NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

June 30, 1991

Paul LaRose, Esq.
Counsel
Shelby Federal Credit Union
1817 West Broadway
Columbia, Missouri 65218

Re: Living Trust Issues
(Your Letter of February 8, 1991)

Dear Mr. LaRose:

You requested information regarding the establishment of living trust accounts. Nick Veatis, NCUA's Region IV Director, asked us to respond to your letter. Basically, you ask three questions: (1) may a successor trustee of a Federal credit union ("FCU") member's living trust account be a nonmember of the FCU?; (2) may a FCU provide for a substitute beneficiary for a member's living trust account, and, if so, does the NCUA have any relevant forms to disseminate?; and (3) could we provide any general information available on the treatment of living trusts?

You do not define the term "living trust accounts." One legal encyclopedia states: "In the traditional classification of trusts, from the viewpoint of ownership they become effective during the death of the settlor or during his life, is into testamentary trusts or inter vivos, or as the latter sometimes are called, living trusts." 76 Am.Jur.2d Trusts, § 1 (1975). Living trusts may be any trust operative during the lifetime of the settlor, either express or implied, passive or active. Id. See also Black's Law Dictionary 813 (5th ed. 1979). A "living trust" was also a device that is meant to avoid probate and is becoming increasingly popular in some states. Because our insurance regulations do not specifically address living trusts, the trust assets deposited in an account at a FCU would be insured, depending on state law, as either a single ownership, joint ownership, revocable trust or irrevocable trust account while the

FOIA Vol. IV.C, Vol. I, I, Vol. II, F, I

settlor(s) are living. Each of these account classifications as they might relate to the proposed account is discussed below. The NCUA does not provide account forms.

The membership status of the trustee makes no difference for insurance analysis purposes. The availability of substitute trustees and beneficiaries depends upon state law and the documents creating the trust. However, a change in beneficiaries can change insurance coverage of revocable and irrevocable trusts. See discussion below. In addition, for insurance purposes, validity under applicable state law and clear recordkeeping of parties in interest are pivotal requirements. Several opinion letters on trusts are enclosed for your information.

ANALYSIS

Member Accounts

The NCUSIF generally insures only member accounts in a federally-insured credit union. 12 U.S.C. §1781(a). The term "member account" is defined as:

> a share, share certificate, or share draft account of a member of a credit union of a type approved by the [NCUA] Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member [and other credit union and public unit accounts, and certain nonmember accounts at credit unions serving low-income members]. 12 U.S.C. §1752(5).

The term "member" is defined as "those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the FCU Act or state law in the case of state credit unions...." 12 C.F.R. §745.1(b). Section 745.0 of the NCUA Rules and Regulations states:

> These rules [on share insurance] do not extend insurance coverage to persons not entitled to maintain an insured account

> or to account relationships that have not been approved by the [NCUA] Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured. 12 C.F.R. §745.0.

The law is very clear that the NCUSIF insures only member accounts, with only a few exceptions under limited conditions. However, even if an account may legally be created under state law, the NCUA still makes a final determination as to the insurability of the account. (55 Fed. Reg. 43087, 43088 (October 26, 1990)), enclosed.

Validity 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." 12 C.F.R. Part 745, Appendix, §G. Without an opinion on the issue of the validity of the trust from a locally licensed attorney, the NCUA has insufficient information to determine whether or not a trust is valid.

If local law considers a trust valid, any account set up in the name of such trust will be insured as either a revocable or irrevocable trust account. If local law considers the trust to be unenforceable or invalid, the account will be considered to be a joint ownership account, if there is more than one settlor living, and a single ownership account, if only one settlor is living.

Single Ownership Account

The single ownership account classification includes accounts held by agents, nominees or custodians. These accounts are aggregated with other accounts of the principal and insured up to $100,000. 12 C.F.R. §745.3(a)(2). If the living trust is not a trust under local law, and there is one settlor, the "trust" account will be aggregated with other accounts of the settlor/member for insurance coverage purposes.

Joint Ownership Account

All joint ownership accounts held by the same combination of individuals are added together and insured up to $100,000, separate from single ownership accounts. 12 C.F.R. §745.8(a) and (d). "An account is insured as a joint account only if each of the co-owners has personally executed an account signature card and possesses withdrawal rights. An account owned jointly which does not qualify as a joint account for insurance purposes is insured as if owned by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate." 12 C.F.R. Part 745, Appendix, §F. If the living trust is not a trust under local law, and there is more than one settlor with withdrawal rights, the "trust" account will be insured as a joint ownership account.

Revocable Trust Account

A revocable trust account is treated as a single ownership account, unless the named beneficiary is a spouse, child, or grandchild of the owner of the account. 12 C.F.R. §745.4. "In the case of a revocable trust account, the person who holds the power of revocation is deemed to be the owner of the funds in the account. If a revocable trust account is held in the name of a fiduciary other than the owner of the funds, any other accounts held by the fiduciary are insured separately from such revocable trust account." 12 C.F.R. Part 745, Appendix §B. Named beneficiaries must be clear on the account records. If the living trust is revocable, it will be insured as such.

Irrevocable Trust Account

Assuming an irrevocable express trust exists under state law, then "all trust interests (as defined in subsection 745.2(d)(4)), for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements." 12 C.F.R. §745.9-1. A "trust interest" is defined as the "interest of a beneficiary in an irrevocable express

trust...." 12 C.F.R. §745.2(d)(4). In order for an account to receive irrevocable trust status, the value of the trust interest must be capable of determination without evaluation of contingencies, except for those covered by present worth tables under the Federal Estate Tax Regulations. 12 C.F.R. §745.2(d)(1). If the living trust is irrevocable, each beneficiary's aggregate interest derived from the same settlor will be separately insured to a maximum of $100,000. 12 C.F.R. Part 745, Appendix, §G.

> 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. 12 C.F.R. Part 745, Appendix, §G. See also 12 C.F.R. Part 745, Appendix, §G, Example 2.

Furthermore, the membership status of the trustee is irrelevant for insurance purposes.

Recordkeeping Requirements

Certain recordkeeping requirements must be met in order for an account to be insured as an irrevocable trust account.

> 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. 12 C.F.R. Part 745, Appendix, §G.

Thus, if the account is an irrevocable trust account, either the credit union or the trustee must maintain records of beneficiary interests.

Closing the Account

Usually, upon the death of the Settlor, the member account will be closed and become an account payable to the beneficiaries. NCUA Accounting Manual for Federal Credit Unions, §5150.12 (Nov. 1989). Then, if the beneficiaries are FCU members, they may deposit the funds in their FCU member accounts.

Summary

The critical issue is the treatment of a trust under local law. An opinion on this issue from a locally licensed attorney should be dispositive on this issue, and we would recommend that the FCU obtain one if NCUSIF insurance coverage is to be determined with certainty. Of course, as laws change, the opinion would need to be updated in the future in the event a question arose. Clear recordkeeping is also essential. In addition, several opinion letters regarding various trust accounts are enclosed for your information.

We would like to clarify one paragraph in the enclosed December 18, 1990 letter to James K. Cook. In the first full paragraph on page 5 of that letter, we stated that the NCUA Rules and Regulations would not be complied with if a third party was engaged to provide recordkeeping services in an irrevocable trust. If the trustee engages the services of the third party, we now believe the trustee is constructively maintaining such records that would be sufficient to meet the regulatory requirements. If you have any further questions, please contact Martin Conrey, Staff Attorney, of this Office (tel. 202-682-9630).

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosures
GC/MEC:sg
SSIC 8300
91-0235
cc: Nick Veghts, Region IV Director

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/MM:sg
SSIC 8010
88-1114

Office of General Counsel

July 11, 1989

Mr. Steve Bisker
Haden & Bisker, P.C.
450 Maple Avenue, East
Suite 202-203
Vienna, Virginia 22180

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

LCI. II Part I Trust Account

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 745.4.

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

GC/RD.sg
4700

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

November 10, 1987

Office of General Counsel

G.M. Fuller, Esq.
Fuller, Tubb & Pomeroy
800 Fidelity Plaza
201 Robert S. Kerr Ave.
Oklahoma City, Oklahoma 73102-4292

Dear Mr. Fuller:

This is in response to your letter concerning insurance coverage of trust accounts held in Federal credit unions (FCU's). You also requested a copy of the case of Herbert v. National Credit Union Administration (citation omitted), which is enclosed. This Office also received a follow-up letter dated September 4, 1987, from you raising additional insurance coverage questions.

As you noted in your two letters, you are aware of Section 119 of the FCU Act (12 U.S.C. §1765) and Section 6 of Article III of the FCU Bylaws concerning trust accounts held in FCU's. We would also direct your attention to Part 745 of the NCUA Rules and Regulations (12 C.F.R. §745) concerning insurance coverage for FCU accounts. I have enclosed a copy of a prior opinion letter which provides several examples of the types of trust accounts that can be maintained at an FCU and the NCUSIF coverage of those accounts. I have also enclosed a copy of "Your Insured Funds." As noted in the opinion, the types of trust accounts covered by NCUSIF insurance may be more numerous for state-chartered federally-insured credit unions than federally-chartered credit unions. In short, this is so because an FCU is limited to issuing shares in certain delineated trusts (as described in Article III, Section 6 of the FCU Bylaws) while state-chartered federally-insured credit unions may accept funds from trusts and establish share accounts as permitted under state law.

I believe that after you review the cites and materials provided, you should have the answers to your questions. If our interpretation of the FCU Act or NCUA Rules and Regulations is necessary after your review, please let me know.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

RD:sg
Enclosures

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

December 24, 1987

Office of General Counsel

Steven D. Eimert, Esq.
Sherin and Lodgen
100 Summer Street
Boston, MA 02110

Re: Voting by Personal Trusts (Your November 5, 1987 Letter)

Dear Mr. Eimert:

You have requested our opinion on whether an irrevocable personal trust established by or for the benefit of one or more members can itself become a member of a Federal credit union (FCU). You further request our opinion on the voting rights of the trust, if membership in an FCU is established. It is our opinion that, though a separately-insured irrevocable personal trust account can be established at an FCU by or for the benefit of a member, the trust itself does not thereby become a credit union member with voting rights. Whether an irrevocable trust can itself become a member will depend on the credit union's field of membership.

Irrevocable trust accounts, like joint, IRA, and other accounts, have long been used by members of federally-insured credit unions to shift income for tax purposes and to extend the amount of NCUA insurance coverage. We have viewed these accounts as different forms of accounts established by persons or entities eligible for credit union membership. To establish a joint account, for example, at least one person named in the account must be a member of the particular credit union. 12 C.F.R. §745.8(f). To establish an insured irrevocable trust account, either all settlors or all beneficiaries must be members. 12 C.F.R. §745 App. G, Example 2. Just as establishment of a joint account does not give additional voting power to a member establishing such an account, neither does an irrevocable trust to the member, settlor or beneficiary. See Standard Federal Credit Union Bylaws, Art. VI, Sec. 4.

An irrevocable trust could become a credit union member with separate voting rights 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 an irrevocable trust -- the settlors, trustees and beneficiaries -- are within the field of membership of such a credit union, the irrevocable trust can become a member with separate voting rights. For insurance purposes, however, the trust would be treated as an unincorporated association.

If the irrevocable trust qualifies as a member of the FCU, it has voting rights as does any other member. Pursuant to Article VI, Section 4 of the Standard Bylaws, "a member other than a natural person may vote through an agent designated in writing for the purpose . . . ." The settlor of the irrevocable trust will make such designation. Article VI, Section 4 states that "A trustee, or other person acting in a representative capacity, shall not, as such, be entitled to vote." This further clarifies that the voting right designation must be in writing.

In sum, an irrevocable trust will not normally be a member of an FCU; it will merely be a form of insured account held by or for a member. In those situations, the trustee has no voting right since the trust is not separately a member of the FCU. Where the trust qualifies as and becomes a member of the FCU, the settlor may appoint in writing a natural person, be it the trustee or another, to vote for the member trust.

Sincererly,

TIMOTHY P. McCOLLUM
Assistant General Counsel

HMU:sg

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

July 26, 1985

Honorable George C. Wortley
Member, U.S. House of Representatives
1269 Federal Building
Syracuse, New York 13260

ATTN: Loretta Toppe

Dear Congressman Wortley:

This is in response to your letter dated July 1, 1985, to Mr. Donald E. Shasteen concerning a question raised by Mr. Charles R. Ryan on behalf of the Local 818 Steamfitters and Apprentices Pension Fund. Mr. Ryan is concerned about the National Credit Union Share Insurance Fund (NCUSIF) insurance coverage for certain pension fund accounts.

Unlike banks, credit unions are nonprofit cooperatives chartered to serve persons with a common bond. Also, unlike other Federal deposit insurance (FDIC and FSLIC), NCUSIF insurance is afforded only to member accounts of NCUSIF-insured credit unions. See, Section 207(c)(1) of the Federal Credit Union Act (12 U.S.C. §1787(c)(1)). Therefore, essential to any analysis of insurance coverage is the determination of the membership status of the depositor seeking insurance coverage.

Where the pension fund is established as a trust, the issue of the legality of depositing monies from the pension fund into a federally insured credit union and the NCUSIF coverage of such monies would be treated in the same manner as other trust accounts. Section 745.9-1 of the NCUA Rules and Regulations (12 C.F.R. Part 745.9-1) addresses the issue of NCUSIF insurance coverage of trust accounts. It states that:

> "All trust interests, for the same beneficiary, deposited and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other deposit or share accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements." (Emphasis added.)

The term "trust interest" is defined in Section 745.2(d)(4) of the Rules and Regulations as:

ENCLOSURE

". . . the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor." (Emphasis added.)

As evident from the above, each beneficiary's interest would be separately insured up to $100,000 provided that the trust is an "irrevocable express trust." Further, the participants (beneficiaries) of the trust fund must establish their membership in the credit union in order to receive separate NCUSIF coverage. This would not require that the beneficiary open a separate account at the credit union. Instead, signing a membership agreement and paying an entrance fee (if any) would be sufficient for purposes of establishing his/her membership.

The following examples should help clarify the insurance coverage afforded to trust accounts in Federal credit unions. (The examples might be somewhat different if a state-chartered federally-insured credit union were involved.)

(a) Revocable trust accounts (other than testamentary). The settlor(s) must be a member(s) to establish a revocable trust. The account is insured to a maximum of $100,000 regardless of the number of identifiable beneficiaries or their affiliation or lack thereof with the credit union.

(b) Irrevocable trust accounts. Either the settlor or the beneficiary must be a member of the credit union before an irrevocable trust account can be created. 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. Insurance coverage is as follows:

(i) Where the settlor is a member and the beneficiary is a member. The account is insured to a maximum of $100,000.

(ii) Where the settlor is a member and the beneficiaries are members. The account is insured as to the determinable interest of each beneficiary to a maximum of $100,000 per member. Interests not capable of evaluation shall be combined and insured to a maximum of $100,000.

(iii) Where the settlor is a member and the beneficiary is a nonmember. The account is insured to a maximum of $100,000.

(iv) Where the settlor is a member and the beneficiaries are both members and

nonmembers. The account is insured as to the determinable interests of each member beneficiary to a maximum of $100,00 per member. Member interests not capable of evaluation and nonmember interests shall be combined and insured to a maximum of $100,000.

(v) Where the settlor is a nonmember and the beneficiary is a member. The account is insured to a maximum of $100,000.

(vi) Where the settlor is a nonmember and the beneficiaries are members. The account is insured as to the determinable interest of each beneficiary to a maximum of $100,000 per member.

(vii) Where the settlor is a nonmember and the beneficiaries are both members and nonmembers. Such an account cannot be legally established; therefore, it is not insurable.

In the final analysis, credit unions are different from other financial institutions and for this reason the insurance coverage is also different. I hope this will help Mr. Ryan better understand our position.

Sincerely,

STEVEN R. BISKER
Assistant General Counsel

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

November 26, 1990

Guy A. Messick, Esq.
Lastowka & Messick, P.C.
The Madison Building
108 Chesley Drive
Media, PA 19063-1712

RE: Testamentary Trust Accounts
(Your Letter of October 29, 1990)

Dear Mr. Messick:

You have asked whether the NCUA has any objection to suggested language on a signature card of a testamentary trust account to be offered by a federal credit union ("FCU"). The NCUA has no objection to the suggested language based on the FCU Act; however, the language should also be in accordance with any applicable state law and the bylaws of the FCU.

ANALYSIS

The suggested testamentary account language provided to this office for review is as follows:

> TRUST ACCOUNT AND PAY ON DEATH ACCOUNT
>
> The person creating either of these account types intends that any named beneficiary acquires the right to withdraw from this account only if (1) the person creating the account dies, and (2) the beneficiary is then living.
>
> If two or more beneficiaries are named and survive the death of the person creating the account, such beneficiaries will own this account in equal shares, without any right of survivorship.
>
> [Alternative second paragraph -- If two or more beneficiaries are named and survive the death of the person creating the account, such beneficiaries

> will own this account in equal shares as joint tenants with rights of survivorship OR as tenants in common as indicated by the depositor's check mark on this form under "TYPE OF ACCOUNT."]
>
> The person creating either of these account types reserves the right to: (1) change beneficiaries; (2) change account types; and (3) withdraw all or part of the deposit at any time during his or her lifetime.

The language, other than the alternative second paragraph, purportedly comes from Bankers Systems Inc., Savings Account Agreement, Form #SAA-SCA.

In order to determine account insurance under the National Credit Union Share Insurance Fund ("NCUSIF"), member accounts are classified under Part 745 of the NCUA Rules and Regulations. 12 C.F.R. Part 745. As you know, the NCUA does not prescribe the form and language of member accounts. Section 745.2 of the NCUA Rules and Regulations provides: "[t]he regulations in this part in no way are to be interpreted to authorize any type of account that is not authorized by Federal law or regulation or State law or regulation or the bylaws or a particular credit union." 12 C.F.R. §745.2(b). This letter only covers federal law issues. Before any account is offered, it must also be reviewed for compliance with applicable state laws and the FCU bylaws.

NCUSIF insures a payable on death, or testamentary, account differently depending on the relationship of the beneficiary to the insured accountholder. Of course, the accountholder must be a member of the FCU to establish the account. If the named beneficiary is a spouse, child or grandchild of the account owner, the account is 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. 12 C.F.R. §745.4(b). If the named beneficiary is other than a spouse, child or grandchild of the account owner, the funds in the account are added to any individual accounts of such owner and insured up to $100,000 in the aggregate. 12 C.F.R. §745.4(c). It is critical that the account records evidence the existence of a testamentary trust relationship in order for Section 745.4 of the NCUA Rules and regulations to apply. 12 C.F.R. §745.2(c).

Upon the grantor owner's death, the account will be closed and become an account payable to the beneficiaries. NCUA Accounting Manual for Federal Credit Unions, §5150.12 (Nov. 1989). If the beneficiaries are FCU members, they may deposit the funds in their FCU member accounts.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

GC/MEC:sg
SSIC 7000
90-1107

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

December 18,.1990

James K. Cook, Esq.
Schuchat, Cook & Werner
The Shell Building
Suite 250
1221 Locust Street
Saint Louis, Missouri 63103-2364

Re: National Credit Union Share Insurance Fund -- Status of Vacation Trust Fund Account (Your Letter of November 8, 1990)

Dear Mr. Cook:

You requested a legal opinion on the following question: "If the assets of the Vacation Fund (the "Vacation Trust Fund") are deposited in the Electrical Workers Credit Union (the "EWCU"), will the individual interest of each employee for whom contributions have been made, be separately insured up to the current $100,000 maximum by the National Credit Union Administration?" In general, the National Credit Union Share Insurance Fund ("NCUSIF") only insures member accounts in a NCUSIF-insured credit union. Thus, only the interests in the Vacation Trust Fund held by members in the EWCU will be insured by the NCUSIF. Furthermore, it is unclear whether the account would be insured as an irrevocable trust account, revocable trust account or single ownership account. Each of these account classifications as they might relate to the proposed account is discussed below.

BACKGROUND

Local 309 of the International Brotherhood of Electrical Workers ("Local 309"), the Southwestern Illinois Division, Illinois Chapter, NECA ("SID"), and several named trustees (the "Trustees") are parties to the Local 309 Amended Trust Agreement of April 1, 1981. This Amended Trust Agreement was in turn amended by a First Amendment, dated February 1, 1989 (together the Amended Trust Agreement and the First Amendment

are referred to as the "Trust Agreement"). The original trust agreement was entered into on December 4, 1974. Section 5.01 of the Trust Agreement states that it is an irrevocable trust, created pursuant to the Labor Management Relations Act of 1947, 29 U.S.C. §185(c)(5), and that the title rests with the Trustees. Section 5.03 of the Trust Agreement states that it is created for the exclusive benefit of employees, dependents and beneficiaries; Section 5.04 states that no contributions made by an employer may revert to the employer, except in the circumstance of an erroneous overpayment. However, the Trust Agreement may be amended by SID or Local 309 (Trust Agreement, §6.01) or by the mutual consent of these two parties (Trust Agreement, §7.01).

You state in your letter that the purpose of the Trust Agreement is to provide a pooled trust fund [the "Vacation Trust Fund"] as a vehicle for collection of employer contributions to provide compulsory paid vacations to employees (the "employee-beneficiary") in the electrical construction industry within the territorial jurisdiction of Local 309. The applicable collective bargaining agreement requires employers to contribute 7% of each employee's gross hourly wage to the Vacation Trust Fund, which, due to continuous assessments, has an average balance of about $1 million at any one time.

According to a telephone conversation between you and Martin Conrey, Staff Attorney, on December 6, 1990, some of the employee-beneficiaries are not members of Local 309, but are temporarily in the jurisdiction of Local 309 from another local of the International Brotherhood of Electrical Workers. Furthermore, you stated in the same conversation that not all employee-beneficiaries are members of EWCU.

Presently, you state that the Vacation Trust Fund is held by a bank, which also maintains the records of the individual interest of each employee-beneficiary in the Vacation Trust Fund. The Trustees are considering transferring the Vacation Trust Fund to an account at EWCU, an Illinois state-chartered, NCUSIF-insured credit union whose field of membership includes Local 309 members and employees of the Local 309 office and of the EWCU. It is contemplated that either the EWCU, Local 309 or another party paid by the Trustees could provide the recordkeeping services for the Vacation Trust Fund.

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ANALYSIS

The NCUSIF generally insures only member accounts in a federally-insured credit union. 12 U.S.C. §1781(a). The term "member account" is defined as:

> a share, share certificate, or share draft account of a member of a credit union of a type approved by the [NCUA] Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member [and other credit union and public unit accounts, and certain nonmember accounts at credit unions serving low-income members]. 12 U.S.C. §1752(5).

The term "member" is defined as "those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the FCU Act or state law in the case of state credit unions...." 12 C.F.R. §745.1(b). Section 745.0 of the NCUA Rules and Regulations states:

> These rules [on share insurance] do not extend insurance coverage to persons not entitled to maintain an insured account or to account relationships that have not been approved by the [NCUA] Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured. 12 C.F.R. §745.0.

The law is very clear that the NCUSIF insures only member accounts, with only a few exceptions under limited conditions. The State of Illinois, Department of Financial Institutions, Credit Union Division, would need to determine if accounts are legally established member accounts. However, even if an account may legally be created under state law, the NCUA still makes a final determination as to the insurability of the account. (55 Fed.Reg. 43087, 43088 (October 26, 1990) (enclosed)).

NCUSIF share insurance will vary depending upon the classification of the account. The share account that would be opened for the Vacation Trust Fund could be a treated as a

custodial single ownership account, revocable trust account or irrevocable trust account. Although the Trust Agreement states that the trust is irrevocable, the Trust Agreement also may be amended by the parties. Furthermore, you stated in a telephone conversation with Martin Conrey on December 6, 1990, that you were not sure if the trust was revocable or irrevocable under the Trust Agreement, as it can be modified, and under the law in light of the passage of the Employee Retirement Income Security Act of 1974, as amended, (29 U.S.C. §§1001 et seq.), since the creation of the Vacation Trust Fund.

It is critical that if the account is to be insured as an irrevocable trust, with maximum NCUSIF insurance of up to $100,000 for each beneficiary, that the trust be an irrevocable express trust under state 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." 12 C.F.R. Part 745, Appendix, §G. At this time, the NCUA has insufficient information to make this determination. Assuming an irrevocable express trust exists under state law, then "all trust interests (as defined in subsection 745.2(d)(4)), for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements." 12 C.F.R. §745.9-1. A "trust interest" is defined as the "interest of a beneficiary in an irrevocable express trust...." 12 C.F.R. §745.2(d)(4). In order for an account to receive irrevocable trust status, the value of the trust interest must be capable of determination without evaluation of contingencies, except for those covered by present worth tables under the Federal Estate Tax Regulations. 12 C.F.R. §745.2(d)(1). Certain recordkeeping requirements must be met in order for an account to be insured as an irrevocable trust account.

> 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 benefi-

ciaries 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. 12 C.F.R. Part 745, Appendix, §G.

Thus, if the account is an irrevocable trust account, either the credit union or the trustee must maintain records of beneficiary interests. A third party may not be engaged to performs such recordkeeping services under the NCUA Rules and Regulations.

A revocable trust account is treated as a single ownership account, unless the named beneficiary is a spouse, child, or grandchild of the owner of the account. 12 C.F.R. §745.4. This would not seem to be the case with the Vacation Trust Fund account.

The single ownership account classification includes accounts held by agents, nominees or custodians. These accounts are aggregated with other accounts of the principal and insured up to $100,000. 12 C.F.R. §745.3(a)(2). In the event that the Vacation Trust Fund account was not determined to be an irrevocable trust account under state law, it would probably be classified as a single ownership account.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosure
GC/MEC:sg
SSIC 8300
90-1119

must file a notice to that effect. The credit union submitting the notice shall be notified in writing of the date on which all required information is received and the notice is accepted for processing. Before the end of the 30-day period beginning on the date NCUA accepts the information for processing, the Regional Director will issue a written notice to the individual and the credit union of disapproval or approval of the proposed official or employee. If, after the 30-day period has ended, the individual has not been informed in writing of NCUA's disposition, the individual shall be considered approved.

(2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.

(3) Election of directors or credit committee members. (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.

(ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of appeal pursuant to part 747 subpart L of NCUA's Regulations (12 CFR 747.1201 et seq.).

PART 741—[AMENDED]

1. Part 741, Requirements for Insurance, is amended as follows:

2. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790, and Pub. L. 101-73. Section 741.9 is also authorized by 31 U.S.C. 3717.

§§ 741.8-741.12 [Redesignated as §§ 741.9-741.13]

3. Sections 741.8, 741.9, 741.10, 741.11 and 741.12 are redesignated as §§ 741.9, 741.10, 741.11, 741.12 and 741.13, respectively.

4. A new § 741.8 is added to read as follows:

§ 741.8 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) must adhere to the requirements stated in § 701.14(c) concerning the prior notice and NCUA review. Credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14(d)(2) and (f). NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1).

[FR Doc. 90-25383 Filed 10-25-90; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

SUMMARY: A limited number of states authorize state-chartered credit unions to offer "uninsured membership shares." These shares are at risk to the member [illegible] credit union. The purpose of this final amendment is to provide that, as a condition of federal share insurance, federally insured state-chartered credit unions may not offer these uninsured shares. This amendment will only affect a small number of credit unions.

EFFECTIVE DATE: November 26, 1990.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION

A. Background

In general, the aggregate of a member's individual share accounts in a federally insured credit union is insured up to $100,000 by the National Credit Union Share Insurance Fund (NCUSIF). There may be as many as thirteen state statutes, however, that authorize state-chartered credit unions to have uninsured membership shares. The amount of a member's uninsured share may be as little as a few dollars or as much as several thousand dollars, depending on state law and the policies of the individual credit union. In any case, a situation is presented where, even though the member may have significantly less than $100,000 in his combined individual share accounts, an initial amount of the member's funds is not insured.

The NCUA has a number of concerns with uninsured membership shares:

—Section 207(k)(1) of the FCU Act (12 U.S.C. 1787(k)(1)) states in part that "the term 'insured account' means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $100,000" and that "in determining the amount due any member, there shall be added together all accounts maintained by him * * *." Thus, the FCU Act does not appear to contemplate uninsured membership shares; rather, it indicates an intent to provide insurance coverage on all of the first $100,000. This is consistent with the purpose of share insurance: to protect the average saver.

—Federally insured credit unions are required to place an official sign, regarding federal insurance coverage up to $100,000, at all branches and at all teller stations or windows where insured shares are received (see 12 CFR 740.3). Also, many credit unions routinely advertise federal insurance coverage up to $100,000. NCUA is [illegible] credit unions require or offer uninsured membership shares, confusion will inevitably result, even where good faith efforts are made to disclose the uninsured status of the account. The failure of a credit union offering these accounts is likely to result in substantial adverse public reaction, litigation, and potentially increased liability to the National Credit Union Share Insurance Fund.

—There appears to be no effective and coherent plan, on the part of some

credit unions offering or planning to offer these accounts, to deal with losses that must be absorbed by uninsured shares. Important questions are not addressed, including whether other capital accounts are used first to absorb losses, what type of notice is to be provided to members, whether the member is obligated to replenish the shares, and whether the credit union is obligated at any point to restore amounts used to absorb losses.

- Proponents of the uninsured membership share concept argue that these shares serve as an additional source of capital to support more rapid asset growth and to enable credit unions to fund new programs and services. While NCUA encourages sound levels of asset growth, it is concerned with the potential for the use of uninsured share to support excessive rates of growth. It is noted that federal credit unions, and the vast majority of state-chartered credit unions, continue to successfully use the traditional method of building capital, *i.e.*, setting aside earnings to both support reasonable rates of asset growth and improve overall capital levels.

B. Comments

The NCUA Board published a proposed rule prohibiting uninsured membership shares on May 3, 1990, with a sixty-day comment period (*see* 55 FR 18613). Forty comments were received. Fifteen of the commenters were state-chatered credit unions and ten were federal credit unions. Six of the commenters were credit union leagues and six were state agencies. Three comments were received from national credit union trade associations.

C. Discussion

The commenters were split on the desirability of the proposed amendment. Most of the commenters supporting the prohibition cited NCUA's concerns set forth in the proposed rule and noted above as the basis of their position, with a number of commenters specifically [illegible] shares will lead to significant confusion among members concerning insurance coverage. A number of commenters believe that the practice is inherently unsafe and unsound.

Half of the commenters disagreed with the proposed rule. Ten commenters stated that uninsured membership shares are a necessary mechanism to accumulate capital. Six commenters disapproved of a blanket prohibition on uninsured membership shares but recommended allowing uninsured membership shares with a limit placed on the amount of share, typically somewhere between $100.00 and $200.00.

Six commenters believe that NCUA has no authority to prohibit uninsured membership shares in state-chartered credit unions. They stated that section 201(b)(7) of the FCU Act requires an agreement from credit unions applying for NCUSIF insurance "not to issue or have outstanding any account * * * the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions." These commenters believe that this language expressly permits the states to determine which member accounts are permissible for federally insured state-chartered credit unions.

The NCUA Board disagrees with the commenters' analysis. The Board believes that the commenters are misconstruing section 201(b)(7) of the FCU Act. The fact that a credit union does not have to receive approval by the NCUA Board for state-authorized accounts does not mean that if the practice is unsafe and unsound, the NCUA Board may not prohibit the account as a condition of insurance. Any other interpretation could lead to absurd results. It would allow the states to permit any type of account, without regard to risk to the Share Insurance Fund.

Twelve commenters disagreed with NCUA's reasoning that confusion may arise among members about the uninsured status of uninsured membership shares which may cause adverse public reaction and litigation and could be a threat to the NCUSIF if a credit union offering these accounts failed. These commenters believe that concerns in this area could be adequately addressed by regulation of uninsured shares. In regard to increased liability to the NCUSIF, these commenters believe that, because the shares are uninsured, the only risk would come from inadequate disclosure, which NCUA can regulate. Numerous [illegible] regulations cited the disclosure problem as the primary reason for their support of the prohibition.

Nine commenters disagreed with NCUA's concern that there is no coherent plan by credit unions offering or planning to offer uninsured membership shares for dealing with losses on these types of accounts. The commenters believe that NCUA can promulgate regulations to create an effective and coherent plan concerning how to deal with losses that must be absorbed by uninsured membership shares.

Although NCUA could regulate this area, the NCUA Board's belief that this type of activity presents potential safety and soundness problems dissuades the Board at this time from encouraging the development of uninsured membership share through the regulation of disclosure requirements and plans for losses.

Ten commenters disagreed with NCUA's concern that the traditional mechanisms for raising capital are adequate and that uninsured membership shares may be used to support excessive growth. The commenters believe that these accounts will serve as additional capital to absorb investment, loan and/or operating losses. They believe any concern about unhealthy asset growth can be handled by regulation. While it might be possible to reduce this concern though regulation, variances in state laws concerning uninsured membership shares make the adoption of a uniform system of regulation by NCUA impractical, and the Board continues to believe that any benefits of such action are outweighted at this time by the concerns expressed in the Background discussion above. The Board has adoted the proposed amendment in final form without modification.

Regulatory Requirements

Paperwork Reduction Act

The proposed amendment does not contain any paperwork requirements.

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendment will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612: Effect on the States and State-Chartered Credit Unions

The NCUA Board is aware of only [illegible] state-chartered credit unions that currently offer uninsured membership shares. Under the rule, those credit unions should coordinate with their appropriate Regional Director to either pay out the uninsured shares or convert them to insured shares status. Although the amendment does restrict federally insured state-chartered credit unions from implementing authority granted under state law, the NCUA believes that the protection of the NCUSIF warrants the prohibition. Since the number of

affected credit unions is minimal, the amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 741

Credit unions, Uninsured member shares.

By the National Credit Union Administration Board on October 19, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790 and Public Law 101-73. Section 741.11 also issued under 31 U.S.C. 3717.

2. A new § 741.14 is added to read as follows:

§ 741.14 Uninsured membership shares.

Any credit union that is insured pursuant to title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745.

[FR Doc. 90-25385 Filed 10-25-90; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 747

Rules of Practice and Procedure

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adding a new subpart L to part 747 of its Regulations. Along with new §§ 701.14 and 741.18, issued concurrently with this action, subpart L implements recent amendments to the Federal Credit Union Act requiring prior notice and NCUA approval of senior management changes in certain federally insured credit unions.

DATES: November 26, 1990.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. Mckenna, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

A. Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended the FCU Act by adding a new section 212 (12 U.S.C. 1791). Section 212 requires specified categories of federally insured credit unions to furnish NCUA with a least 30 days' notice before adding any individual to the board of directors or credit or supervisory committees or employing and individual as a senior executive officer. A federally insured credit union is covered by the notice requirement if the credit union: (1) Has been chartered less than 2 years, or (2) is otherwise is a "troubled condition," as defined in § 701.14 of NCUA's Regulations. Section 212 also prohibits the credit union from adding the individual to the board or committee, or employing the individual as a senior executive officer, if NCUA issues a Notice of Disapproval. NCUA is adding subpart L to part 747 of its Regulations to set forth the rights that an individual or a credit union may exercise and procedures which must be followed when NCUA issues a Notice of Disapproval pursuant to section 212 of the FCU Act.

B. Comments

The NCUA Board issued a proposed rule on March 20, 1990 (55 FR 12855, 4/6/90). Fifty comments were received. Thirty of the commenters were federal credit unions. Four commenters were state credit union leagues and three were national credit union trade associations. Two comments were received from state regulatory agencies. Comments were also received from a law firm and a banker's trade association. As many commenters favored the proposed rule as opposed it, with most commenters recommending at least one change in the final regulation.

A number of commenter found the time frame set forth in the proposed rule excessive and potentially unworkable. Other commenters found the substance of the notice and appeal provisions confusing.

Having considered these comments, and after further staff review, the Board has made substantial revisions in order to clarify the final rule.

C. Section-by-Section Discussion

Section 747.1201 sets forth the scope of subpart L. It is substantially the same as in the proposed rule. Reference has been added to the credit and supervisory committees in order to clarify that the rule does not apply to other internal committees of the credit union.

Section 747.1202 sets forth criteria the NCUA Board or its designee will use to issue a Notice of Disapproval, i.e., that the individual's competence, experience, character, or integrity indicate that it would not be in the best interest of the members of the credit union or of the public to permit the individual to be associated with the credit union. The two subsections of the proposed rule have been combined, with no change in substance.

Section 747.1203 sets forth procedures to be followed where a Notice of Disapproval is issued. This section provides that the notice will be served on the credit union and the individual and describes the required content of the Notice. This section has been revised to clarify that, prior to deciding whether to appeal to the NCUA Board, the individual and the credit union may request the Regional Director's reconsideration. This information will be contained in the Notice of Disapproval.

Section 747.1204 sets forth procedures for an appeal to the NCUA Board or its designee of a disapproval by the Regional Director. This section provides that, within 15 days after receipt of a Notice of Disapproval or a denial of a request for reconsideration, the individual or credit union may submit an appeal to the NCUA Board. The section states that the appeal shall be in writing and describes the required contents of the appeal. Appeals will be decided by the board within 90 days of receipt of all required information. The section replaces §§ 747.1204 and 747.1205 of the proposed rule, which had proposed oral hearing procedures for appeals. The Board has determined, based on considerations of time, costs, and agency resources, that appeals on the written record are preferable to oral hearings.

New § 747.1205(a) of subpart L provides that a failure to file an Appeal, either to the initial determination or a decision on a request for reconsideration, is a failure to exhaust administrative remedies and the determination or decision will be deemed to have been accepted by, and binding upon, the individual or credit union. Section 747.1205(b) sets forth those jurisdictions where a petitioner may seek judicial review.