



Via Electronic Delivery to SMeek@illinoistreasurer.gov

November 9, 2018

Sara Meek
Deputy Director of Legislative Affairs
Illinois State Treasurer
219 State House
Springfield, Illinois 62706

Re: Proposed Rules on the Revised Uniform Unclaimed Property Act
Illinois Register, Volume 42, Issue 39, Pages 17145–17232 (September 28, 2018)

Dear Ms. Meek:

The Illinois Bankers Association (“IBA”)¹ is writing on behalf of its members to comment on the above-referenced proposed rule for implementing the Revised Uniform Unclaimed Property Act, 765 ILCS 1026/15-101 *et seq.* (Illinois RUUPA), as adopted by the General Assembly in Public Acts 100-22 and 100-566. We appreciate the Treasurer’s Office’s efforts in drafting proposed rules that would clarify many of the Illinois RUUPA’s requirements. Clarifying rules will be tremendously helpful for our members, which are making every effort to comply with the bewildering array of new requirements in the new law.

However, there are a limited number of provisions in the proposed rules that appear to overstep the statutory authority provided in the Illinois RUUPA, as well as provisions that would benefit from additional clarification. We respectfully request that your office consider the following comments.

Safe Deposit Boxes. Under proposed Section 760.210(b), a holder is required to file an “Annual Report containing information about the contents of safe deposit boxes.” This report must be “completed in its entirety, verified for accuracy, and filed **regardless of whether a holder has abandoned safe deposit boxes to report.**” In practice, this language would require financial institutions to report the contents of safe deposit boxes that have not — and may never — become unclaimed property.

We do not believe that the Illinois RUUPA provides statutory authority for the Treasurer’s Office to demand information regarding property that is *not* considered unclaimed. Section 15-401 of the Illinois RUUPA requires reports only from holders “of property presumed abandoned and subject to the custody of the administrator.” Property that is not considered unclaimed is simply outside the purview of the Illinois RUUPA. Additionally, a financial institution holding an active safe deposit box may not have legal authority to invade their customers’ boxes to inventory their contents, whether under a lease agreement or otherwise. Even if such authority existed, arranging for annual drilling of all boxes to provide inventories for the annual report would be prohibitively expensive and clearly untenable for other self-evident reasons.

Stored-Value Cards. Proposed Section 760.220(a)(4) requires holders of stored-value cards lacking an expiration date to “honor the card on presentation indefinitely.” The proposed rule notes that this provision is required to avoid preemption from a preemption determination by the Consumer Financial Protection Bureau, 78 Fed. Reg. 24386 (April 25, 2013). However, the referenced preemption determination relates only to Regulation E’s protections for gift cards, 12 CFR 1005.20(e)(1), and expressly does not apply to stored value cards that are not marketed or labeled as gift cards. 12 CFR 1005.12(b)(2) (the protections “**do not include** any card, code, or other device that is: . . . (2) reloadable and not marketed or labeled as a gift card or gift certificate”). Consequently, the requirement to honor a gift card indefinitely should not apply to stored-value cards that are not marketed or labeled as gift cards.

¹ The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate that benefits the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 30% of IBA members are community banks with less than \$100 million in assets, and over 60% of IBA members are community banks with less than \$250 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 100,000 men and women in over 5,000 offices across the state.

Examples of Apparent Owner Interest. Proposed Section 760.300 includes helpful lists of activities that are considered “owner-initiated,” which are indications of interest, in contrast to activities that are considered “holder-generated,” which are not indications of interest. However, the examples of holder-generated activities require some clarification, as they include “[a]utomatic financial or administrative transactions or activity, such as automatic payments or distributions or automatic portfolio rebalancing.” It should be clarified that when an apparent owner orders a financial institution to institute automatic payment or distributions, or initiates automatic portfolio rebalancing, such initial activities or initial authorizations clearly constitute owner-initiated activities that should be treated as indications of interest.

Deduction of Due Diligence Costs. Proposed Section 760.460 limits a holder’s right under the Illinois RUUPA to “deduct reasonable costs incurred in sending a notice by United States mail.” 765 ILCS 1026/15-501(e). Proposed Section 760.460(h) would limit these deductions to “the cost of envelopes, postage, and stationery. No other cost of mailing may be deducted.” Holders should be able to deduct *all* their reasonable mailing costs — for example, their printing costs and at least some of the employee time and third party vendor costs associated with drafting, reviewing, printing, mailing, and retaining copies of these required notices.

Holder Reimbursement Requirements. Proposed Section 760.680(b) requires a holder seeking reimbursement on a negotiable instrument to “submit proof that payment was made to a person the holder reasonably believed to be the legal owner of the property.” This proposed language includes an unnecessary change to the statutory language in the Illinois RUUPA, which requires proof that payment was made to “a person the holder reasonably believed entitled to payment.” 765 ILCS 1026/15-605(b).

At the very least, the reference in the proposed rules to the “legal owner” of a negotiable instrument should be “apparent owner,” which is the term used in other subsections within this section. The Illinois RUUPA does not require holders to track down “legal owners” of property; they are responsible for tracking only the “apparent owners” who appear “on the records of a holder as the owner of property.” 765 ILCS 1026/15-102(3). Additionally, a holder should not be responsible for submitting “information and documentation . . . as necessary to establish legal ownership” in proposed Section 760.680(i) — again, the holder’s responsibilities are limited to providing information and documentation regarding “apparent ownership.”

Interest and Penalties. Proposed Section 760.940(b) restates ambiguous language in the Illinois RUUPA regarding penalties: “The administrator may require a holder that fails to report, pay, or deliver property within the time prescribed by the Act to pay to the administrator, in addition to interest, a civil penalty of \$200 for each day the duty is not performed, up to a cumulative maximum amount of \$5,000.”

It is unclear whether the phrase “cumulative maximum amount of \$5,000” refers to the total dollar amount of civil penalties that may be assessed to a holder for a specific violation, or the total dollar amount of civil penalties that may be assessed to a holder for multiple violations “each day,” or the total dollar amount of civil penalties that may be assessed to a holder for multiple violations in a given annual reporting period.

For example, if a holder fails to report ten certificate of deposit accounts for one month, would the holder be subject to a maximum penalty of \$5,000, or a daily maximum of \$5,000 for thirty days, or a per-item maximum of \$5,000 for each of the ten unreported accounts? We believe the clearest interpretation would be to treat the stated cumulative maximum penalty as a limit of \$5,000 per holder per reporting period. Rather than restating the ambiguous statutory language, we ask that the administrative rules provide this clarification.

Thank you for this opportunity to comment on the proposed rules. Please feel free to contact us if you have any questions.

Very truly yours,



Carolyn Settanni
Vice President and
Assistant General Counsel