

November 26, 2008

Brenda Weinberger, Risk Manager
Shell Federal Credit Union
301 E. 13th Street
Deer Park, TX 77536

Re: Permissibility of Closing Inactive Accounts.

Dear Ms. Weinberger:

You have asked if a federal credit union's (FCU's) board of directors can close accounts that have been inactive more than 12 months with balances of between one cent and 500 dollars and mail the members the balance. The answer is yes, if this does not conflict with other federal laws, state escheat laws, or its account agreement obligations. You should keep in mind that, if the FCU charges inactive account fees and these have caused a member's share account to fall below the par value amount, the FCU can terminate the account only if the member has not increased the balance to par value within a time period specified in the FCU's Bylaws.

You have proposed an inactive accounts policy where the FCU would close accounts inactive for more than 12 months and with balances of between one cent and 500 dollars. The FCU would mail each accountholder's balance to his or her last known address. The FCU also would notify members of the new policy before instituting it.

The FCU Act, NCUA regulations, and prior NCUA legal opinions address issues related to closing accounts. Under the FCU Act, FCUs have exclusive authority to determine terms, rates and conditions for member share accounts except as limited by the NCUA Board. 12 U.S.C. §1757(6). Under NCUA regulations, an FCU can, "consistent with this section [§701.35], parts 707 [truth in savings] and 740 [accuracy in advertising], 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 draft or share certificate account. State laws regulating such activities are not applicable to [FCUs]." 12 CFR §701.35(c); see OGC Op. 03-0855 (Nov. 21, 2003); OGC Op. 06-1214 (Apr. 11, 2007) (available at www.ncua.gov).

An FCU must ensure its policy is consistent with the requirements in NCUA's truth in savings regulation, 12 C.F.R. Part 707, and NCUA's accuracy of

advertising regulation, 12 C.F.R. Part 740. Under the truth in savings regulation, an FCU must disclose to members fees imposed on dormant or inactive accounts. 12 C.F.R. §707.4(b)(4)(v) and Part 707, app. C; and see OGC Op. 03-0855 (Nov. 21, 2003) (discussing dividend payments for dormant accounts). Under the advertising regulation, an FCU must not use any advertising that misrepresents its services. 12 C.F.R. §740.2.

Under NCUA's FCU Bylaws, an FCU may terminate a member's membership if a member's share balance falls below the value of a par value share and the member does not increase the balance within a specified time period. Although the time period is left to an FCU's discretion in the FCU Bylaws, it cannot be zero and should be reasonable. FCU Bylaws Art. III, §3 and Staff Commentary iii; see also OGC Op. 03-0855 ("an FCU interested in implementing a dormant account policy must also ensure that it is consistent with the requirements of the . . . [FCU Bylaws] governing a member's right to bring an account back to par value before being terminated from membership"). While an FCU may charge dormant account fees, these fees could drop an account balance below the required par value and would trigger a member's right to bring the account to the required par value within the time period set in the Bylaws before being terminated on that basis. You need to ensure the policy you are proposing is consistent with the time period you provide in Article III §3 of your FCU Bylaws.

Finally, we note that NCUA's policy on FCUs' compliance with state escheat laws is provided in "Examination for Compliance with State Unclaimed Property Laws," Interpretative Ruling and Policy Statement 82-4, 47 Fed. Reg. 53,325 (Nov. 26, 1982), available at www.ncua.gov. As we wrote in a prior opinion, "A state does not have authority to regulate an FCU's account operation until an account achieves unclaimed property status." OGC Op. 06-1214.

If you have any questions regarding this legal opinion, please contact Staff Attorney Regina Metz or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel