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NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

May 16, 1989

Office of General Counsel

William J. Wagner, Esq.
Senior Trial Attorney
Office of Aviation Enforcement and Proceedings
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Financial Institution's Obligations Under the
Department of Transportation's Public Charter
Regulations (Your December 7, 1988, letter)

Dear Mr. Wagner:

This is in response to your request for assistance in ensuring compliance with the consumer protection requirements of the Department of Transportation's ("DOT's") aviation charter regulations applicable to financial institutions where depository (escrow) accounts are established in such institutions by charter operators. We previously expressed concern about whether establishment of escrow accounts in federally-insured credit unions was proper and whether funds in such accounts would be covered by the National Credit Union Share Insurance Fund ("NCUSIF") if a credit union were to be liquidated. After careful review, it is our opinion federally-insured credit unions should not participate in public charter accounts.

BACKGROUND

According to DOT regulations, charter operators must establish charter escrow accounts in depository institutions insured by the Federal Deposit Insurance Corporation ("FDIC") or the Federal Savings and Loan Insurance Corporation ("FSLIC"). No credit

FOIA Vol. 10: C

William J. Wagner, Esq.

May 16, 1989

Page 2

unions are insured by the FDIC or the FSLIC. However, you have informed us that DOT can waive the requirement that depository institutions holding escrow accounts be so insured. Monies received by a charter operator from charter participants (passengers on a particular charter flight) will be deposited in the charter escrow account. Once the charter flight takes place, the monies in the charter escrow account will be paid out to the charter operator.

The National Credit Union Administration ("NCUA") charters Federal credit unions ("FCU's"). The NCUA insures all FCU's and many state-chartered credit unions through the National Credit Union Share Insurance Fund ("NCUSIF"). Collectively, this letter refers to such credit unions as federally-insured credit unions ("FICU's"). Some of the issues addressed below apply to all FICU's, some apply only to FCU's. You may wish to consult with individual state credit union regulators for issues involving state-chartered credit unions that we do not address.

ANALYSIS

Membership Requirement

Pursuant to Section 109 of the FCU Act (12 U.S.C. §1759) individuals and organizations may qualify for membership in a particular FCU if they work for or belong to one or more occupational or associational groups or if they live, work, or are located in a defined community. The field of membership for each FCU is set forth in its charter. State-chartered credit unions have similar membership requirements. Generally, only members can establish insurable accounts in credit unions.

There are some exceptions to these membership account requirements. We note one of the exceptions as it may be relevant to charter escrow accounts. An FCU with a low-income designation from the NCUA may accept up to 20% of its deposits from nonmembers. Some states have a similar low-income designation for state-chartered credit unions.

Whether a charter escrow account can be a legally established and insured "member account" will depend on the membership eligibility of the owner of the funds, except with regard to low-income designated credit unions. (See Section 745.0 of the NCUA Regulations, 12 C.F.R. §745.0.) Insurance of an escrow account will depend on the kind of account established. Generally, it is our understanding that escrow accounts are established as agent or revocable trust accounts. Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 745.3(a)(2)), which governs such non-testamentary accounts, provides:

William J. Wagner, Esq.
May 16, 1989
Page 3

Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and insured up to \$100,000 in the aggregate.

Under the DOT program, the charter operator deposits the funds for the benefit of the charter participants until the charter is complete. Determination of the owner of the account is normally dependent on whether the charter has been completed. Prior to completion of the charter, charter participants are the owner of the funds. It is unlikely that all charter participants will be within the field of membership of the credit union. Unless all participants qualify for membership, the account would not qualify as a member account and would not be insured. Once the charter is complete, the funds belong to the charter operator. The NCUSIF would then look to the membership of the charter operator to determine insurability of the account.

Trust Authority

This type of account may not be proper for an FCU to engage in due to the trust type nature of the account. The charter account requires some custodial service by the FCU. Federal credit unions have not been granted general trust authority and should probably not engage in this type of business activity. State-chartered credit unions may be similarly restricted.

FCU Examinations

The NCUA may not be in a position to properly monitor these types of accounts in accordance with DOT regulations. The issues of concern to DOT are not normally pursued during NCUA examinations of credit unions and may cause undue burden to Federal credit unions and examiners.

I hope we have been of assistance. Please contact us if further questions arise.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

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Part 711, staff believes that the definition of "low income area," as used in Part 711, should conform to the definition of "low income members" as found in Section 700.1(h) of the NCUA's Rules and Regulations.

Using the definition found in Section 700.1(h), NCUA's Region I Office has designated the FCU as a low-income FCU. In addition, the FCU is controlled and managed by minorities.

It is staff's opinion that an exemption from the Interlocks Act is proper pursuant to Section 711.4(b)(1)(i) and (ii) of the NCUA's Rules and Regulations due to the facts that the FCU is located in a low-income area; the FCU is controlled and managed by persons who are members of a minority group; and the FCU is relying upon Mr. Robinson to provide necessary management expertise. The regulation provides that any interlocking relationship permitted under the above cited sections may not continue for more than five years. It was requested that the interlock continue until April 1, 1993.

RECOMMENDATION

Staff recommends that the NCUA Board permit the interlocking relationship to continue until April 1, 1993.