

June 3, 1991

Mary Isaacs,  
Controller/Compliance Officer  
Trane Employees Federal Credit Union  
Box 443  
La Crosse, Wisconsin 54602-0443

Re: Preemption of Wisconsin Statute Requiring Interest of Mortgage Escrow Accounts (Your April 29, 1991 Letter)

Dear Ms. Isaacs:

You asked whether Section 138.052 of the Wisconsin Statutes, which requires financial institutions to pay 5.25% interest on mortgage escrow accounts, is applicable to federal credit unions ("FCUs"). The Wisconsin statute is preempted by Section 701.35 of NCUA's Rules and Regulations.

Analysis

Section 138.052(5)(a) of the Wisconsin Statutes Annotated provides that "a . . . credit union . . . which originates a loan after January 31, 1983, and which requires an escrow account to assure the payment of taxes or insurance shall pay interest on the outstanding principal balance of the escrow of not less than 5.25% per year, unless the escrow funds are held by a 3rd party in a noninterest-bearing account." We assume, for purposes of this opinion, that the statute was intended to apply to federal, as well as Wisconsin-chartered credit unions. You indicate that, although Trane Federal Credit Union ("Trane") is not unwilling to pay interest on its first mortgage escrow accounts, it wishes to adjust the interest rate on those accounts due to falling interest rates.

Section 701.35 of NCUA's Rules and Regulations, 12 C.F.R. ~701.35, states:

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with Section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in Section 117 of the Act (12 U.S.C. 1763). \* \* \* (c) A Federal credit union may, consistent with this Section, other Federal law, and its contractual obligations, determine the type of disclosures, fees or charges, time for crediting of deposited funds, and all other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to Federal credit unions.

The Wisconsin statute is preempted by Section 701.35(c). The decisions whether an account will receive dividends and, if so, what dividend rate will be paid, are matters affecting the maintaining of a share account, and are therefore decisions to be made by an FCU's board of directors. State laws such as the Wisconsin statute, which purport to regulate such decisions, are inapplicable to FCUs.

We note that H.R. 2373, a bill recently introduced in the U.S. House of Representatives, would limit the amount of advance deposits in escrow accounts and require loan servicers to pay interest on advance deposits in escrow accounts. While the bill, if enacted into law, would not affect our response to your current question, it would require that interest of 5.25 percent be paid by servicers of escrow accounts for federally related mortgage loans. We are enclosing a copy of the bill for your information.

Sincerely,

Hattie M. Ulan  
Associate General Counsel

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