

July 7, 1992

Leon G. Swenson,
League Consultant
South Dakota Credit Union League
P.O. Box 0
Sioux Falls, South Dakota 57101

Re: Preemption of South Dakota Law on Disposition of Decedent Accounts (Your June 19, 1992, Letter)

Dear Mr. Swenson:

You asked whether Section 701.35(c) of NCUA's Rules and Regulations preempts a newly enacted South Dakota law affecting disposition of funds in a decedent's account. We note that the copy of the law that you provided does not specifically state that the law applies to federal credit unions ("FCUs"). Assuming that the law is intended to apply to FCUs, we see no basis for preemption, and it is our opinion that FCUs must comply with the law.

The law contains a number of provisions, and you do not specify which section concerns you. Since the other provisions of the law appear to reduce, rather than add to the burdens on financial institutions holding funds of deceased persons, we assume that you are inquiring about possible preemption of Section 6 of the law, which limits the amount of funds that may be released by the financial institution holding them.

Specifically, Section 6 provides that, except where funds are released to a surviving spouse, the holder may only release seventy percent of the funds pending satisfaction of any inheritance tax obligation. Once notified that the inheritance tax has been paid or that no inheritance tax obligation exists, the holder may release the remaining funds.

Section 701.35(c) preempts state laws affecting the opening, maintaining, or closing of accounts in FCUs. However, preemption becomes an issue only where there is a conflict between the federal and state laws involved. In our view, the South Dakota statute does not affect the opening, maintaining, or closing of an account; it merely governs disposition of the funds in a decedent's account. It has long been our position that both account ownership (other than for NCUSIF insurance purposes) and inheritance issues are governed by state law. We perceive no conflict between the South Dakota law and Section 701.35(c). Therefore, the South Dakota law is not preempted, and FCUs must comply with it.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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