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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
November 30, 1988

Office of General Counsel

Mark Schweinfurth
Finance Director
Cinco Federal Credit Union
Auburn and William Howard Taft
Cincinnati, Ohio 45219

RE: Share Insurance for Various Federal Credit
Union Accounts (Your April 27, 1988, Letter)

Dear Mr. Schweinfurth:

Your have asked our opinion concerning four issues of
National Credit Union Administration ("NCUA") account
insurance:

1. "If an account is joint i.e. two business partners, would the account be insured up to \$200,000 (\$100,000 for each partner)?" This account will be insured to \$100,000 whether it is treated as a joint account (with joint owners who happen to be business partners) or a partnership account. A partnership is treated for Federal insurance purposes as an entity separate and apart from its members. A partnership account is therefore insured to \$100,000, separate and apart from the \$100,000 insurance coverage for any individual accounts held by members of the partnership. If it is simply a joint account, and not a business account of the partnership, it will be insured for \$100,000 separate from any individual account of the joint owners.

2. "If an organization has an account with a custodian or trustee authorized to conduct their business, can they open another account with a different custodian or trustee and have each account insured to \$100,000?" Without more specific information, we cannot give an opinion. In general, however, simply adding different accounts with different custodians or trustees will not increase insurance coverage.

3. "If an organization has several different accounts listed as funds for different purposes or funding activities would each account be insured up to \$100,000 regardless of whether they have the same custodian or trustee?" Once again, we would need more specific information to give an opinion. But as a general rule, where the funds deposited are the property of one organization in pursuit of a single activity, the accounts are added together and insured to the \$100,000 maximum.

4. If a custodial account is established for the benefit of more than one person, will the ascertainable interest of each owner/principal be insured up to \$100,000? In the standard custodial account, each owner/principal's funds in an account held by a custodian would be added to any other individual accounts that person may have in the FCU and insured to \$100,000 in the aggregate.

Partnership Accounts

Section 745.6 of the NCUA Rules and Regulations [12 C.F.R. 745.6] provides:

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to \$100,000 in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to \$100,000 in the aggregate. For purposes of this section, "independent activity" means an activity other than one directed solely at increasing insurance coverage.

A partnership is treated as a separate entity for Federal insurance purposes.¹ It is insured up to \$100,000 in its own right separate and apart from the insurance provided to individual accounts of its members.

¹This is also true for membership purposes. The partnership itself would have to be within the credit union field of membership.

Joint Account

Section 745.8 of the NCUA Rules and Regulations [12 C.F.R. 745.8] provides:

(a) Separate insurance coverage. Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entirety, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners.

The fact that the joint owners happen to be business partners does not, in and of itself, require that the account be treated as something other than a joint account. To qualify as a joint account, each joint owner would have to sign an account signature-card and each would have to have equal withdrawal rights. If the account fails to qualify, the actual ownership of each joint owner would be added to the owner's individual accounts and insured up to \$100,000.

Trustee Accounts Held for an Organization

We are uncertain what kind of situation you are referring to in your second question. A trustee in bankruptcy, for example, may be authorized to conduct the bankrupt organization's business. Such a trustee may be able to establish an individual account in the name of a member organization and, through a trustee, an irrevocable trust account with the organization as settler. The member organization's individual account would be insured up to \$100,000 and the irrevocable trust account, established under Section 745.9-1 of NCUA's Rules and Regulations [12 C.F.R. 745.9-1], would be separately insured to \$100,000.

As a general rule, however, merely establishing separate irrevocable trust accounts, identical except for the trustee, will not increase insurance coverage. Section 745.9-1(b) of NCUA's Rules and Regulations [12 C.F.R. 745.9-1(b)] provides:

All [irrevocable] trust interests ... for the same beneficiary, deposited in an account 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 accounts

of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

Organizational Accounts Established for Different Purposes

These two examples of coverage under Section 745.6 are given in the Appendix to Part 745 [12 C.F.R. Part 745, App. Section D, Ex. 2, 3.]:

Question: Member C college maintains three separate accounts with the same credit union under the titles: "General Operating Fund," "Teachers Salaries," and "Building Fund." What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added together and insured only to the \$100,000 maximum.

* * *

Question: The men's club of X Church carries on various social activities in addition to holding several fund-raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men's club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the \$100,00 maximum.

Again, the issue is who is the owner of the funds, not whether the custodian or trustee is different.

Insurance of Fractional Interests

You enclosed a copy of an FDIC interpretation of its insurance coverage for custodial accounts established with funds from more than one person:

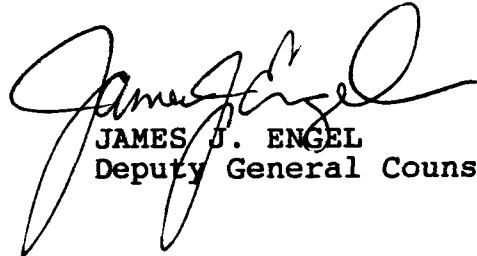
The Board of Directors has concluded that, if the records of the depositor, maintained in

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good faith and in the regular course of business, reflect, at all times, the name and ascertainable interest of each owner in a specifically designated custodial deposit, such interest may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in custody and portion thereof is placed on deposit in one or more insured banks, his interest in a custodial deposit in any one insured bank would represent at any given time the same fractional share as his share of the total commingled funds.

NCUA's practice is the same. This is the same principle that is applied in the case of employee retirement accounts. See 12 C.F.R. Part 745, App. Section G, last paragraph and Ex. 3(a), attached.

Sincerely,



JAMES J. ENGEL
Deputy General Counsel

HMU:sg

Attachment

Answer: Accounts numbered 1 and 2 are each separately insured for \$100,000 as individual accounts held by A, B, respectively (§745.3(a)). With respect to the joint accounts, accounts numbered 3 and 4 are owned by the same combination of individuals and are added together and insured to a maximum of \$100,000, leaving \$200,000 uninsured (§745.8(d)). A, B and C each have a \$33,334 insured interest in accounts 3 and 4. A and B also maintain a joint account, account number 5. Because C has no interest in this account, it is owned by a combination of individuals different from accounts 3 and 4. The interests of A and B in account number 5 are deemed to be equal (§745.2(c)(4)). A's \$50,000 interest in account 5 is added to his insured interest in accounts 3 and 4, giving him a total of \$83,334 insurance coverage for his interests in the various joint accounts, in addition to the insurance in the amount of \$100,000 provided for his individual account. B's interests in accounts 3, 4 and 5 are identical to A's and her interests are insured in a like manner.

G. TRUST ACCOUNTS AND RETIREMENT ACCOUNTS

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, that is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to \$100,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the \$100,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-10 of

the Federal Estate Tax Regulations (26 C.F.R. 20-2031-10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed the basic insured amount of \$100,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. 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.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

An account established pursuant to a revocable trust arrangement is insured as a form of individual account and is treated under Section B, supra, dealing with Testamentary Accounts.

IRA and Keogh accounts are separately insured, each up to \$100,000. Although credit unions may serve as trustees or custodians for self-directed IRA and Keogh accounts, once the funds are taken out of the credit union, they are no longer insured.

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual member/beneficiary on his interest in the account will be in proportion to his interest in the entire employee retirement fund.

If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of \$10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only \$2,500 on that credit union account. There is an exception, however. The member would be insured for \$10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

Example 1

Question: Member S invests \$45,000 in trust for B, the beneficiary. S also has an individual account containing \$90,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§754.3(a) and 745.9-1(a)).

Example 2

Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E, and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

Example 3

Question: Member S invests \$500,000 in trust for ABC Employees Retirement Fund. Some of the beneficiaries are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each member beneficiary to a maximum of \$100,000 per member. Member interests not capable of evaluation and nonmember interests shall be added together and insured to a maximum of \$100,000 in the aggregate (§745.9-1).

Example 3(a)

Question: Member S is trustee for the ABC Employees Retirement Fund containing \$1,000,000. Member A has a determinable interest of \$90,000 in the Fund (9% of the total). S invests \$500,000 of the Fund in trust in an insured credit union and the remaining \$500,000 elsewhere. Some of the beneficiaries of the Fund are members of the credit union and some are not. S does not segregate each employee's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to determinable interest of each member beneficiary, adjusted in proportion to the Fund's investment in the credit union. A's insured interest in the account is \$45,000, or 9% of \$500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. Each beneficiary who is a member would be similarly insured. Members' interests not capable of evaluation and nonmembers' interests are added together and insured to a maximum of \$100,000 in the aggregate. (§745.9-1.)

Example 4

Question: Member A has an individual account of \$100,000 and establishes an IRA and accumulates \$50,000 in that account. Subsequently A becomes self employed and establishes a Keogh account in the same credit union and accumulates \$100,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured for up to \$100,000. In the example, A would be fully insured for \$250,000 (§§745.3(a) and 745.9-2).

Example 5

Question: Member A has a self-directed IRA account with \$70,000 in it. The FCU is the trustee of the account. Member transfers \$40,000 into a blue chip stock; \$30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full \$70,000 in A's IRA account is insured. The \$40,000 is no longer insured once it is moved out of the FCU. The \$30,000 remaining in the FCU is insured (§745.9-2).