NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

December 2, 1991

Jeanne Carlisle
Member Services
MOCSE Federal Credit Union
3600 Coffee Road
Modesto, CA 95355

Re: Trust Accounts
(Your Letter of November 4, 1991)

Dear Ms. Carlisle:

You have requested an opinion letter describing the share insurance available for a medical benefit fund in trust for school employees, who are the beneficiaries of the trust. Your letter does not contain any further facts regarding the account. Without further facts regarding the trust we do not have sufficient information to adequately respond to your request. However, we have enclosed several letters concerning various trust accounts, which may be of some assistance to you in determining National Credit Union Share Insurance Fund coverage of trust accounts.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosures

GC/MEC:[illegible]
SSIC 7000
91-1112

FOIA Vol. IV.C

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

Reading File

August 1, 1991

JoAn Blackstone
Pizer & Michaelson Inc.
201 Spear Street, Suite 1111
San Francisco, CA 94105

Re: "Living Trust" Accounts
(Your letter of June 13, 1991)

Dear Ms. Blackstone:

You have requested NCUA review of a letter from you, Re: National Credit Union Share Insurance Fund ("NCUSIF") Insurance: Selected Issues, dated June 5, 1991 (the "Letter"). Basically, it seems that you are concerned about "a typical revocable living trust arrangement in which a husband and wife are co-trustees with full power of revocation during their lifetimes, and the trust becomes irrevocable upon the death of the first spouse." Letter, p. 5. In this scenario, the account could be insured as either a revocable account, if the beneficiaries were spouse, child or grandchild of the husband and wife, or a joint or single ownership account, if the beneficiaries were other than a spouse, child or grandchild, during the lifetimes of the husband and wife, and as a irrevocable trust account upon the death of either the husband or the wife. This result assumes that the trust becomes irrevocable upon the death of either the husband or the wife under state law and the account meets the other requirements of NCUSIF insurability.

ANALYSIS

A determination of the amount of NCUSIF insurance of any account is made only in the event of liquidation of an NCUSIF-insured credit union. "In the event of the liquidation of an insured credit union, the [NCUA] Board will promptly determine the insured accountholders thereof and the

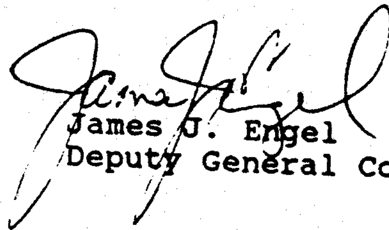
amount of the insured account or accounts of each accountholder." 12 C.F.R. §745.200(a). The Board has delegated this authority to the Liquidating Agent of a liquidating credit union, who "is authorized to make initial determinations with respect to insurance claims pursuant to the principles set forth in this Part, and to act on requests for reconsideration of the initial determination." 12 C.F.R. §745.201. This decision, in turn, may be appealed to the Board, and after a Board determination, may be appealed to Federal court. 12 C.F.R. §§745.202-.203.

"The amount of insurance on an insured account shall be determined in accordance with the provisions of Subpart A of this Part [12 C.F.R. §745.0 <u>et seq.</u>] and the Federal Credit Union ("FCU") Act...." 12 C.F.R. §745.200(b). Under Subpart A, an account is insured as a testamentary account only if the named beneficiary is a spouse, child or grandchild of the owner, in which case 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). In the event a husband and wife jointly invest in an account with right of survivorship "payable-on-death" for the benefit of their son and daughter, the account will be insured up to $100,000 as to each beneficiary separately from any accounts of the owners. The husband would be entitled to $100,000 insurance for son and $100,000 for daughter, as would the wife, for a total of $400,000 on the account. 12 C.F.R. Part 745, Appendix B, Example 3.

However, if the beneficiaries of the account of the husband and wife were not a spouse, child or grandchild, the account would probably be insured as a joint account. <u>See</u> 12 C.F.R. §745.8 and NCUA Letter to Marsha Majors, Member Services Manager, U.S. New Mexico FCU, Re: Share Insurance Coverage, dated June 30, 1991 (attached). 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 single ownership accounts. 12 C.F.R. §745.3 and Part 745, Appendix F. In a community property state, such as California, it is more than likely that such an account will be a joint account. 12 C.F.R. §745.8(a) ("[Qualifying] accounts owned jointly, whether...by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners.")

Other living trust issues raised in your letter are exhaustively discussed in a recent NCUA letter enclosed in this letter. See NCUA Letter to Paul LaRose, Counsel, Shelter FCU, Re: Living Trust Issues, dated June 30, 1991 (attached). This letter explains several different scenarios involving living trusts and should answer any questions you have regarding NCUSIF insurability. If you have any further questions, please contact Martin Conrey, Staff Attorney, of this Office (tel. 202-682-9630).

Sincerely,



James J. Engel
Deputy General Counsel

Enclosures
GC/MEC:sg
SSIC 8300
91-0627

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

June 30, 1991

Marsha Majors
Member Services Manager
U.S. New Mexico Federal Credit Union
P.O. Box 129
Albuquerque, NM 87103

Re: Share Insurance Coverage
(Your November 5, 1990, Letter)

Dear Ms. Majors:

On April 16, 1991, the Office of General Counsel received your request for an opinion regarding National Credit Union Share Insurance Fund ("NCUSIF") share insurance coverage of certain accounts. It is our understanding that the Region has provided you with answers orally, but you now desire a written opinion. The two issues you raise are: (1) whether language provided on U.S. New Mexico Federal Credit Union (the "FCU") share certificate accounts is sufficient to entitle the certificate shareholders to various account classifications for NCUSIF share insurance purposes; and (2) whether a share account established as a joint ownership/payable on death ("POD") account is treated as a joint account or testamentary account for NCUSIF share insurance purposes. The FCU share certificate and share savings account agreements (whose language is nearly identical, so much so that the discussion regarding the FCU share certificate accounts applies equally to the FCU share savings account agreements) that you supplied with your request letter are sufficient to establish single ownership, joint ownership or testamentary accounts for NCUSIF insurance coverage purposes. An account that is established as a joint ownership/POD account is considered a joint ownership account for NCUSIF insurance purposes until only one of the original joint owners

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remains, at which point the account may be considered a testamentary account for NCUSIF insurance purposes.

ANALYSIS

In pertinent part, the FCU's Joint Share Certificate Agreement states:

> The joint owners of this share certificate hereby agree with each other and with said Credit Union that all sums now paid, or heretofore or hereafter paid in on this share certificate by any or all of said joint owners to their credit as such joint owners with all accumulations thereon, are and shall be owned by them jointly, with right of survivorship and shall be subject to the withdrawals or receipt of any of them, and payment to any of them or the survivor(s) shall be valid and discharge said Credit Union from any liability for such payment. FCU Joint Share Certificate Agreement.

Section 745.8(a) of the NCUA Rules and Regulations states that "[a]ccounts owned jointly, whether as tenants with right of survivorship ... shall be insured separately from accounts individually owned by any of the owners." 12 C.F.R. §745.8(a). Qualifying joint accounts are insured separately from individual accounts up to $100,000. 12 C.F.R. §745.8(b). It is true that Section 745.8 also states that in order to qualify for the NCUSIF joint ownership account classification that "each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as the other co-owners." Id. However, Section 745.2 of the NCUA Rules and Regulations stresses that the critical element is that "[t]he account records of the insured credit union ... 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." 12 C.F.R. §745.2(c)(1). To this end, "the details of the relationship and the interest of the other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business." 12 C.F.R. §745.2(c)(2), see also NCUA Accounting Manual for Federal

Credit Unions, §5150.6 and Figure 9-39, Illustration of a Joint Ownership Agreement for Share Certificate Account (FCU 123 CT). Since the language used in the FCU's Joint Share Certificate Agreement is clear that a joint ownership account is established, the need for a separate joint account signature card is vitiated. If the surviving joint accountholder is not an FCU member, then the account will be closed and become an account payable to the nonmember joint owner(s). NCUA Accounting Manual for Federal Credit Unions, §§5030.1.5 and 5150.12 (Nov. 1989). The ownership interests in the account and the disposition of the funds upon the death of any owner will depend upon the law of the state in which the credit union is located. NCUA Accounting Manual for Federal Credit Unions, §5030.1.5 (Nov. 1989).

This same reasoning holds true for the POD Share Certificate Agreement. In pertinent part, that Agreement states:

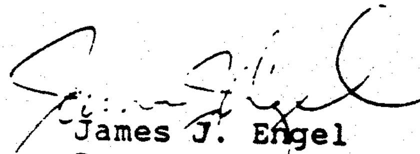
> During my/our lifetime all money on deposit in the certificate shall be owned by me/us jointly and payment may be made upon my/any of our request. Upon my death/the death of the last survivor of us all such money shall be owned and payment may be made at the request of any P.O.D. payee(s) surviving. Any payments upon my/any of our request or of the request of any other person with the right to request payment discharges the said Credit Union from any liability for such payments. FCU P.O.D. (Payable On Death) Share Certificate Agreement.

As is required for the NCUSIF testamentary account classification, this account language clearly "evidences an intention that the funds shall pass on the death of the owner of the funds to the named beneficiary." 12 C.F.R. §745.4(a). "If the named beneficiary is a spouse, child or grandchild of the 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).

As for the second issue, as the FCU's POD language states, a joint ownership/POD account is treated as a joint ownership account first, and only operates as a POD account when only one joint owner remains. This result is also in accord with

applicable NCUA Rules and Regulations. See 12 C.F.R. §§745.2, 745.4 and 745.8 and Appendices B and F. For example, A, B and C establish a joint account with right of survivorship to be POD to X. This account is insured as a joint account. Then A dies, and B and C become vested in A's ownership interest in the account, which remains POD to X, and the account remains insured as a joint account. Then B dies, and C becomes vested in B's ownership interest in the account, which remains POD to X. It is at this time that the account becomes insured as a testamentary account. This result remains even if the account is POD to X and Y. If C dies, then, once again, the account becomes insured as a joint account of X and Y. A joint ownership/POD account is never insured as both a joint ownership and a testamentary account simultaneously, thus effectively doubling NCUSIF insurance coverage. To do so would be to exalt form over substance.

Sincerely,



James J. Engel
Deputy General Counsel

cc: Gene Jackson
Director, Insurance
Region V

GC/MEC:sg
SSIC 7000
91-0422

NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 30, 1991

Paul LaRose, Esq.
Counsel
Shelter 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 Veghts, 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: "[o]ne traditional classification of trusts, from the viewpoint of whether they become effective after the death of the settlor or during his life, is into testamentary trusts or trusts inter vivos, or, as the latter sometimes are called, 'living trusts.'" 76 Am.Jur.2d Trusts, §4 (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 843 (5th ed., 1979). A "living trust" is also a device that is used 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

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. <u>See</u> 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.

<u>ANALYSIS</u>

<u>Member Accounts</u>

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

Office of General Counsel

GC/MM:sg
SSIC 8010
88-1114

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

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 754.4.

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.

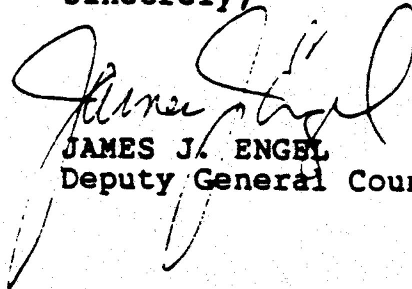
Trusts, that are members of a FCU, are no different than any other nonnatural person member seeking to borrow from a credit

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.59
47CU

NATIONAL CREDIT UNION ADMINISTRATION
Washington, DC 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

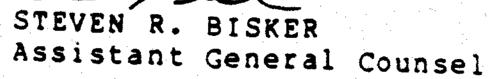
Dear Mr. Fuller:

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