NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

July 11, 1991

Gene McCain
Employees Retirement Service Company of America
16201 S.W. 95th Avenue, Suite 204
Miami, FL 33157

Re: NCUSIF Insurance Coverage of 457 Plans
(Your April 15, 1991, Letter)

Dear Mr. McCain:

You have asked about National Credit Union Share Insurance Fund (NCUSIF) insurance coverage of retirement funds deposited by employers pursuant to Section 457 of the Internal Revenue Code (457 Plans). You ask whether the National Credit Union Administration's (NCUA's) position is that such funds are insured up to $100,000 per plan or $100,000 per participant. Under NCUA's insurance regulations, funds deposited in federally insured credit unions under 457 Plans are insured up to $100,000 per participant. Credit union membership of the participant is crucial.

<u>Analysis</u>

As you know, Section 745.9-3 of NCUA's Rules and Regulations, 12 C.F.R. §745.9-3, provides:

> Funds deposited by an employer pursuant to a deferred compensation plan (including §401(K) of the Internal Revenue Code) shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately from other accounts of the participant or employee.

You suggest that the failure to mention Section 457 in the regulation indicates that funds deposited under 457 Plans should not receive pass-through insurance coverage (insurance

FOIA Vol. IV, C
Vol. II, F, 3

coverage on a per participant basis). The preamble to Section 745.9-3, however, makes clear that it covers all deferred compensation plans (non-trusteed), including 457 Plans. In relevant part, the preamble states:

> Generally, a deferred compensation plan is a contract by an employee with an employer to defer a specified amount of the employee's wages or other compensation. The deferred funds are invested by the employer for the employee's benefit and, if the parties agree, may be invaded for the employee's benefit in the case of an emergency beyond the employee's control. The deferred compensation, and any benefits accumulated under the deferred compensation plan, are paid to the employee upon retirement or separation from employment. Typically, this payment is made to the employee over a course of years.
>
> The funds in a deferred compensation plan usually remain the sole property of the employer. In some cases this is done to satisfy the provisions of sections 451 or 457 of the Internal Revenue Code (I.R.C. §§451, 457). These sections postpone taxes on the deferred income until the year in which such income is paid to a plan participant. Even though the funds are held by the employer, the funds must be used for the participant's benefit. If the employer becomes insolvent, however, the funds may become depleted and would no longer be available to the employee.
>
> At the present time, the interest of employees, i.e., participants in non-trusteed deferred compensation plans are <u>not</u> separately insured. <u>See</u> §§745.2 and 745.9-1 of the NCUA Rules and Regulations (12 C.F.R. §§745.2, 745.9-1). Upon further consideration, the NCUA Board believes that for purposes of determining the extent of insurance coverage, the differences between a deferred compensation plan and the interest of a beneficiary in a trusteed employee pension plan are not significant.

> In order to obtain extended insurance coverage, a plan must specifically set out the interest of each covered employee participant and such an employee must be a member of the credit union in which the funds are maintained. That is, whether or not a retirement plan is qualified with respect to tax consequences under rules issued by the Internal Revenue Service, the interest of each employee that is to be insured must be ascertainable from records available to the credit union. Thus, for insurance purposes, the tax consequences of a given retirement plan are not relevant.
>
> The final rule would extend the insurance coverage to all deferred compensation plans, even if they do not comply with the provisions of the Internal Revenue Code, and regulations promulgated thereunder, addressing the tax treatment of such plans. However, it should be noted that, as is the case with trusteed pension plans, in order to qualify for extended insurance of up to $100,000 for the interest of each employee participant, the employee must be a member of the Federal credit union in which the employer's account is maintained.

47 Fed. Reg. 30,464 (July 12, 1982).

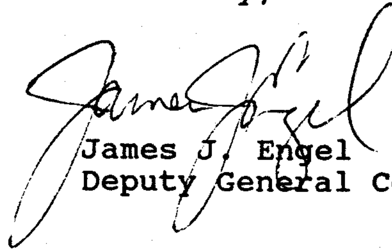
In response to your inquiry about the statutory authority for providing pass-through coverage, we note that Section 207(k)(1) of the Federal Credit Union Act, 12 U.S.C. §1787(k)(1), states, in part:

> The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.

Pursuant to this broad authority, the NCUSIF may provide up to $100,000 insurance coverage of a member participant's interest in funds deposited in a federal credit union under a 457 Plan.

We recognize that the FDIC has modified its insurance regulations to provide for only $100,000 aggregate coverage for 457 Plans. NCUA will be reviewing its insurance regulations in the future for any needed changes. However, until that time, coverage of 457 Plans remains as discussed above.

Sincerely,



James J. Engel
Deputy General Counsel

GC/LH:sg
SSIC 8010
91-0425