

March 21,2007

Dennis A. Stover, Vice President
HealthEquity Inc.
1276 South 820 East, Suite 201
American Fork, UT 84003

Re: NCUA Insurance Coverage for Health Savings Accounts.

Dear Mr. Stover:

You asked about the availability and scope of NCUA share insurance for an account holding funds invested by individuals in Health Savings Accounts (HSAs) at a federally-insured credit union. HSAs qualify for NCUA share insurance if the owner of the funds is a member or otherwise eligible to maintain an account in an insured credit union; funds may be insured as an individual account or, if a qualified payable-on-death beneficiary is named, as a revocable trust. 12 C.F.R. §§745.0, 745.3, 745.4. You also asked if an HSA would qualify for NCUA insurance if the funds' custodian is the credit union or a vendor. The custodian's identity does not affect the insurance coverage.

HSAs are tax-advantaged savings plans defined in the Internal Revenue Code as trusts created exclusively to pay the qualified medical expenses of the account owner beneficiary. 26 U.S.C. §223(d)(1). Banks, credit unions, insurance companies, and any other person "who demonstrates to the satisfaction of the [Treasury] Secretary that the manner in which such person will administer the trust will be consistent with the [statutory HSA] requirements" can serve as an HSA trustee. 26 U.S.C. §§ 223(d)(1)(B), 408(n), 816. NCUA regulations implement this statutory authority and permit federal credit unions (FCUs) to act as HSA trustees or custodians. 12 C.F.R. §721.3(l). State law determines whether state-chartered credit unions have authority to serve as HSA custodians and trustees.

The HSA statute contemplates that HSA owners can designate a beneficiary to receive any balance remaining after their death. 26 U.S.C. §223(f)(8); see also 69 Fed. Reg. 29907, 29909 (May 24, 2004). Where an owner has designated a qualifying beneficiary, meaning a spouse, child, grandchild, parent, or sibling, NCUA provides additional insurance of up to \$100,000 per beneficiary, separate from any individual accounts of the owner. 12 C.F.R. §745.4(b). If an HSA owner does not identify a qualifying beneficiary, the funds are added to any other individual accounts of the owner and insured to \$100,000 in the aggregate. 12 C.F.R. §§745.3, 745.4(c).

NCUA's general account insurance principles require a credit union's account records to identify the account as an HSA for it to receive additional insurance

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coverage for any qualifying beneficiaries. 12 C.F.R. §745.2(c)(1). The account records also must disclose the names of the settlor (grantor) and the trustee. 12 C.F.R. §745.2(c)(2). Generally, a credit union, other than a low-income designated FCU, cannot accept HSA funds from individuals outside its field of membership, as the funds would not qualify for share insurance. 12 C.F.R. §§701.34, 741.9, 745.0.

HSAs are often marketed to individuals through the sales agents of health insurance companies and this process may involve the sales agent signing up individuals as members of a credit union. For FCUs, the sales agent can act on the credit union's behalf to verify the individuals' membership eligibility and take their membership applications. We note an individual who is within the FCU's field of membership must complete and sign a membership application, purchase (or pay the initial installment on) one share, and pay any applicable entrance fee. 12 U.S.C. §1759b; FCU Bylaws article II, section 2. The individuals need not establish or maintain a separate share account to qualify for FCU membership, as the HSA investment can fulfill the one share requirement. OGC Op. 94-0424 (May 2, 1994). For state-chartered credit unions, we defer to the opinion of the appropriate state supervisory agency on the matter of how membership must be established.

Lastly, we note, where a sales agent is involved, insured credit unions may need to pay particular attention to how certain regulatory compliance matters will be addressed, for example, customer identification requirements and consumer privacy disclosures. 12 C.F.R. Part 716; 12 C.F.R. §748.2(b)(2). It may be necessary for an HSA sales agent to be familiar with the regulatory requirements but, in any event, it remains the insured credit union's responsibility to ensure compliance with applicable regulatory requirements.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

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