

# The Feds: Court Decisions, Congressional Legislation and Intergovernmental Cooperation

September 9, 2021



# Features of Zoom Webinar

All Audience Microphones Are Muted

This session is being recorded

Use “Q & A” to ask questions of the panelists and organizers.

# Presenting

## Federal Legislative Update

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**Matthew B. Hoekstra**, Principal, Williams & Jensen

## Matured Unredeemed Debt

**Marcia Goodnight**, Director, Division of Customer Service, Bureau of the Fiscal Service

## Federal Preemption and State Unclaimed Property

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# Federal Legislation on Unclaimed Savings Bonds

*Christopher Hatcher and Matthew Hoekstra of Williams & Jensen, PLLC*

## 117<sup>th</sup> Congress

H.R. 4085, the Unclaimed Savings Bond Act of 2021

Lead Sponsors: Ron Estes (R-KS) and Danny Davis (D-IL)

- 19 Cosponsors, 13D/6R
- 12 Cosponsors on Ways and Means Comm. (has jurisdiction)
- Leading states with cosponsors include NY, CA, IL, MO, SC





# Overview of Bill and Issue

## Overview

- Since 1935, the U.S. Treasury's Bureau of the Public Debt has issued more than six billion savings bonds worth more than \$600 billion. Approximately \$24 billion in savings bonds have reached final maturity and ceased to pay interest. H.R. 4085, the Unclaimed Savings Bond Act, proposes to empower the states to act on behalf of the Bureau to find owners of matured unredeemed savings bonds and facilitate the payment of their claims.

## Why HR. 4085 Is Necessary

- Most savings bonds accrue interest until maturing over a 20- to 40-year time period. When these bonds mature, and cease to pay interest, it has been up to the buyer to remember to redeem the matured bond decades after the initial purchase. This has resulted in approximately \$26 billion in matured U.S. savings bonds left unclaimed in the U.S. Treasury.

**Toolkit to reach out to Congress:** <https://nast.org/unclaimed-bonds/>



# Questions?



# MATURED UNREDEEMED DEBT (MUD) UPDATE

U.S. Department of the Treasury  
Bureau of the Fiscal Service  
September 2021



BUREAU OF THE  
**Fiscal Service**  
U.S. DEPARTMENT OF THE TREASURY



# Introduction

Thank you for allowing us to participate in this webinar and an additional opportunity to bring more awareness about MUD. We have made a lot of progress since we last spoke and are eager to share what we've done and plan to accomplish in the future.

Since we began our partnership in January 2020, we have learned a great deal about the important work the states are doing. We appreciated the invitation to the NAST Treasury Management Training Symposium the last two years and look forward to attending next year.

We are excited for our partnership to continue to grow and the opportunity to further collaborate on the most important task – getting bond proceeds back to the rightful owners.





# MUD Background

The Department of the Treasury began issuing U.S. Savings Bonds in 1935. Savings bonds that have reached full maturity and stopped earning interest (typically after 30 years) are considered Matured Unredeemed Debt (MUD).

By law, savings bonds never expire and there is no deadline for owners to redeem their bonds; therefore, these bonds remain as an obligation of the United States.

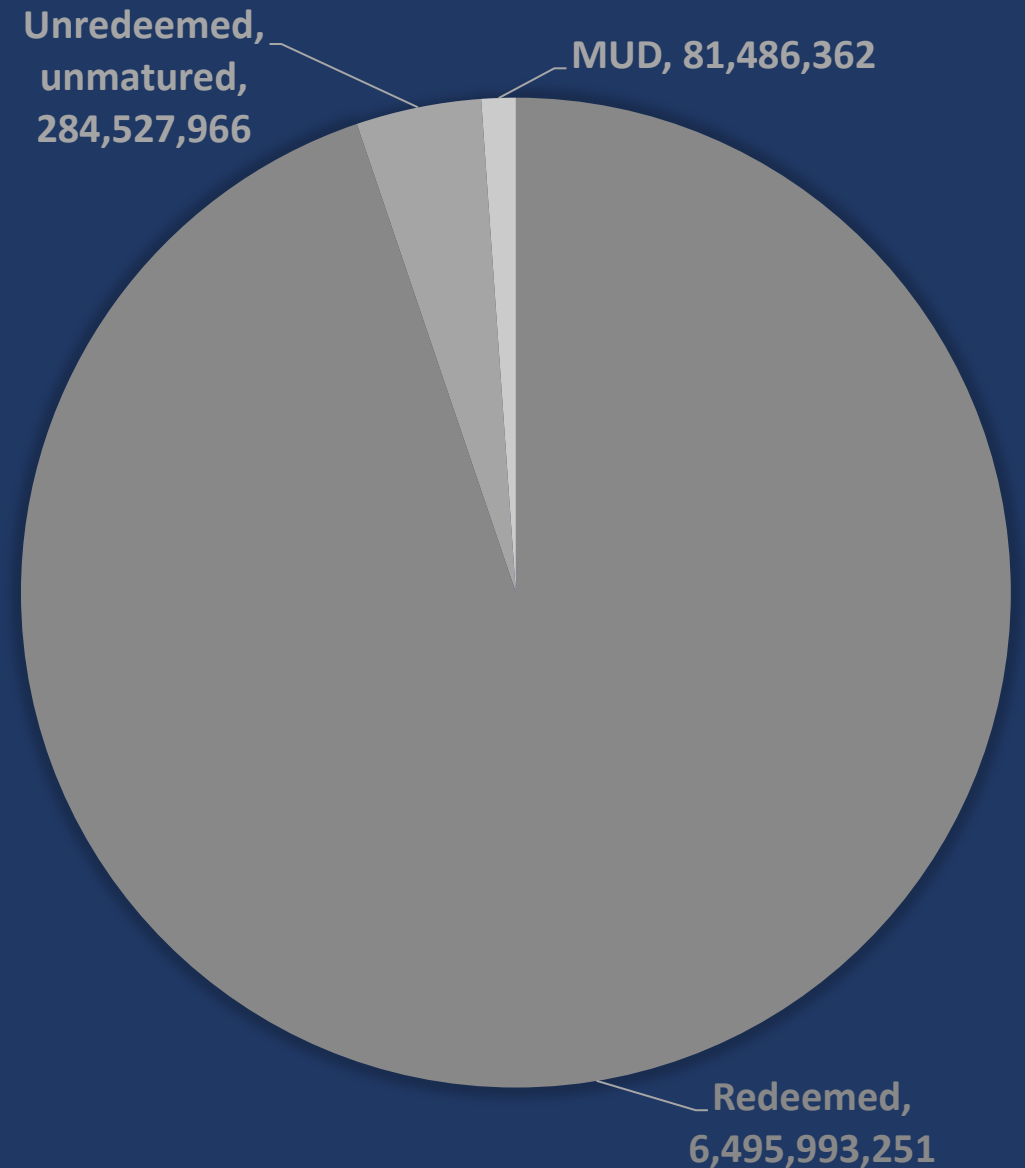
On December 18, 2020, the White House issued Executive Order 13968, “Promoting Redemption of Savings Bonds,” to continue to promote the redemption of matured savings bonds. Per the Executive Order, Treasury published a report on June 17, 2021, with an update on the MUD Initiative.



## MUD Statistics

As of July 31, 2021, MUD represents approximately **81.5 million** savings bonds, totaling **\$29.7 billion** dollars. This amount grows monthly as additional savings bonds mature.

Of the approximately **7 billion** securities issued in paper form, **81 million** pieces are considered MUD, representing approximately **1%** of the total pieces.





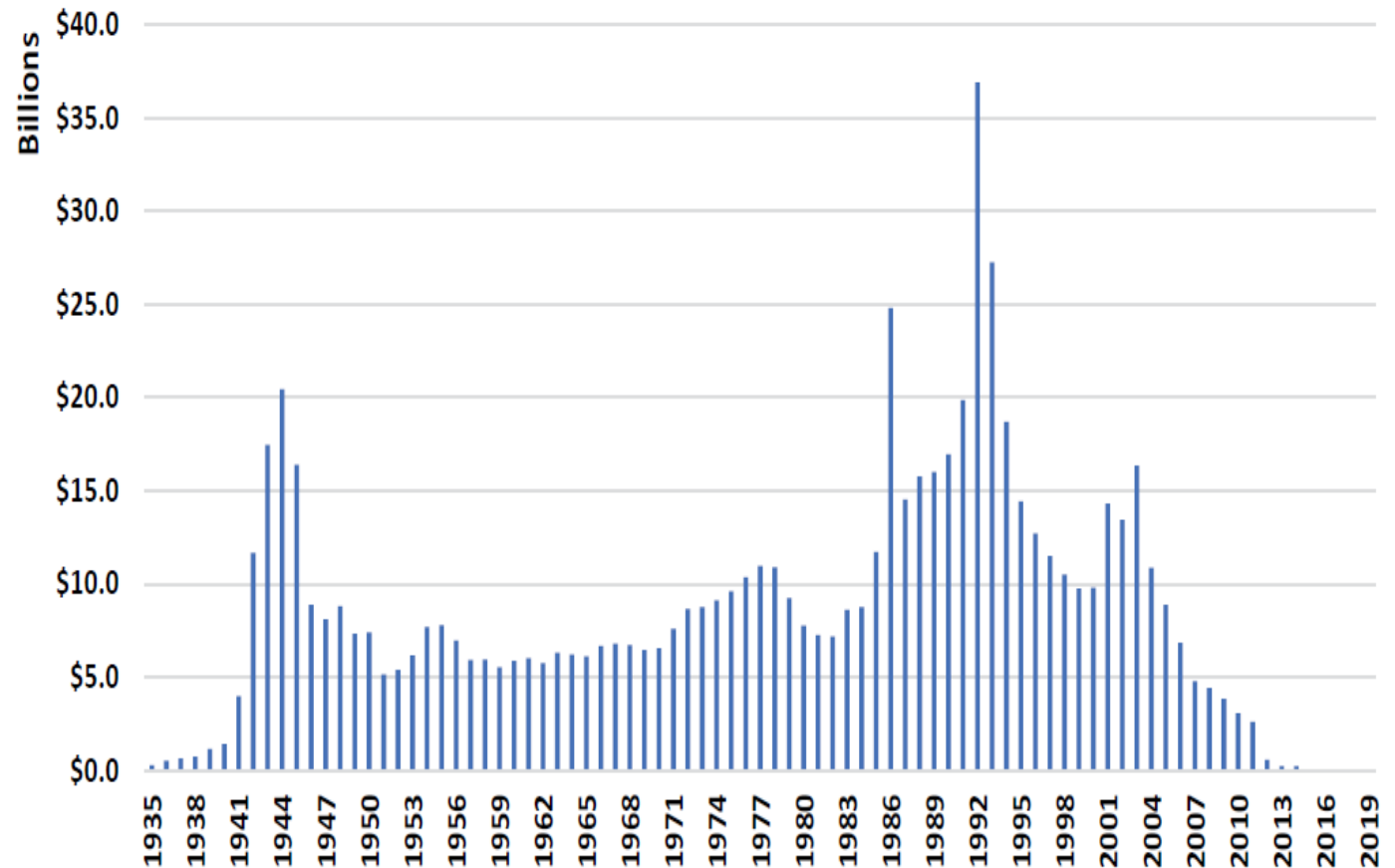
## MUD Growth

A surge in the issuance of savings bonds occurred when interest rates and inflation were relatively high during the mid-1980s through the early 1990s.

This has caused MUD to continue to grow rapidly. Between 2018 to 2020, MUD increased by approximately \$3 billion.

Despite all the efforts we are incorporating to locate bondholders, the amount of MUD will continue to grow monthly as additional bonds mature but are not redeemed.

Paper Savings Bonds Issued



To date, nine have a direct link to Treasury Hunt on their site and 27 have a link to MissingMoney.com (which provides a link to Treasury Hunt).

We need your help to keep spreading the word!  
This is an easy way to help citizens redeem their bonds.

With respect to population having an affect on results, these are the top five states by total matches:

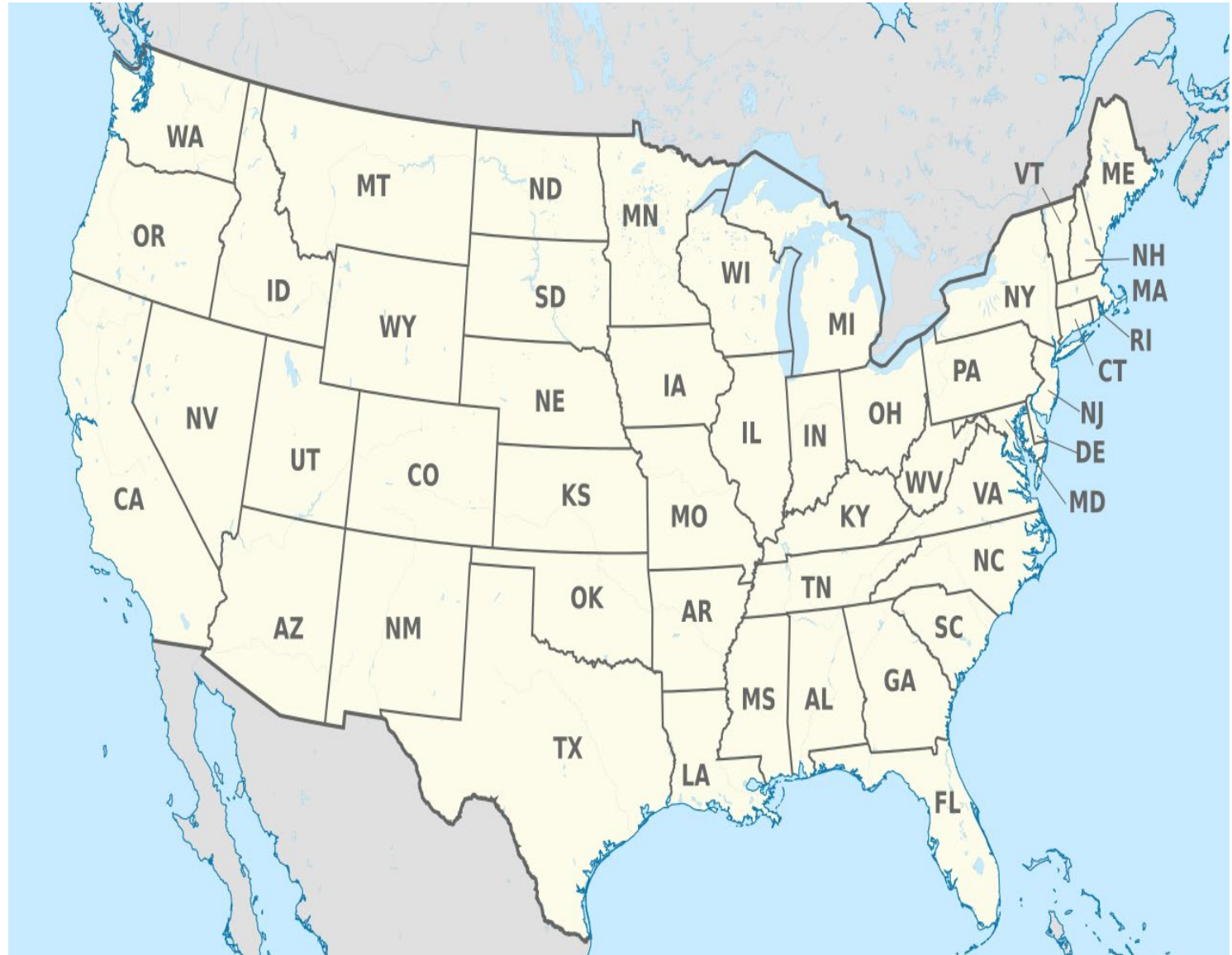
New York – 7,529

California – 6,330

## Pennsylvania – 6,099

Florida – 5,111

Illinois – 4,512





# MUD Focus Areas

- **Partnerships with States:** Partner with the states to learn best practices, promote Treasury Hunt and boost redemptions.
- **Treasury Hunt:** Provide an online search tool for the public to identify potential MUD.
- **Records Modernization:** Extract owner data from existing microfilm and index images for a searchable database (the digitization effort funded by Congress). Treasury awarded contracts to three vendors in May 2021.
- **Data Analysis:** Perform data matching of MUD records against other databases to better identify bond owners.
- **Customer Research:** Understand why customers do not redeem their bonds at maturity to develop outreach efforts and/or process improvements.
- **Communications & Marketing:** Raise awareness with various audiences and work with other agencies e.g., Veterans Affairs (VA) to reunite bond owners with their proceeds.
- **Longer Term Initiatives:** Ease bond redemption with innovative methods such as automating the process.



# Treasury Hunt

In **December 2019**, Treasury Hunt, an online tool to search for open bonds and/or missing interest payments was launched.

As of August 23, 2021:

- **22,482** individual SSNs have redeemed **201,835** bonds worth **\$107.7 million**
- Total searches: **929,550**
- Total potential matches: **107,151**

In **April 2020**, Treasury Hunt began capturing the searcher's state of residence.

As of August 23, 2021:

- **783,330** searches have resulted in **87,036** potential matches returned from all 50 states, the District of Columbia, Armed Forces Europe and Pacific and seven territories.





# Bond Records Landscape

Locating MUD bond owners is challenging for several reasons. The bond records, which are housed on microfilm, are of poor quality and are not easily accessible or searchable. The records are issue stubs, not the actual bond images. Additionally, interpreting the data points, is difficult due to various styles of inscriptions and fonts on the face the bonds. The images on the right illustrate how the records vary in presentation and readability.

Savings bonds issued prior to 1974 did not require a Social Security Number (SSN); therefore, unique identifying information is not available.

Other impediments include

- deceased bond owners
- difficulty locating heirs
- bonds purchased as gifts
- incomplete addresses

Even if bond owners are located, many are hesitant to redeem their bonds upon maturity (or thereafter) due to tax implications.

NUMERICAL RECORD—UNITED STATES SAVINGS BONDS

CONTROL SERIAL NO. 52,001,000 SERIES E DENOMINATION \$25

BOND NUMBER	BOND NUMBER	BOND NUMBER	BOND NUMBER
000	100	200	300
000 2 10 52	000 2 7 52	000 2 11 52	000 2 15 52
01 0P 43 4231	01 2 4 55	01 2 5 55	01 2 9 55
02 00 63 43	02 2 16 48	02 2 22 49	02 2 28 49
03 2 12 47	03 2 18 47	03 2 24 47	03 2 30 47
04 4 30 47	04 2 10 47	04 2 16 47	04 2 22 47
05 2 16 48	05 2 22 48	05 2 28 48	05 2 34 48
06 2 12 57	06 2 18 57	06 2 24 57	06 2 30 57
07 2 11 59	07 2 17 59	07 2 23 59	07 2 29 59
08 2 2 60	08 2 8 60	08 2 14 60	08 2 20 60
09 0P 42 4231	09 2 13 50	09 2 19 50	09 2 25 50
10 00 19 43	10 2 12 53	10 2 18 53	10 2 24 53
11 2 11 53	11 2 17 53	11 2 23 53	11 2 29 53
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13 00 1003 45	13 2 29 46	13 2 35 46	13 2 41 46
14 00 932 45	14 2 10 49	14 2 16 49	14 2 22 49
15 6 427 46	15 2 26 49	15 2 32 49	15 2 38 49
16 2 2 55	16 2 8 55	16 2 14 55	16 2 20 55
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ORIGINAL REGISTRATION STUB

UNITED STATES SAVINGS BOND

Q 6 054 816 109 E

THE BOND IDENTIFIED HEREON HAS THIS DAY BEEN ISSUED WITH THE NAME AND ADDRESS OF THE OWNER AND THE ISSUE DATE INScribed THEREON AT THE TIME OF ISSUE, AUTHENTICATED BY OFFICIAL DATING STAMP, AS FOLLOWS:

ISSUE DATE

Illegible text for name and address. Possibly SSN.

Illegible text for 2<sup>nd</sup> name.

Do NOT fold, spindle or mutilate.

# Records Modernization

Due to the state of our bond records, we began a digitization effort in December 2019 to modernize the dated microfilm. We began a new, iterative, two-phased approach in early 2021.

During Phase 1, we awarded a contract in May 2021 to three vendors. In July, we shipped a sampling of 5,000 reels to each vendor for the time period of 1974-1993, allowing them four months to test and perfect their digitization process, which will be completed in November.

Next, each vendor will have two months of production time from mid-November until mid-January 2022 to digitize their 5,000 reels to prove they can meet our requirements. They will share their results January 19<sup>th</sup> and we will validate their work through February.

Vendor(s) for Phase 2 will be selected in February 2022. This phase will begin on February 22, 2022 and will consist of digitizing the remaining reels of microfilm. Phase 2 will take 12 months to complete.





# Data Analysis

Treasury has compared over 64 million MUD records against various internal systems to identify potential bond owners.

We began using the results to prioritize specific, high value groups of bond owners to develop and conduct outreach. The style, method, and content of our current outreach is targeted on specific populations based on what our data suggests would be the most effective approach for promoting bond redemptions.

Treasury initiated a data matching effort with the VA because many veterans were encouraged to purchase savings bonds during basic training. We compared our records and have identified a significant number of matches and will conduct outreach to veterans soon.



# Customer Research

Treasury launched a market research initiative in February 2021 to determine:

- Why individuals do not redeem savings bonds upon maturity
- What would motivate individuals to redeem a bond
- What are the most impactful process improvements that would increase MUD redemption.

The results show that nearly half of customers are unaware they have MUD bonds or have simply forgotten about them.

A large majority of customers who know they have matured bonds do not plan to redeem them now because they do not need the money, do not want to pay taxes on the interest, or for other reasons.





## Customer Research, cont.

We received the research results in June 2021 and have been analyzing them to develop data-driven techniques to improve the redemption process and the customer experience.

In July, we updated the TreasuryDirect.gov website with language about savings bonds that is easier to understand. A re-design of the entire website is currently underway, and we are confident the additional changes will improve the customer experience.

In August, we made the redemption process easier by allowing customers to redeem bonds valued at \$1,000 or less with just a valid ID, instead of requiring a certified signature.



In August 2021, we began mass mailings to notify customers of their MUD bonds. This includes TreasuryDirect customers who also have over \$1,000 in MUD. These mailings will continue in batches of 10,000 letters for the next four months and we will track the success rate from this effort.

We will soon be mailing outreach letters to customers who have bonds that are getting ready to mature to serve as a reminder to redeem them.

We also plan to reach out to customers who have active federal debts and MUD bonds.

Treasury will continue to bring awareness to MUD by establishing a larger presence on social media and working with specific organizations to encourage customers to redeem their bonds.





## Longer Term Initiatives

As more knowledge is obtained from other initiatives, Treasury will focus on improving the customer experience, particularly as it relates to the ease of redeeming savings bonds.

Other options for expediting bond redemptions are also being explored, such as using mobile capture technology for physical bonds.

We will also improve the process for filing claims for lost or stolen bonds, such as developing an application or online tool to automate and expedite the process.

Currently, we are exploring improvements to Treasury Hunt, such as providing customers with more information about their bonds in the search results.





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# Questions?

# Federal Preemption & State Unclaimed Property Laws



Presented by:

Lynden Lyman, Executive Consultant Kelmar

G. Allen Mayer, Chief of Staff Illinois State Treasurer

September 9, 2021





An overview of federal preemption, along with the associated concepts of intergovernmental immunity and federal munificence, and a discussion of their impact on state unclaimed property laws.





# The Supremacy Clause

**“The Constitution and laws of the United States which shall be made pursuance thereof...shall be the Supreme law of the land; and judges in every State shall be bound thereby, any Thing in the Constitution or Laws of a State to the contrary notwithstanding.”**

Article VI, Clause 2



# Federal preemption of state law

**State laws that CONFLICT with federal laws are “without effect”**

“It is basic to this constitutional command that all conflicting state provisions be without effect.”  
Maryland v. Louisiana, 451 U.S. 725, 746 (1981)





# Concurrent Powers

- Concurrent powers do not necessarily trigger federal preemption
- For example, the ability of both the state and federal governments to tax





# The Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment X



# Article VI trumps Amendment X

## Supremacy Clause overrides states' rights

“There is another clause in the constitution, which has the effect of a prohibition on the exercise of their authority, in numerous cases. The 6th article of the constitution of the United States, declares, that the laws made in pursuance of it, ‘shall be the supreme law of the land, any thing in the constitution, or laws of any State to the contrary notwithstanding.’ By this declaration, the States are prohibited from passing any acts which shall be repugnant to a law of the United States.” McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 400 (1819)





# Implied Preemption

## Field Preemption

No preemptions of state law is indicated, but the federal regulatory scheme is so pervasive so as to “**occupy the field**”

## Conflict Preemption

Impossible to comply with both federal and state laws on a particular matter



# Examples of Implied Preemption

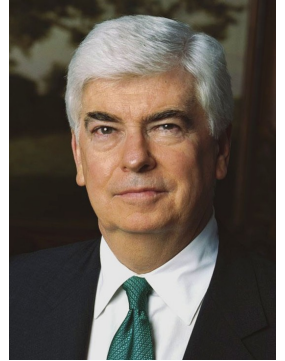
- Unclaimed travelers checks, money orders, and other similar instruments
- Unclaimed digital music royalties
- Gift card expiration dates
- Unclaimed class action proceeds



# Federally Chartered Institutions

## Dodd-Frank Act

- State law preemptions standards for national banks and subsidiaries clarified (12 USCS §25b)
- State consumer financial laws are preempted, **only** if application of a State consumer financial law (1) would have a discriminatory effect on national banks (2) prevents or significantly interferes with the exercise by the national bank of its powers, or (3) is preempted by another provision of Federal law

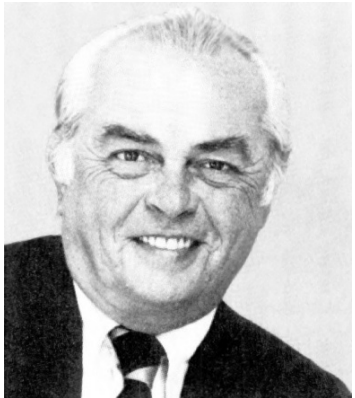


# Note: Unclaimed Property Examinations



## Garn–St Germain Act of 1982

“...lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.”



12 U.S.C.S. § 484(B)



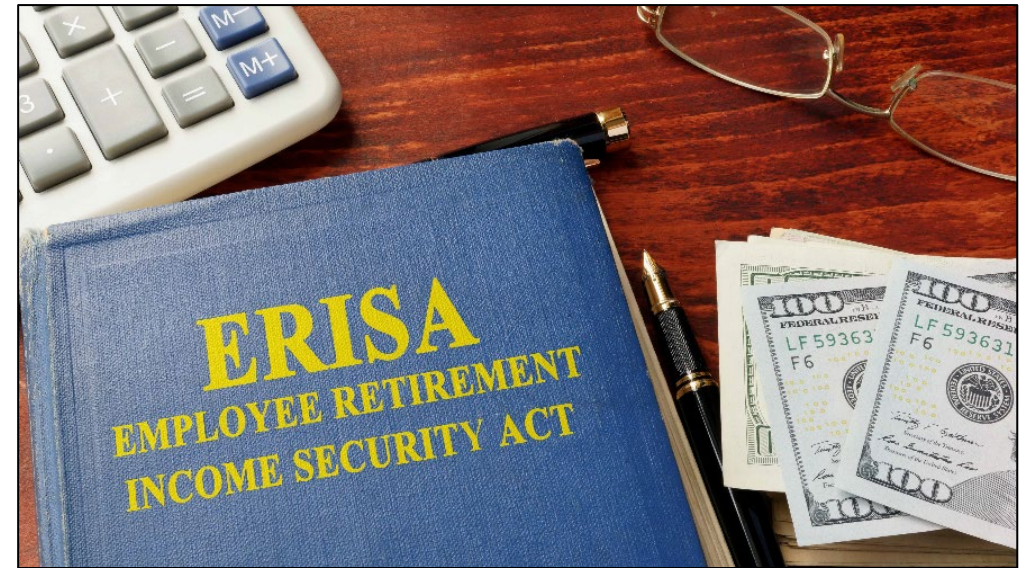


# Express Preemption

**Congress makes clear the intent to supersede state law.**

Employee Retirement Income Security Act of 1974 (ERISA)

“...the provisions of this title and title IV **shall supersede any and all State laws** insofar as they may now or hereafter *relate to* any employee benefit plan...” 29 U.S.C.S. § 1144(a)



# But... More ERISA

**“...nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.” 29 U.S.C.S. § 1144(b)(2)(A)**

**The US Supreme Court has never ruled on the issue of ERISA preemption of state unclaimed property laws.**



# Unclaimed IRS refunds

*“No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property.” 12 U.S.C. § 6408*



# What exactly is preempted?



## Airline Deregulation Act of 1978

**Prohibits** any state “*law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or service of an air carrier....*” (49 USC § 41713(b))



# How do courts decide?

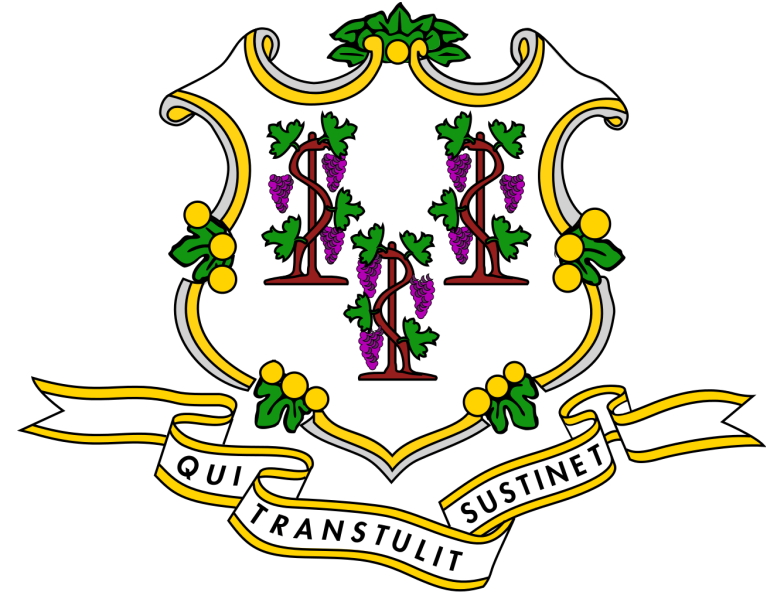
- Purpose of Congress “is the ultimate touchstone”
- “In all pre-emption cases, and particularly in those in which Congress has ‘legislated ... in a field which the States have traditionally occupied’,” the presumption is no preemption, absent a clear showing of Congressional intent
- If Congressional intent is unclear, a court will generally “accept the reading that disfavors pre-emption”
- Materiality of impact of state law





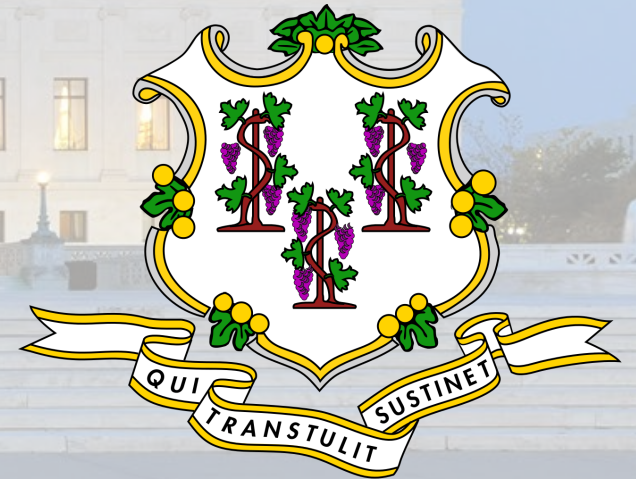
# *Aetna Life Insurance Co.*

- 1989 Federal Appeals Court (Second Circuit)
- Connecticut sought \$2.5 million in uncashed benefit payment checks
- Preemption when state law affects eligibility or amount of benefits
- No preemption for incidental effect on ERISA plan
- **HELD: No preemption**



# ERISA Preemption isn't Absolute

“The [US Supreme] Court has also recognized, however, that Congress, in seeking to preempt all state laws that ‘relate to’ employee benefit plans, could not possibly have meant to preempt all laws having any impact on such plans, no matter how small or how tangential. ‘Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law ‘relates to’ the plan.’ As we have stated before, the reason we cannot interpret **ERISA** as preempting state statutes whose effect on pension plans is tangential and remote is ‘a matter of common sense.’” Aetna Life Insurance Co. v. Borges, 869 F.2d 142, 145 (2d Cir. 1989)



# Intergovernmental Immunity

- Intergovernmental immunity is a doctrine preventing the federal government and individual state governments from impeding each other's sovereignty
- Usually, intergovernmental immunity means federal immunity from state law
- Consider, however, that state/local employee retirement plans are exempt from ERISA





# Longstanding Legal Doctrine

## Original Case: MD can't tax the Nat'l Bank

“This law of Maryland acts directly on the operations of the bank, and may destroy it... A right to tax without limit or control, is essentially a power to destroy. If one national institution may be destroyed in this manner, all may be destroyed in the same manner. If this power to tax the national property and institutions exists in the State of Maryland, it is unbounded in extent... Is there then any intelligible, fixed, defined boundary of this taxing power? If any, it must be found in this Court... **since the sovereign powers of the Union are supreme, and, wherever they come in direct conflict and repugnancy with those of the State governments, the latter must give way...**”

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 400 (1819)



# Intergovernmental Immunity Examples



- Savings bonds (New Jersey v. United States Treasury (3rd Cir. 2012))
- Other amounts owed by the U.S. Treasury (Alabama v. Bowsher (DC Dist. 1990))
- Federal employees' Thrift Savings Plan
- IRS tax refunds (no intergovernmental immunity) (In re Abrams (NY 1986))



# Likely Intergovernmental Immunity

- Federal employees' Thrift Savings Plan
- U.S. Postal money orders
- HUD HFA loans
- FDIC deposit insurance\*
- SSA social insurance programs (old age/survivor's/disability)
- SBA Paycheck Protection Program





# Federal Munificence

## Federal clawback stops state escheat

"And would it not be much better to let that money go into a fund that would inure to the benefit of other veterans than to let . . . it go into a fund under the escheat laws of [a] State?" US Representative Jennings in 1941 (quoted in United States v. Oregon, 366 U.S. 643, 647-48 (1961))

"The fact that this law pertains to the devolution of property does not render it invalid. Although it is true that this is an area normally left to the States, it is not immune under the Tenth Amendment from laws passed by the Federal Government which are, as is the law here, necessary and proper to the exercise of a delegated power.  
United States v. Oregon, 366 U.S. 643, 649 (1961)



# More Federal Munificence

- Medicaid (HHS) [*MediCARE is different!*]
- 2020-21 COVID Recovery Rebates (IRS)
- Individual disaster assistance (FEMA)
- Emergency rental assistance (Treasury)



**Medicaid**

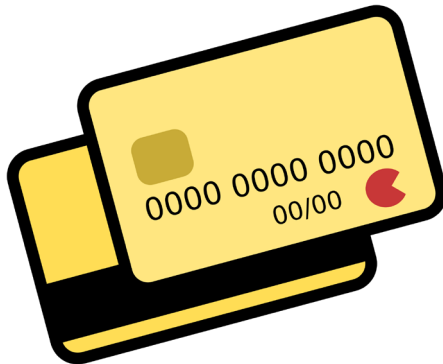


**FEMA**



# What About...

- SNAP (USDA)
- TANF (HHS)



Which use stored value cards...





# Conclusions



- Federal law sometimes expressly addresses state unclaimed property laws



- Usually whether state laws are preempted is difficult to discern (don't assume it is automatic!)



- When the federal government is the “holder” expect that either common law or Congressional statutes will make it difficult for states to assume custody





# Questions?

# Thank You!