

April 18, 2007

Sara W. Trexler, Senior Vice President Trust Services
State Employees' Credit Union
P. O. Box 26807
Raleigh, NC 27611-6807

Re: NCUA Share Insurance Coverage for Irrevocable Trust Accounts and Inherited Individual Retirement Accounts (IRA).

Dear Ms. Trexler:

You have asked if an IRA account would continue to receive NCUA share insurance coverage after the owner's death if a designated beneficiary who inherits the IRA is a non-member. Yes. NCUA's share insurance rules provide continuing coverage for a designated beneficiary regardless of membership status. You also have asked if an irrevocable trust account with multiple grantors or beneficiaries would continue to be covered by NCUA share insurance if one grantor or beneficiary relinquished his membership after the account was opened. Yes. Coverage would continue despite this action because of the nature of irrevocable trust accounts.

NCUA insures a member's traditional IRAs and Roth IRAs up to a maximum of \$250,000. 12 C.F.R. §745.9-2(c)(1). That coverage is separate from the coverage a member receives on other kinds of accounts he owns at the same credit union. For insurance purposes, a member's traditional and Roth IRAs in the same credit union will be combined together and insured in the aggregate to \$250,000. 12 C.F.R. §745.9-2(c)(2). Share insurance for traditional and Roth IRAs "is based on the present vested ascertainable interest of a participant *or designated beneficiary*." *Id* (emphasis added). While the participant or original owner of the IRA would have to have been a member to open the account in the first instance, §745.9-2(c)(2) provides coverage to a designated beneficiary without specifically requiring the designated beneficiary to be a member. *Id*.

We caution that the inheritability of an IRA, determination of who and how many can qualify as a designated beneficiary, account distribution options, and other issues related to tax-advantaged accounts are governed by the Internal Revenue Code and other applicable tax laws. These tax related issues can be complex and are outside the purview of NCUA. We recommend members understand them as part of their overall financial planning and account structuring for share insurance purposes.

NCUA insures trust interests in an irrevocable trust account provided, among other things, the trust is valid under local law. 12 C.F.R. §745.9-1; Appendix to Part 745, Subsection G. A "trust interest" means the interest of a beneficiary in an irrevocable

express trust, whether created by instrument or statute, but does not include any interest retained by the settlor. 12 C.F.R. §745.2(d)(4). All trust interests for the same beneficiary created by the same settlor will be added together and insured up to \$100,000 in the aggregate separately from other accounts of the trustee, settlor, or beneficiary. 12 C.F.R. §745.9-1(b). Also, certain recordkeeping requirements must be met. Notably, the credit union's records must indicate the name of the settlor and trustee of the trust and must contain an account signature card executed by the trustee indicating his fiduciary capacity. Appendix to Part 745, Subsection G. Also, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee.

An irrevocable trust would first have to be created by instrument or statute under state law before an irrevocable trust account can be opened at a credit union. As a creature of state law and reflecting the wishes of the settlor, trust terms can vary greatly from state to state and trust to trust. Typically, the settlor transfers ownership of his property to the trust. Transferred property can include a business, investment assets, cash, life insurance policies, and other assets. Generally, the settlor loses control of the transferred property and cannot terminate the trust. It is the settlor's loss of control over the property transferred to the irrevocable trust and individuals associated with the trust that distinguishes this kind of account from other NCUA-insured accounts, where account owners retain more complete control throughout the life of the accounts.

The membership requirement for NCUA share insurance coverage for all accounts, including irrevocable trusts, is satisfied at the time of account opening. For an irrevocable trust to qualify for share insurance coverage from a membership perspective, the settlor or beneficiary of the trust 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. *Id.* Generally, a sufficient membership connection must be maintained throughout the life of any type of account for coverage to continue. It is easily accomplished by a member with an account he controls. This is not necessarily the case for a member who opens an irrevocable trust account. After a valid, irrevocable trust account with multiple settlors or beneficiaries is created, no one settlor or beneficiary can control whether the others maintain their membership.

Taking this into account, NCUA believes an irrevocable trust account would continue to satisfy the membership requirement for insurance coverage even if a settlor or beneficiary relinquished his membership after account opening so long as other settlors or beneficiaries maintained their membership. Otherwise, it would be unfair and against the public policy underlying NCUA share insurance to deprive coverage to a properly created irrevocable trust account that satisfied the membership requirement at the time the account was opened. Accordingly, the account will continue to be covered. Of course, if additional settlors or beneficiaries also relinquished their membership, then the insurability of the account would become more questionable as the sufficiency of the

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membership connection becomes more attenuated. In that unlikely event, at least one settlor or beneficiary would have to maintain membership for coverage to continue.

Please contact Staff Attorney Frank Kressman or me with any additional questions.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

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