

February 25, 2016

**VIA EMAIL [katie.robinson@uniformlaws.org](mailto:katie.robinson@uniformlaws.org)**

Rex Blackburn, Co-Chair  
Michael Houghton, Co-Chair  
Charles A. Trost, Reporter  
Drafting Committee to Revise the Uniform Unclaimed Property Act  
Uniform Law Commission  
111 N. Wabash Ave.  
Suite 1010  
Chicago, IL 60602

RE: Project to Revise the Uniform Unclaimed Property Act

Dear Chairman Blackburn, Chairman Houghton and Reporter Trost:

The American Bankers Association Working Group on Revisions to the Uniform Unclaimed Property Act respectfully submits these comments for consideration by the Drafting Committee in your forthcoming draft of the proposed Revised Uniform Unclaimed Property Act (“RUUPA”).

The American Bankers Association is the voice of the nation’s \$15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans. The ABA RUUPA Working Group is comprised of lawyer, government relations staff and operation and compliance professionals from bank members of all sizes and state bankers associations.

Banks hold various categories of property subject to unclaimed property laws, and the ABA appreciates the opportunity to participate as an Observer to the Drafting Committee and to provide input on the latest draft issued by the committee. We would be happy to discuss these suggested changes or provide additional supporting material at your convenience.

## **Section 1. In General**

### ***Definition of “Domicile”***

The Drafting Committee should amend section 102(4)(c), in text or through an accompanying comment, to provide that the domicile for a national bank is the address identified in its charter. The National Bank Act requires a national bank to state in its organization certificate “[t]he place where its operations of discount and deposit are to be carried on, designating the State, Territory or District, and the particular county and city, town, or village.” 12 U.S.C. § 22. Reference to this consistent and easily applicable standard would provide considerable clarity for national banks.

## **Section 2. Presumptions of Abandonment**

### ***Treatment of Money Orders and Cashier's/Teller's Checks***

The committee should clarify the treatment of cashiers/teller's checks and personal money orders sold by a bank.

The definition of a "money order" in section 102(15) explicitly excludes any instrument sold by a financial organization. As a result, a personal money order sold by a bank would not fall within the seven year dormancy period provided for money orders under section 201(2) of the act. The Drafting Committee should make explicit that personal money orders sold by a bank are analogous to a single purpose checking account, in that they are issued by and drawn upon the bank, and as such should be treated as a demand deposit under section 201(6) for purposes of determining abandonment.

The terms "cashier's check" or "teller's check" appear to be undefined in the act. The Drafting Committee should specifically define this type of property and clarify which dormancy period applies to it under section 201. A comment providing that the definitions in UCC § 3-104(g) and § 3-104(h) are the preferred definitions for cashier's check and tellers check respectively, would be beneficial. Furthermore, given the similarity of a check and money order, the holding period for these types of property should be consistent. Given that the financial organization is directly liable under these instruments, we believe they should be classified under section 201(5) as instruments evidencing a debt of a business association. Note that the definition of a "business association" at section 102(3) includes a financial organization. A comment to that effect would be extremely helpful as there is currently no direct guidance on this issue.

### ***Demand, Savings, or Time Deposits (Section 201(6))***

To avoid financial loss to a customer with a certificate of deposit (CD), or other time deposit account, the committee should amend the presumption of abandonment to a "later of" standard rather than an "earlier of" standard in section 201(6). For example, when a customer purchases a CD, that customer invests a fixed sum of money for a fixed period of time in return for a higher rate of interest than a regular savings or demand deposit account. If the CD is cashed out before maturity, however, the account may be subject to an early withdrawal penalty or a forfeiture of earned interest. See Regulation D section 204.2(c)(1). Some CDs and other time deposit accounts may have maturity dates that exceed the three year period set out in the Act. As a result, a customer who purchased a ten year CD would be at risk of having it escheat to the state for lack of activity, even though the customer does not expect to take action on the account until maturity, because the dormancy period would run shorter than the CD term.

### ***Payroll Cards***

A payroll card, unlike a payroll check, is an individual account (or subaccount) that is owned and controlled by an employee. When wages are paid by an employer, they become the funds of the employee upon deposit to the account (or subaccount) associated with the card. Thus, payroll cards should be treated as a Consumer Asset Account subject to the three

year presumption of abandonment set out in Section 201(6) rather than the one year period set out in Section 201(11). When wages are paid through a payroll check, the money remains in the employer's account until the check is cashed or the amount of the check is remitted to the state upon escheat. However, when wages are paid through a payroll card, money is transferred and immediately owned and controlled by the employee receiving the payment. This is identical to wages that are transferred via direct deposit to an employee's savings or checking account and should be treated similarly. Further, some payroll cards feature the ability to be loaded by multiple sources, not merely the employer. Given this ability to receive funds from other sources, it is almost administratively impossible to determine which funds will be subject to the one year presumption draft as wages and which funds will be subject to the three year presumption as a Consumer Asset Account.

In addition, the definition of payroll card in Section 102(20) presents a number of issues and problems, having described a financial product that is not commonly offered by the banking industry, if at all:

- Once a payroll card is loaded with wages, commissions, bonuses, or reimbursements, that card is indefinitely a payroll card, having had such value loaded initially. Thus, upon termination, in the event an employee elects to use the payroll card as a general purpose reloadable card, that status as a payroll card remains even if the card ceases to be funded by wages and is funded by other sources of funds.
- An employer does not "control" an employee's payroll card account (or subaccount). Upon deposit of wages, the employer ceases to have control over the account and the employee exercises control over the account. The employee owns the payroll card account, not the employer.
- An employer should be able to discharge the employer's obligation to pay wages upon depositing funds into a payroll card account. The employer's discharge of that obligation should not turn on an employee's election to withdraw funds from the payroll card account. Because the employee may not so elect, the employer's obligation could be indefinitely suspended potentially causing the employer to run afoul of a state's wage and hour laws.

In light of these issues and problems in the proposed definition, we urge the adoption of "payroll card account" as set forth in Regulation E section 1005.2(b)(2). This federally adopted definition has been a template for this financial product for a number of years.

### ***Indication of Owner's Interest in Property (Section 208)***

An indication of interest in any one account or type of property should stay the running of presumed abandonment periods for all accounts or property types in the custody of the same financial organization, if certain conditions are satisfied, such as the provisioning to an apparent owner consolidated statements or reports covering multiple accounts or property types. For example, if a consumer has made a deposit or withdrawal on a checking account, and that consumer also maintains a savings account and CD with the same bank, then the checking

account activity would also qualify as an indication of interest in the other two accounts if the consumer receives a consolidated statement of activity on all three accounts. As a practical matter, the consumer would have notice of the existence of the other accounts via the joint statements, and can therefore be presumed to be aware of them, even in the absence of regular transactions.

The 1981 version of the Uniform Act includes such a provision for property held by financial organizations, and forms the primary basis of unclaimed property law in approximately 19 states. The Drafting Committee should return to this preferred standard that is still in effect in the majority of states with uniform unclaimed property laws by reincorporating the language from sections 6(a)(4) and 6(a)(5) of the 1981 Act.

### **Section 3. Priority of Custody of Abandoned Property**

The Drafting Committee should clarify the relationship between priority of custody outlined in the Act and priority established under federal law. For example, 12 U.S.C. 2503 provides priority for written instruments on which a bank is directly liable (including money orders, traveler's checks, and cashier's checks) first to the state where the instrument was purchased, and subsequently to the state in which the bank has its principal place of business.

Under the Act, priority of custody is determined by the address of the apparent owner, which according to section 102(19) is the payee. If the owner payee of a cashier's check has a last known address in State A, but the cashier's check is purchased in a bank in State B, the Act would be in conflict with federal law in regard to the priority of escheat. Although federal law presumably governs in a direct conflict with state law, it would nonetheless be beneficial for the Act to explicitly address the interplay between these two standards.

### **Section 10. Report of Property; Examination of Records**

The ABA Working Group recognizes that the Drafting Committee has thus far decided not include a provision prohibiting the use of contingency fee arrangements with private third-party audit firms engaged by state unclaimed property administrators. Nevertheless, the ABA Working Group would like to join the other stakeholders that have previously submitted numerous letters on this subject to reiterate our concern with these arrangements and urge the committee to eliminate their use in the area of unclaimed property.

The Working Group supports the inclusion of contract transparency provisions, clear audit practice guidelines, data privacy and security requirements, and an administrative appeals process for holders under audit.

Should the Drafting Committee have any questions or would like additional information related to any of the comments by the ABA RUUPA Working Group contained herein, please contact me at (202) 663-5507 or [aguggenh@aba.com](mailto:aguggenh@aba.com).

Again, we greatly appreciate the Drafting Committee's consideration of these recommendations. We look forward to continued discussion and participation in the drafting process.

Sincerely,

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