

— NATIONAL CREDIT UNION ADMINISTRATION —

WASHINGTON, D.C. 20456

June 4, 1990

Mr. Jeff Rodman
Actors Federal Credit Union
64 West 46th Street
New York, N.Y. 10036

Re: Share Insurance of Escrow Accounts (Your
February 9, 1990, Letter)

Dear Mr. Rodman:

You have asked us for an opinion on the insurance coverage of certain escrow accounts. If all the production companies and actors are within the field of membership of Actors Federal Credit Union ("FCU"), then the escrow accounts may be properly established and maintained as insured accounts.

BACKGROUND

The Actors Equity Association ("AEA") has approximately \$1,100,000 that it would like to deposit in the Actors Federal Credit Union. The funds are currently held in a bank in bonds or escrow deposits of individual theatrical producers. These accounts are the equivalent of two weeks' salaries of the AEA members participating in a production. The funds are held in the account until the production closes and the actors' salaries have been paid in full. Once the actors are paid, the money reverts to the production companies. If the actors are not paid in full, the funds are distributed to the actors by AEA. The AEA is concerned about possible insurance coverage if it establishes these accounts at the FCU. AEA is a member of the FCU; the production companies are not.

ANALYSIS

MEMBERSHIP

Except in situations not applicable here, only members can establish insurable accounts in Federal credit unions. Generally, where there are multiple owners of a single account, only that part which belongs to a member is insured. (See Section 745.0 of the NCUA Regulations, 12 C.F.R. §745.0.) However, Section 109 of the FCU Act does allow nonmembers to have joint accounts with FCU members and the nonmembers interest will be insured.

ESCROW ACCOUNTS

Whether an escrow account can be a legally established and insured "member account" will depend on the membership eligibility of the owner of the funds. Insurance of an escrow account will

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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 NCUA's Regulations (12 C.F.R. 745.3(a)(2)), which governs such nontestamentary accounts, provides:

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.

Though state law may have an effect on how NCUA treats this account, it appears that the owners of the funds at the time the accounts will be established are the production companies. However, the "owner" of the funds can change when circumstances change. Determination of the owner of the account in this scenario is dependent on whether the actor has been paid. If the actor receives his last two weeks of salary, the production company continues to own the funds and receives the money back from AEA. If the production company does not pay the actors, the funds would be paid to the actors by AEA. The actors are then the owners of the funds. Upon the occurrence of a contingency whereby the owner changes (i.e., failure of production company payment of last two weeks' salary by a certain date), the new owner must be a member in order for the account to continue to be insured. Otherwise, the account would cease to be a member account and would be transferred to an account payable. Unless all participants qualify for membership, the accounts may not remain as insured accounts.

JOINT ACCOUNTS

In your letter you also mentioned the possibility of AEA and the production companies depositing funds in joint accounts at the FCU. As noted above, Section 109 of the FCU Act (12 U.S.C. 1759) authorizes joint accounts with nonmembers. Insurance of joint accounts is governed by Section 745.8 of the Regulations (12 C.F.R. §745.8) which states in part:

(e) Different combination of individuals. A person holding an interest in more than one joint account owned by different combinations of individuals may receive a maximum of \$100,000 insurance coverage on the total of his interest in those joint accounts.

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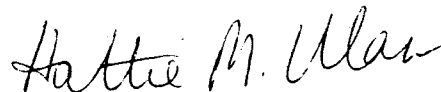
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(f) Nonmember joint owners. A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

As long as one of the parties to each joint account is an FCU member, the accounts can be legally established and insured. Since AEA is a member and none of the production companies are members, then AEA will have multiple joint accounts and will receive only \$100,000 insurance coverage in the aggregate for its total interests in the joint accounts. Each nonmember production company will receive up to \$100,000 insurance coverage.

The only available method for AEA to obtain maximum insurance coverage on its deposits is to have all of the actors and production companies within the field of membership of the FCU. If all the participants are not currently within the field of membership, a charter amendment will be necessary to accomplish your goal.

Sincerely,



Hattie M. Ulan
Associate General Counsel
Office of General Counsel

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