NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

December 18, 1991

Larry W. Stapleton,
President/CEO
Alabama Mental Health Credit Union
1000 River Road, N.E.
Tuscaloosa, Alabama 35404

Re: Insurance Coverage for Patient Accounts (Your November 21, 1991, Letter)

Dear Mr. Stapleton:

You asked whether certain accounts in the Alabama Mental Health Credit Union ("AMHCU") are federally insured to the $100,000 limit. If the accounts are legally established pursuant to Alabama law and meet the criteria for insurability under Part 745 of NCUA's Rules and Regulations (the "Regulations"), they are insured to the $100,000 limit.

Background

According to your letter, AMHCU serves the employees, employees' family members and residents of the mental health facilities of the State of Alabama. AMHCU makes available an account for resident patients of the mental health facilities. Each account is opened in the name of a patient and is managed by the business office of the facility where the patient resides.

You question whether this type of account is insured to the $100,000 limit generally available for federally insured credit union accounts. Your examiner has told you that he believes such accounts are insured to the $100,000 maximum, but you seek a legal opinion confirming his statement.

FOIA Vol. IV, C

Analysis

In order to be insured by the NCUA, a credit union account must satisfy two criteria. First, the account must be legally established and second, it must be of a type legally insurable under Part 745 of the Regulations.

Since AMHCU is an Alabama-chartered credit union, Alabama law would control on the issue of whether the accounts in question are legally established. We do not have sufficient familiarity with Alabama law to offer an opinion on that issue, and we suggest that you consult local counsel. Generally, in order for an account to be legally established in a state-chartered credit union, the account must be of a type allowed by state law, and the account holder must be within the credit union's field of membership and have joined the credit union, or otherwise be eligible to maintain an account in the credit union.

You state that the account is opened in the name of the resident/patient and managed by the business office of the patient's facility. However, the materials you included with your letter indicate that rather than each patient having a separate account in the credit union, the facility opens an account in which all patients' personal funds are commingled, and keeps its own records of the additions to and withdrawals from that account on behalf of each individual patient. While we are unable to determine which of these scenarios actually applies, in either case, the accounts would be insured (if at all) as agent accounts under Section 745.3(a)(2) of the Regulations.

Section 745.3(a)(2) states:

> Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

Here, each patient would be a principal, with the facility serving as agent. The funds of each patient deposited in the

agent account would be added to any other monies owned by the patient and deposited in AMHCU, and the total would be insured to a maximum of $100,000.

With limited exceptions not relevant here, NCUA insures only the funds of credit union members. The membership status of the owner of the funds (in this case, a patient) is controlling for insurance purposes. (See, Section 745.0 of the Regulations, copy enclosed.) You do not indicate whether the patients are members of AMHCU. If an individual patient is not a member of AMHCU, his account, or his portion of an account, will not receive insurance.

It is important to note that under Section 745.2(c) of the Regulations (copy enclosed), the account records of an insured credit union must disclose any relationship upon which a claim for insurance coverage is founded. Under the scenario described in your letter (each patient has a separate account with facility as agent) this requirement would not pose a problem, since the individual patient is named on the account as owner of the funds.

However, under the facts described in the documents you enclosed with your letter (pooled patient funds in a single account with facility identified as agent), the ownership of the funds would not be clear from the name on the account. Again, keep in mind that the credit union records are conclusive as to the existence of an agent or custodian relationship upon which insurance coverage is determined. (See, Section 745.2(c)(1).) In the pooled arrangement, the account should be maintained in the name of the facility with a specific designation included. For example, using the name of the facility followed by terms such as "agent account," "nominee" or "patient account" on the account card and periodic statements would indicate a relationship upon which additional insurance can be based. Then, either the credit union's records or those of the facility must clearly show the interest of each patient in a defined portion of the funds. (See, Section 745.2(c)(2).) However, if the credit union's records do not disclose the agent relationship, NCUA will not review the facility's records to determine if additional insurance is available and will treat the account

as belonging to the facility and entitled to only $100,000 coverage. Again, only those funds belonging to patients who are members will receive insurance coverage.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosures

GC/MRS:sg
SSIC 8010
91-1209

Part 745

Share Insurance and Appendix

Subpart A—Clarification and Definition of Account Insurance Coverage.

§745.0 Scope.

The regulation and appendix contained in this Part describe the insurance coverage of various types of member accounts. In general, all types of member share accounts received by the credit union in its usual course of business, including regular shares, share certificates, and share draft accounts, represent equity and are insured. For the purposes of applying the rules in this Part, it is presumed that the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. These rules 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 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.

§745.1 Definitions.

(a) The terms "account" or "accounts" as used in this Part mean share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units and nonmembers where permitted under the Act) in a credit union of a type approved by the 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.

(b) The terms "member" or "members" as used in this Part mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

(c) The term "public unit" means the United States, any state of the United States, the District of Colombia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in Section 3(c) of the Indian Financing Act of 1974.

(d) The term "political subdivision" includes any subdivision of a public unit, as defined in (c) above, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

§745.2 General Principles Applicable in Determining Insurance of Accounts.

(a) General: This Part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this Part. The Appendix provides examples of the application of these rules to various factual situations. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern.

(b) The 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 by the bylaws of a particular credit union. The purpose is to be as inclusive as possible of all situations.

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

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

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) Valuation of trust interests: (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-7 of the Federal Estate Tax Regulations (26 C.F.R. 20.2031-7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100.000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means 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.

§745.3 Single Ownership Accounts.

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

(1) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in the individual's own name shall be insured up to $100,000 in the aggregate.

(2) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

(3) *Custodial loan accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to Section 107(13) of the Federal Credit Union Act and Section 701.23 of NCUA's Regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

(b) Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor.

§745.4 Testamentary Accounts.

(a) The term "testamentary account" refers to 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 named beneficiary.

(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,

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

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

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) Valuation of trust interests: (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-7 of the Federal Estate Tax Regulations (26 C.F.R. 20.2031-7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100.000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means 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.

§745.3 Single Ownership Accounts.

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

(1) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in the individual's own name shall be insured up to $100,000 in the aggregate.

(2) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

(3) *Custodial loan accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to Section 107(13) of the Federal Credit Union Act and Section 701.23 of NCUA's Regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

(b) Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor.

§745.4 Testamentary Accounts.

(a) The term "testamentary account" refers to 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 named beneficiary.

(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,