NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

January 22, 1992

Mr. Joel W. Gilbertson
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502

Re: North Dakota Real Estate Trust Account Program
(Your December 10, 1991, Letter)

Dear Mr. Gilbertson:

Your letter to Chairman Jepsen has been forwarded to the Office of General Counsel for a response. You have asked whether North Dakota real estate brokers participating in the Real Estate Trust Account Program (RETA) may maintain client and customer trust funds in interest bearing checking accounts, e.g., NOW accounts, in credit unions under the jurisdiction of the National Credit Union Administration (NCUA). We note that credit unions offer dividend bearing share draft accounts rather than NOW accounts. In practical terms, the accounts are very similar.

Background

As we understand it, RETA requires real estate brokers to establish interest bearing trust accounts for client and customer funds involved in real estate transactions. The recipient of the interest on those funds is the Real Estate Trust Account Committee (the Committee), which is required to use the funds for charitable purposes. You have enclosed an opinion from the North Dakota Attorney General that the Committee holds the beneficial interest in the interest income earned on real estate interest bearing accounts under RETA. You have also enclosed opinions from the Federal Reserve Board (FRB) and the Federal Deposit Insurance

Corporation (FDIC) that RETA funds may be placed in NOW accounts in member and nonmember banks of the Federal Reserve System.

Analysis

The issue addressed by the FRB and the FDIC was whether a real estate broker would be eligible to hold a NOW account, since in most cases the broker would be a partnership or corporation and generally such entities are not eligible to hold NOW accounts. The FRB and FDIC concluded that since all of the interest earned by an account would be held by a nonprofit organization (the Committee), RETA funds could be placed in NOW accounts in member and nonmember banks. The queston of whether RETA funds can be placed in dividend bearing share draft accounts in credit unions is somewhat different.

NCUA charters, insures, and regulates federal credit unions (FCUs) and insures and regulates (to a more limited extent) federally-insured state chartered credit unions (FISCUs). Section 107(6) of the Federal Credit Union Act, 12 U.S.C. §1757(6), provides that an FCU may only offer share draft accounts to its members, to certain nonmember entities not applicable here, and to nonmembers in the case of FCUs serving predominantly low income members. See also 12 U.S.C. §1785(f). In the case of escrow accounts, such as those established under RETA, it is the owner of the funds, not the agent, who must be a member. Thus, for an FCU to accept an account under RETA, either all of the clients or customers of the real estate broker would have to belong to the FCU or the FCU would have to predominantly serve low income members and have received a low-income designation from NCUA. See 12 C.F.R. §701.32(d). In addition, the Federal Credit Union Act and NCUA Regulations provide that only the accounts of members or eligible nonmembers are insured. Thus, a real estate agent's customers and clients would have to be members in order for their funds to be insured. The Committee's interest in the accounts would not be insured unless the Committee was a member of the credit union.

It appears that the unique nature of credit unions makes it impractical for most federally-insured credit unions to

Corporation (FDIC) that RETA funds may be placed in NOW accounts in member and nonmember banks of the Federal Reserve System.

Analysis

The issue addressed by the FRB and the FDIC was whether a real estate broker would be eligible to hold a NOW account, since in most cases the broker would be a partnership or corporation and generally such entities are not eligible to hold NOW accounts. The FRB and FDIC concluded that since all of the interest earned by an account would be held by a nonprofit organization (the Committee), RETA funds could be placed in NOW accounts in member and nonmember banks. The queston of whether RETA funds can be placed in dividend bearing share draft accounts in credit unions is somewhat different.

NCUA charters, insures, and regulates federal credit unions (FCUs) and insures and regulates (to a more limited extent) federally-insured state chartered credit unions (FISCUs). Section 107(6) of the Federal Credit Union Act, 12 U.S.C. §1757(6), provides that an FCU may only offer share draft accounts to its members, to certain nonmember entities not applicable here, and to nonmembers in the case of FCUs serving predominantly low income members. See also 12 U.S.C. §1785(f). In the case of escrow accounts, such as those established under RETA, it is the owner of the funds, not the agent, who must be a member. Thus, for an FCU to accept an account under RETA, either all of the clients or customers of the real estate broker would have to belong to the FCU or the FCU would have to predominantly serve low income members and have received a low-income designation from NCUA. See 12 C.F.R. §701.32(d). In addition, the Federal Credit Union Act and NCUA Regulations provide that only the accounts of members or eligible nonmembers are insured. Thus, a real estate agent's customers and clients would have to be members in order for their funds to be insured. The Committee's interest in the accounts would not be insured unless the Committee was a member of the credit union.

It appears that the unique nature of credit unions makes it impractical for most federally-insured credit unions to

participate in RETA. Enclosed for your information are two letters addressing Interest on Lawyer Trust Account (IOLTA) programs that appear similar to the RETA program.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

GC/LH:sg
SSIC 3600
91-1227

Enclosure

cc: Chairman Jepsen

Chicago FI

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/MM:scg
8000
89-0814

December 11, 1989

Ms. Phyllis D. Groenewoud
Financial Institutions Bureau
P.O. Box 30224
Lansing, Michigan 48909

Re: Michigan's IOLTA Program (Your July 27, 1989, Letter)

Dear Ms. Groenewoud:

You have asked whether certain types of accounts established pursuant to an IOLTA program in a Michigan state-chartered federally-insured credit union would be entitled to share insurance. The answer for each type of account is addressed separately below.

BACKGROUND

Generally, under an IOLTA program, an attorney or a law firm pools clients' escrow accounts into a single IOLTA account. Instead of the dividends on the account going to the clients for the duration of the escrow, the dividends are instead transferred to the IOLTA fund where they are used to fund legal services for the indigent. In Michigan, the Attorney General has rendered an opinion that the Michigan Bar Foundation will own the entire beneficial interest in and will have exclusive right to all the interest or dividend income earned on trust accounts established under the IOLTA Program.

ANALYSIS

Generally, an IOLTA Program account will be an escrow account. Escrow accounts are established as agent accounts. The insurance

of escrow or agent accounts is governed by Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 745.3(a)(2)) which provides:

> 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.

In determining the insurance of escrow accounts which are set up as a type of agent account, the membership of the principal/owner of the funds is the critical factor. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured. (See 12 C.F.R. 745.0.) The owners of the funds (presumably the clients) would be required to be members of the federally-insured credit union. The agent (presumably the law firm) is not required to be a member of the credit union.

You note that pursuant to the Michigan Credit Union Multi-Party Account Act, a credit union can accept a multi-party trust account so long as one party to the account is a member of the credit union. We maintain that only member interests in the account will be insured unless the account is a joint account. Joint accounts can be established and insured with nonmembers. In order to obtain separate insurance coverage, however, the joint account must be a qualifying joint account. Section 745.8(b) of the NCUA Rules and Regulations (12 C.F.R. 745.8(b)) provides:

> (b) Qualifying joint accounts. Joint accounts are insured separately from individual accounts up to a maximum of $100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as other co-owners.

Section 745.8(f) of the NCUA Regulations (12 C.F.R. 745.8(f)) addresses the insurance of such accounts:

> (f) Nonmember joint owners. A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner of the member joint-owner's interest.

You asked our opinion on the availability of Federal share insurance on the following four types of accounts.

(1) Revocable trust/agency (IOLTA) account where attorney or law firm is a member, but no client is a member. As noted above, the membership of the principal/owner of the funds is the critical fact. In order for an agent account to be opened and insured, the principals/clients must be members. Hence, this escrow account could not be properly established. However, the law firm member can have an insured account for its own funds. Such account would be aggregated with other accounts of the firm and insured pursuant to Section 745.6 of the NCUA Regulations (12 C.F.R. 745.6) - Accounts Held by a Corporation, Partnership or Unincorporated Association.

(2) A revocable trust/agency (IOLTA) account where the attorney or law firm is a member, but only some clients are members of the credit union. Even if the account is legally established pursuant to Michigan multi-party account law, only member funds will be insured pursuant to Section 745.3(a)(2) of the NCUA Regulations. Each member/owner's share will be added to any other of that individual's account and insured up to $100,000 in the aggregate.

(3) a. A revocable trust/agency (IOLTA) account where the law firm is not a member but some clients are members. Again, only clients/members can have insured accounts. See answer to (2) above.

b. A revocable trust/agency (IOLTA) account where the law firm is not a member but all of the clients are members. This account can be legally established and insured. It will be insured pursuant to Section 745.3(a)(2) of the NCUA Regulations. Each principal's/client's share in the account will be added to any other individual accounts of that principal and insured up to $100,000 in the aggregate.

(4) A revocable trust/agency (IOLTA) account where the attorney and all the clients are members. Same as (3) b. above.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

Office of General Counsel

GC/JT:sg
SSIC 3500
89-0916

December 19, 1989

Robert D. Welden, Esq.
General Counsel
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, Washington 98121-2599

Re: Interest on Lawyer Trust Accounts (Your September 12, 1989, Letter)

Dear Mr. Welden:

You have asked for further information regarding National Credit Union Share Insurance Fund coverage of Interest on Lawyer Trust Accounts ("IOLTAs"). We recently issued an opinion on this subject, a copy of which is enclosed. Your second question regarding our interpretation of 12 U.S.C. 1785(f) is addressed below.

ANALYSIS

Section 205(f) of the FCU Act (12 U.S.C. 1785(f)) states:

> (1) Every insured credit union is authorized to maintain, and make loans with respect to, share draft accounts in accordance with rules and regulations prescribed by the Board. Except as provided in paragraph (2), an insured credit union may pay dividends on share draft accounts . . . .

Vol. III C 7

> (2) Paragraph (1) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit . . . .

You have asked how we interpret the word "individuals" in 12 U.S.C. 1785(f)(2). This term allows federally-insured credit unions to offer share draft accounts to nonmember natural persons that have the legal capacity to establish accounts at a federally-insured credit union, such as nonmembers establishing share draft accounts at a credit union designated as serving predominantly low-income members[1] and nonmembers legally establishing share draft accounts at state-chartered federally-insured credit unions. Similarly, the phrase "organizations. . . not operated for profit" in 12 U.S.C. 1785(f)(2) adds certain nonmember organizations, such as a religious group establishing a nonmember share draft account at a credit union designated as serving predominantly low-income members.

Sincerely,

HATTIE M. ULAN
Associate General Counsel

Enclosure

[1] Section 107(6) of the FCU Act authorizes FCU's that predominantly serve low-income members, as defined by NCUA, to accept nonmember deposits, subject to NCUA Regulation. (See 12 C.F.R. 701.32.)