



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

Office of General Counsel

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8000  
89-0814

December 11, 1989

Ms. Phyllis D. Groenewoud  
Financial Institutions Bureau  
P.O. Box 30224  
Lansing, Michigan 48909

Re: Michigan's IOLTA Program (Your July 27, 1989,  
Letter)

Dear Ms. Groenewoud:

You have asked whether certain types of accounts established pursuant to an IOLTA program in a Michigan state-chartered federally-insured credit union would be entitled to share insurance. The answer for each type of account is addressed separately below.

#### BACKGROUND

Generally, under an IOLTA program, an attorney or a law firm pools clients' escrow accounts into a single IOLTA account. Instead of the dividends on the account going to the clients for the duration of the escrow, the dividends are instead transferred to the IOLTA fund where they are used to fund legal services for the indigent. In Michigan, the Attorney General has rendered an opinion that the Michigan Bar Foundation will own the entire beneficial interest in and will have exclusive right to all the interest or dividend income earned on trust accounts established under the IOLTA Program.

#### ANALYSIS

Generally, an IOLTA Program account will be an escrow account. Escrow accounts are established as agent accounts. The insurance

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of escrow or agent accounts is governed by Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 745.3(a)(2)) which provides:

Accounts held by agents or nominees. 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 account of the principal and insured up to \$100,000 in the aggregate.

In determining the insurance of escrow accounts which are set up as a type of agent account, the membership of the principal/owner of the funds is the critical factor. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured. (See 12 C.F.R. 745.0.) The owners of the funds (presumably the clients) would be required to be members of the federally-insured credit union. The agent (presumably the law firm) is not required to be a member of the credit union.

You note that pursuant to the Michigan Credit Union Multi-Party Account Act, a credit union can accept a multi-party trust account so long as one party to the account is a member of the credit union. We maintain that only member interests in the account will be insured unless the account is a joint account. Joint accounts can be established and insured with nonmembers. In order to obtain separate insurance coverage, however, the joint account must be a qualifying joint account. Section 745.8(b) of the NCUA Rules and Regulations (12 C.F.R. 745.8(b)) provides:

(b) Qualifying joint accounts. Joint accounts are insured separately from individual accounts up to a maximum of \$100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as other co-owners.

Section 745.8(f) of the NCUA Regulations (12 C.F.R. 745.8(f)) addresses the insurance of such accounts:

(f) Nonmember joint owners. A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner of the member joint-owner's interest.

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You asked our opinion on the availability of Federal share insurance on the following four types of accounts.

(1) Revocable trust/agency (IOLTA) account where attorney or law firm is a member, but no client is a member. As noted above, the membership of the principal/owner of the funds is the critical fact. In order for an agent account to be opened and insured, the principals/clients must be members. Hence, this escrow account could not be properly established. However, the law firm member can have an insured account for its own funds. Such account would be aggregated with other accounts of the firm and insured pursuant to Section 745.6 of the NCUA Regulations (12 C.F.R. 745.6) - Accounts Held by a Corporation, Partnership or Unincorporated Association.

(2) A revocable trust/agency (IOLTA) account where the attorney or law firm is a member, but only some clients are members of the credit union. Even if the account is legally established pursuant to Michigan multi-party account law, only member funds will be insured pursuant to Section 745.3(a)(2) of the NCUA Regulations. Each member/owner's share will be added to any other of that individual's account and insured up to \$100,000 in the aggregate.

(3) a. A revocable trust/agency (IOLTA) account where the law firm is not a member but some clients are members. Again, only clients/members can have insured accounts. See answer to (2) above.

b. A revocable trust/agency (IOLTA) account where the law firm is not a member but all of the clients are members. This account can be legally established and insured. It will be insured pursuant to Section 745.3(a)(2) of the NCUA Regulations. Each principal's/client's share in the account will be added to any other individual accounts of that principal and insured up to \$100,000 in the aggregate.

(4) A revocable trust/agency (IOLTA) account where the attorney and all the clients are members. Same as (3) b. above.

Sincerely,



HATTIE M. ULAN  
Assistant General Counsel