December 23, 1991

Robert S. Bascom
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New York State Credit Union League, Inc.
Box 15201
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Re: Preemption of New York State Law on Designa- tion of Beneficiary for Shares (Your November 25, 1991, Letter)

Dear Mr. Bascom:

You requested our opinion on whether Section 701.35 of NCUA's Rules and Regulations (the "Regulations") preempts a New York statute that limits the amount that a financial institution may pay upon an account holder's death. In our opinion, the statute is not preempted. You also asked why the NCUA Ac- counting Manual does not allow the use of a Designation of Beneficiary for Shares with a single ownership account. Please see our response below.

Preemption

Background

The New York League requested guidance from the State of New York Banking Department on the use of Designation of Benefi- ciary forms by credit unions. The Banking Department wrote back, indicating that credit unions must comply with Section 1310 of New York's Surrogate's Court Procedure Act when re- leasing monies pursuant to a Designation of Beneficiary form, and that under that statute, a credit union may not honor a Designation of Beneficiary form if the amount of "debt" (SCPA ~1310(1)(a)(i)) owed to the deceased by all "debtors" (SCPA ~1310(1)(b)), including the credit union, exceeds $10,000.

You interpret the Banking Department's letter to mean that a credit union located in New York may only use a Designation of Beneficiary for Shares if "the aggregate of all deposits does not exceed $10,000." You state that such a limitation could prove cumbersome for credit unions, as an individual's aggregate deposits could exceed $10,000 at any time without a credit union's knowledge.

You suggest that SCPA Section 1310 is preempted by Section 701.35(c) of the Regulations, which permits a federal credit union ("FCU") to determine "all matters affecting the open- ing, maintaining or closing" of an account, and preempts any state law attempting to regulate such activities. You ask for our opinion on SCPA Section 1310's applicability to both FCUs and federally insured state-chartered credit unions ("FISCUs").

Analysis

We note at the outset that Section 701.35(c) only preempts state laws insofar as they attempt to regulate practices by FCUs. Therefore, even if we were to find that Section 701.35(c) preempts the New York statute, FISCUs would not be affected by our determination and would still have to comply with the statute. In any event, we do not believe that SCPA Section 1310 is preempted.

We have reviewed SCPA Section 1310, and our interpretation differs both from yours and from that of the

Banking Depart- ment. You state that the statute precludes use of a Designa- tion of Beneficiary for Shares when the aggregate of the deceased's deposits exceeds $10,000. However, what the stat- ute actually provides is that a financial institution may pay only so much from the deceased's account as will bring the aggregate paid to the deceased's representatives by all "debtors" to $10,000. (See, SCPA ~~1310(2) and (3).) As we read the statute, the amount on deposit is irrelevant; it is the amount paid by all debtors that is dispositive. More- over, nothing in the statute precludes use of Designation of Beneficiary for Shares form.

The Banking Department states that Designation of Beneficiary forms cannot be honored when the aggregate amount of debt owed to the deceased by all debtors exceeds $10,000. We in- terpret the statute differently. First, as discussed above, the $10,000 limit governs the amount paid, rather than the amount owed. Second, both sections 1310(2) and (3) provide for payments in compliance with the limit. However, by their express terms, Sections 1310(2) and (3) only govern payment "unless otherwise provided by a designation of a beneficiary which is then in effect." Payment under Section 1310 is made only when an affidavit is filed and there is no designation of beneficiary. It seems to us that the designation of beneficiary supersedes the payment rules and limitations of Section 1310(2) and (3). This interpretation is bolstered by the Practice Commentary to Section 1310 (copy enclosed), which states in part, "Note that payment may not be made under this section if there is in effect a valid designation of a beneficiary who is entitled to the debt in question." In our view, if a Designation of Beneficiary for Shares has been filed and is in effect at the time of the account holder's death, the statute does not apply.

Federal preemption of a state statute becomes an issue only when there is a conflict between the federal and state laws. We do not perceive any conflict between SCPA Section 1310 and either the Federal Credit Union Act or NCUA's Regulations. Therefore, we need not address the preemption issue. How- ever, please feel free to contact us if you have further questions regarding this matter.

Accounting Manual

You also asked for the reasoning behind the statement, in Section 5150.12 of the Accounting Manual, to the effect that for a single ownership account, a beneficiary may not be des- ignated to receive the member's shareholdings upon the member's death. While the owner of an individual account may designate a beneficiary to receive his shares upon his death, his doing so changes his account from a single ownership ac- count to a "payable on death" or "testamentary" account. Testamentary accounts are classified separately from single ownership accounts, and their insurance coverage may differ from that of single ownership accounts, depending upon the identity of the beneficiary. You may wish to consult Section 745.4 of the Regulations for an explanation of the insurance coverage for testamentary accounts.

Sincerely,

Hattie M. Ulan
Associate General Counsel

Enclosure

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