



July 13, 2015

Mr. Gerard Poliquin
Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NASCUS Comments on Proposed Rule Part 745 – IOLTAs and Share Insurance

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS), the professional association of the state credit union regulatory agencies and the nation's state credit union system, submits the following comments in response to the National Credit Union Administration's (NCUA's) notice of proposed rulemaking, Part 745 Share Insurance. NCUA proposes amending Part 745 to implement statutory changes that provide pass-through share insurance coverage for IOLTA accounts and similar escrow accounts.

NASCUS strongly supports the regulatory changes implementing pass-through share insurance coverage for Interest on Lawyer Trust Accounts (IOLTAs) and other similar escrow accounts as provided by Congress. In addition, we believe NCUA should exercise its authority to extend similar pass-through coverage to certain prepaid card accounts (alternately known as stored-value cards).

The Credit Union Share Insurance Fund Parity Act (Parity Act) amended the statutory provisions of the Federal Credit Union Act (FCUA) to expressly provide for pass-through share insurance coverage for IOLTA and similar escrow accounts.¹ Prior to the passage of the Parity Act, NCUA had declined to extend pass-through share insurance coverage for IOLTA accounts.² However, NCUA has previously embraced both the concept of pass-through share insurance coverage and share insurance coverage for certain non-member accounts.³

IOLTA and Similar Escrow Accounts

In identifying “similar escrow accounts” to qualify for pass-through share insurance coverage, NCUA emphasizes characteristics comparable to those of an IOLTA account. These comparable characteristics include having a licensed professional or other individual serving in a fiduciary capacity and holding funds for the benefit of a client as part of a transaction or business

¹ Pub. L. No. 113-252, 128 Stat.2893 (2014) and 12 U.S.C. 1787(k)(1).

² See NCUA Legal Opinion 08-0840 (October 8, 2008) (since retracted).

³ For example, see NCUA Legal Opinion 09-1022 (October 23, 2009).

relationship.⁴ Citing these characteristics, NCUA proposes including realtor escrow accounts and prepaid funeral accounts for pass-through share insurance coverage.⁵

As a class, NCUA should include escrow accounts used to facilitate purchase transactions in a similar fashion as a realtor escrow account. Such accounts may include escrow accounts used for the purchases of boats and commercial vessels, as well as planes. Escrow accounts may also used to facilitate the purchase of a business. In addition to these purchase related escrow accounts, NCUA should include escrow accounts used to hold security deposits over extended periods of times such as those used in landlord-tenant transactions.

For ease of administration, NCUA should specify the above accounts as qualifying for pass-through share insurance coverage. In addition, NCUA should qualify any escrow account established by a licensed or registered escrow agent.

Prepaid Card Accounts

NCUA seeks comment on whether prepaid card accounts should qualify for pass-through share insurance coverage. The agency notes that it is disinclined to include such accounts unless the underlying owners of the prepaid funds are members of the credit union. NCUA presents a thoughtful analysis of whether prepaid card accounts fit within the statutory framework of the share insurance fund, but ultimately concludes such inclusion is beyond the agency's authority. This conclusion rests on too narrow a reading of both the Parity Act and the FCUA. It also too lightly dismisses the similarities of some prepaid card accounts, such as payroll card, benefit card, and student loan card accounts, to the characteristics cited in the escrow account analysis of the proposed rule.

In declining to extend pass-through share insurance coverage to prepaid card accounts, NCUA writes "NCUA does not believe that a prepaid card program *is always* sufficiently similar to an IOLTA, for purposes of the Insurance Parity Act, to qualify for pass-through share insurance coverage as an escrow account similar to an IOLTA."⁶ [emphasis added] NCUA acknowledges some prepaid card accounts have similar characteristics to escrow and IOLTA accounts, yet denies the entire class because others do not.

A better approach would be to allow those prepaid card accounts that have the conforming characteristics and decline to provide pass-through coverage for those that do not. In taking this better approach, NCUA could stipulate that qualifying prepaid card accounts must meet the proposed record keeping requirements for escrow accounts. Many of the types of prepaid cards that lack the characteristics of escrow accounts lack the specific identifying information of the underlying individuals, and are unlikely to gather that information in the future as it is cost prohibitive with respect to the business model of such products.⁷

⁴ 80 FR 27111 (May 12, 2015).

⁵ Ibid.

⁶ 80 FR 27112 (May 12, 2015).

⁷ See statement of the Network Branded Prepaid Card Association regarding FDIC pass-through insurance: <http://www.nbpc.com/en/Government-Affairs/Policy-Positions/Deposit-Insurance.aspx>

However, the prepaid cards that do present similar characteristics to escrow accounts would necessarily maintain detailed and accurate records of the underlying individuals. These cards, like an escrow account, facilitate a specific transaction between individuals. Whether the exact amount of employees weekly pay, the weekly or monthly benefits payment to an individual, or the loan proceeds funding a student's semester of study, these prepaid card accounts represent more than a passing transaction between individuals, they represent an "established relationship" of trust, with the account holder maintaining the "funds for the benefit and future use of the individual." That matches two of the three primary characteristics NCUA defined for a "similar escrow account," lacking, in some cases, only the licensed professional. However, we note that not all similar escrow accounts (such as landlord-tenant) will necessarily involve a licensed professional.

For the reasons stated above, prepaid cards may have similar characteristics to escrow accounts and should be qualified for pass-through share insurance coverage.

We thank NCUA for the opportunity to comment on the proposed changes to Part 745 to provide pass-through share insurance coverage to IOLTA accounts and similar escrow accounts including prepaid card accounts. We trust NCUA will develop a rule for pass-through coverage on certain accounts that recognizes the importance of this area in the financial services sector. As prepaid cards continue to be utilized by a growing business community, from universities, to private employers, to community service entities, it will be essential credit unions be positioned to provide those accounts to their members if they so choose. We would be pleased to discuss these comments in detail at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
General Counsel