

August 13, 2008

The Honorable Dawn Marie Sass, Treasurer  
The Honorable Alberta Darling, Chairwoman  
College Savings Program Board  
Office of the State Treasurer  
P. O. Box 7871  
Madison, WI 53707-7871

Re: Share Insurance Coverage – Section 529 College Savings Plans.

Dear Treasurer Sass and Senator Darling:

You have asked whether Wisconsin College Savings Board deposits from its 529 College Savings Program will be fully insured if no more than \$100,000 are placed at a federally insured credit union. Yes, the 529 College Savings Program deposits are insured as a government account because the Wisconsin College Savings Board qualifies as a public entity.

The State of Wisconsin has established a credit union deposit trust fund (CU Trust) under its 529 College Savings Program. Funds in the CU Trust will be deposited at federally insured credit unions. According to May 8, 2006, and August 8, 2006 correspondence from your office and discussions with 529 College Savings Program officials, Wisconsin's program is a qualified tuition savings program under the Internal Revenue Code, 26 U.S.C. §529(b)(1)(A)(ii). Participants purchase interests in the 529 College Savings Program so that the interests will be exempt from registration under the Investment Company Act. See 15 U.S.C. §80a-2(b). Pursuant to state law, revenue in the CU Trust must be deposited with federally-insured credit unions located in Wisconsin. Wis. Stat. §25.855 (2007).

Because the Wisconsin College Savings Board is the legal owner of the CU Trust and has decided to deposit no more than \$100,000 in a federally insured credit union, the funds qualify for share insurance as government deposits. Under section 207(k)(2) of the Federal Credit Union Act, NCUA must insure deposits or shares of a government depositor in an amount equal to \$100,000. 12 U.S.C. §1787(k)(2). Government depositors include the official custodian of public funds of any state and its political subdivisions. 12 U.S.C. §1787(k)(2)(B).

Accounts held by government depositors at a credit union in the custodian's jurisdiction are insured in the aggregate for all share certificate and regular share accounts for each custodian up to \$100,000. 12 C.F.R. §745.10(a)(2)(ii). Government depositor accounts at federally-insured credit unions outside the

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custodian's jurisdiction are insured in the aggregate for all share certificate, regular share, and share draft accounts up to \$100,000 for each custodian. 12 C.F.R. §745.10(b). If a person is the custodian for more than one public unit, each public unit is insured separately. 12 C.F.R. §745.10(c). A "public unit" includes any state of the United States, and any principal department created by state statute and to which funds have been allocated for its exclusive use and control, but excludes subordinate or non-autonomous divisions, agencies, or boards within principal departments. 12 C.F.R. §745.1(c), (d).

Additionally, we note that funds in the CU Trust could receive share insurance coverage as agent or nominee accounts. Agent or nominee accounts consist of funds owned by a principal and deposited in one or more accounts in the name of an agent or nominee. 12 C.F.R. §745.3(a)(2). These accounts are aggregated and insured as single ownership accounts with all other individual accounts a principal has at the same credit union up to \$100,000. *Id.* In March 2006, NCUA amended §745.3(a)(2) to clarify qualified tuition savings programs are insured as agent accounts because states hold the funds as an agent for the participant. 71 F.R. 14631, 14633 (March 23, 2006). To be fully insured, however, careful titling of the accounts and proper records are necessary because a participant's interest must be ascertainable from the credit union or state's records. 12 C.F.R. §745.2(c)(2). Additionally, participants with interests in the CU Trust must meet membership requirements. 12 C.F.R. §745.0.

We hope this information is useful to you. If you have additional questions, please feel free to contact Staff Attorney Tonya Green or me at (703) 518-6540.

Sincerely,

/S/

Sheila A. Albin  
Associate General Counsel

OGC/MIG:bhs  
08-0718