



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

March 2, 1992

*Retirement
Program*

Lawrence P. Levine
Ryder Systems, Inc.
3600 NW 82 Avenue
Miami, Florida 33166

Re: **Insurance Coverage** (Your September 3, 1991,
Letter)

Dear Mr. Levine:

You have asked several questions 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 (the "Fund") 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 is \$5.5 million with about twenty-three hundred participants. Neither the plan administrator nor Ryder System, Inc. is a member of the FCU. Although all Ryder employees situated in the United States are eligible to become members of the FCU, some of the participants in the plan are not members of the FCU. Furthermore, some plan participants are members of another federal credit union.

To provide a better understanding of our answers to your specific questions, the following is a general background on insurance coverage of deferred compensation plans. Member accounts in federal credit unions are insured by the National Credit Union Insurance Fund ("NCUSIF"). 12 U.S.C. §1783. Share insurance of up to \$100,000 per account is available for qualifying member share accounts. (See Part 745 of NCUA's Regulations, 12 C.F.R. Part 745.) Accounts established pursuant to a 401(k) plan are insured in accordance

FCIA Vol. IV, Part C Insurance Coverage

Lawrence P. Levine
March 2, 1992
Page 2

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 (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.

QUESTIONS AND ANSWERS

Your specific questions and our answers follow:

Question #1 - If an employee of Ryder System, Inc. is a par-

Lawrence P. Levine

March 2, 1992

Page 3

participant in the 401(k) Plan and designates monies to be invested in the Fund but is not a member of the FCU, although eligible for membership, is that employee's investment in the Fund protected by any NCUSIF insurance coverage?

As discussed above, funds deposited in the credit union as part of a 401(k) plan are insured up to \$100,000 per participant who is an FCU member. 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. . . " 12 C.F.R. 745.1(b). This does not require the opening of a separate account at the credit union; signing a membership agreement and paying an entrance fee (if any) is sufficient to establish membership. Under your scenario, if the individual is not a member of the FCU and the settlor is a member of the FCU, insurance coverage may be available up to \$100,000 in the aggregate for nonmember participants.

Question #2 - If an employee of Ryder Systems, Inc. is a participant in the 401(k) Plan and designates monies to be invested in the Fund and is not a member of the FCU, but is a member of another federal credit union, is that employee's investment in the Fund protected by any NCUSIF insurance coverage?

In order to obtain separate insurance coverage, the participant must qualify for membership and join the FCU in which the funds are deposited. Since that is not the case here, only insurance coverage up to \$100,000 in the aggregate for nonmember participants may be available if the settlor is a member of the FCU.

Question #3 - The question is the same as question # 2 but instead of a federal credit union, the employee is a member of a state credit union.

No individual coverage, see the answer to question #2.

Question #4 - If a person was a member of the FCU, leaves Ryder's employment, continues his/her participation in the 401(k) Plan and designates monies to be invested in the Fund, is that employee's investment in the Fund protected by any NCUSIF insurance coverage?

Lawrence P. Levine

March 2, 1992

Page 4

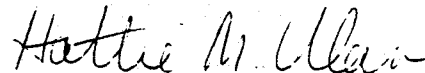
Most FCUs have adopted a policy allowing members to maintain membership after they leave the field of membership (Ryder employment) if certain conditions are met. If Ryder FCU has this "once a member, always a member" policy, share insurance of up to \$100,000 per member is available. If the FCU has not adopted the "once a member, always a member" policy, insurance coverage up to \$100,000 in the aggregate for nonmember participants may be available if the settlor is a member of the FCU. Contact the FCU board of directors to determine if the FCU has adopted the "once a member, always a member" policy.

Question #5 - If a person was never a member of the FCU, leaves Ryder's employment, continues his/her participation in the 401(k) Plan and designates monies to be invested in the Fund, is that employee's investment in the Fund protected by any NCUSIF insurance coverage.

No individual coverage, see the answers to questions #1 and #4.

As you can see from the answers to your specific questions, one of the major factors in determining insurance coverage of deferred compensation plans is whether the person is a member of the FCU. Please contact us if you have any further questions or if we can be of further assistance.

Sincerely,



Hattie M. Ulan
Associate General Counsel

Enclosure

GC/MM:sg
SSIC 8010
91-0906

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).

Section 6. Shares may be issued in a revocable or irrevocable trust, subject to the following:

(a) When shares are issued in a revocable trust, the settlor must be a member of this credit union in his/her own right, and the name of the beneficiary must be stated.

(b) When shares are issued in an irrevocable trust, the settlor or the beneficiary must be a member of this credit union in his/her own right, and the name of the beneficiary must be stated. For purposes of this section, shares issued pursuant to a pension plan authorized by the rules and regulations shall be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

(c) Trust accounts established prior to the effective date of this section shall not be affected. Trusts may be established pursuant to this section, provided such trusts, their terms and conditions are in accordance with the laws of this jurisdiction.

Article IV. Receipting for Money - Passbooks

Section 1. Money paid in or paid out on account of shares, loans, interest, entrance and transfer fees, or late charges shall be evidenced by an appropriate voucher or receipt or by entries in a member's passbook which shall also identify the person acting on behalf of this credit union. The member's official permanent record for all transactions shall be the entries in the passbook or a statement of account when such a plan is used as prescribed in the Accounting Manual for Federal Credit Unions.

Section 2. If a passbook is lost or stolen, immediate notice of such fact shall be given to the financial

officer, and written application shall be made for the payment of the amount due the member as represented by said passbook or for the issuance of a duplicate passbook. The board may require the filing of an adequate bond to indemnify this credit union against any loss or losses resulting from the issuance of such duplicate passbook. The board may also require payment to this credit union of a reasonable charge to cover the cost of issuing a duplicate passbook.

Article V. Meetings of Members

Section 1. The annual meeting of the members shall be held within the period authorized in the Act, in the county in which the office of the credit union is located or within a radius of 100 miles of such office, at such time and place as the board shall determine and announce in the notice thereof.

Section 2. At least 7 days before the date of any annual or special meeting of the members, the recording officer shall cause written notice thereof to be handed to each member in person, or mailed to each member at his address as the same appears on the records of this credit union; except that if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is readily accessible to members and wherein regular business hours are maintained, and the board so determines, notice of the annual meeting may be given by posting the notice thereof in a conspicuous place in the office of this credit union where it may be read by the members, at least 14 days prior to such meeting. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members