

December 5, 2000

Kevin Duncalf, CEO  
Service Plus Credit Union  
2110 53<sup>rd</sup> Street  
Moline, IL 61265

Re: Share Insurance Coverage for Living Trusts.

Dear Mr. Duncalf:

Your letter to Melinda Love, Director Region IV, regarding the subject topic has been forwarded to us for response. You have asked whether a living trust held in connection with a revocable trust is entitled to share insurance if it contains a defeating contingency. You also have asked us to assume that, aside from the defeating contingency, the living trust otherwise meets all requirements for a revocable trust. A defeating contingency in a living trust precludes separate share insurance coverage, but only for those beneficiaries subject to the defeating contingency.

If a living trust is held in connection with a revocable trust and meets all requirements for a revocable trust, including naming qualifying beneficiaries, then it is entitled to separate share insurance coverage under NCUA's insurance rules. 12 C.F.R. §745.4. A "living trust" is a formal trust that an owner creates and retains control over during his or her lifetime, and a "qualifying beneficiary" is the account owner's spouse, child, grandchild, parent and sibling. 12 C.F.R. §§745.4(b), (d) and (e).

If the living trust includes a defeating contingency that relates to a beneficiary's interest in the trust assets, then separate insurance coverage is not available. 12 C.F.R. §745.4(e). A "defeating contingency" is a condition that prevents the beneficiary from acquiring a vested and non-contingent interest in the funds in the share account upon the owner's death. 12 C.F.R. §745.4(e). For example, if the living trust named one qualifying beneficiary and placed a defeating contingency on that beneficiary's interest in the trust funds, then there would be no separate share insurance for this account. Rather, the account would be added to any individual accounts of the owner and insured in the aggregate to \$100,000. This result is the same if there are no defeating contingencies, but the named beneficiary is not a qualifying beneficiary. If, for example, the living trust named five qualifying beneficiaries and placed a defeating contingency on two of them, then there would be no separate insurance coverage for those two beneficiaries, whose interests would be added to any individual accounts of the owner and insured in the aggregate to \$100,000, but there would be separate insurance coverage up to \$100,000 for each of the three beneficiaries on whom no defeating contingency was placed.

You also expressed a concern that your credit union might have difficulty in

determining whether a living trust contains a defeating contingency. NCUA does not intend for credit unions to make that determination. In the preamble to the recent share insurance rule changes, NCUA stated that the burden is on the member to create a living trust that qualifies for insurance coverage. 65 Fed. Reg. 34,923 (June 1, 2000). Credit unions may choose to advise a member to have a living trust reviewed by private counsel, such as the attorney who prepared the trust, for legal and regulatory sufficiency before account opening. Ultimately, the member is responsible for determining whether a trust contains a defeating contingency under the law of the state in which it was created.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/FSK:bhs  
SSIC 3000  
00-0943

cc: Region IV