

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 3, 1991

Mary Isaacs,
Controller/Compliance Officer
Trane Employees Federal Credit Union
Box 443
La Crosse, Wisconsin 54602-0443

Re: Preemption of Wisconsin Statute Requiring
Interest of Mortgage Escrow Accounts (Your
April 29, 1991 Letter)

Dear Ms. Isaacs:

You asked whether Section 138.052 of the Wisconsin Statutes, which requires financial institutions to pay 5.25% interest on mortgage escrow accounts, is applicable to federal credit unions ("FCUs"). The Wisconsin statute is preempted by Section 701.35 of NCUA's Rules and Regulations.

Analysis

Section 138.052(5)(a) of the Wisconsin Statutes Annotated provides that "a . . . credit union . . . which originates a loan after January 31, 1983, and which requires an escrow account to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest-bearing account." We assume, for purposes of this opinion, that the statute was intended to apply to federal, as well as Wisconsin-chartered credit unions. You indicate that, although Trane Federal Credit Union ("Trane") is not unwilling to pay interest on its first mortgage escrow accounts, it wishes to adjust the interest rate on those accounts due to falling interest rates.

Section 701.35 of NCUA's Rules and Regulations, 12 C.F.R. §701.35, states:

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. 1757(6)) and

FOIA

Vol. VIK

Mary Isaacs
June 4, 1991
Page 2

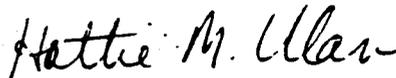
the board of directors may declare dividends on such accounts as provided in Section 117 of the Act (12 U.S.C. 1763).

* * *
(c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

The Wisconsin statute is preempted by Section 701.35(c). The decisions whether an account will receive dividends and, if so, what dividend rate will be paid, are matters affecting the maintaining of a share account, and are therefore decisions to be made by an FCU's board of directors. State laws such as the Wisconsin statute, which purport to regulate such decisions, are inapplicable to FCUs.

We note that H.R. 2373, a bill recently introduced in the U.S. House of Representatives, would limit the amount of advance deposits in escrow accounts and require loan servicers to pay interest on advance deposits in escrow accounts. While the bill, if enacted into law, would not affect our response to your current question, it would require that interest of 5.25 percent be paid by servicers of escrow accounts for federally related mortgage loans. We are enclosing a copy of the bill for your information.

Sincerely,



Hattie M. Ulan
Associate General Counsel

GC/MRS:sg
SSIC 3320
91-0503

102D CONGRESS
1ST SESSION

H. R. 2373

IN THE HOUSE OF REPRESENTATIVES

Mr. SANDERS introduced the following bill; which was referred to
the Committee on _____

A BILL

To amend the Real Estate Settlement Procedures Act of 1974 to
limit the amount of advance deposits that may be deposited in
escrow accounts, require lenders to pay interest on advance
deposits in escrow accounts, and provide for effective
enforcement of such provisions, and for other purposes.

- 1 Be it enacted by the Senate and House of Representatives
- 2 of the United States of America in Congress assembled,

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Escrow Deposit Act of
3 1991``.

4 SEC. 2. MAXIMUM AMOUNT OF ADVANCE DEPOSITS AND EFFECT OF
5 FEDERAL ESCROW LIMITATIONS.

6 Section 10(a) of the Real Estate Settlement Procedures
7 Act of 1974 (12 U.S.C. 2609(a)) is amended--

8 (1) in the matter preceding paragraph (1), by
9 inserting ``or servicer (as the term is defined in
10 section 6(i))`` after ``lender``;

11 (2) by inserting ``or servicer`` after ``lender``
12 each place it occurs in paragraphs (1) and (2);

13 (3) in paragraph (2), by striking ``one-sixth of the
14 estimated total amount`` and inserting ``one-sixth of the
15 sum of the estimated total amounts``; and

16 (4) by inserting after the period at the end the
17 following:

18 ``Except as authorized in the proviso in paragraph (2),
19 clause (B) of such paragraph may not be construed to require
20 or permit deposits in any such escrow account based on one-
21 sixth of each of the estimated amounts of the taxes,
22 insurance premiums, and other charges to be paid during the
23 12-month period (commonly known as individual or single item
24 analysis) or in any other manner that results in the

1 additional balance in such escrow account exceeding one-sixth
2 of the sum described in paragraph (2)(B).

3 "Paragraphs (1) and (2) may not be construed to require
4 any deposit in such an escrow account or to require the
5 deposit of a particular amount in such an escrow account. To
6 the extent that the terms of a mortgage agreement or contract
7 relating to escrow requirements (for a federally related
8 mortgage loan) are not inconsistent with paragraphs (1) and
9 (2) and the other provisions of this section, such terms
10 shall control the establishment and maintenance of any such
11 escrow account."

12 **SEC. 3. INTEREST ON ADVANCE DEPOSITS IN ESCROW ACCOUNTS.**

13 Section 10 of the Real Estate Settlement Procedures Act
14 of 1974 (12 U.S.C. 2609) is amended by adding at the end the
15 following new subsection:

16 "(e) **INTEREST ON ESCROW ACCOUNTS.**--Any servicer that
17 establishes or continues an escrow account in connection with
18 a federally related mortgage loan shall pay interest on the
19 outstanding balance in the escrow account at an annual rate
20 not less than 5.25 percent. The Secretary shall by regulation
21 provide for the manner and timing of the payment of the
22 interest to the borrower."

23 **SEC. 4. ENFORCEMENT OF BORROWER RIGHTS.**

24 (a) **CIVIL MONEY PENALTIES.**--Section 10(d) of the Real
25 Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d))

1 is amended--

2 (1) in paragraph (1)--

3 (A) by striking "failure to submit a statement
4 to a borrower as required under subsection (c)" and
5 inserting "failure to comply with the requirements
6 of this section"; and

7 (B) by striking "failing to submit the
8 statement" and inserting "failing to comply"; and

9 (2) in paragraph (2), by striking "the requirement
10 to submit the statement" and inserting "a requirement
11 under this section".

12 (b) ACTIONS.--Section 10 of the Real Estate Settlement
13 Procedures Act of 1974 (12 U.S.C. 2609), as amended by
14 section 3 of this Act, is further amended by adding at the
15 end the following new subsection:

16 "(f) ACTIONS TO ENFORCE BORROWER RIGHTS.--

17 "(1) IN GENERAL.--An action may be brought pursuant
18 to this section by a borrower under a federally related
19 mortgage loan, the Secretary, the Attorney General of any
20 State in which a borrower is located, or the insurance
21 commissioner of any State in which a borrower is located.

22 "(2) ATTORNEYS FEES.--In any action brought pursuant
23 to this section, the court may award to the prevailing
24 party the court costs of the action together with
25 reasonable attorneys fees."

1 SEC. 5. JURISDICTION OF COURTS.

2 Section 16 of the Real Estate Settlement Procedures Act
3 of 1974 (12 U.S.C. 2614) is amended by striking ``section 8
4 or 9`` and inserting ``section 8, 9, or 10``.