December 18, 1991

Larry W. Stapleton,
President/CEO
Alabama Mental Health Credit Union
1000 River Road, N.E.
Tuscaloosa, Alabama 35404

Re: Insurance Coverage for Patient Accounts (Your November 21, 1991, Letter)

Dear Mr. Stapleton:

You asked whether certain accounts in the Alabama Mental Health Credit Union ("AMHCU") are federally insured to the $100,000 limit. If the accounts are legally established pur- suant to Alabama law and meet the criteria for insurability under Part 745 of NCUA's Rules and Regulations (the "Regula- tions"), they are insured to the $100,000 limit.

Background

According to your letter, AMHCU serves the employees, employees' family members and residents of the mental health facilities of the State of Alabama. AMHCU makes available an account for resident patients of the mental health fa- cilities. Each account is opened in the name of a patient and is managed by the business office of the facility where the patient resides.

You question whether this type of account is insured to the $100,000 limit generally available for federally insured credit union accounts. Your examiner has told you that he believes such accounts are insured to the $100,000 maximum, but you seek a legal opinion confirming his statement.

Analysis

In order to be insured by the NCUA, a credit union account must satisfy two criteria. First, the account must be legally established and second, it must be of a type legally insurable under Part 745 of the Regulations.

Since AMHCU is an Alabama-chartered credit union, Alabama law would control on the issue of whether the accounts in ques- tion are legally established. We do not have sufficient fa- miliarity with Alabama law to offer an opinion on that issue, and we suggest that you consult local counsel. Generally, in order for an account to be legally established in a state-chartered credit union, the account must be of a type allowed by state law, and the account holder must be within the credit union's field of membership and have joined the credit union, or otherwise be eligible to maintain an account in the credit union.

You state that the account is opened in the name of the resident/patient and managed by the business office of the patient's facility. However, the materials you included with your letter indicate that rather than each patient having a separate account in the credit union, the facility opens an account in which all patients' personal funds are commingled, and keeps its own records of the additions to and withdrawals from that account on behalf of each individual patient. While we are unable to determine which of these scenarios ac- tually applies, in either case, the accounts would be insured (if at all) as agent accounts under Section 745.3(a)(2) of the Regulations.

Section 745.3(a)(2) states:

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.

Here, each patient would be a principal, with the facility serving as agent. The funds of each patient deposited in the

agent account would be added to any other monies owned by the patient and deposited in AMHCU, and the total would be in- sured to a maximum of $100,000.

With limited exceptions not relevant here, NCUA insures only the funds of credit union members. The membership status of the owner of the funds (in this case, a patient) is control- ling for insurance purposes. (See, Section 745.0 of the Regulations, copy enclosed.) You do not indicate whether the patients are members of AMHCU. If an individual patient is not a member of AMHCU, his account, or his portion of an ac- count, will not receive insurance.

It is important to note that under Section 745.2(c) of the Regulations (copy enclosed), the account records of an insured credit union must disclose any relationship upon which a claim for insurance coverage is founded. Under the scenario described in your letter (each patient has a separate account with facility as agent) this requirement would not pose a problem, since the individual patient is named on the account as owner of the funds.

However, under the facts described in the documents you en- closed with your letter (pooled patient funds in a single ac- count with facility identified as agent), the ownership of the funds would not be clear from the name on the account. Again, keep in mind that the credit union records are conclu- sive as to the existence of an agent or custodian relation- ship upon which insurance coverage is determined. (See, Section 745.2(c)(1).) In the pooled arrangement, the account should be maintained in the name of the facility with a spe- cific designation included. For example, using the name of the facility followed by terms such as "agent account," "nominee" or "patient account" on the account card and peri- odic statements would indicate a relationship upon which ad- ditional insurance can be based. Then, either the credit union's records or those of the facility must clearly show the interest of each patient in a defined portion of the funds. (See, Section 745.2(c)(2).) However, if the credit union's records do not disclose the agent relationship, NCUA will not review the facility's records to determine if additional insurance is available and will treat the account

as belonging to the facility and entitled to only $100,000 coverage. Again, only those funds belonging to patients who are members will receive insurance coverage.

Sincerely,

Hattie M. Ulan
Associate General Counsel

Enclosures

GC/MRS:sg
SSIC 8010
91-1209