

March 12, 2004

Thomas Casey, Financial Manager
Ledge Light Federal Credit Union
60 Colver Avenue
Groton, CT 06340

Re: Preemption of Connecticut Unclaimed Property Law.

Dear Mr. Casey:

You have asked if federal law preempts a Connecticut statute that prohibits federal credit unions (FCUs) from assessing fees based on inactivity or dormancy against member share accounts. Our view is that the law conflicts with the Federal Credit Union Act and therefore, as to FCUs, it is preempted.

Connecticut amended its unclaimed property statute effective August 16, 2003. In pertinent part, the new law provides:

A holder of property . . . may not impose on the property a dormancy charge or fee, abandoned property charge or fee, unclaimed property charge or fee, escheat charge or fee, inactivity charge or fee, or any similar charge, fee or penalty for inactivity with respect to the property. Neither the property nor an agreement with respect to the property may contain language suggesting that the property may be subject to such a charge, fee or penalty for inactivity.

2003 Conn. Acts 03-01, §83 (June 30th Spec.Sess.). Before the amendment, the statute was considerably less clear about whether fees could be assessed against an inactive account. The statute provided simply that the holder of property presumed abandoned could exclude any charges that could "lawfully be withheld" before turning funds over to the state. CONN. GEN.STAT. ANN. §3-57A(A)(3) (West 2000).

According to the materials you provided us, the state objected to fees that your credit union had assessed against dormant accounts during the last examination period, ending December 1999. The state demanded that the credit union reverse these charges and tender almost \$3,000 to the state treasurer, representing the reversed fees plus interest. The state did not indicate the basis for its determination that the fees were improper. The credit union paid the money to the state "under protest," but did not notify the NCUA or seek its guidance at that time. You have now sought our view as to whether the law, as amended, is preempted.

NCUA's policy regarding state laws pertaining to abandoned property and escheat is addressed in NCUA Interpretative Ruling and Policy Statement (IRPS) No. 82-4, Examination for Compliance with State Unclaimed Property Laws, available on our web site. As discussed in IRPS 82-4, NCUA acknowledges the legitimate state interest in determining whether and when property of its citizens has been abandoned and allows limited examination of FCUs by appropriate state officials for compliance purposes. At the same time, however, NCUA does not concede that states can prohibit activities expressly permitted for FCUs by federal law or regulation.

In the preamble to IRPS 82-4, the NCUA Board specifically states:

As to service charges that result in absorbing accounts or portions thereof into income, this is a matter of contract between the FCU and the member. To the extent that such charges are either authorized or not prohibited by the

Federal Credit Union Act, NCUA Rules and Regulations or Board policy, and are provided for in the contract with the member, it is the Board's position that state law prohibiting such charges would be preempted.

47 Fed. Reg. 53326 (November 26, 1982).

The Federal Credit Union Act grants FCUs exclusive authority to determine "terms, rates and conditions" relating to member share accounts, subject only to limitations prescribed by the NCUA Board. 12 U.S.C. §1757(6). Based on this statute, the NCUA Board has adopted a regulation outlining the scope of an FCU's authority to prescribe terms and conditions relating to member accounts:

A federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

12 C.F.R. §701.35(c) (emphasis added). In accordance with this regulation, an FCU may impose fees and charges against a member account, including dormant account fees, without regard for state law. Legal opinions issued by this office have consistently upheld this view. See, for example, OGC Opinion Letter No. 93-0719, dated October 28, 1993, a copy of which is enclosed.

To the extent that the recently amended Connecticut statute would prohibit an FCU from assessing a fee based upon account inactivity or dormancy, it is preempted.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC//RPK:bhs
04-0259

Enclosure