NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

July 30, 1986

Office of General Counsel

GC/YG:sg
8000

Louise F. Pongracz, Esq.
Feinberg and Feld P.C.
33 Broad Street
Boston, MA 02109

Dear Ms. Pongracz:

This is in reply to your letter dated May 12, 1986, concerning the insurance coverage of pension and annuity fund accounts.

Part 745 of the NCUA Rules and Regulations, 12 C.F.R. §745, outlines the insurance coverage of accounts. There is insufficient information in your letter for this Office to determine whether the subject accounts can be insured and the amount of insurance coverage. Accordingly, we have enclosed copies of two letters prepared by this Office which address the insurance coverage of pension and annuity fund accounts in general. The enclosed letters should help you in your determination regarding the insurance coverage of the above accounts.

I hope we have been of assistance. Please contact me at (202) 357-1030 if you have further questions.

Sincerely,

/S/

STEVEN R. BISKER
Assistant General Counsel

YG:cch

Enclosures

FOIA Vol IV, C

NATIONAL CREDIT UNION ADMINISTRATION Hattie

WASHINGTON, D.C. 20456

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Robert E. Harroun, III, Esquire
General Counsel
Office of the Legislative Auditor
State of Louisiana
Baton Rouge, LA 70804-4397

Dear Mr. Harroun:

This is in response to your telephone conversations with and letter of April 3, 1985, to Hattie Ulan of this Office, concerning National Credit Union Share Insurance Fund ("NCUSIF") coverage of nonmember participant funds in a deferred compensation plan where the funds are maintained in a Federal credit union.

Section 745.9-3 of the NCUA Rules and Regulations (12 C.F.R. §745.9-3) establishes the NCUSIF share insurance coverage of member participants' funds in a deferred compensation plan. The regulation provides as follows:

> Funds deposited by an employer pursuant to a deferred compensation plan shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately from other accounts of the participant or employer.

In most instances, nonmember participant funds in a deferred compensation account would not be insured. Under limited circumstances, if the deferred compensation plan is established as a trust (according to the materials you submitted, this does not appear to be the case) insurance coverage may be available up to $100,000 in the aggregate for nonmember participants if the settlor of the trust is a member of the FCU.

I hope that we have been of assistance. If you have any further questions, please contact Hattie Ulan of this office.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

L.B. Vol II F2- Deferred Compensation Plan

NATIONAL CREDIT UNION ADMINISTRATION Enclosure

WASHINGTON, D.C. 20456

July 26, 1985

Honorable George C. Wortley
Member, U.S. House of Representatives
1269 Federal Building
Syracuse, New York 13260

ATTN: Loretta Toppe

Dear Congressman Wortley:

This is in response to your letter dated July 1, 1985, to Mr. Donald E. Shasteen concerning a question raised by Mr. Charles R. Ryan on behalf of the Local 818 Steamfitters and Apprentices Pension Fund. Mr. Ryan is concerned about the National Credit Union Share Insurance Fund (NCUSIF) insurance coverage for certain pension fund accounts.

Unlike banks, credit unions are nonprofit cooperatives chartered to serve persons with a common bond. Also, unlike other Federal deposit insurance (FDIC and FSLIC), NCUSIF insurance is afforded only to member accounts of NCUSIF-insured credit unions. See, Section 207(c)(1) of the Federal Credit Union Act (12 U.S.C. §1787(c)(1)). Therefore, essential to any analysis of insurance coverage is the determination of the membership status of the depositor seeking insurance coverage.

Where the pension fund is established as a trust, the issue of the legality of depositing monies from the pension fund into a federally insured credit union and the NCUSIF coverage of such monies would be treated in the same manner as other trust accounts. Section 745.9-1 of the NCUA Rules and Regulations (12 C.F.R. Part 745.9-1) addresses the issue of NCUSIF insurance coverage of trust accounts. It states that:

> "All trust interests, for the same beneficiary, deposited and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other deposit or share accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements." (Emphasis added.)

The term "trust interest" is defined in Section 745.2(d)(4) of the Rules and Regulations as:

> ". . . the interest of a beneficiary in an <u>irrevocable express trust</u>, whether created by trust instrument or statute, but does not include any interest retained by the settlor." (Emphasis added.)

As evident from the above, each beneficiary's interest would be separately insured up to $100,000 provided that the trust is an "irrevocable express trust." Further, the participants (beneficiaries) of the trust fund must establish their membership in the credit union in order to receive separate NCUSIF coverage. This would not require that the beneficiary open a separate account at the credit union. Instead, signing a membership agreement and paying an entrance fee (if any) would be sufficient for purposes of establishing his/her membership.

The following examples should help clarify the insurance coverage afforded to trust accounts in Federal credit unions. (The examples might be somewhat different if a state-chartered federally-insured credit union were involved.)

(a) <u>Revocable trust accounts</u> (other than testamentary). The settlor(s) must be a member(s) to establish a revocable trust. The account is insured to a maximum of $100,000 regardless of the number of identifiable beneficiaries or their affiliation or lack thereof with the credit union.

(b) <u>Irrevocable trust accounts</u>. Either the settlor or the beneficiary must be a member of the credit union before an irrevocable trust account can be created. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union. Insurance coverage is as follows:

(i) <u>Where the settlor is a member and the beneficiary is a member</u>. The account is insured to a maximum of $100,000.

(ii) <u>Where the settlor is a member and the beneficiaries are members</u>. The account is insured as to the determinable interest of each beneficiary to a maximum of $100,000 per member. Interests not capable of evaluation shall be combined and insured to a maximum of $100,000.

(iii) <u>Where the settlor is a member and the beneficiary is a nonmember</u>. The account is insured to a maximum of $100,000.

(iv) <u>Where the settlor is a member and the beneficiaries are both members and</u>

nonmembers. The account is insured as to the determinable interests of each member beneficiary to a maximum of $100,00 per member. Member interests not capable of evaluation and nonmember interests shall be combined and insured to a maximum of $100,000.

(v) Where the settlor is a nonmember and the beneficiary is a member. The account is insured to a maximum of $100,000.

(vi) Where the settlor is a nonmember and the beneficiaries are members. The account is insured as to the determinable interest of each beneficiary to a maximum of $100,000 per member.

(vii) Where the settlor is a nonmember and the beneficiaries are both members and nonmembers. Such an account cannot be legally established; therefore, it is not insurable.

In the final analysis, credit unions are different from other financial institutions and for this reason the insurance coverage is also different. I hope this will help Mr. Ryan better understand our position.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel