



Submitted via email: regcomments@ncua.gov

July 13, 2015

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Arlington, VA 22314-3428

Re: Proposed Share Insurance / IOLTA Rule
RIN 3133-AE49

Dear Mr. Poliquin:

On behalf of Wisconsin's credit unions® and their 2.6 million members, the Wisconsin Credit Union League welcomes the opportunity to comment on the National Credit Union Administration's (NCUA's) proposal to amend §745.14 of its regulations regarding pass-through NCUSIF share insurance coverage for IOLTAs (Interest On Lawyer Trust Accounts) and other similar accounts.

We support the NCUA's efforts to clarify the scope of pass-through coverage, which should insure a wide range of trust and escrow accounts in addition to IOLTAs. Under state programs, interest earned on these accounts can help to support much-needed services for America's needy, and credit unions are likely to pay better interest rates than banks will. As a result, this change benefits not just credit unions and depositors, but the public generally.

To help ensure clarity, we believe the proposed language should be revised to address a few potential issues. For example, the rule should be modified to say that accounts will be insured when held by either individuals or organizations, like law firms, real estate agencies, collection agencies, or property management companies.

Finally, we urge the NCUA to allow similar pass-through NCUSIF insurance coverage for prepaid and stored value cards, in parity with FDIC insurance for banks.

General support for pass-through insurance coverage

We were pleased when the Credit Union Share Insurance Fund Parity Act (the "Act") was signed into law because it represents a "win-win-win" solution:

- The Act benefits credit unions by removing a significant competitive disadvantage to banks, which have long been free to offer FDIC-insured IOLTA and similar accounts.
- The Act benefits attorneys, as well, by giving them more choices for opening IOLTAs and fostering competition among financial institutions.
- Perhaps most importantly, the Act ultimately benefits America's neediest people. Wisconsin, like other states, uses the interest earned on IOLTAs to make grants to agencies that provide civil legal services to the state's most

N25 W23131 Paul Road Pewaukee, Wisconsin 53072-5779

Phone: (262) 549-0200 or (800) 242-0833 Fax: (262) 549-7722 Web: www.theleague.coop

Member Credit Union National Association

vulnerable residents. Families and individuals throughout the state get the legal help they need to deal with such issues as escaping domestic violence and abuse, foreclosure, bankruptcy, illegal eviction, and obtaining the medical benefits they are due. The American Bar Association Division for Legal Services has praised the Act, noting that credit unions are likely to pay higher rates and thus provide greater funding for these important programs.¹

Clarifying that pass-through NCUSIF coverage extends to “other similar escrow accounts” will similarly help to fund other types of needed public services. For example, the interest paid on IBRETAs (Interest Bearing Real Estate Trust Accounts) in Wisconsin is used “to augment existing emergency and transitional homeless programs. IBRETA dollars partially fund grants to organizations that provide shelter or services to homeless individuals or families.”² Other states use IBRETA interest payments to support similar services.

Given the many benefits, we fully support the NCUA’s efforts to clarify that pass-through NCUSIF coverage insures a wide range of accounts in which a credit union member holds funds in trust for others (who need not be members).

“Other similar escrow accounts”

While we applaud the NCUA for this proposal, we are concerned about some of its terminology. The term “other similar escrow accounts” must be defined accurately, and we believe that the NCUA should consider revising its proposed definition to address some potential issues:

- The proposed text of §754.14(c)(ii) would define “other similar escrow account” as “an account where a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client as part of a transaction or business relationship ...” The problem is that IOLTA, IBRETA and similar accounts may not be held by just one licensed professional – or by any individual at all. Instead, law firms, real estate agencies, funeral homes and other organizations may actually be the titled account holders, using a single account to pool funds. For example, Wisconsin Supreme Court rules require attorneys and law firms in this state to hold client funds in IOLTAs.³

The language of the proposed rule could be read as only covering accounts titled in an individual’s name, which cannot be the NCUA’s intention. To avoid this result, we suggest that the rule define “other similar escrow account” as “an account where a licensed professional or other individual or organization serving in a fiduciary capacity holds funds for the benefit of a client or clients as part of a transaction or business relationship ...”

Similarly, the proposed language of §754.14(a)(i) would provide pass-through insurance coverage for funds held in accounts “by either the attorney administering the IOLTA or the escrow agent administering a similar escrow account.” Since the “escrow agent” may not be an individual but rather a law firm, real estate agency, collection agency, or other organization, the rule should define the term “escrow agent” to mean an individual or organization.

- We welcome the NCUA’s addition of examples to illustrate the scope of §754.14(c)(ii): “... such as realtor accounts and prepaid funeral accounts.” No one should read this as limiting the rule’s scope to the two examples given; however, to help stress that the list is for illustrative purposes only, the rule might be revised to say “... including but not limited to realtor accounts and prepaid funeral accounts.”

The term “real estate trust accounts” should be used instead of “realtor accounts.” REALTOR™ is trademarked by the National Association of Realtors to describe its members, and not all real estate sales agents qualify to use it.⁴ Using the term “realtor” may unintentionally limit the scope of the proposed rule to trust accounts held by only certain real estate professionals.

Further, we suggest that the list in §754.14(c)(ii) be expanded to more fully illustrate the rule’s breadth. For example, the Wisconsin Statutes specifically allow state-chartered credit unions to hold “collection agency trust accounts.” (Wis. Stats. §118.113(19).) (Collection agencies must hold funds they collect from debtors in trust accounts until the funds are remitted to claimants.) To avoid confusion, we suggest expanding the illustrative list at the end of §754.14(c)(ii) to include, for example, collection agency trust accounts, property management accounts (which are used by landlords to hold tenant security deposits), or accounts in which builders hold their customers’ deposits in escrow.

Prepaid cards

CUNA’s July 9 comment letter thoroughly explains why the NCUA can and should extend pass-through share insurance coverage to prepaid cards. We support CUNA’s position and won’t belabor the issue here. Suffice it to say that prepaid and stored value cards, including travel cards, gift cards, and payroll cards, are vital financial tools for many Americans. FDIC insurance coverage has been in place since 2008 for stored value cards and other non-traditional access mechanisms. (FIL-129-2008). The NCUA is required to establish share insurance levels for accounts “consistently with actions taken by the Federal Deposit Insurance Corporation.” (12 U.S.C. 1787(k)(1)(A).) Continuing to deny NCUSIF coverage for prepaid and stored value cards puts credit unions at a competitive disadvantage to banks and undermines Congress’ goal of full NCUSIF insurance parity with the FDIC.

If the NCUA will not address pass-through coverage for stored value and prepaid cards in this rule, we strongly urge it to reconsider its position and take up the issue in a new proposal as soon as possible.

Conclusion

We support the NCUA’s proposal to clarify and expand the scope of pass-through NCUSIF coverage for IOLTA and other similar escrow accounts. The change benefits not only credit unions and depositors, but the public generally, since interest in these accounts is often used to support vital services for the needy. The proposed language, however, could be revised somewhat to avoid confusion. Finally, we urge the NCUA to allow similar pass-through NCUSIF insurance coverage for prepaid and stored value cards, in parity with FDIC insurance for banks.

Thank you.

Sincerely,



Paul Guttormsson
Legal Counsel
The Wisconsin Credit Union League

¹ “[N]ational IOLTA revenue remains mired at its painful lows and the first glimmer of IOLTA rate increases remain stubbornly on the horizon. Bank lending remains very conservative, even as most banks are awash in cash. Until those dynamics materially change there is little incentive for the majority of banks to pay rates on their short-term (including IOLTA) deposits higher than what they currently do. ... Given the current banking backdrop, the alternative presented by the credit union proposition is an attractive one.

[The credit unions] that are actively seeking IOLTA business and that have a history of paying higher deposit account rates could provide a short-term boost to IOLTA programs that are positioned to take advantage of this potential change.” *Dialog*, a publication of the American Bar Association, Division for Legal Services (Winter 2014), available online at: http://www.americanbar.org/content/newsletter/publications/dialogue_home/dialogue_archive/ls_dial_wi14_iolta3.html.

² Wisconsin Department of Administration, <http://www.doa.state.wi.us/Divisions/Housing/IBRETA>

³ See, e.g., *Managing Your Client Trust Account, Manual & Workbook*, Wisconsin Office of Lawyer Regulation (Jan. 2011), available online at: <http://wicourts.gov/services/attorney/docs/trustaccountmanual.pdf>

⁴ <http://www.realtor.com/advice/whats-difference-real-estate-salesperson-broker/>