NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

May 5, 1992

Louis R. Ravetti
President
Ent Federal Credit Union
805 N. Murray
Colorado Springs, CO 80935

Re: Escrow Funds Insurability
(Your Letter of March 25, 1992)

Dear Mr. Ravetti:

You have requested an opinion regarding the insurability of certain real estate escrow accounts at Ent Federal Credit Union ("FCU"). It is our opinion that unless the owners of the funds are FCU members, the real estate escrow accounts are not insurable as escrow accounts. Neither are they insurable as unincorporated association accounts.

ANALYSIS

The Ent FCU accounts are presently structured as escrow accounts. Escrow is defined as "[a] writing, deed, money, stock or other property delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee." Black's Law Dictionary (5th ed., 1979). As funds held from the buyer of property for the seller of property by a real estate broker in a FCU until the sale is consummated or terminated, the escrow account is deemed an account held by agent for NCUSIF insurance purposes. See 12 C.F.R. §745.3(a)(2); see also NCUA Opinion Letter from me to Jeff Rodman, Actors FCU, re: Share Insurance of Escrow Accounts, dated June 4, 1990 (enclosed); NCUA Opinion Letter from me to C.S. Smebakken, U.S. Dept. of Agriculture, re: Insurance of Market Agency Accounts, dated April 3, 1989 (enclosed); and NCUA Opinion Letter from James J. Engel, Deputy

FOIA - Vol. II, I, Vol. II.H

General Counsel, to Steven D. Eimert, Esq., Sherin and Lodgen, re: Share Insurance Coverage, dated November 30, 1988 (enclosed). As these opinion letters state, the membership status of the escrow agent is irrelevant for NCUSIF insurance purposes, and the membership status of the buyer (owner of the funds) is determinative. In this case the real estate buyers are presumably not members of the FCU, and so the escrow accounts are not insured.

Even if the real estate escrow accounts were restructured to be corporate or unincorporated association accounts they would remain uninsured. In order to obtain separate NCUSIF insurance coverage, a corporation or unincorporated association must be engaged in an "independent activity", that is, "an activity other than one directed solely at increasing insurance coverage." 12 C.F.R. §745.6. As only the form, but not the substance, of the accounts would change in this scenario, the account would be "deemed to be owned by the person or persons ... comprising such ... unincorporated association." Id. Therefore, the nonmember owners of the funds in the account would remain uninsured.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan,
Associate General Counsel

Enclosures

GC/MEC:sg
SSIC 7000
92-0338

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

June 4, 1990

Mr. Jeff Rodman
Actors Federal Credit Union
164 West 46th Street
New York, N.Y. 10036

Re: Share Insurance of Escrow Accounts (Your February 9, 1990, Letter)

Dear Mr. Rodman:

You have asked us for an opinion on the insurance coverage of certain escrow accounts. If all the production companies and actors are within the field of membership of Actors Federal Credit Union ("FCU"), then the escrow accounts may be properly established and maintained as insured accounts.

BACKGROUND

The Actors Equity Association ("AEA") has approximately $1,100,000 that it would like to deposit in the Actors Federal Credit Union. The funds are currently held in a bank in bonds or escrow deposits of individual theatrical producers. These accounts are the equivalent of two weeks' salaries of the AEA members participating in a production. The funds are held in the account until the production closes and the actors' salaries have been paid in full. Once the actors are paid, the money reverts to the production companies. If the actors are not paid in full, the funds are distributed to the actors by AEA. The AEA is concerned about possible insurance coverage if it establishes these accounts at the FCU. AEA is a member of the FCU; the production companies are not.

ANALYSIS

MEMBERSHIP

Except in situations not applicable here, only members can establish insurable accounts in Federal credit unions. Generally, where there are multiple owners of a single account, only that part which belongs to a member is insured. (See Section 745.0 of the NCUA Regulations, 12 C.F.R. §745.0.) However, Section 109 of the FCU Act does allow nonmembers to have joint accounts with FCU members and the nonmembers interest will be insured.

ESCROW ACCOUNTS

Whether an escrow account can be a legally established and insured "member account" will depend on the membership eligibility of the owner of the funds. Insurance of an escrow account will

depend on the kind of account established. Generally, it is our understanding that escrow accounts are established as agent or revocable trust accounts. Section 745.3(a)(2) of NCUA's Regulations (12 C.F.R. 745.3(a)(2)), which governs such nontestamentary accounts, provides:

> 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.

Though state law may have an effect on how NCUA treats this account, it appears that the owners of the funds at the time the accounts will be established are the production companies. However, the "owner" of the funds can change when circumstances change. Determination of the owner of the account in this scenario is dependent on whether the actor has been paid. If the actor receives his last two weeks of salary, the production company continues to own the funds and receives the money back from AEA. If the production company does not pay the actors, the funds would be paid to the actors by AEA. The actors are then the owners of the funds. Upon the occurrence of a contingency whereby the owner changes (i.e., failure of production company payment of last two weeks' salary by a certain date), the new owner must be a member in order for the account to continue to be insured. Otherwise, the account would cease to be a member account and would be transferred to an account payable. Unless all participants qualify for membership, the accounts may not remain as insured accounts.

JOINT ACCOUNTS

In your letter you also mentioned the possibility of AEA and the production companies depositing funds in joint accounts at the FCU. As noted above, Section 109 of the FCU Act (12 U.S.C. 1759) authorizes joint accounts with nonmembers. Insurance of joint accounts is governed by Section 745.8 of the Regulations (12 C.F.R. §745.8) which states in part:

> (e) Different combination of individuals. A person holding an interest in more than one joint account owned by different combinations of individuals may receive a maximum of $100,000 insurance coverage on the total of his interest in those joint 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 as the member joint-owner's interest.

As long as one of the parties to each joint account is an FCU member, the accounts can be legally established and insured. Since AEA is a member and none of the production companies are members, then AEA will have multiple joint accounts and will receive only $100,000 insurance coverage in the aggregate for its total interests in the joint accounts. Each nonmember production company will receive up to $100,000 insurance coverage.

The only available method for AEA to obtain maximum insurance coverage on its deposits is to have all of the actors and production companies within the field of membership of the FCU. If all the participants are not currently within the field of membership, a charter amendment will be necessary to accomplish your goal.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel
Office of General Counsel

GC/MM:sg
SSIC 8010
90-0225

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

April 3, 1989

Office of General Counsel

C.S. Smebakken
Regional Supervisor
Packers and Stockyards Administration
U.S. Department of Agriculture
208 Post Office Building
Box 8
South St. Paul, MN 55075

Re: Insurance of Market Agency Accounts (Your February 13, 1989, Letter)

Dear Mr. Smebakken:

You have asked for an interpretation of the insurance coverage applicable to custodial accounts established by a market agency. Such accounts can be established at a Federal credit union ("FCU") by a market agency only if all the principals (the shippers) can establish member accounts there. This type of account would be insured pursuant to Section 745.3(a)(2) of NCUA's Rules and Regulations (12 C.F.R. 745.3(a)(2)). If funds of the market agency are deposited in the same account, the market agency must also be a member of the FCU. Funds deposited by a market agency on its own behalf will be insured pursuant to Section 745.6 of NCUA's Rules and Regulations (12 C.F.R. 745.6).

BACKGROUND

This background information is taken from a 1947 letter issued by the Federal Deposit Insurance Corporation. It is the only information you provided to us. We have assumed that the factual background remains accurate.

A market agency is a commission firm at a stockyard under the Packers and Stockyards Act. For a commission, the market agency sells livestock consigned to it by livestock shippers. The market agency deposits the proceeds from the sale of the shippers' livestock into a bank or credit union account. The

Secretary of Agriculture has ruled that the market agency holds the shippers' funds as trust funds.

Following the sale of a shipper's livestock, the market agency draws a check or share draft payable to the order of the shipper on the account for the net amount of the sale. The market agency also draws checks or share drafts on this account to pay for transportation and stockyard charges and for its sales commission.

There is an alternative method of handling shippers' funds. Under the alternative procedure, a market agency will deposit in the shippers' proceeds account only the net proceeds due the shipper. Other items of marketing expense will be paid for out of a general account in which the market agency will deposit the check representing gross proceeds from the buyer. Otherwise, the account is handled and maintained in the manner outlined above.

ANALYSIS

Insurance Coverage of Accounts

The NCUA Board only insures FCU "member accounts" (see Section 201 of the FCU Act, 12 U.S.C. 1781(a)). Such accounts are insured by the National Credit Union Share Insurance Fund ("NCUSIF"). (See Section 203 of the FCU Act.) In general, in order to establish a member account, the depositor or owner of the funds must fall within the field of membership of the FCU. The FCU's field of membership is set forth in its charter.

A custodial account is an account held by an agent or nominee on behalf of a principal(s). All principals must be able to establish member accounts for this type of account to be insured. Custodial accounts are insured under Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 745.3(a)(2)). This section provides as follows:

> 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.

This insurance coverage is applicable to share, share draft and share certificate accounts.

Application to Market Agency Accounts

A market agency account can be established as a custodial account in an FCU provided the shipper on whose behalf the funds are deposited is a member of the FCU. The account will be insured pursuant to Section 745.3(a)(2). If funds of the market agency are deposited in the account, the market agency must also be a member of the FCU. Funds of the market agency will be insured pursuant to Section 745.6 of NCUA's Rules and Regulations (12 C.F.R. 745.6) providing:

> Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to $100,000 in the aggregate. For purposes of this section, "independent activity" means an activity other than one directed solely at increasing insurance coverage.

In the event of an insurance payout, the FCU's records must adequately reflect the custodial arrangement. We draw your attention to Section 745.2(c) of NCUA's Rules and Regulations (12 C.F.R. 745.2(c)), which provides in part:

> (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.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

JT:sg

GC/HMD
8200

NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

November 30, 1988

Office of General Counsel

Steven D. Eimert, Esq.
Sherin and Lodgen
100 Summer Street
Boston, MA 02110

Re: Share Insurance Coverage (Your May 23, 1988, letter)

Dear Mr. Eimert:

You posed several questions about membership in Federal credit unions ("FCU's") and National Credit Union Share Insurance Fund ("NCUSIF") coverage of share accounts. Generally (though with some exceptions), in order to qualify for share insurance coverage, depositors must qualify for and have established membership in an FCU. Also, in general, various types of member accounts are separately insured by the NCUSIF up to $100,000 per account.

Membership and Insurance of Corporation and Partnership Accounts

You have asked these questions on insurance of corporation and partnership accounts:

Corporations

a. In order for a corporation to be a credit union member and thus open a valid account, must all of its stockholders be within the credit union's field of membership?

On the one hand, a requirement that all stockholders be within the field of membership would seem to follow from the interaction of (a) common language in section 5 of credit union charters including "organizations of such persons" within the field of membership with (b)

Article XVIII, Section 2(b) of the Standard Bylaws defining "organizations of such persons" to mean organizations composed exclusively of persons who are within the credit union's field of membership.

On the other hand, 12 C.F.R. Sec. 745.0 contemplates partial insurance coverage where not all parties with an interest in a credit union account are members or eligible for membership. As applied to corporate accounts, does this create the potential for partial coverage of a corporation's account where some but not all of its stockholders are within the field of membership? If such a partially insured corporate account is possible, would the depositor-corporation be a member of the credit union?

b. If in fact all of the stockholders of a corporation must be within the field of membership in order for the corporation to be a member, and its account insured, at what point in time is this test applied? (i) Once, at the time the account is established? (ii) Constantly, so that subsequent stock transfers could strip a corporation of its membership status and the protection of share insurance? (iii) Immediately before the credit union fails, to determine the availability of share insurance?

c. Additionally, is the eligibility of corporate officers or directors for credit union membership relevant in determining the corporation's eligibility for membership and share insurance?

d. In the case of a corporation which is a wholly-owned subsidiary of another corporation, how are the eligibility rules applied?

<u>Partnerships</u>.

a. In order for a partnership to obtain credit union membership and qualify for share insurance, must all partners be within the field of membership? For the

reasons discussed above as to corporations, this conclusion seems likely. If so, all of the subsidiary questions set forth above in 1b. and 1d. as to corporations likewise apply to partnerships, with the further question as to the treatment of limited versus general partnerships.

b. In the case of limited partnerships, must both all general and all limited partners be within the credit union's field of membership?

A corporation or partnership can become a member[1] of an FCU in one of three ways. First -- and this more frequently occurs in community based FCU charters -- the "field of membership" section (Section V) of the charter may include "all businesses," partnerships and corporations" within the defined geographic boundaries. Second -- and this is often true of occupational FCU charters -- a particular corporation or partnership, i.e., the sponsoring organization, may be specifically listed in Section V of the charter. If membership eligibility of a corporation or partnership is obtained in one of these two ways, membership eligibility of the shareholders, directors, or officers of the corporation, or of the partners of the partnership is irrelevant.

The third way for a corporation or partnership to qualify for membership in an FCU is based upon the membership eligibility of the shareholders or partners. For this to be possible, the FCU must have in Section V of its charter the phrase "organizations of such persons" which is defined in Article XVIII, Section 2(a) of the Standard FCU Bylaws as "an organization or organizations composed exclusively of persons who are within the field of membership of this credit union." If all shareholders or all partners are members or are within the FCU's field of membership, then the corporation or partnership would qualify as a member. With respect to wholly-owned subsidiaries, we would look to the membership eligibility of the parent or, if the parent is itself an "organization of such persons," of the parent's shareholders. Please be aware, however, that the funds in a corporation or partnership account established solely for the purpose of "increasing insurance coverage" will be allocated among the fund owners and aggregated with their other individual accounts. 12 C.F.R. §745.6.

[1] A corporation or partnership can establish an insured share account in a credit union designated as serving predominantly low-income members without itself being a member. 12 U.S.C. §1752(5).

The FCU Bylaws do not distinguish between general and limited partners: Where the status of the members is relevant, all would have to be eligible for membership. Accordingly, there is no partial coverage of corporation or partnership accounts; they are either fully insured to $100,000 or not insured at all.

Whether a corporation or partnership account qualifies as a "member account" for insurance purposes is determined as of the date of liquidation. Article II, Section 5, of the FCU Bylaws states:

> The membership of members who are no longer within the field of membership on the day this bylaw is effective or thereafter, is terminated immediately: Provided, however, That the board may resolve that such members may retain membership if they meet certain reasonable minimum standards established by the board.

Article III, Section 5(e) adds:

> (e) The share account of a person whose membership is terminated in accordance with article II, section 5, of these bylaws may be continued until the close of the dividend period in which the membership is terminated, after which it shall be transferred to an account payable.

If an FCU has adopted a "once a member, always a member" resolution under Article II, Section 5, a corporation or partnership account properly established at the outset will continue to be a "member account" even if non-members subsequently join the organization. These accounts will be fully insured on liquidation for insolvency. If an FCU board has not adopted such a resolution, and if, on liquidation, NCUA discovers that a corporation or partnership account is no longer a "member account" insured under Title II of the FCU Act -- for example, because one of the shareholders or partners is no longer in the field of membership -- then the Agency would look to Article III, Section 5(e) of the Bylaws. If the account should have been transferred to an account payable by the date of liquidation, NCUA will treat the account as having been so transferred.

Escrow Accounts

You have also asked:

> a. Where the escrow agent of a deposit in a sales transaction, but neither the seller nor the buyer, is eligible for membership in a credit union, is the deposit insured?
>
> b. If, pursuant to the governing purchase and sale agreement, the broker in the sale is entitled to a portion of the deposit in the event the buyer defaults and forfeits its deposit, must the broker be within the credit union's field of membership as well?
>
> c. If the escrow agent and either the seller or the buyer (but not both) are within the field of membership, is the account insured? Does the answer to this question turn upon who in fact proves to be entitled to the deposit (i.e., the seller if the transaction closes and the buyer if it does not due to the seller's default)?

Insurance of an escrow account will depend on the kind of account established. Generally, it is our understanding that escrow accounts are established as agent or revocable trust accounts. Section 745.3(a)(1) of the NCUA Rules and Regulations [12 C.F.R. 745.3(a)(1)], which governs such non-testamentary accounts, provides:

> 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 accounts of the principal and insured up to $100,000 in the aggregate.

With respect to your question "a", even if the escrow agent were a member, rather than merely eligible for membership, the account would not qualify as a member account and would not be insured. The escrow agent is acting on behalf of another, the principal/owner, and that party's membership is the critical factor.

As to questions "b" and "c", whether such an account is an insured "member account" will depend on membership eligibility of the "owner" of the funds. See 12 U.S.C. §745.0. Though state law may have an effect on how NCUA treats this account, our general view in the case you pose is that the owner of the funds is the person providing the funds -- the buyer. The broker's and seller's contingent interest in the funds in the example given is insufficient to establish "ownership" of the funds for NCUA insurance purposes. Upon the occurrence of a contingency whereby ownership of the account transfers to the seller, then the seller must be the member at that point. Otherwise the account would cease to be a member account and would be transferred to an account payable. The fact that the escrow agent may be entitled to a payment from the funds in the account is not the determining factor. The agent is not deemed to be the owner of the funds for insurance purposes.

Joint Accounts with Non-Members

You have also made this inquiry:

> 12 C.F.R. Sec. 745.8(f) provides that a non-member may become a co-owner, with right of survivorship, of funds in a joint account, and that the non-member's funds are insured "in the same manner as the member joint-owner's interest." The meaning of this provision is unclear. Where for instance the non-member succeeds upon death of the other joint-owner member(s) to sole ownership of the funds, does the insurance of the account cease immediately? Does the credit union have an affirmative obligation to advise the non-member of the lack of insurance for the account? Does in fact the insurance continue indefinitely under the express language of Section 745.8(f)?

A joint account comprising a member and non-member is governed by Article II, Section 5, and Article III, Section 5(e) of the FCU Bylaws after the member dies: The account "may be continued until the close of the dividend period in which the membership is terminated, after which it shall be transferred to an account payable."

Joint account terminations are addressed more fully in the Accounting Manual for FCU's. Relevant portions are enclosed.

Election to Membership

Next you state:

> 12 C.F.R. Sec. 745.1(b) defines a "member" as being a person within the credit union's field of membership who has been "elected to membership" in accordance with the [Federal] Credit Union Act ....
>
> * * *
>
> I would like to know whether the NCUA requires strict adherence to the membership admission procedure outlined in the Bylaws in order for new depositors to qualify as members and for their accounts to be insured. If not, what formalities, if any, are required beyond opening an account, having the signature card completed and signed and assigning an account number?

Article II, Section 2, of the FCU Bylaws provides:

> Upon approval of [a membership] application by a majority of the directors or a majority of the members of a duly authorized executive committee or by a membership officer and upon his/her subscription to at least one share of this credit union and the payment of the initial installment thereon, and the payment of a uniform entrance fee if required by the board, the applicant is admitted to membership.

These admission procedures are mandatory requirements; NCUA expects FCU's to follow them. In liquidation payouts, however, NCUA presumes regularity in complying with these procedures. We are not aware of any account which has been denied insurance coverage solely on the basis that the FCU failed to enforce the admission requirements.

Public Unit Accounts

You next ask:

> 12 C.F.R. Sec. 745.10 sets forth rules as to the insurance of so-called "public unit" accounts. These rules appear to provide that the $100,000 limit on insured deposits is applied separately to each "official custodian" of a public unit's funds.
>
> a. In this context, I would appreciate guidance as to the meaning of the term "official custodian." Does it refer to the governing body of the unit, such as a commission or board? Or does it refer to a particular individual with official, or actual, control over the unit's funds?
>
> b. In addition, in order to be insured, a public unit's funds must be deposited in the credit union "pursuant to the statutory or regulatory authority of the custodian or public unit. It would be helpful if the meaning of the foregoing phrase could be clarified. Does it require an affirmative authorization to deposit funds in federal credit unions, or merely the discretion to oversee the disposition of the unit's monies? Is the absence of a restriction on deposits in a credit union the equivalent of affirmative authorization?

Section 207(c)(2)(A) of the FCU Act [12 U.S.C. §1787(c)(2)(A)] authorizes NCUSIF coverage of public unit accounts:

> .... [I]n the case of a depositor or member who is-
>
> (i) an officer, employee, or agent of the United States....
>
> (ii) an officer, employee, or agent of any State of the United States, or of

> any count, municipality, or political subdivision thereof .....
>
> (iii) an officer, employee, or agent of the District Columbia ....
>
> (iv) an officer, employee, or agent of an Indian tribe .... having official custody of public funds....
>
> his account shall be insured in an amount not to exceed $100,000 per account.

Section 745.10 of the NCUA Regulations [12 C.F.R. 745.10] further fleshes out NCUSIF coverage of public funds: "[E]ach official custodian of funds .... lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000. "Official custodian" refers to the "officer, employee, or agent" under Section 207(c)(2)(A) who is "official custodian of public funds." "Lawfully investing" is defined in Section 745.10(d) of the Regulations [12 C.F.R. 745.10(d)] to mean:

> pursuant to the statutory or regulatory authority of the custodian or public unit.

Further definition of this requirement would lie in the specific authority, statutes, or regulations (e.g., state, municipal or other local statute or regulation). An authorizing statute or regulation may be restrictive (e.g. limiting deposit of public funds to a maximum amount in specifically identified federally-insured institutions) or permissive (e.g. granting discretion to deposit public funds in any financial institution located in a specific locality). No special rules of interpretation apply.

Recordkeeping/Duty Of Investigation

You final inquiry is:

> A question related to all of the foregoing inquiries is what duty a federal credit union has to determine whether new depositors are in fact entitled to become members or otherwise to have their deposits insured. Under the insurance regulations,

> the existence of share insurance as to particular accounts turns upon the credit union's records and good faith records of the depositors maintained in the regular course of business. 12 C.F.R. Sec. 745.2(c).

For liquidation purposes there are essentially four cateogies of share accounts:

1) accounts where membership requirements have been met and continue to exist at the time of liquidation, either because the accountholder is still within the field of membership or because the FCU board adopted a "once a member, always a member" resolution;

2) accounts where the requirements for membership once existed but ceased at some point and do not exist at liquidation;

3) accounts where the requirements for membership never existed and the accountholder can establish good faith on his part and misrepresentation on the part of the FCU; and

4) accounts where the requirements for membership never existed and the accountholder cannot establish misrepresentation on the part of the FCU.

The first group comprise traditional member accounts, which are fully-insured in accordance with the FCU Act and Part 745. The second group are treated as general creditor "accounts payable" under Article III, Section 5(e) of the FCU Bylaws. In the event such accountholders do not receive full payment on these deposits, they may have a claim against an individual FCU official.

The third group of accounts are those of "equitable" shareholders entitled to the same treatment as other shareholders. NCUA may then have a claim against the liquidated FCU's officials.

The last group consists of accounts of uninsured shareholders who are repaid at the same rate and to the same extent as NCUA exercising its subrogation right. If these shareholders suffer a loss, they may have a claim against FCU officials.

Given the FCU officials' potential liability, it behooves them to establish good policies to ensure only proper "member accounts" are established and maintained.

Sincerely,

JAMES J. ENGEL
Deputy General Counsel

Enclosures

HMU:sg

number or an employer-assigned number. In these cases, a Social Security number must be obtained.

In addition to the member's basic account number, each share certificate will be assigned its own control number, e.g., 1, 2, 3, and so on. The same account number or share certificate control number will not be assigned to more than one account. When the use of the same basic account number facilitates the posting of accounts for members of the same family (or some other relationship between accounts), some characteristic such as an alphabetic letter will be assigned to each subsequently issued basic account number to distinguish it from the other accounts with the same basic account number, such as 95, 95A, 95B, etc.

Some accounting machines and many data processing systems call for a "check digit" to be added to the account number to assure that postings are made to the proper account.

5030.1.5 IF MEMBER DESIRES A JOINT ACCOUNT

If the member wishes to have a joint account with some other person, a Joint Share Account Agreement (form FCU 123) must be signed by the persons who are to be the joint owners. *Any unused signature spaces on the Joint Share Account Agreement will be lined out as a control procedure.* Persons not within the field of membership may become joint owners but may not become members of the credit union. Such persons have no vote and cannot borrow. No entrance fee is charged for joint owners who do not become members. If the joint owner is within the field of membership, that person may become a member by filling out an Application for Membership card (form FCU 150) and paying the entrance fee, if any. A separate individual account for each joint member is not needed. It is recommended that all applicants for membership be told of the advantages of joint accounts particularly in the event of the death of a member.

The Joint Share Account Agreement is not a designation of a beneficiary. 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. If the state law provides for the right of survivorship, so that a joint account may be created, the right applies only to the amount in the account at the time of death of one of the joint owners.

When a joint account has been established, ar one of the joint owners may make payments in the account, withdraw funds from the account, pledge the shares as security for a loan, without th signature of the other joint owner(s). A joint owne who is not a member may not borrow from th credit union, nor can he/she continue the shar account in the credit union after the member-join owner dies, except as provided in the instruction relating to share accounts of terminated or de ceased members set forth in Section 5150.

5030.1.5.1 TERMINATION OF A JOINT ACCOUNT:

a. A joint account may be terminated by th death of all but one of the joint owners. Th account must be closed and the funds dis bursed if the remaining owner(s) is a non member. However, if the nonmember is with in the field of membership, he/she may con tinue the account by immediately joining th credit union.

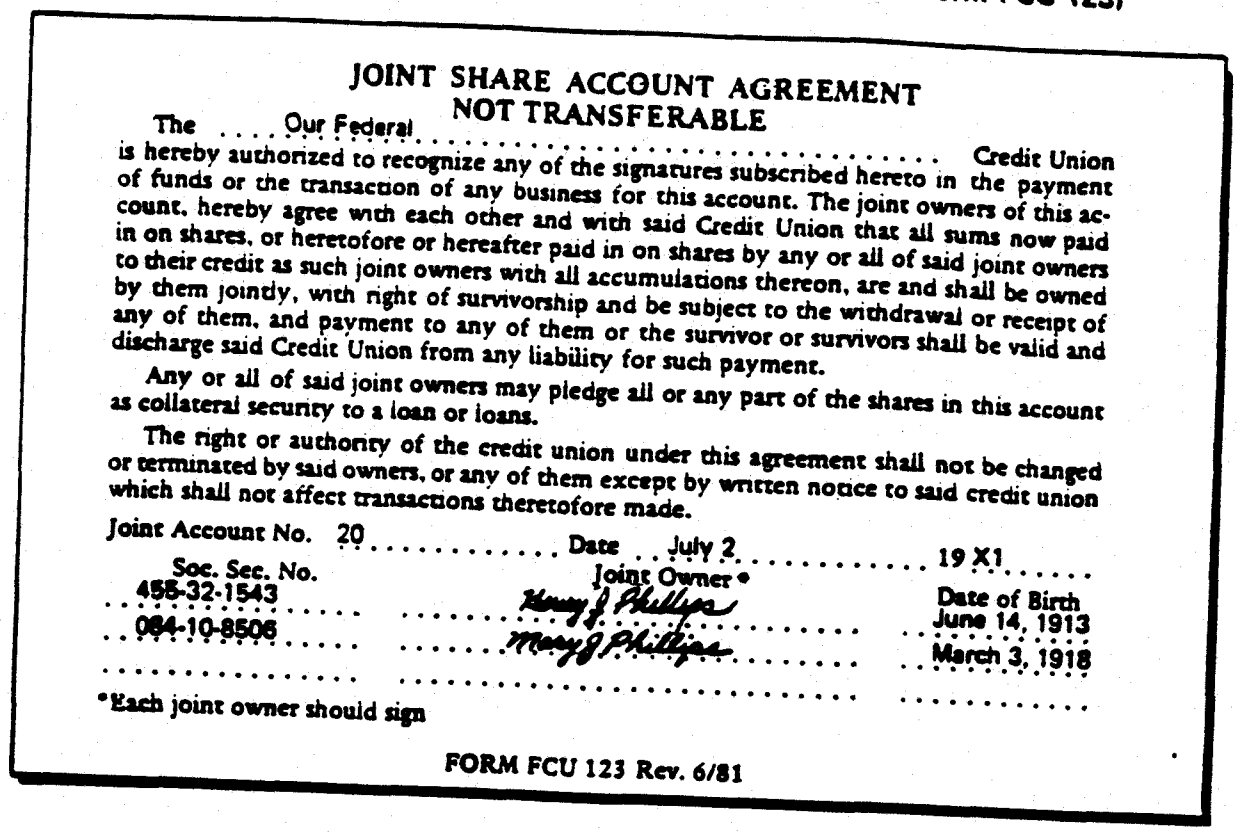
b. A second method of terminating the account i by the withdrawal of funds by any joint owner A total withdrawal by any joint owner, wheth er a member or not, results in the distributio of the funds as a private matter among the joint owners.

c. A third method is by written notice to the credit union by a joint owner. It should be noted that a person requesting deletion from a joint account can only request his own deletion and not that of any other joint owner, whether he is a member or not. The proper method is a written letter with full signature requesting that the terminating joint owner be deleted from the joint account. This letter must be made a part of the credit union's files should disputes later arise. A simple "cross out" of a name and initials would not be sufficient in the event a dispute does arise. Again, if after such notice only a nonmember joint owner or owners remain, the account must be closed and the funds disbursed unless the nonmember or members are in the field of membership and join the credit union.

The addition of names to a joint account requires a totally new joint ownership agreement that indicates the approval of the addition of all joint owners.

The possibility exists that in a joint account between a nonmember and a member outside the

Figure 5-7: Illustration of a Completed Joint Share Account Agreement (Form FCU 123)



JOINT SHARE ACCOUNT AGREEMENT
NOT TRANSFERABLE

The Our Federal Credit Union is hereby authorized to recognize any of the signatures subscribed hereto in the payment of funds or the transaction of any business for this account. The joint owners of this account, hereby agree with each other and with said Credit Union that all sums now paid in on shares, or heretofore or hereafter paid in on shares 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 be subject to the withdrawal or receipt of any of them, and payment to any of them or the survivor or survivors shall be valid and discharge said Credit Union from any liability for such payment.

Any or all of said joint owners may pledge all or any part of the shares in this account as collateral security to a loan or loans.

The right or authority of the credit union under this agreement shall not be changed or terminated by said owners, or any of them except by written notice to said credit union which shall not affect transactions theretofore made.

Joint Account No. 20 Date July 2 19 X1

Soc. Sec. No.	Joint Owner*	Date of Birth
455-32-1543	Henry J. Phillips	June 14, 1913
084-10-8506	Mary J. Phillips	March 3, 1918

*Each joint owner should sign

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field of membership (once a member, always a member), the termination of such an account, if it were the *only* account held by that member, would cause that member to lose his membership status. Therefore, *before* terminating the joint account, that member should establish another account to guard against that possibility which would also result in his losing membership status.

Proceeds of insurance on the lives of owners of joint accounts must be paid to the proper beneficiary in accordance with State law. Advice of an attorney should be obtained to avoid the possibility of loss because of improper payments.

The credit union shall obtain the Social Security (or other identifying) number of at least one member of a joint account for use in preparing information returns or statements to the Internal Revenue Service (Form 1099) when these are required to be furnished. Figure 5-7A will assist the credit union in determining the correct social security (or identifying) number to be used for reporting to Internal Revenue. The requirements are based on Section 6109, Federal Tax Regulations.

Loans to Trustee and Pledge of Shares — The trustee or trustees may not borrow from the trust account unless the terms or nature of the trust permit such actions. It is the trust instrument that will delineate the scope of permissible interaction between the trustee of an account and the credit union. For example, where the trustee is a member in his own right, the trust instrument should disclose whether he may pledge the trust account to secure a personal loan. In the case of share accounts established for retirement purposes under sections 401(d) or 408 of the Internal Revenue Code, the pledging of shares is considered as a premature withdrawal and subject to severe tax penalties.

5150.10.1 DEPOSIT INSURANCE COVERAGE ON TRUST ACCOUNTS

One unique characteristic of trust accounts concerns separate insurance coverage for deposits insured by the National Credit Union Administration Share Insurance Fund (NCUSIF). All trust accounts, for the same beneficiary, deposited and established pursuant to valid trust agreements that are created by the same settlor (grantor) must be added together and insured up to the permissible maximum in the aggregate under the NCUSIF. This is separate from other deposit or share accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

5150.11 SHARE ACCOUNTS OF MINORS

Minors within the field of membership may hold shares in their own names either individually or as co-owners (for example, as joint tenants). In the absence of limitations agreed to in writing by the parent or guardian of the minor and the credit union at the time the account is opened, the minor may make payments into and withdrawals from his share account as if he were an adult member.

Trust accounts for minors are usually limited to those cases where the minors are of such tender years as to be unable to transact business in their own right. Even under such circumstances the establishment of trust accounts should not be widespread or generally encouraged because of the legal complications which might be involved. A trust account constitutes a solemn fiduciary relationship that is always carefully scrutinized by the courts if any dispute arises. In some jurisdictions tentative or Totten (payable upon death) trusts may be established.

If, under the terms of the trust agreement, the beneficiary becomes entitled to the shares during his minority, they may be transferred to an account in the minor's name, if he is or becomes a member. Otherwise the shares may be withdrawn only with the written consent of the minor's parent or guardian. If the shares are not transferred to a new share account or withdrawn by the close of the dividend period in which the minor became entitled to them, they should be transferred to Accounts Payable (Account No. 801), from which payment will be made only with the written consent of the parent or guardian.

5150.12 SHARE ACCOUNTS OF TERMINATED OR DECEASED MEMBERS

The provisions of Article II, Section 5 of the Federal Credit Union Bylaws apply to the continuing membership of a member who has left the field of membership. When the membership of a member has been terminated in accordance with these provisions of the bylaws, the share account of the terminated member may be retained, at the option of the owner, in the credit union until the close of the current dividend period. After the close of the dividend period, the share account will be closed and the amount transferred to the General Ledger Accounts Payable (Account No. 801), if the owner has not voluntarily withdrawn the funds. However, if the shares in the account are pledged as security on a loan in the credit union or if the owner of the account has co-signed a loan still outstanding, the amount of shares below the owner's direct or indirect liability to the credit union may not be withdrawn without the approval of the credit committee or a loan officer. At the option of the owner, such funds may remain in a share account until the close of the dividend period in which his liability to the credit union is terminated.

The same withdrawal and transfer procedures apply to joint share accounts where the member-joint owner dies and the surviving joint owner(s) is not a member of the credit union. In this case the shares may be paid to the surviving joint owner(s) without the necessity of probate proceedings. Local laws, however, relating to notice by the credit union to state officials in connection with inheritance taxes must be observed. Share accounts of deceased members that are not joint accounts are also under

the same transfer and withdrawal limitations described above. The proceeds of these accounts may be paid as described below.

For a single ownership account, the Federal Credit Union Act does not provide for the designation of a beneficiary who may receive the shareholdings of a member of a credit union upon the death of the member. In case of the death of a member, any funds held in his name should be paid to the administrator or executor appointed by the court if there is an administration of the estate of the decedent. A credit union is absolutely protected in paying over the shareholdings of a deceased member only when such payment is made to an executor or administrator upon administration of the assets of the deceased estate in the proper court.

Credit unions will have cases, however, in which the decedent will leave no will and in which it will be an undue hardship to require that the widow or children go to the expense of court action for the administration of the estate. This is especially true in any case in which the deceased member has very little property to administer and only a small amount of shareholdings in the credit union. In such a situation the credit union may take proper steps to assure itself that it will not be required to pay out the shareholdings of the deceased member twice and may pay to the widow or children or other next of kin upon proper assurance that all debts, including funeral expenses, have been paid. Whenever possible, it is suggested that the credit union obtain some form of non-recourse security for the payment of money of a deceased member where there is no administration of the estate of the decedent. The approval of the board of directors designating payment to certain person(s) must also be obtained prior to the payment of any money in such cases.

5160 DIVIDENDS

Section 5150 covers the various types of share accounts and share certificate accounts authorized by Section 701.35 of the National Credit Union Administration Rules and Regulations. The regulation is intended to provide Federal credit unions with flexibility in implementing savings programs that will benefit their entire membership. This section will deal with the establishment of dividend policy, computation of dividend amount and payment of dividends.

5160.1 ESTABLISHING DIVIDEND POLICY

The board should periodically review the FCU's long- and short-range need for funds. Based upon this review the board determines what types of share accounts can best be utilized to meet those needs. The board must exercise caution in establishing requirements and conditions when instituting a new type of account, particularly if the proposed account will have a contracted rate of return which is higher than the current or past return on existing accounts. Instituting new types of accounts should result in attracting new funds or in retaining funds that would otherwise be lost.

In developing an overall dividend policy, the board must establish dividend periods, dividend credit determination dates (when a share purchase begins earning dividend credit), dividend distribution dates, any associated penalties (if applicable) and the method of computation for each type of account to be offered.

5160.1.1 DIVIDEND PERIOD

The dividend period consists of a span of time in which shares on deposit will earn dividend credit. *The board of directors must establish dividend periods for each type* of account being offered. The dividend period may be different for each type of account. If escrow accounts are maintained as special limited withdrawal member accounts, the dividend period must be identical to that for regular share accounts. The board may elect any dividend periods from daily to annually. Dividend periods of less than a day or more than a year are not permissible. Dividend periods shall be selected such that the last dividend period in any calendar year ends on December 31, unless the cost of the dividends is accrued by debiting Dividends Expense (Account No. 380) and crediting Accrued Dividends Payable (Account No. 854).

5160.1.2 DIVIDEND CREDIT

The board of directors may establish dividend credit determination dates such as the following:

"Grace period to end of month." This type of determination means shares paid in by the Nth