



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

February 5, 1992

Heather A. Coy
Ryder System Inc.
3600 NW 82 Avenue
Miami, Florida 33166

Re: Insurance Coverage (Your July 30, 1991, Letter)

Dear Ms. Coy:

You have asked for information on the insurance coverage of a 401(k) plan at the Ryder System Federal Credit Union (FCU).

BACKGROUND

Ryder System Inc. has a Ryder Employee Savings Plan Money Market account at the FCU. This account is one of seven funds in Ryder's 401(k) plan. The estimated balance of Ryder's Money Market account in the FCU is \$5.5 million with about twenty-three hundred participants. Some, but not all, of the participants in the plan are members of the FCU. Neither the plan administrator nor Ryder System, Inc. is a member of the FCU.

ANALYSIS

Member accounts in federal credit unions are insured by the National Credit Union Share Insurance Fund ("NCUSIF"). 12 U.S.C. §1783. Share insurance of up to \$100,000 per account is available for various types of qualifying member share accounts. (See Part 745 of NCUA Regulations, 12 C.F.R. Part 745.) Accounts established pursuant to a 401(k) plan are insured in accordance with Section 745.9-3 of NCUA Regulations (12 C.F.R. 745.9-3), which states:

Funds deposited by an employer pursuant to a deferred compensation plan

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(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 employer.

Funds deposited as part of a deferred compensation plan are insured up to \$100,000 per participant who is an FCU member, provided the account is legally established and the plan specifically sets out the interest of each participant. In most instances, nonmember participant funds in a deferred compensation account would not be insured. However, under limited circumstances, insurance coverage may be available up to \$100,000 in the aggregate for nonmember participants. (See 12 C.F.R. Part 745, Appendix G, Example 3(a), enclosed.) In order for nonmember participants to receive this insurance coverage, the settlor or administrator of the plan must be a member of the FCU.

You have informed us that the settlor of the plan is not a member of the FCU. The settlor of the plan, whether it is Ryder System Inc. or the plan administrator, may join the FCU as long as it is within the FCU's field of membership. Once the settlor becomes a member, limited insurance coverage for nonmembers participating in the plan will be provided to the same extent as in the case of trust accounts, i.e., up to \$100,000 in the aggregate as to all nonmember participants. If Ryder Systems Inc. or the plan administrator is not within the FCU's field of membership, the FCU can request a field of membership expansion to have the settlor included. The settlor should then join the FCU. The FCU's field of membership expansion request should be addressed to the NCUA Region III office.

One additional note. This interpretation of the insurance coverage of deferred compensations plans differs slightly from previously issued legal opinions. In the past, we have applied the provisions of our insurance regulations concerning irrevocable trust accounts (Section 745.9-1) and required either all of the settlors or all of the beneficiaries (participants) of a deferred compensation plan to be members of the credit union in order to legally establish the account and receive insurance coverage. After further review of the

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FCU Act and NCUA Regulations, we have now concluded that in the case of a deferred compensation plan, including a 401(k) plan, it is not necessary for all of the beneficiaries to be FCU members. However, it is only the interests of the member beneficiaries that will be entitled to insurance coverage. An additional \$100,000 of coverage can be obtained if the settlor of the plan is also an FCU member.

Sincerely,

A handwritten signature in cursive script that reads "Hattie M. Ulan".

Hattie M. Ulan
Associate General Counsel

Enclosures

GC/MM:sg
SSIC 8010
91-0803

Answer: Accounts numbers 1 and 2 are each separately insured for \$100,000 as individual accounts held by A, B, respectively (§745.3(a)(1)). With respect to the joint accounts, accounts numbered 3 and 4 are owned by the same combination of individuals and are added together and insured to a maximum of \$100,000, leaving \$200,000 uninsured (§745.8(d)). A, B and C each have a \$33,334 insured interest in accounts 3 and 4. A and B also maintain a joint account, account number 5. Because C has no interest in this account, it is owned by a combination of individuals different from accounts 3 and 4. The interests of A and B in account number 5 are deemed to be equal (§745.2(c)(4)). A's \$50,000 interest in account 5 is added to his insured interest in accounts 3 and 4, giving him a total of \$83,334 insurance coverage for his interests in the various joint accounts, in addition to the insurance in the amount of \$100,000 provided for his individual account. B's interests in accounts 3, 4 and 5 are identical to A's and her interests are insured in a like manner.

G. TRUST ACCOUNTS AND RETIREMENT ACCOUNTS

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, that is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to \$100,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the \$100,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-10 of

the Federal Estate Tax Regulations (26 C.F.R. 20.2031-10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed the basic insured amount of \$100,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. 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 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.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid 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. An account in which such funds are invested is considered to be an individual account.

An account established pursuant to a revocable trust arrangement is insured as a form of individual account and is treated under Section B, *supra*, dealing with Testamentary Accounts.

IRA and Keogh accounts are separately insured, each up to \$100,000. Although credit unions may serve as trustees or custodians for self-directed IRA and Keogh accounts, once the funds are taken out of the credit union, they are no longer insured.

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual member/beneficiary on his interest in the account will be in proportion to his interest in the entire employee retirement fund.

If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of \$10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only \$2,500 on that credit union account. There is an exception, however. The member would be insured for \$10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

Example 1

Question: Member S invests \$45,000 in trust for B, the beneficiary. S also has an individual account containing \$90,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§745.3(a)(1) and 745.9-1).

Example 2

Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E, and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

Example 3

Question: Member S invests \$500,000 in trust for ABC Employees Retirement Fund. Some of the beneficiaries are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each member beneficiary to a maximum of \$100,000 per member. Member interests not capable of evaluation and nonmember interests shall be added together and insured to a maximum of \$100,000 in the aggregate (§745.9-1).

Example 3(a)

Question: Member S is trustee for the ABC Employees Retirement Fund containing \$1,000,000. Member A has a determinable interest of \$90,000 in the Fund (9% of the total). S invests \$500,000 of the Fund in trust in an insured credit union and the remaining \$500,000 elsewhere. Some of the beneficiaries of the Fund are members of the credit union and some are not. S does not segregate each employee's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to determinable interest of each member beneficiary, adjusted in proportion to the Fund's investment in the credit union. A's insured interest in the account is \$45,000, or 9% of \$500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. Each beneficiary who is a member would be similarly insured. Members' interests not capable of evaluation and nonmembers' interests are added together and insured to a maximum of \$100,000 in the aggregate. (§745.9-1.)

Example 4

Question: Member A has an individual account of \$100,000 and establishes an IRA and accumulates \$50,000 in that account. Subsequently A becomes self employed and establishes a Keogh account in the same credit union and accumulates \$100,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured for up to \$100,000. In the example, A would be fully insured for \$250,000 (§§745.3(a)(1) and 745.9-2).

Example 5

Question: Member A has a self-directed IRA account with \$70,000 in it. The FCU is the trustee of the account. Member transfers \$40,000 into a blue chip stock; \$30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full \$70,000 in A's IRA account is insured. The \$40,000 is no longer insured once it is moved out of the FCU. The \$30,000 remaining in the FCU is insured (§745.9-2).