

November 21, 2003

Mr. Harvey Grimball
Grimball & Associates
1219 Plains Port Hudson Road
Zachary, Louisiana 70791

Re: Louisiana Statute Governing Inactive Accounts.

Dear Mr. Grimball:

You have asked if federal credit unions (FCUs) may rely on a Louisiana statute that permits a credit union domiciled in the state to credit share accounts under \$100 to a reserve for inactive accounts after it has been unable to contact the member for a period of two years. LA. REV. STAT. ANN. § 6:659.1 (1999). The Federal Credit Union Act (Act) and NCUA regulations do not contemplate FCUs relying on state law in this regard, but they permit FCUs to adopt an inactive accounts policy that would be equivalent to this state law provision, as long as the policy does not conflict with other federal laws, state escheat laws, or its contractual obligations.

The Act grants an FCU exclusive authority to determine the terms, rates and conditions of member accounts, subject only to limitations prescribed by the NCUA Board. 12 U.S.C. §1757(6). Under NCUA regulations, state laws regulating the opening, maintenance and closing of share, share draft or share certificate accounts are not applicable to FCUs. 12 C.F.R. §701.35(c). Together, these statutory and regulatory provisions permit an FCU to adopt an inactive accounts policy that would be equivalent to, or even more stringent than the Louisiana statute, as long as it discloses the policy to members and it does not conflict with other federal laws, state escheat laws or the FCU's contractual obligations. The NCUA's policy regarding FCUs' compliance with state escheat laws is provided in Interpretative Ruling and Policy Statement 82-4, State Unclaimed Property Laws, available on the agency's website.

Regarding other federal law and regulations, an FCU must ensure that it complies with NCUA rules governing accuracy in advertising and the Truth in Savings Act (TISA). 12 C.F.R. §740.2; 12 C.F.R. Part 707. An FCU must not use any advertising that misrepresents its services or the terms of its account contracts, including the circumstances under which the FCU will close an inactive account and cease paying dividends. 12 C.F.R. §740.2. An FCU must also ensure that its policy is consistent with TISA requirements in Part 707. 12 C.F.R. Part 707. For example, NCUA's TISA regulation requires that dividends continue to accrue until the day funds are withdrawn from an account. 12 C.F.R. §707.7(c). NCUA's official staff commentary on the rule discusses the application of §707.7 to dormant accounts. 59 Fed. Reg. 59887 (November 21, 1994). In response to comments that financial institutions should be permitted to withhold the payment of dividends for dormant accounts, if authorized by state law and the deposit contract, the NCUA Board concluded that, under TISA, account inactivity does not affect an institution's duty to pay interest. 59 Fed. Reg. 59887, 59897 (November 21, 1994). 12 C.F.R. §707.1(d). We believe, however, it would not conflict with the TISA requirements if an FCU's dormant account policy required the closure of the inactive account before ceasing dividend accrual. Finally, an FCU interested in implementing a dormant account policy must also ensure that it is consistent with the requirements of the Federal Credit Union Bylaws (FCU Bylaws) governing a member's right to bring an account back to par value before being terminated from membership. FCU Bylaws, Article III, Section 3.

Sincerely,

Sheila A. Albin
Associate General Counsel

OGC/DMS:bhs
03-0855