

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 29, 1990

Richard E. Dahab, CFA, President
Dahab Associates, Inc.
52 Nassau Avenue
Islip, New York 11751

Re: Insurance Coverage for Annuity Fund Accounts
(Your May 8, 1990, Letter)

Dear Mr. Dahab:

This is in response to your inquiry as to how NCUA insurance coverage applies in the case of an annuity fund. Although we would need further information in order to determine the precise coverage available to your client, the IBEW Local 456 Annuity Fund (the "Fund"), the following describes the relevant statutory provisions and regulations and their probable application under the facts you provided.

Federal credit unions and federally insured state credit unions are insured by the National Credit Union Share Insurance Fund ("NCUSIF") (12 U.S.C. Section 1783). Share insurance is available for qualifying member share accounts of all types received by the credit union in its regular course of business. (NCUA Rules and Regulations (the "Regulations"), Section 745.0 (12 C.F.R. §745.0.)) The Fund monies are most likely insurable under one of two sections of the Regulations: Section 745.3 (Single Ownership Accounts) (12 C.F.R. §745.3) or Section 745.9-3 (Deferred Compensation Accounts) (12 C.F.R. §745.9-3). Because the facts provided are insufficient to permit a determination as to exact applicability of these two provisions, they are discussed separately below.

Section 743.3 (Single Ownership Accounts)

Section 743.3 states, in pertinent part:

(a) Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to \$100,000 in the aggregate. . . .

(2) Accounts held by agents or nominees. Funds owned by a principal and

FOIA

Vol. II, E, 5
Vol. II, 1

Vol. IV, C.

Richard E. Dahab, CFA, President

June 29, 1990

Page 2

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.

This type of account may be established only if all of the principals (in this case, the union members whose monies make up the Fund) are eligible for membership in the credit union. While all principals need not actually have established membership in order for the account to qualify for insurance, the Federal Credit Union Act and the Regulations provide that only the monies attributable to principals who have established membership are insured. (See, 12 U.S.C. §1781(a); 12 C.F.R. §745.0.) Any principal who is a member will have his monies aggregated with any individual accounts he has in the credit union and insured up to a maximum of \$100,000 for the combined accounts.

The agent or nominee need not be a member of the credit union, unless the agent or nominee also has monies in the Fund's credit union account.

In the event of any insurance payout by the NCUSIF, the credit union's records must adequately reflect the arrangement between agent/nominee and principal. Section 745.2(c) of the Regulations (12 C.F.R. §745.2(c)) states in part:

(1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be

Richard E. Dahab, CFA, President

June 29, 1990

Page 3

ascertainable either from the member records of the credit union or the records of the member maintained in good faith and in the regular course of business.

The Appendix to Part 745 of the Regulations (12 C.F.R. Part 745, Appendix A) provides examples of the insurance coverage. Example 3 reads as follows:

Question: Member A has \$92,500 invested in an individual account, and his agent, Member B, invests \$25,000 of A's funds in a properly designated agency account. B also holds a \$100,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the \$100,00 maximum, leaving \$17,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§745.3(b)). B's individual account is insured separately from the agency account (§745.3(a)). However, if the account records of the credit union do not show the agency relationship under which the funds in the \$25,000 account are held, the \$25,000 in B's name could, at the option of NCUSIF, be added to his individual account and insured to \$100,000 in the aggregate, leaving \$25,000 uninsured (§745.2(c)).

Section 745.9-3 (Deferred Compensation Accounts)

Section 745.9-3 states:

Funds deposited by an employer pursuant to a deferred compensation plan (including §401(K) of the Internal Revenue Code) shall be insured up to \$100,00 as to the interest of each plan participant who is

Richard E. Dahab, CFA, President

June 29, 1990

Page 4

a member, separately from other accounts of the participant or employer.

We offer no opinion as to whether the Fund qualifies as a deferred compensation plan under the Internal Revenue Code and regulations; you should consult the I.R.S. on that issue. Assuming that the Fund does qualify as a deferred compensation plan, the interests of credit union members in monies deposited by the Fund would be insured up to \$100,000 per member, provided that the plan specifically sets out the interest of each participant. This insurance would be in addition to that available for other member accounts.

As a rule, monies of nonmember participants in a deferred compensation plan are not insured. In limited circumstances, if the deferred compensation plan is established as a trust, insurance coverage may be available up to \$100,000 in the aggregate for nonmember participants if the settlor of the trust is a member of the credit union. Your letter does not provide enough information for us to determine whether the Fund would be set up as a trust or whether this limited insurance would be available.

Your letter states that the Fund wishes to deposit a portion of its assets in a credit union. We call your attention to 12 C.F.R. Part 745, Appendix G, which provides in part:

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 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

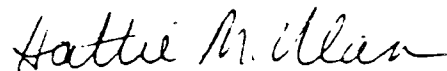
Richard E. Dahab, CFA, President
June 29, 1990
Page 5

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.

Enclosed is a copy of the examples provided in Appendix G to Part 745, which provide further clarification.

I hope that we have been of assistance.

Sincerely,



Hattie M. Ulan,
Associate General Counsel
General Counsel's Office

GC/MRS:SG
SSIC 8010
90-0517

Enclosure

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).