

February 11, 1999

Robert C. Pyfer, Senior Vice President
Government and Public Relations
Montana Credit Union Network
1236 Helena Avenue
Helena, Montana 59601-2990

Re: Medical Savings Accounts Under Montana Law.

Dear Mr. Pyfer:

You ask whether federal credit unions (FCUs) can serve as "account administrators" for medical savings accounts (MSAs) under Montana's MSA statute. You believe that the duties of an account administrator under Montana law are ministerial, not fiduciary in nature, and, thus, that FCUs should be able to administer Montana MSAs. We disagree.

An MSA is a tax-exempt trust or custodial account that allows either employers or employees of a small company or the self-employed to save money for future medical expenses. As discussed in NCUAs Letter to Credit Union 98-CU-5, a copy of which is attached, FCUs cannot act as trustees or custodians of MSAs. A trustee or custodian is a fiduciary, that is, one "having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking." BLACK'S LAW Dictionary 625 (6th ed. 1990).

Montana's MSA statute specifically states that an account administrator "has a fiduciary duty to the person for whose behalf the account is administered." MONT. CODE ANN. §15-61-204(1) (1998). Among its statutory duties, an account administrator is to make reports to Montana's department of revenue, distribute funds to the estate of an account holder, collect and remit penalties for withdrawals made for other than medical expenses, and reimburse an account holder for payments made for medical expenses and insurance or pay for the medical expenses and insurance from the MSA. MONT. CODE ANN. §15-61-202; §15-61-203; §15-61-204 (1998).

Our view is that an FCU, serving as an account administrator under the Montana MSA statute, acts in a fiduciary capacity. Currently, FCUs can act only as trustees or custodians for certain types of pension and retirement accounts specifically identified in our regulations. 12 C.F.R. §724. We continually review

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and update our regulations and anticipate reviewing the role of FCUs in the administration of MSAs in the near future.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/NSW:bhs
SSIC 3500
98-1037