

September 20, 1996

Robert S. Walls, Sr., President
Delaware Credit Union League, Inc.
4 Quigley Boulevard
New Castle, Delaware 19720-4150

Re: Interpretive Ruling and Policy Statement ("IRPS") 82-4
(You July 8, 1996 Letter)

Dear Mr. Walls:

In your letter, you expressed concern over the manner in which the Delaware Office of the State Banking Commissioner ("Banking Commissioner") is handling examinations of federal credit unions (FCUs) for compliance with unclaimed property laws. Specifically, you asked us to provide you with guidance as to the enforceability of the "reasonable cause clause" in IRPS 82-4; as to what instructions could be given to the Banking Commissioner in conducting a compliance inspection, and as to what documents requested by the Banking Commissioner are statutorily relevant. We have set forth our responses below.

BACKGROUND

The NCUA Board, recognizing that unclaimed property is a subject of particular interest to the states, adopted IRPS 82-4 to permit the states to inspect the books and records of FCUs for the purpose of determining compliance with state unclaimed property laws. The states conduct this inspection as representatives of the Board and under limited authority, as only the Board has the authority to examine the books and records of an FCU. 12 U.S.C. §1756. The clause in IRPS 82-4 that you refer to as the "reasonable cause clause" provides:

The state authorities so designated may, at reasonable times and upon reasonable notice to a Federal credit union, review a Federal credit union's records solely to ensure compliance with applicable state unclaimed property laws upon a reasonable cause to believe that the Federal credit union has failed to comply with such laws.

ANALYSIS

You first raised the question of whether the "reasonable cause clause" in IRPS 82-4 was enforceable. The answer is yes. This clause was added to protect FCUs from unreasonable or burdensome intrusions by the states. It limits a state's authority to conduct the review upon having reasonable cause to believe that an FCU has failed to comply with the state's unclaimed property laws and instructs the state to provide the FCU with reasonable notice that at reasonable times, it intends to conduct an inspection for compliance.

While the Board chose to delegate this authority to the states for the limited purpose of determining compliance, the Board clearly states in the preamble to IRPS 82-4 that "inherent in its designation authority is the authority to withdraw that designation should, for example, a particular state agency abuse its authority in the examination process." Thus, if an FCU believes that a state has acted outside of its designated scope of authority pursuant to IRPS 82-4 and the matter cannot be informally resolved between the parties, then the FCU needs to file a request for action as provided under Section 790.3 of NCUA's Regulations. Continued violations of IRPS 82-4 by a state could result in the withdrawal of this limited authority.

Next, you asked us to provide the Banking Commissioner with guidance on conducting the compliance review of FCUs. It is given that the Banking Commissioner is familiar with general examination procedures as the state entity responsible for examining all the banking organizations for compliance with Delaware's unclaimed property laws. DEL CODE ANN. tit. 12, §1155 (1995). However, what would be most useful for the Banking Commissioner is to obtain a good understanding of IRPS 82-4 and its application to the states. With this knowledge, the Banking Commissioner should have a better idea of how to proceed in performing this function for FCUs.

Last, you sought our opinion as to which documents requested by the Banking Commissioner are statutorily relevant for purposes of the state's inspection. After conferring with the Office of Examination and Insurance and Region II, it is our opinion that all of the documents requested by the Banking Commissioner are of relevance. Although the retrieval of these documents may require additional staff time, the document request appears reasonable.

I hope that this opinion supplies you with a better understanding of IRPS 82-4.

Sincerely,

Richard S. Schulman
Associate General Counsel

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