Federal Scrutiny of State Escheat Practices Intensifies

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In this article, Criscuolo and Kashawlic examine the recent attention U.S. lawmakers are paying to state unclaimed property and escheatment laws, explaining that some lawmakers are finding that state laws seem less geared toward reuniting owners with their property and more interested in treating property as found state funding.

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State unclaimed property enforcement has entered a period of accelerated expansion, and recent federal attention suggests the policy debate is shifting in ways that directly affect financial institutions, broker-dealers, retirement plan providers, transfer agents, and other holders of customer assets.

Sen. Elizabeth Warren, D-Mass., recently sent a letter[1] to the National Association of Unclaimed Property Administrators that — together with the introduction of H.R. 8338, the Safeguarding Americans' Fairly Earned Retirement (SAFER) Act[2] — reflects growing concern that state escheat laws might be operating in a manner that undermines investor protection, threatens long-term wealth accumulation, and weakens retirement security. Warren framed the issue in direct terms, citing reports that an increasing number of Americans may be losing hard-earned savings and investments to "states' coffers" and questioning whether state systems are adequately designed to reunite owners with their property.[3]

Those developments represent a meaningful inflection point. Unclaimed property is no longer viewed solely as a technical state law reporting obligation: It is increasingly being framed as a broader regulatory, fiscal, and public policy issue with significant implications for capital markets, retirement savings, and the financial interests of millions of account holders.[4] Just as important, the fallout from aggressive escheat practices is becoming more visible. The issue is no longer limited to abstract compliance concerns; it is now producing litigation, reputational pressure, political controversy, and renewed scrutiny of whether states are treating unclaimed property as a custodial obligation or as a source of usable public funds.

Dormancy Standards Are Moving Away From Traditional Owner Protection Principles

At the center of the debate is the way states determine when property becomes unclaimed or abandoned. In her letter, Warren highlighted the historical role of the so-called returned by post office or RPO standard, under which the dormancy period generally would not begin until mail sent to the owner was returned as undeliverable.[5] That standard was more closely tied to a key predicate of abandonment: an actual loss of contact with the owner. In contrast, many

[1] Letter from Warren to Meaghan Aguirre, National Association of Unclaimed Property Administrators (Apr. 15, 2026). *See also* William Hoke, "Warren Voices Concerns Over State Unclaimed Property Laws," *Tax Notes State*, Apr. 27, 2026, p. 313.

[2] *See* Hoke, "Federal Bill Requires Proof of Death Before Securities Escheatment," *Tax Notes State*, Apr. 20, 2026, p. 209.

[3] Warren, *supra* note 1.

[4] *See, e.g.*, Hoke, "State Unclaimed Property Audits — Judicious or Avaricious?" *Tax Notes State*, Mar. 9, 2026, p. 816; Hoke, "If Your Investment Mode Is 'Buy and Hold,' Beware of Delaware," *Tax Notes State*, Jan. 19, 2026, p. 226.

[5] Warren, *supra* note 1.

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states have moved to a more aggressive inactivity standard, under which the absence of owner-initiated contact can trigger dormancy even if communications are being delivered successfully.[6]

That distinction is critical for financial institutions and long-term investors. Under an inactivity-based model, property may be presumed abandoned even when the owner remains reachable, continues receiving statements or other account communications, has not expressed any intent to relinquish the property, and is simply pursuing a long-term investment or retirement strategy. Warren tied that trend to concerns that shortened dormancy periods and inactivity triggers might be sweeping in assets that are not truly abandoned but are instead held by investors following a prudent "buy and hold" approach.[7] In the context of brokerage accounts, securities positions, IRAs, and similar assets, inactivity often reflects patience and disciplined investment behavior, not neglect.

The issue is compounded by shortened dormancy periods. As Warren noted, many states have reduced the dormancy period for some financial assets from five years to three.[8] The practical effect is to require account holders to affirmatively contact their financial institutions within a much shorter period merely to prevent assets from being escheated, even if those accounts remain economically active and the owners remain meaningfully connected to them.

Economic Consequences of Escheatment

The economic consequences of these trends are substantial. Once securities are reported and remitted to the state, many jurisdictions liquidate them within a relatively short period. Warren underscored the investor protection problem that policy creates even if owners are later reunited with their property. For example, owners might receive only the value realized at liquidation and lose any subsequent market appreciation.[9] For long-term investors, that can mean forfeiting capital gains, dividend growth, and years of compound returns. For retirement savers, the damage can be even more severe because premature liquidation can disrupt a carefully constructed long-term savings strategy and reduce retirement readiness.

This is where the fallout becomes especially significant. Escheatment of investment assets does not simply move property from one custodian to another; it can permanently alter the owner's financial outcome. If long-term securities are liquidated and later reclaimed only in cash, the owner bears market-loss timing risk without having chosen to exit the investment. The owner may never be made whole. That outcome is increasingly difficult to square with the traditional justification for unclaimed property laws, which is to protect owners until they can be reunited with their property.

Real-World Fallout: Litigation, Public Controversy, and Erosion of Trust

The consequences of those issues are no longer theoretical. In her letter, Warren pointed to a growing number of disputes showing that owners are increasingly challenging how states hold, use, and return unclaimed property.[10] In Ohio, for example, litigation was filed to challenge the use of unclaimed funds to help support construction of a new Cleveland Browns stadium in Brook Park.[11]

[6] *See, e.g.*, Del. Code Ann. tit. 12, section 1198(11); Del. Code Ann. tit. 12, section 1130 (in Delaware, securities-related property may turn on owner interest/activity rather than returned mail); Cal. Civ. Code section 1513, 1514 (in California, bank deposits and some intangible property use owner activity/increase-decrease in account balance as dormancy triggers); and 765 Ill. Comp. Stat. 1026/15-201, 15-202 (in Illinois, property is often presumed abandoned after a period following the owner's last indication of interest).

[7] Warren, *supra* note 1.

[8] *Id.*

[9] In December 2024 a class action was filed in the U.S. District Court for the District of Delaware against several Delaware unclaimed property officials, including the director and assistant director of enforcement, the secretary of finance, and the state treasurer. The case, *Vial v. Mayrack*, No. 24-cv-01313, arises from the alleged escheatment of stock owned by Rene Correa Borquez, a deceased Chilean national, which Delaware reportedly took into custody after Borquez died in 2006 without providing notice to his heirs. The plaintiff, acting on behalf of Borquez's heirs, alleges that although the heirs received checks totaling more than $2.5 million in 2023, that amount was substantially less than the value of the property allegedly taken by the state, including the appreciation in holdings such as Citigroup and Hilton Hotels.

[10] Warren, *supra* note 1.

[11] *Id. See also* Hoke, "Ohio Judge Stays Use of Unclaimed Funds to Build NFL Stadium," *Tax Notes State*, Jan. 5, 2026, p. 75.

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That controversy was especially damaging from a public policy standpoint because it reinforced a perception that unclaimed property might be treated not as custodial property held for owners but as a pool of money available for unrelated governmental or quasi-public spending priorities. When escheated funds become associated with high-profile projects such as professional sports stadium development, the political optics are significant: Owners might reasonably question whether states are sufficiently motivated to reunite them with their property quickly and efficiently.

The Ohio stadium issue also has broader implications for holders and policymakers. It sharpens the argument that state unclaimed property programs might be affected by fiscal incentives that are difficult to reconcile with owner protection principles. If escheated funds can be redirected, pledged, or otherwise relied on to support public initiatives, critics will inevitably ask whether aggressive dormancy standards and shortened reporting periods serve a custodial function or a budgetary one. That is precisely the type of concern Warren's inquiry appears designed to reveal.

Other litigation trends reinforce the point. In Colorado, claimants challenged the adequacy of the state's unclaimed property website and email notice process, arguing that the notice system was insufficient to alert rightful owners of their missing property.[12] In Delaware, ongoing litigation alleges that state officials caused stocks to be seized without adequate warning and later failed to account for the increase in value after liquidation.[13] Those disputes illustrate the practical fallout of aggressive escheat regimes: challenges to notice sufficiency, disputes over whether owners were given a meaningful chance to respond, and claims that states are returning only a diminished version of what was originally taken.

Beyond litigation, there is broader institutional fallout. Public confidence in unclaimed property systems could erode if owners perceive that states are quicker to take property than to return it. Financial institutions could face increased customer complaints and reputational risk if account holders believe their assets were escheated despite continued account awareness or ordinary long-term inactivity. Policymakers might also come under pressure to justify why large reserves of unclaimed property continue to grow while only a fraction is returned annually.

In short, the issue is evolving from a compliance matter into a trust, governance, and public legitimacy issue.

A Direct Challenge to State Practices

Warren's letter is noteworthy not only for its probing tone but also for the scope and specificity of the information she requested from the association. The senator's inquiry seeks a state-by-state summary of the methods used to trigger dormancy for financial accounts, including whether states rely on an inactivity standard, an RPO standard, a combination of both, or another method. For states using inactivity triggers, Warren asked when those laws were changed, which property types are subject to the standard, and whether the changes correlated with an increase or decrease in escheated funds. She also requested a state-by-state review of dormancy periods applicable to financial accounts, including whether those periods have been shortened in the last 10 years.[14]

Warren also requested a breakdown of how much state reserves of escheated funds have increased over the last decade, the proportion of those funds returned to owners during the same period, and a description of the steps each state takes to reunite owners with their property.[15]

That line of inquiry is especially important because it focuses attention on program

[12] *Knellinger v. Young*, No. 23-1018 (10th Cir. Apr. 11, 2025). The Tenth Circuit held that property owners can pursue takings claims against the Colorado state treasurer without exhausting their administrative remedies. The district court had dismissed the plaintiffs' claim for lack of standing because the plaintiffs had not first pursued all administrative remedies. *Knellinger*, No. 1:22-CV-01379-CNS-STV (D. Colo. Jan. 6, 2023). The Tenth Circuit reversed the district court's dismissal of the plaintiffs' damages claims and remanded the case for further proceedings consistent with its opinion.

[13] Complaint, *Vial v. Mayrack*, No. 24-cv-01313 (D. Del. Dec. 4, 2024). The district court denied the state's motion to dismiss in March, allowing the lawsuit challenging the constitutionality of Delaware's unclaimed property compliance law to proceed.

[14] Warren, *supra* note 1.

[15] *Id.*

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outcomes, not just legal design. If state-held reserves are growing rapidly while return rates remain comparatively low, that could support the argument that systems are more effective at collecting assets than restoring them.

Warren's inquiry also targeted the role of third-party auditors, asking how states use them, the scope of their services, and the compensation structures used to pay them.[16] For holders, that is significant because contingent-fee audit arrangements and multistate contract audit models have long raised concerns about aggressive enforcement incentives. Federal attention to those arrangements could intensify scrutiny of whether state unclaimed property systems are structured in a way that rewards asset capture more than owner reunification.

The SAFER Act: A Federal Policy Response

The SAFER Act reinforces the policy shift by focusing directly on the treatment of retirement and long-term investment assets under state escheat laws. Its central premise is that owner intent and the realities of long-term investing should play a more meaningful role in determining abandonment. As contemplated, the legislation would support longer dormancy periods for retirement and investment accounts, stronger notice and outreach requirements, and greater protection against premature liquidation of securities before owners have had a meaningful chance to respond.

If enacted, the legislation could require holders to revisit how they identify dormant financial assets, what types of owner engagement count as contact, how due diligence is conducted, and when securities can be transferred or liquidated. Even if the bill does not advance in its current form, its introduction is significant because it shows that Congress is beginning to examine unclaimed property through the lens of investor protection, retirement policy, and economic fairness.

[16] *Id.*

Implications for Financial Institutions and Other Holders

For financial institutions and other holders of customer assets, the developments create a heightened risk environment. Institutions should expect greater scrutiny of whether dormancy standards applied to financial accounts are substantively reasonable, not just technically permissible under state law. A holder could satisfy the literal terms of a state statute and still face criticism if its processes result in the escheatment and liquidation of accounts belonging to reachable customers who intended to remain invested.

Audit and litigation exposure could also increase. In her letter, Warren expressly referenced disputes involving the use of unclaimed funds, the adequacy of owner notice, and the failure to account for increases in the value of liquidated securities.[17] That trend suggests that holders should anticipate more challenges to inactivity-based dormancy standards, electronic notice procedures, securities liquidation practices, and the sufficiency of due diligence efforts.

Further, the fallout from high-profile controversies such as the Ohio stadium matter heightens reputational and governance risks. Financial institutions might increasingly be asked by regulators, boards, auditors, and customers to explain how their escheat processes protect owners from avoidable harm.

Holders should therefore closely review dormancy logic for brokerage, advisory, IRA, and retirement-related accounts; assess how electronic statements, online logins, adviser communications, and other nontransactional indicators are treated; and strengthen documentation showing that accounts were not reported prematurely. Internal controls around the timing and handling of securities liquidation should also receive heightened attention.

What Financial Institutions Should Do Now

In light of the developments, holders should consider conducting a targeted risk assessment of

[17] *Id.*

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their unclaimed property compliance frameworks for investment and retirement-related assets. That assessment should focus on whether dormancy triggers reflect actual owner abandonment or instead capture ordinary long-term investment behavior. Institutions should also evaluate whether they are appropriately crediting forms of owner engagement that might not involve a transaction, including electronic account access, ongoing statement delivery, communications through financial advisers, and other evidence that the owner remains aware of and connected to the account.

Holders should further review the adequacy of due diligence notices, outreach timing, escalation procedures, and liquidation controls for securities and retirement assets. Institutions with significant exposure to multistate audit activity should assess whether historical practices, legacy systems, or incomplete records create vulnerabilities, particularly if inactivity standards were applied rigidly without adequate consideration of owner reachability or account context. Legal, compliance, operations, and business teams should also begin evaluating whether potential federal reforms and the broader backlash against aggressive state escheat practices could require changes to systems, reporting processes, customer communications, or governance protocols.

Looking Ahead

Warren's letter and the SAFER Act mark important developments in the evolution of policies on unclaimed property. The issue is no longer confined to administrative reporting rules and technical questions of state law compliance. It now implicates broader concerns about fairness, owner intent, investor protection, retirement security, and whether current state escheatment frameworks create incentives that favor state custody and public use of assets over owner reunification. The Ohio stadium controversy and litigation in Colorado and Delaware illustrate the broader fallout when escheatment systems are perceived as overreaching or misaligned with their custodial purpose. For financial institutions and other holders, the message is clear: Unclaimed property practices involving financial assets are moving closer to the center of the investor protection debate, and organizations should evaluate whether their dormancy, due diligence, and liquidation practices are defensible in an environment of increasing federal scrutiny. ■

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