NATIONAL CREDIT UNION ADMINISTRATION
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Office of General Counsel

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Mr. Steve Bisker
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Re: Trusts (Your November 1, 1988, Letter)

Dear Steve:

I apologize for the delay in providing you with a written response to your questions on the treatment of different types of trusts. Your questions with our answers are as follows: 1) Can a revocable trust become a member of a Federal credit union ("FCU's)? Yes. 2) What is the NCUSIF coverage of revocable trusts? It depends on the type of revocable trust 3) When a trust becomes a member of an FCU is it treated as an unincorporated association and insured pursuant to Section 745.6 of the NCUA Rules and Regulations? Yes. 4) When an account is opened by a member with a beneficiary designated in the account agreement to receive the proceeds in the account upon the death of the member, is the insurance coverage of the account determined pursuant to Section 745.4? Yes. 5) Is a trust that is a member of an FCU in its own right, restricted in its ability to borrow from the FCU by Article XII, Section 1 of the Bylaws dealing with loans to nonnatural person members? Yes. 6) In our July 6, 1989 phone conversation, you asked whether a member may receive a loan from an FCU when a nonnatural person (a living trust in which the settlor is a member) pledges the collateral for the loan? The answer is yes. Our comments on each question are addressed separately below.

You first question was whether a revocable trust can become a member of an FCU? We have previously opined that an irrevocable trust can become a member of an FCU. As we have discussed previously, the analysis dealing with revocable trusts is similar to irrevocable trusts. A revocable trust can become a credit

union member if it is within the FCU's field of membership. Many FCU's, for example, include in their fields of membership, "organizations of such persons" otherwise within the field of membership. Article XVIII, Section 2(b) of the Standard Federal Credit Union Bylaws, defines this phrase to include only "an organization or organizations composed exclusively of persons within the field of membership of this credit union." If all persons composing a revocable trust -- the settlors, trustees, and beneficiaries -- are within the field of membership of such a credit union, the revocable trust can become a member of the FCU, in its own right. For insurance purposes, the trust would be treated as an unincorporated association.

Your second question relates to the insurance coverage of revocable trusts. You point out that according to Section G of the Appendix to Part 745 of the NCUA Rules and Regulations, revocable trust are insured pursuant to 745.4, Testamentary Accounts. Section 745.4(b) [12 C.F.R. §745.4(b)] states:

> (b) If the named beneficiary of a testamentary account is a spouse, child, or grandchild of the owner, the account shall be insured up to $100,000 in the aggregate as to each such beneficiary, separately from any other accounts of the owner or beneficiary, regardless of the membership status of the beneficiary.

You also point out that in past opinions we have stated that revocable trust accounts (other than testamentary) are insured to a maximum of $100,000. This would seem to conflict with the language in section 745.4(b). It does not. We distinguish between revocable testamentary trusts and revocable trusts that are nontestamentary in nature. Under NCUA's insurance regulations, a testamentary account refers to [12 C.F.R. §745.4(a)]:

> a revocable trust account, tentative or "Totten" trust account, "payable-on-death account," or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to the named beneficiary.

Those revocable trust accounts, which are not testamentary in nature are treated as "held by agents or nominees," insured in accordance with Section 745.3(a)(2) of NCUA's Rules and Regulations [12 C.F.R. §745.3(a)(2)]:

> Funds owned by a principal and deposited in one or more accounts in the name or names of agents of nominees shall be added

> to any individual account of the principal and insured up to $100,000 in the aggregate.

Revocable trusts that are testamentary in nature can receive increased insurance coverage (if the beneficiary is a spouse, child or grandchild) than revocable trusts that are nontestamentary in nature. This is a clarification of the NCUA Rules and Regulations. Therefore, the letter you cite is the correct position on the insurability of revocable trusts.

Your third question was whether a trust that becomes a member of the FCU is treated as an unincorporated association and insured pursuant to Section 745.6 of the Rules and Regulations? The answer is yes but with one cautionary note. Most revocable trusts that are not testamentary in nature may not be able to get past the "independent activity" hurdle of 745.6 and will for insurance purposes be treated under Section 745.3.

Your fourth question was whether an account opened by a member with a beneficiary designated in the account upon the death of the member receives insurance coverage pursuant to Section 745.4 (Testamentary Accounts). Under NCUA insurance regulation 745.4 cited above, any account, other than a joint account with right of survivorship, which "evidences an intention that the funds shall pass on the death of the owner of the funds to the named beneficiary" is a testamentary account. Clearly, any revocable trust account meeting this criteria would be insured pursuant to Section 754.4.

Your fifth question was whether a trust that is a member of an FCU in its own right is restricted in its ability to borrow from the FCU by Article XII, Section 1 of the Bylaws dealing with loans to nonnatural persons members. Article XII, Section 1 of the FCU Bylaws states that "[l]oans to a member other than a natural person shall not be in excess of its shareholdings in this credit union." A standard bylaw amendment to this section states:

> . . . Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, <u>unless</u> the loan is made jointly to one or more natural person members and business organization in which they have majority interest, or if the nonnatural person is an association the loan is made jointly to a majority of the members of the association and to the association in its own right.

Trusts, that are members of a FCU, are no different than any other nonnatural person member seeking to borrow from a credit

union. Therefore, any FCU that has adopted this nonstandard bylaw may make loans jointly to the members of the trust and the trust in excess of the trust's shareholdings in the FCU. No other exceptions are allowed.

Your sixth question was whether an FCU may loan funds to a member when a nonnatural person (a living trust in which the settlor is a member) pledges the collateral for the loan? Section 107(5) of the FCU Act (12 U.S.C. §1757(5)) authorizes FCU's to make loans to their members. Some nonmember participation in member loans is permissible, as long as the nonmember involvement in the loan does not so substantially distort the direct lending relationship between the FCU and the member so as to render the transaction an impermissible loan to a nonmember in violation of Section 107(5). There are several elements that give rise to impermissible nonmember loan participation but most would probably not exist when a loan is made to a member with collateral pledged by a living trust. Thus, in most cases, this loan arrangement will be permissible under the FCU Act and NCUA Rules and Regulations.

I hope the above clarifies our position on these issues. Again, I apologize for the delay.

Sincerely,

JAMES J. ENGEL
Deputy General Counsel