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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

November 10, 1987

Office of General Counsel

G.M. Fuller, Esq.
Fuller, Tubb & Pomeroy
800 Fidelity Plaza
201 Robert S. Kerr Ave.
Oklahoma City, Oklahoma 73102-4292

Dear Mr. Fuller:

This is in response to your letter concerning insurance coverage of trust accounts held in Federal credit unions (FCU's). You also requested a copy of the case of Herbert v. National Credit Union Administration (citation omitted), which is enclosed. This Office also received a follow-up letter dated September 4, 1987, from you raising additional insurance coverage questions.

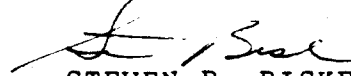
As you noted in your two letters, you are aware of Section 119 of the FCU Act (12 U.S.C. §1765) and Section 6 of Article III of the FCU Bylaws concerning trust accounts held in FCU's. We would also direct your attention to Part 745 of the NCUA Rules and Regulations (12 C.F.R. §745) concerning insurance coverage for FCU accounts. I have enclosed a copy of a prior opinion letter which provides several examples of the types of trust accounts that can be maintained at an FCU and the NCUSIF coverage of those accounts. I have also enclosed a copy of "Your Insured Funds." As noted in the opinion, the types of trust accounts covered by NCUSIF insurance may be more numerous for state-chartered federally-insured credit unions than federally-chartered credit unions. In short, this is so because an FCU is limited to issuing shares in certain delineated trusts (as described in Article III, Section 6 of the FCU Bylaws) while state-chartered federally-insured credit unions may accept funds from trusts and establish share accounts as permitted under state law.

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G.M. Fuller, Esq.
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I believe that after you review the cites and materials provided, you should have the answers to your questions. If our interpretation of the FCU Act or NCUA Rules and Regulations is necessary after your review, please let me know.

Sincerely, .



STEVEN R. BISKER
Assistant General Counsel

RD:sg
Enclosures



NATIONAL CREDIT UNION ADMINISTRATION

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:

ENCLOSURE



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". . . the interest of a beneficiary in an irrevocable express trust, 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) Revocable trust accounts (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) Irrevocable trust accounts. 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) Where the settlor is a member and the beneficiary is a member. The account is insured to a maximum of \$100,000.
 - (ii) Where the settlor is a member 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. Interests not capable of evaluation shall be combined and insured to a maximum of \$100,000.
 - (iii) Where the settlor is a member and the beneficiary is a nonmember. The account is insured to a maximum of \$100,000.
 - (iv) Where the settlor is a member and the beneficiaries are both members and



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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