

July 3, 1997

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Re: Revocable Living Trusts, Your Letter of April 21, 1997.

Dear [ ]:

Your letter was forwarded to the Office of General Counsel for response. You described various procedures and forms you were asked to use to set up revocable living trust accounts at two federal credit unions (FCUs) recently. Specifically, you were asked to supply a "certificate of trust," special account opening forms, and an opinion of the drafting attorney of the trust that the trust is revocable under state law. As a result of this experience, you suggest that NCUA standardize and streamline the procedure and forms for credit union members who desire to transfer their accounts into revocable living trusts.

The establishment of living trusts is governed by state law, not the Federal Credit Union Act (the Act). The Act and NCUA regulations address who may open and maintain FCU share accounts and account insurance coverage, but not the procedures required to create a trust under state law. The distinction we are focusing on is between the establishment of a living trust, itself, and setting up an account that will hold trust funds. The tax and trust issues you raised are not within NCUA's jurisdiction. Insofar as the information requested from you concerns these requirements, it seems reasonable and prudent.

Under the Act, credit unions are member-owned financial cooperatives that can provide services only to members. 12 U.S.C. §§1752(1), 1757, and 1759. An FCU must verify that a prospective accountholder is within its approved field of membership and accepted for membership before opening an account for that person. 12 U.S.C. §1759. This is also critical for National Credit Union Share Insurance Fund (NCUSIF) federal share account insurance purposes, since NCUSIF account insurance is limited to member accounts. 12 U.S.C. §§1752(5) and 1781(a). These are the reasons FCUs request information from prospective accountholders before opening an account. Though federal law does not require procedures or forms to establish revocable living trust accounts, NCUA regulations provide that FCUs must create appropriate account records to verify the membership status of its accountholders. 12 C.F.R. §745.2(c), (d) (a copy is enclosed).

You appear to question the requirement imposed by one of the FCUs that you open a second account in order to establish an account in the name of the living trust. The FCU told you that this was because of IRS rules. We suggest that you ask for further clarification from the FCU, and if you think it appropriate, contact the IRS about the application of such rules in your case.

Unlike most banks and thrifts, FCUs have very limited trust authority and have no authority to interpret trusts. These limitations are reflected in the "Account for a Revocable Living Trust" form you attached to your letter. This form seems to be a reasonable effort by the FCU to alert you to the non-fiduciary, depository nature of your account. It also alerts you to the necessity of the FCU knowing who can withdraw or pledge funds in the account and, also, the FCU's need to know of any changes to the requested account information. Though not required by regulation, the information requested appears reasonable and legal and appears to be in a simple format that would be useful to the FCU.

In order for the FCU to let you know how much share account insurance your revocable living trust account

has, it must know the beneficiary's names and the degree of kinship to the member. The NCUSIF provides share account insurance for revocable trusts, tentative or Totten trust accounts, payable-on-death accounts, and other similar testamentary accounts in which funds will pass to a beneficiary upon the death of the owner. 12 C.F.R. §745.4(a). A testamentary account in which the named beneficiary is the spouse, child, or grandchild of the owner is "insured up to \$100,000 in the aggregate as to each such beneficiary, regardless of the membership status of the beneficiary." 12 C.F.R. §745.4(b). If the named beneficiary is not the owner's spouse, child, or grandchild, then the funds in the account "shall be added to any individual accounts of such owner and insured by \$100,000 in the aggregate." 12 C.F.R. §745.4(c). As you can see, beneficiary information is crucial for the FCU to inform you fully about your account insurance. If no relevant beneficiary information is provided to the FCUs, your revocable trust account might be combined with your other single or joint ownership accounts for NCUSIF account insurance purposes, and insured accordingly.

If you have other questions, you can call either the Office of General Counsel at (703) 518-6540 or the Division of Insurance in Region II at (703) 838-0401.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/MSA/SAA:sg  
SSIC 7000 / 97-0539

Enclosure  
cc: Jane A. Walters, Region II Director  
Robert E. Loftus, Director, PACA