

their personal residence, including home equity and home improvement loans. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing past due status.

“*Recorded Investment in a Loan*” means the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

“*Troubled Debt Restructuring*” is as defined in GAAP and means a restructuring in which a credit union, for economic or legal reasons related to a member borrower’s financial difficulties, grants a concession to the borrower that it would not otherwise consider.¹⁶ The restructuring of a loan may include, but is not necessarily limited to:

(1) The transfer from the borrower to the credit union of real estate, receivables from third parties, other assets, or an equity interest in the borrower in full or partial satisfaction of the loan,

(2) A modification of the loan terms, such as a reduction of the stated interest rate, principal, or accrued interest or an extension of the maturity date at a stated interest rate lower than the current market rate for new debt with similar risk, or

(3) A combination of the above.

A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not to be reported as a restructured troubled loan.

“*Well secured*” means the loan is collateralized by: (1) A perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount, or (2) by the guarantee of a financially responsible party.

“*Workout Loan*” means a loan to a borrower in financial difficulty that has been formally restructured so as to be reasonably assured of repayment (of principal and interest) and of performance according to its restructured terms. A workout loan typically involves a *re-aging, extension, deferral, renewal, or rewrite* of a loan.¹⁷ For purposes of this policy statement, workouts do not include loans made to market rates and terms such as refinances, borrower retention actions, or new loans.¹⁸

¹⁶FASB ASC 310-40, “Troubled Debt Restructuring by Creditors.”

¹⁷“*Re-Age*” means returning a past due account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

¹⁸There may be instances where a workout loan is not a TDR even though the borrower is experiencing financial hardship. For exam-

ple, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union’s recorded investment in the loan, *e.g.*, due to charge-offs.

“*Deferral*” means deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral.

“*Renewal*” means underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms.

“*Rewrite*” means significantly changing the terms of an existing loan, including payment amounts, interest rates, amortization schedules, or its final maturity.

[86 FR 34617, June 30, 2021]

PART 745—SHARE INSURANCE AND APPENDIX

Subpart A—Clarification and Definition of Account Insurance Coverage

Sec.

745.0 Scope.

745.1 Definitions.

745.2 General principles applicable in determining insurance of accounts.

745.3 Single ownership accounts.

745.4 Revocable trust accounts.

745.5 Accounts held by executors or administrators.

745.6 Accounts held by a corporation, partnership, or unincorporated association.

745.7 Shares accepted in a foreign currency.

745.8 Joint ownership accounts.

745.9-1 Trust accounts.

745.9-2 Retirement and other employee benefit plan accounts.

745.10 Accounts held by government depositors.

745.11 Accounts evidenced by negotiable instruments.

745.12 Account obligations for payment of items forwarded for collection by depository institution acting as agent.

745.13 Notification to members/shareholders.

745.14 Interest on lawyers trust accounts and other similar escrow accounts.

ple, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union’s recorded investment in the loan, *e.g.*, due to charge-offs.

§ 745.0

Subpart B—Payment of Share Insurance and Appeals

- 745.200 General.
745.201 Processing of insurance claims.
745.202 Judicial review.

APPENDIX TO PART 745—EXAMPLES OF INSURANCE COVERAGE AFFORDED ACCOUNTS IN CREDIT UNIONS INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

AUTHORITY: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109-351; 120 Stat. 1966.

SOURCE: 51 FR 37560, Oct. 23, 1986, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 745 appear at 84 FR 1608, Feb. 5, 2019.

Subpart A—Clarification and Definition of Account Insurance Coverage

§ 745.0 Scope.

The regulation and appendix contained in this part describe the insurance coverage of various types of member accounts. In general, all types of member share accounts received by the credit union in its usual course of business, including regular shares, share certificates, and share draft accounts, represent equity and are insured. For the purposes of applying the rules in this part, it is presumed that the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. These rules do not extend insurance coverage to persons not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured.

§ 745.1 Definitions.

(a) The terms *account* or *accounts* as used in this part mean share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state-chartered credit unions) of a member (which includes other credit unions, public units and nonmembers where permitted under the Act) in a credit union of a type ap-

12 CFR Ch. VII (1–1–23 Edition)

proved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) The terms *member* or *members* as used in this part mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state-chartered credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

(c) The term *public unit* means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

(d) The term *political subdivision* includes any subdivision of a public unit, as defined in paragraph (c) of this section, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

(e) The term “standard maximum share insurance amount,” referred to as the “SMSIA” hereafter, means

National Credit Union Administration

§ 745.2

\$250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)).

[51 FR 37560, Oct. 23, 1986, as amended at 71 FR 14635, Mar. 23, 2006; 73 FR 62858, Oct. 22, 2008; 74 FR 55749, Oct. 29, 2009; 75 FR 53843, Sept. 2, 2010; 76 FR 30253, May 25, 2011; 78 FR 32545, May 31, 2013]

§ 745.2 General principles applicable in determining insurance of accounts.

(a) *General.* This part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part. The appendix provides examples of the application of these rules to various factual situations. While the provisions of this part govern in determining share insurance coverage, to the extent local law enters into a share insurance determination, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of other jurisdictions where the insured credit union has offices or service facilities.

(b) The regulations in this part in no way are to be interpreted to authorize any type of account that is not authorized by Federal law or regulation or State law or regulation or by the by-laws of a particular credit union. The purpose is to be as inclusive as possible of all situations.

(c) *Records.* (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account

must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the SMSIA.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

(e) *Continuation of insurance coverage following the death of a member.* The death of a member will not affect the member's share insurance coverage for a period of six months following death unless the member's share accounts are restructured in that time period. If the accounts are restructured during the six-month grace period, or upon the expiration of the six months if not restructured, the share insurance coverage will be provided on the basis of actual ownership of the accounts in accordance with the provisions of this

§ 745.3

12 CFR Ch. VII (1–1–23 Edition)

part. The operation of this grace period, however, will not result in a reduction of coverage.

(f) *Continuation of separate share insurance coverage after merger of insured credit unions.* Whenever the liability to pay the member accounts of one or more insured credit unions is assumed by another insured credit union, whether by merger, consolidation, other statutory assumption or contract: The insured status of the credit unions whose member account liability has been assumed terminates, for purposes of this section, on the date of receipt by NCUA of satisfactory evidence of the assumption; and the separate insurance of member accounts assumed continues for six months from the date the assumption takes effect or, in the case of a share certificate, the earliest maturity date after the six-month period. In the case of a share certificate that matures within the six-month grace period that is renewed at the same dollar amount, either with or without accrued dividends having been added to the principal amount, and for the same term as the original share certificate, the separate insurance applies to the renewed share certificate until the first maturity date after the six-month period. A share certificate that matures within the six-month grace period that is renewed on any other basis, or that is not renewed, is separately insured only until the end of the six-month grace period.

[51 FR 37560, Oct. 23, 1986, as amended at 65 FR 34924, June 1, 2000; 68 FR 75114, Dec. 30, 2003; 71 FR 14635, Mar. 23, 2006]

§ 745.3 Single ownership accounts.

(a) Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to the SMSIA in the aggregate.

(1) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in the individual's own name shall be insured up to the SMSIA in the aggregate.

(2) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nomi-

nees shall be added to any individual account of the principal and insured up to the SMSIA in the aggregate. This applies to interests created in qualified tuition savings programs established in connection with section 529 of the Internal Revenue Code (26 U.S.C. 529).

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be insured for the cumulative balance paid into the account by the mortgagors, up to the limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts. This provision is effective as of October 22, 2008, for all existing and future mortgage servicing accounts.

(b) Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to the SMSIA in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor.

[51 FR 37560, Oct. 23, 1986, as amended at 71 FR 14635, Mar. 23, 2006; 73 FR 62858, Oct. 22, 2008; 74 FR 55749, Oct. 29, 2009]

§ 745.4 Revocable trust accounts.

(a) *General rule.* Except as provided in paragraph (e) of this section, the funds owned by an individual and deposited into one or more accounts with respect to which the owner evidences an intention that upon his or her death the funds shall belong to one or more beneficiaries shall be separately insured (from other types of accounts the owner has at the same insured credit union) in an amount equal to the total number of different beneficiaries named in the account(s) multiplied by the SMSIA. This section applies to all

National Credit Union Administration

§ 745.4

accounts held in connection with informal and formal testamentary revocable trusts. Such informal trusts are commonly referred to as payable-on-death accounts, in-trust-for accounts or Totten Trust accounts, and such formal trusts are commonly referred to as living trusts or family trusts. (EXAMPLE 1: Account Owner "A" has a living trust account with four different beneficiaries named in the trust. A has no other revocable trust accounts at the same NCUA-insured credit union. The maximum insurance coverage would be \$1,000,000, determined by multiplying 4 times \$250,000 (the number of beneficiaries times the SMSIA). (EXAMPLE 2: Account Owner "A" has a payable-on-death account naming his niece and cousin as beneficiaries, and A also has, at the same NCUA-insured credit union, another payable-on-death account naming the same niece and a friend as beneficiaries. The maximum coverage available to the account owner would be \$750,000. This is because the account owner has named only three different beneficiaries in the revocable trust accounts—his niece and cousin in the first, and the same niece and a friend in the second. The naming of the same beneficiary in more than one revocable trust account, whether it be a payable-on-death account or living trust account, does not increase the total coverage amount.) (EXAMPLE 3: Account Owner "A" establishes a living trust account with a balance of \$300,000, naming his two children "B" and "C" as beneficiaries. A also establishes, at the same NCUA-insured credit union, a payable-on-death account, with a balance of \$300,000, also naming his children B and C as beneficiaries. The maximum coverage available to A is \$500,000, determined by multiplying 2 times \$250,000 (the number of different beneficiaries times the SMSIA). A is uninsured in the amount of \$100,000. This is because all funds that an owner holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits.)

(b) *Required intention and naming of beneficiaries.* The required intention in paragraph (a) of this section that upon

the owner's death the funds shall belong to one or more beneficiaries must be manifested in the title of the account or elsewhere in the account records of the credit union using commonly accepted terms such as, but not limited to, *in trust for*, *as trustee for*, *payable-on-death to*, or any acronym therefore, or by listing one or more beneficiaries in the account records of the credit union. In addition, for informal revocable trust accounts, the beneficiaries must be specifically named in the account records of the insured credit union. The settlor of a revocable trust shall be presumed to own the funds deposited into the account.

(c) *Definition of beneficiary.* For purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.

(d) *Interests of beneficiaries outside the definition of beneficiary in this section.* If a beneficiary named in a trust covered by this section does not meet the definition of beneficiary in paragraph (c) of this section, the funds corresponding to that beneficiary shall be treated as the individually owned (single ownership) funds of the owner(s). As such, they shall be aggregated with any other single ownership accounts of such owner(s) and insured up to the SMSIA per owner. (EXAMPLE: Account Owner "A" establishes a payable-on-death account naming a pet as beneficiary with a balance of \$100,000. A also has an individual account at the same NCUA-insured credit union with a balance of \$175,000. Because the pet is not a "beneficiary," the two accounts are aggregated and treated as a single ownership account. As a result, A is insured in the amount of \$250,000, but is uninsured for the remaining \$25,000.)

(e) *Revocable trust accounts with aggregate balances exceeding five times the SMSIA and naming more than five different beneficiaries.* Notwithstanding the general coverage provisions in paragraph (a) of this section, for funds owned by an individual in one or more revocable trust accounts naming more than five different beneficiaries and whose aggregate balance is more than five times the SMSIA, the maximum

§ 745.4

12 CFR Ch. VII (1–1–23 Edition)

revocable trust account coverage for the account owner shall be the greater of either: five times the SMSIA or the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of the SMSIA per different beneficiary. (EXAMPLE 1: Account Owner “A” has a living trust with a balance of \$1 million and names two friends, “B” and “C” as beneficiaries. At the same NCUA-insured credit union, A establishes a payable-on-death account, with a balance of \$1 million naming his two cousins, “D” and “E” as beneficiaries. Coverage is determined under the general coverage provisions in paragraph (a) of this section, and not this paragraph (e). This is because all funds that A holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union, are aggregated for insurance purposes. Although A’s aggregated balance of \$2 million is more than five times the SMDIA, A names only four different beneficiaries, and coverage under this paragraph (e) applies only if there are more than five different beneficiaries. A is insured in the amount of \$1 million (4 beneficiaries times the SMSIA), and uninsured for the remaining \$1 million.) (EXAMPLE 2: Account Owner “A” has a living trust account with a balance of \$1,500,000. Under the terms of the trust, upon A’s death, A’s three children are each entitled to \$125,000, A’s friend is entitled to \$15,000, and a designated charity is entitled to \$175,000. The trust also provides that the remainder of the trust assets shall belong to A’s spouse. In this case, because the balance of the account exceeds \$1,250,000 (5 times the SMSIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: \$1,250,000 or the aggregate of each different beneficiary’s interest to a limit of \$250,000 per beneficiary. The beneficial interests in the trust for purposes of determining coverage are: \$125,000 for each of the children (totaling \$375,000), \$15,000 for the friend, \$175,000 for the charity, and \$250,000 for the spouse (because the spouse’s \$935,000 is subject to the \$250,000 per-beneficiary limitation). The aggregate beneficial interests total \$815,000. Thus, the maximum cov-

erage afforded to the account owner would be \$1,250,000, the greater of \$1,250,000 or \$815,000.)

(f) *Co-owned revocable trust accounts.* (1) Where an account described in paragraph (a) of this section is established by more than one owner, the respective interest of each account owner (which shall be deemed equal) shall be insured separately, per different beneficiary, up to the SMSIA, subject to the limitation imposed in paragraph (e) of this section. (EXAMPLE 1: A and B, two individuals, establish a payable-on-death account naming their three nieces as beneficiaries. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage afforded to A and B would be \$1,500,000, determined by multiplying the number of owners (2) times the SMSIA (\$250,000) times the number of different beneficiaries (3). In this example, A would be entitled to revocable trust coverage of \$750,000 and B would be entitled to revocable trust coverage of \$750,000.) (EXAMPLE 2: A and B, two individuals, establish a payable-on-death account naming their two children, two cousins, and a charity as beneficiaries. The balance in the account is \$1,750,000. Neither A nor B has any other revocable trust accounts at the same NCUA-insured credit union. The maximum coverage would be determined under paragraph (a) of this section by multiplying the number of account owners (2) times the number of different beneficiaries (5) times \$250,000, totaling \$2,500,000. Because the account balance (\$1,750,000) is less than the maximum coverage amount (\$2,500,000), the account would be fully insured.) (EXAMPLE 3: A and B, two individuals, establish a living trust account with a balance of \$3.75 million. Under the terms of the trust, upon the death of both A and B, each of their three children is entitled to \$600,000, B’s cousin is entitled to \$380,000, A’s friend is entitled to \$70,000, and the remaining amount (\$1,500,000) goes to a charity. Under paragraph (e) of this section, the maximum coverage, as to each co-owned account owner, would be the greater of \$1,250,000 or the aggregate amount (as to each co-owner) of the interest of each different beneficiary named in the trust, to a limit of

National Credit Union Administration

§ 745.4

\$250,000 per account owner per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage for account owner A are: \$750,000 for the children (each child's interest attributable to A, \$300,000, is subject to the \$250,000-per-beneficiary limitation), \$190,000 for the cousin, \$35,000 for the friend, and \$250,000 for the charity (the charity's interest attributable to A, \$750,000, is subject to the \$250,000 per-beneficiary limitation). As to A, the aggregate amount of the beneficial interests eligible for deposit insurance coverage totals \$1,225,000. Thus, the maximum coverage afforded to account co-owner A would be \$1,250,000, which is the greater of \$1,250,000 or the aggregate of all the beneficial interests attributable to A (limited to \$250,000 per beneficiary), which totaled slightly less at \$1,225,000. Because B has equal ownership interest in the trust, the same analysis and coverage determination also would apply to B. Thus, of the total account balance of \$3.75 million, \$2.5 million would be insured and \$1.25 million would be uninsured.)

(2) Notwithstanding paragraph (f)(1) of this section, where the owners of a co-owned revocable trust account are themselves the sole beneficiaries of the corresponding trust, the account shall be insured as a joint account under section 745.8 and shall not be insured under the provisions of this section. (EXAMPLE: If A and B establish a payable-on-death account naming themselves as the sole beneficiaries of the account, the account will be insured as a joint account because the account does not satisfy the intent requirement (under paragraph (a) of this section) that the funds in the account belong to the named beneficiaries upon the owners' death. The beneficiaries are in fact the actual owners of the funds during the account owners' lifetimes.)

(g) For deposit accounts held in connection with a living trust that provides for a life estate interest for designated beneficiaries, NCUA shall value each such life estate interest as the SMSIA for purposes of determining the insurance coverage available to the account owner under paragraph (e) of this section. (EXAMPLE: Account Owner "A" has a living trust account with a

balance of \$1,500,000. Under the terms of the trust, A provides a life estate interest for his spouse. Moreover, A's three children are each entitled to \$275,000, A's friend is entitled to \$15,000, and a designated charity is entitled to \$175,000. The trust also provides that the remainder of the trust assets shall belong to A's granddaughter. In this case, because the balance of the account exceeds \$1,250,000 (5 five times the SMSIA) and there are more than five different beneficiaries named in the trust, the maximum coverage available to A would be the greater of: \$1,250,000 or the aggregate of each different beneficiary's interest to a limit of \$250,000 per beneficiary. The beneficial interests in the trust considered for purposes of determining coverage are: \$250,000 for the spouse's life estate, \$750,000 for the children (because each child's \$275,000 is subject to the \$250,000 per-beneficiary limitation), \$15,000 for the friend, \$175,000 for the charity, and \$250,000 for the granddaughter (because the granddaughter's \$310,000 remainder is limited by the \$250,000 per-beneficiary limitation). The aggregate beneficial interests total \$1,440,000. Thus, the maximum coverage afforded to the account owner would be \$1,440,000, the greater of \$1,250,000 or \$1,440,000.)

(h) *Revocable trusts that become irrevocable trusts.* Notwithstanding the provisions in section 745.9-1 on the insurance coverage of irrevocable trust accounts, if a revocable trust account converts in part or entirely to an irrevocable trust upon the death of one or more of the trust's owners, the trust account shall continue to be insured under the provisions of this section. (EXAMPLE: Assume A and B have a trust account in connection with a living trust, of which they are joint grantors. If upon the death of either A or B the trust transforms into an irrevocable trust as to the deceased grantor's ownership in the trust, the account will continue to be insured under the provisions of this section.)

(i) This section shall apply to all existing and future revocable trust accounts and all existing and future irrevocable trust accounts resulting from formal revocable trust accounts.

[74 FR 55749, Oct. 29, 2009]

§ 745.5

§ 745.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and deposited in one or more accounts shall be insured up to the SMSIA in the aggregate for all such accounts, separately from the individual accounts of the beneficiaries of the estate or of the executor or administrator.

[51 FR 37560, Oct. 23, 1986, as amended at 71 FR 14635, Mar. 23, 2006]

§ 745.6 Accounts held by a corporation, partnership, or unincorporated association.

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to the SMSIA in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to the SMSIA in the aggregate. For purposes of this section, "independent activity" means an activity other than one directed solely at increasing insurance coverage.

[51 FR 37560, Oct. 23, 1986, as amended at 71 FR 14635, Mar. 23, 2006]

§ 745.7 Shares accepted in a foreign currency.

An insured credit union may accept shares denominated in a foreign currency. Shares denominated in a foreign currency will be insured in accordance with this part to the same extent as shares denominated in U.S. dollars. Insurance for shares denominated in foreign currency will be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the shares denominated in the foreign currency as of close of business on the date of default of the insured credit union. The exchange rates to be used for such conversions

12 CFR Ch. VII (1-1-23 Edition)

are the 12 p.m. rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured credit union, unless the share agreement provides that some other widely recognized exchange rates are to be used for all purposes under that agreement.

[71 FR 14635, Mar. 23, 2006]

§ 745.8 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants by the entirety, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners. The interest of a co-owner in all qualifying joint accounts shall be added together and the total for that co-owner shall be insured up to the SMSIA.

(b) *Determination of insurance coverage.* The interests of each co-owner in all qualifying joint accounts shall be added together and the total shall be insured up to the SMSIA. (EXAMPLE: "A&B" have a qualifying joint account with a balance of \$150,000; "A&C" have a qualifying joint account with a balance of \$200,000; and "A&B&C" have a qualifying joint account with a balance of \$375,000. A's combined ownership interest in all qualifying joint accounts would be \$300,000 (\$75,000 plus \$100,000 plus \$125,000); therefore, A's interest would be insured in the amount of \$250,000 and uninsured in the amount of \$50,000. B's combined ownership interest in all qualifying joint accounts would be \$200,000 (\$75,000 plus \$125,000); therefore, B's interest would be fully insured. C's combined ownership interest in all qualifying joint accounts would be \$225,000 (\$100,000 plus \$125,000); therefore, C's interest would be fully insured.

(c) *Qualifying joint accounts.* (1) A joint account is a qualifying joint account if each of the co-owners has personally signed a membership or account signature card and has a right of withdrawal on the same basis as the other co-owners. The signature requirement does not apply to share certificates, or to any accounts maintained

National Credit Union Administration

§ 745.9-2

by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons if the records of the credit union properly reflect that the account is so maintained.

(2) The signature card requirement of paragraph (c)(1) of this section also may be satisfied by information contained in the account records of the federally insured credit union establishing co-ownership of the share account, including, but not limited to, evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the share account by each co-owner.

(d) *Failure to qualify.* A joint account that does not meet the requirements for a qualifying joint account shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to the SMSIA in the aggregate. An account will not fail to qualify as a joint account if a joint owner is a minor and applicable state law limits or restricts a minor's withdrawal rights.

(e) *Nonmember joint owners.* A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

[64 FR 19687, Apr. 22, 1999, as amended at 71 FR 14636, Mar. 23, 2006; 74 FR 55751, Oct. 29, 2009; 86 FR 11102, Feb. 24, 2021]

§ 745.9-1 Trust accounts.

(a) For purposes of this section, "trust" refers to an irrevocable trust.

(b) All trust interests (as defined in § 745.2(d)(4)), for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to the SMSIA in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

(c) This section applies to trust interests created in Coverdell Education Savings Accounts, formerly Education IRAs, established in connection with

section 530 of the Internal Revenue Code (26 U.S.C. 530).

[51 FR 37560, Oct. 23, 1986, as amended at 65 FR 34924, June 1, 2000; 68 FR 75114, Dec. 30, 2003; 71 FR 14636, Mar. 23, 2006]

§ 745.9-2 Retirement and other employee benefit plan accounts.

(a) *Pass-through share insurance.* Any shares of an employee benefit plan in an insured credit union shall be insured on a "pass-through" basis, in the amount of up to the SMSIA for the non-contingent interest of each plan participant, in accordance with § 745.2 of this part. An insured credit union that is not "well capitalized" or "adequately capitalized," as those terms are defined in 12 U.S.C. 1790d(c), may not accept employee benefit plan deposits. The terms "employee benefit plan" and "pass-through share insurance" are given the same meaning in this section as in 12 U.S.C. 1787(k)(4).

(b) *Treatment of contingent interests.* In the event that participants' interests in an employee benefit plan are not capable of evaluation in accordance with the provisions of this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the NCUA with respect to all such interests shall not exceed the SMSIA in the aggregate.

(c)(1) *Certain retirement accounts.* Shares in an insured credit union made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to \$250,000 (which amount shall be subject to inflation adjustments as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such section) per account:

(i) Any individual retirement account described in section 408(a) (IRA) of the Internal Revenue Code (26 U.S.C. 408(a)) or similar provisions of law applicable to a U.S. territory or possession;

(ii) Any individual retirement account described in section 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 408A) or similar provisions of law applicable to a U.S. territory or possession; and

(iii) Any plan described in section 401(d) (Keogh account) of the Internal

§ 745.10

12 CFR Ch. VII (1–1–23 Edition)

Revenue Code (26 U.S.C. 401(d)) or similar provisions of law applicable to a U.S. territory or possession.

(2) Insurance coverage for the accounts enumerated in paragraph (c)(1) of this section is based on the present vested ascertainable interest of a participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to \$250,000 (which amount shall be subject to inflation adjustments as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such section). A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

[71 FR 14636, Mar. 23, 2006, as amended at 75 FR 34622, June 18, 2010]

§ 745.10 Accounts held by government depositors.

(a) Public funds invested in Federal credit unions and federally insured state-chartered credit unions authorized to accept such investments shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally insured credit union will be separately insured in the amount of:

(i) Up to the SMSIA in the aggregate for all share draft accounts; and

(ii) Up to the SMSIA in the aggregate for all share certificate and regular share accounts;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally insured credit union in the same state will be separately insured in the amount of:

(i) Up to the SMSIA in the aggregate for all share draft accounts; and

(ii) Up to the SMSIA in the aggregate for all share certificate and regular share accounts;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally insured credit union in the District of Colum-

bia will be separately insured in the amount of:

(i) Up to the SMSIA in the aggregate for all share draft accounts; and

(ii) Up to the SMSIA in the aggregate for all share certificate and regular share accounts;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, will be separately insured in the amount of:

(i) Up to the SMSIA in the aggregate for all share draft accounts; and

(ii) Up to the SMSIA in the aggregate for all share certificate and regular share accounts;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally insured credit union will be separately insured in the amount of:

(i) Up to the SMSIA in the aggregate for all share draft accounts; and

(ii) Up to the SMSIA in the aggregate for all share certificate and regular share accounts;

(b) Each official custodian referred to in paragraphs (a)(2), (3), and (4) of this section lawfully investing such funds in share accounts in a federally insured credit union outside of their respective jurisdictions shall be separately insured up to the SMSIA in the aggregate for all such accounts regardless of whether they are share draft, share certificate or regular share accounts.

(c) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes. Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set

National Credit Union Administration

§ 745.14

aside to discharge a debt owed to the holders of notes or bonds issued by the public unit, any investment of such funds in an account in a federally insured credit union will be deemed to be a share account established by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the share account will be separately insured up to the SMSIA.

(d) For purposes of this section, “lawfully investing” means pursuant to the statutory or regulatory authority of the custodian or public unit.

[51 FR 37560, Oct. 23, 1986, as amended at 65 FR 34925, June 1, 2000; 71 FR 14636, Mar. 23, 2006]

§ 745.11 Accounts evidenced by negotiable instruments.

If any insured account obligation of a credit union is evidenced by a negotiable certificate account, negotiable draft, negotiable cashier’s or officer’s check, negotiable certified check, or negotiable traveler’s check or letter of credit, the owner of such account obligation will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§ 745.12 Account obligations for payment of items forwarded for collection by depository institution acting as agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the owner of such items will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such depository institution forwarding such items for the owners thereof will be recog-

nized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Board and for the purpose of receiving payment on behalf of such owners.

§ 745.13 Notification to members/shareholders.

Each insured credit union shall provide notice to its members concerning NCUA insurance coverage of member accounts. This may be accomplished by placing either a copy of part 745 of these rules, the appendix, or one or more copies of the NCUA brochure “Your Insured Funds” in each branch office and main office of the credit union. Copies of these materials shall also be made available to members upon request. For purposes of this section, an automated teller machine or point of sale terminal is not a branch office.

§ 745.14 Interest on lawyers trust accounts and other similar escrow accounts.

(a)(1) *Pass-through share insurance.* The deposits or shares of any interest on lawyers trust account (IOLTA) or other similar escrow account in an insured credit union are insured on a “pass-through” basis, in the amount of up to the SMSIA for each client and principal on whose behalf funds are held in such accounts by either the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with the other share insurance provisions of this part.

(2) Pass-through coverage will only be available if the recordkeeping requirements of § 745.2(c)(1) of this part and the relationship disclosure requirements of § 745.2(c)(2) of this part are satisfied. In the event those requirements are satisfied, funds attributable to each client and principal will be insured on a pass-through basis in whatever right and capacity the client or principal owns the funds. For example, an IOLTA or other similar escrow account must be titled as such and the underlying account records of the insured credit union must sufficiently indicate the existence of the relationship on which a claim for insurance is

§ 745.200

founded. The details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from the records of the insured credit union or from records maintained, in good faith and in the regular course of business, by the attorney or the escrow agent administering the account. NCUA will determine, in its sole discretion, the sufficiency of these records for an IOLTA or other similar escrow account.

(b) *Membership requirements and treatment of IOLTAs.* For share insurance purposes, IOLTAs are treated as escrow accounts. IOLTAs and other similar escrow accounts are considered member accounts and eligible for pass-through share insurance if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held. In this circumstance, the membership status of the clients or the principals is irrelevant.

(c) *Definitions.* (1) For purposes of this section:

(i) *Interest on lawyers trust account and IOLTA* mean a system in which lawyers place certain client funds in interest-bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need.

(ii) *Other similar escrow account* means an account where a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client or principal as part of a transaction or business relationship. Examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

(iii) *Pass-through share insurance* means, with respect to IOLTAs and other similar escrow accounts, insurance coverage based on the interest of each person on whose behalf funds are held in such accounts by the attorney administering the IOLTA or the escrow agent administering a similar escrow account.

(2) The terms “interest on lawyers trust account”, “IOLTA”, and “pass-through share insurance” are given the

12 CFR Ch. VII (1–1–23 Edition)

same meaning in this section as in 12 U.S.C. 1787(k)(5).

[80 FR 80642, Dec. 28, 2015]

Subpart B—Payment of Share Insurance and Appeals

SOURCE: 55 FR 5586, Feb. 16, 1990, unless otherwise noted.

§ 745.200 General.

(a) *Payment.* In the event of the liquidation of an insured credit union, the Board will promptly determine the insured accountholders thereof and the amount of the insured account or accounts of each such accountholder. Payment may be in cash, or its equivalent, or may be made by making available to each accountholder a transferred account in a new federally insured credit union in the same community or in another federally insured credit union or institution in an amount equal to the accountholder's insured account. Notwithstanding the foregoing, the Board may withhold payment of such portion of the insured account of any member as may be required to provide for payment of any direct or indirect liability to the closed credit union or the liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by the member or any person liable therefor.

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of Subpart A of this part and the Federal Credit Union Act. For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this part. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends earned or accrued was due to the

fraud, embezzlement or accounting errors of credit union personnel. The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

(c) *Multiple accounts.* In the event an insured member holds more than one insured account in the same capacity, and the aggregate amount of such accounts (including share draft accounts held in such capacity) exceeds the amount of insurance afforded thereon, the insurance coverage will be prorated among the member's interest in all accounts held in the same capacity. In the case of individual accounts, the insurance proceeds shall be paid to the holder of the account, whether or not the holder is the beneficial owner. In the case of accounts which are owned jointly, the insurance proceeds shall be paid to the owners jointly. In the case of trust estates, the insurance proceeds shall be paid to the indicated trustee unless otherwise provided for in the trust instrument or under state law. In the case of corporations, partnerships and unincorporated associations engaged in an independent activity, the insurance proceeds shall be paid to the indicated holder of the account. Where insurance payment is in the form of a transferred account to another insured institution, the same rules shall be applied.

(d) *Computing time.* In computing any period of time prescribed by this subpart, the provisions of § 747.12(a) shall apply.

[55 FR 5586, Feb. 16, 1990, as amended at 61 FR 60186, Nov. 27, 1996]

§ 745.201 Processing of insurance claims.

(a) *Delegations of authority.* The Agent for the Liquidating Agent ("Liquidating Agent") or his or her designee is authorized to make initial determinations with respect to insurance claims pursuant to the principles set forth in this part, and to act on requests for re-

consideration of the initial determination.

(b) *Initial determination.* In the event the Liquidating Agent determines that all or a portion of an accountholder's account is uninsured, the Liquidating Agent shall so notify the accountholder in writing, stating the reason(s) for such initial determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Board in its capacity as Liquidating Agent for the insured credit union to enable the accountholder to share in the proceeds of the liquidation of the credit union, if any, up to the amount of the uninsured account.

(c) *Reconsideration and appeals.* An accountholder may request reconsideration from the Liquidating Agent of the initial determination and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

[55 FR 5586, Feb. 16, 1990, as amended at 82 FR 50294, Oct. 30, 2017]

§ 745.202 Judicial review.

(a) For purposes of seeking judicial review of actions taken pursuant to this subpart, only a determination on appeal issued by the Board pursuant to § 745.202 of this subpart shall constitute a final determination regarding an accountholder's claim for insurance.

(b) Failure to file an appeal with regard to an initial determination, or a decision rendered on a request for reconsideration within the applicable time periods shall constitute a failure by the accountholder to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and binding upon, the accountholder.

(c) Final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States district court for the Federal judicial district where the credit union's principal place of business is located. Such action must be filed not later than 60

days after such final determination is ordered.

[51 FR 37560, Oct. 23, 1986, as amended at 71 FR 67440, Nov. 22, 2006. Redesignated at 82 FR 50294, Oct. 30, 2017; 84 FR 1608, Feb. 5, 2019]

APPENDIX TO PART 745—EXAMPLES OF
INSURANCE COVERAGE AFFORDED AC-
COUNTS IN CREDIT UNIONS INSURED
BY THE NATIONAL CREDIT UNION
SHARE INSURANCE FUND

WHAT IS THE PURPOSE OF THIS APPENDIX?

The following examples illustrate insurance coverage on accounts maintained in the same federally insured credit union. They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured credit unions. These examples interpret the rules for insurance of accounts contained in 12 CFR part 745 and focus on those accounts for which examples are not provided in the regulatory text.

The examples, as well as the rules which they interpret, are predicated upon the assumption that: (1) Invested funds are actually owned in the manner indicated on the credit union's records and (2) the owner of funds in an account is a credit union member or otherwise eligible to maintain an insured account in a credit union. If available evidence shows that ownership is different from that on the institution's records, the National Credit Union Share Insurance Fund may pay claims for insured accounts on the basis of actual rather than ostensible ownership. Further, the examples and the rules which they interpret do not extend insurance coverage to persons otherwise not entitled to maintain an insured account or to account relationships that have not been approved by the NCUA Board as an insured account.

A. How Are Single Ownership Accounts Insured?

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested in one or more individual accounts are added together and insured to the \$250,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds or in the name of the member's agent or nominee. (§745.3(a)(1) and (2).) All such accounts are added together and insured as one individual account. Funds held in one or more accounts in the name of a guardian, custodian, or conservator for the benefit of a ward or minor are added together and insured up to \$250,000. However, such an account or accounts will not be added to any other individual accounts of the guardian, custodian, conservator, ward,

or minor for purposes of determining insurance coverage. (§745.3(b).) A mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by a mortgagor of principal and interest is insured for the cumulative balance paid into the account by the mortgagor, up to \$250,000 for the mortgagor separately from other individual accounts of the mortgagor. A mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by a mortgagor of taxes and insurance premiums shall be added together with the mortgagor's other individual accounts and insured up to \$250,000. (§745.3(a)(3).)

Example 1. Question: Members A and B, husband and wife, each maintain an individual account containing \$250,000. What is the insurance coverage?

Answer: Each account is separately insured up to \$250,000, for a total coverage of \$500,000. The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§745.3(a)(1)).

Example 2. Question: Members H and W, husband and wife, reside in a community property state. H maintains a \$250,000 account consisting of his separately-owned funds and invests \$250,000 of community property funds in another account, both of which are in his name alone. What is the insurance coverage?

Answer: The two accounts are added together and insured to a total of \$250,000. \$250,000 is uninsured (§745.3(a)(1)).

Example 3. Question: Member A has \$192,500 invested in an individual account, and his agent, Member B, invests \$125,000 of A's funds in a properly designated agency account. B also holds a \$250,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the \$250,000 maximum, leaving \$67,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§745.3(a)(2)). B's individual account is insured separately from the agency account (§745.3(a)(1)). However, if the account records of the credit union do not show the agency relationship under which the funds in the \$125,000 account are held, the \$250,000 in B's name could, at the option of the NCUSIF, be added to his individual account and insured to \$250,000 in the aggregate, leaving \$125,000 uninsured (§745.2(c)).

Example 4. Question: Member A holds a \$250,000 individual account. Member B holds two accounts in his own name, the first containing \$125,000 and the second containing

National Credit Union Administration

Pt. 745, App.

\$192,500. In processing the claims for payment of insurance on these accounts, the NCUSIF discovers that the funds in the \$125,000 account actually belong to A and that B had invested these funds as agent for A, his undisclosed principal. What is the insurance coverage?

Answer: Since the available evidence shows that A is the actual owner of the funds in the \$125,000 account, those funds would be added to the \$250,000 individual account held by A (rather than to B's \$192,500 account) and insured to the \$250,000 maximum, leaving \$125,000 uninsured. (§745.3(a)(2).) B's \$192,500 individual account would be separately insured.

Example 5. Question: Member C, a minor, maintains an individual account of \$750. C's grandfather makes a gift to him of \$250,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gift to Minors Act. C's father, also a member, maintains an individual account of \$250,000. What is the insurance coverage?

Answer: C's individual account and the custodian account held for him by his father are each separately insured: The \$250,000 maximum on the custodian account, and \$750 on his individual account. The individual account held by C's father is also separately insured to the \$250,000 maximum. (§745.3 (a)(1) and (b).)

Example 6. Question: Member G, a court-appointed guardian, invests in a properly designated account \$250,000 of funds in his custody which belong to member W, his ward. W and G each maintain \$25,000 individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are each insured to \$250,000 providing W with \$275,000 in insured funds. G's individual account is also separately insured. (§745.3 (a)(1) and (b).)

Example 7. Question: Member A has three individual accounts at the same NCUA-insured credit union. Account #1 is a \$250,000 individual account. Account #2 is a mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by Member A of principal and interest in the amount of \$3,000. Account #3 is a mortgage servicing account maintained by a mortgage servicer, in a custodial or other fiduciary capacity, comprised of payments by Member A of taxes and insurance premiums in the amount of \$1,500. What is the insurance coverage?

Answer: Accounts # 1 and #3 are added together and insured up to \$250,000, leaving \$1,500 uninsured. Account #2 is separately insured up to \$250,000.

B. How Are Accounts Held by Executors or Administrators Insured?

All funds belonging to a decedent and invested in one or more accounts, whether held in the name of the decedent or in the name of his executor or administrator, are added together and insured to the \$250,000 maximum. Such funds are insured separately from the individual accounts of any of the beneficiaries of the estate or of the executor or administrator.

Example 1. Question: Member A, administrator of Member D's estate, sells D's automobile and invests the proceeds of \$12,500 in an account entitled "A Administrator of the estate of D." A has an individual account in that same credit union containing \$250,000. Prior to his death, D had opened an individual account of \$250,000. What is the insurance coverage?

Answer: The \$12,500 is added to D's individual account and insured to \$250,000, leaving \$12,500 uninsured. A's individual account is separately insured for \$250,000 (§745.5).

C. How Are Accounts Held by a Corporation, Partnership or Unincorporated Association Insured?

All funds invested in an account or accounts by a corporation, a partnership or an unincorporated association engaged in any independent activity are added together and insured to the \$250,000 maximum. The term "independent activity" means any activity other than the one directed solely at increasing coverage. If the corporation, partnership or unincorporated association is not engaged in an independent activity, any account held by the entity is insured as if owned by the persons owning or comprising the entity, and the imputed interest of each such person is added for insurance purposes to any individual account which he maintains.

Example 1. Question: Member X Corporation maintains a \$250,000 account. The stock of the corporation is owned by members A, B, C, and D in equal shares. Each of these stockholders also maintains an individual account of \$250,000 with the same credit union. What is the insurance coverage?

Answer: Each of the five accounts would be separately insured to \$250,000 if the corporation is engaged in an independent activity and has not been established merely for the purpose of increasing insurance coverage. The same would be true if the business were operated as a bona fide partnership instead of as a corporation (§745.6). However, if X corporation was not engaged in an independent activity, then \$62,500 (¼ interest) would be added to each account of A, B, C, and D. The accounts of A, B, C, and D would then each be insured to \$250,000, leaving \$62,500 in each account uninsured.

Example 2. Question: Member C College maintains three separate accounts with the same credit union under the titles: “General Operating Fund,” “Teachers Salaries,” and “Building Fund.” What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added together and insured only to the \$250,000 maximum (§745.6).

Example 3. Question: The men’s club of X Church carries on various social activities in addition to holding several fund-raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men’s club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the \$250,000 maximum (§745.6).

Example 4. Question: The PQR Union, a member of the ABC Federal Credit Union, has three locals in a certain city. Each of the locals maintains an account containing funds belonging to the parent organization. All three accounts are in the same insured credit union. What is the insurance coverage?

Answer: The three accounts are added together and insured up to the \$250,000 maximum (§745.6).

D. How Are Accounts Held by Government Depositors Insured?

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in a federally insured credit union are categorized as either share draft accounts or share certificate and regular share accounts. If these accounts are invested in a federally insured credit union located in the jurisdiction from which the official custodian derives his authority, then the share draft accounts will be insured separately from the share certificate and regular share accounts. Under this circumstance, all share draft accounts are added together and insured to the \$250,000 maximum and all share certificate and regular share accounts are also added together and separately insured up to the \$250,000 maximum. If, however, these accounts are invested in a federally insured credit union located outside of the jurisdiction from which the official custodian derives his authority, then insurance coverage is limited to \$250,000 for all accounts regardless of whether they are share draft, share certificate or regular share accounts. If there is more than one official custodian for the same public unit, the funds invested by each

custodian are separately insured. If the same person is custodian of funds for more than one public unit, he is separately insured with respect to the funds of each unit held by him in properly designated accounts.

For insurance purposes, a “political subdivision” is entitled to the same insurance coverage as any other public unit. “Political subdivision” includes any subdivision of a public unit or any principal department of such unit: (1) The creation of which has been expressly authorized by state statute, (2) to which some functions of government have been allocated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

Example 1. Question: As Comptroller of Y Consolidated School District, A maintains a \$275,000 account in the credit union containing school district funds. He also maintains his own \$250,000 member account in the same credit union. What is the insurance coverage?

Answer: The two accounts will be separately insured, assuming the credit union’s records indicate that the account containing the school district funds is held by A in a fiduciary capacity. Thus, \$250,000 of the school’s funds and the entire \$250,000 in A’s personal account will be insured (§§ 745.10(a)(2) and 754.3).

Example 2. Question: A, as city treasurer, and B, as chief of the city police department, each have \$250,000 in city funds invested in custodial accounts. What is the insurance coverage?

Answer: Assuming that both A and B have official custody of the city funds, each account is separately insured to the \$250,000 maximum (§745.10(a)(2)).

Example 3. Question: A is Treasurer of X County and collects certain tax assessments, a portion of which must be paid to the state under statutory requirement. A maintains an account for general funds of the county and establishes a separate account for the funds which belong to the State Treasurer. The credit union’s records indicate that the separate account contains funds held for the State. What is the insurance coverage?

Answer: Since two public units own the funds held by A, the accounts would each be separately insured to the \$250,000 maximum (§745.10(a)(2)).

Example 4. Question: A city treasurer invests city funds in each of the following accounts: “General Operating Account,” “School Transportation Fund,” “Local Maintenance Fund,” and “Payroll Fund.” Each account is available to the custodian upon demand. By administrative direction, the city treasurer has allocated the funds for

National Credit Union Administration

Pt. 745, App.

the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to \$250,000. Because the allocation of the city's funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of \$250,000 is not afforded to each account (§§ 745.1(d) and 745.10(a)(2)).

Example 5. Question: A, the custodian of retirement funds of a military exchange, invests \$2,500,000 in an account in an insured credit union. The military exchange, a non-appropriated fund instrumentality of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for \$250,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, \$2,250,000 is uninsured (§ 745.10(a)(1)).

Example 6. Question: A is the custodian of the County's employee retirement funds. He deposits \$2,500,000 in retirement funds in an account in an insured credit union. The "beneficiaries" of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for \$250,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, \$2,250,000 is uninsured (§ 745.10(a)(2)).

Example 7. Question: A county treasurer establishes the following share draft accounts in an insured credit union each with \$250,000: "General Operating Fund" "County Roads Department Fund" "County Water District Fund" "County Public Improvement District Fund" "County Emergency Fund" What is the insurance coverage?

Answer: The "County Roads Department," "County Water District" and "County Public Improvement District" accounts would each be separately insured to \$250,000 if the funds in each such account have been allo-

cated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute. Funds in the "General Operating" and "Emergency Fund" accounts would be added together and insured in the aggregate to \$250,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§ 745.1(d) and 745.10(a)(2)).

Example 8. Question: A, the custodian of Indian tribal funds, lawfully invests \$2,500,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds \$250,000. A, as official custodian, also invests \$2,500,000 in the same credit union on behalf of 100 individual Indians, who are not members; each Indian's interest is \$10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§ 745.10(a)(5)). Since the credit union's records indicate no tribe has more than \$250,000 in the account, the \$2,500,000 would be fully insured as 15 separate tribal accounts. If anyone tribe had more than a \$250,000 interest in the funds, it would be insured only to \$250,000 and any excess would be uninsured.

However, the \$2,500,000 invested on behalf of the individual Indians would not be insured since the individual Indians are neither public units nor, in the example, members of the credit union. If A is the custodian of the funds in his capacity as an official of a governmental body that qualified as a public unit, then the account would be insured for \$250,000, leaving \$2,250,000 uninsured.

Example 9. Question: A, an official custodian of funds of a state of the United States, lawfully invests \$500,000 of state funds in a federally insured credit union located in the state from which he derives his authority as an official custodian. What is the insurance coverage?

Answer: If A invested the entire \$500,000 in a share draft account, then \$250,000 would be insured and \$250,000 would be uninsured. If A invested \$250,000 in share draft accounts and another \$250,000 in share certificate and regular share accounts, then A would be insured for \$250,000 for the share draft accounts and \$250,000 for the share certificate and regular share accounts leaving nothing uninsured (§ 745.10(a)(2)). If A had invested the \$500,000 in a federally insured credit union located outside the state from which he derives his authority as an official custodian, then \$250,000 would be insured for all accounts regardless of whether they were share draft,

share certificate or regular share accounts, leaving \$250,000 uninsured (§745.10(b)).

E. How Are Trust Accounts and Retirement Accounts Insured?

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, which is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to \$250,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the \$250,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-10 of the Federal Estate Tax Regulations (26 CFR 20.2031-10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed \$250,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrev-

ocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

IRA and Keogh accounts are separately insured, each up to \$250,000. Although credit unions may serve as trustees or custodians for self-directed IRA, Roth IRA and Keogh accounts, once the funds in those accounts are taken out of the credit union, they are no longer insured.

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual participant on his interest in the account will be in proportion to his interest in the entire employee retirement fund. If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of \$10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only \$2,500 on that credit union account. There is an exception, however. The member would be insured for \$10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

Example 1. Question: Member S invests \$250,000 in trust for B, the beneficiary. S also has an individual account containing \$250,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§745.3(a)(1) and 745.9-1).

Example 2. Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

National Credit Union Administration

§ 746.101

Example 3(a). Question: Member T invests \$5,000,000 in trust for ABC Employees Retirement Fund. Some of the participants are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each participant to a maximum of \$250,000 per participant regardless of credit union member status. T's member status is also irrelevant. Participant interests not capable of evaluation shall be added together and insured to a maximum of \$250,000 in the aggregate (§ 745.9-2).

Example 3(b). Question: T is trustee for the ABC Employees Retirement Fund containing \$1,000,000. Fund participant A has a determinable interest of \$90,000 in the Fund (9% of the total). T invests \$500,000 of the Fund in an insured credit union and the remaining \$500,000 elsewhere. Some of the participants of the Fund are members of the credit union and some are not. T does not segregate each participant's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to the determinable interest of each participant, adjusted in proportion to the Fund's investment in the credit union, regardless of the membership status of the participants or trustee. A's insured interest in the account is \$45,000, or 9% of \$500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. All other participants would be similarly insured. Participants' interests not capable of evaluation are added together and insured to a maximum of \$250,000 in the aggregate (§ 745.9-2).

Example 4. Question: Member A has an individual account of \$250,000 and establishes an IRA account and accumulates \$250,000 in that account. Subsequently, A becomes self-employed and establishes a Keogh account in the same credit union and accumulates \$250,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured as follows: the individual account for \$250,000, the maximum for that type of account; the IRA account for \$250,000, the maximum for that type of account; and the Keogh account for \$250,000, the maximum for that type of account. (§§ 745.3(a)(1) and 745.9-2).

Example 5. Question: Member A has a self-directed IRA account with \$70,000 in it. The FCU is the trustee of the account. Member transfers \$40,000 into a blue chip stock; \$30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full \$70,000 in A's IRA account is insured. The \$40,000 is no longer insured once it is moved out of the

FCU. The \$30,000 remaining in the FCU is insured (§ 745.9-2).

[74 FR 55751, Oct. 29, 2009, as amended at 75 FR 34622, June 18, 2010]

PART 746—APPEALS PROCEDURES

Subpart A—Procedures for Appealing Material Supervisory Determinations

Sec.

- 746.101 Authority, purpose, and scope.
- 746.102 Definitions.
- 746.103 Material supervisory determinations.
- 746.104 General provisions.
- 746.105 Procedures for reconsideration from the appropriate program office.
- 746.106 Procedures for requesting review by the Director of the Office of Examination and Insurance.
- 746.107 Procedures for appealing to the Supervisory Review Committee.
- 746.108 Composition of Supervisory Review Committee.
- 746.109 Procedures for appealing to the NCUA Board.
- 746.110 Administration of the appeal.
- 746.111 Oral hearing.
- 746.112 Retaliation prohibited.
- 746.113 Coordination with State supervisory authority.

Subpart B—Appeals Procedures That Do Not by Law Require a Board Hearing

- 746.201 Authority, purpose, and scope.
- 746.202 Definitions.
- 746.203 Request for reconsideration.
- 746.204 Appeal to the Board.
- 746.205 Preliminary considerations regarding the appeal.
- 746.206 Administration of the appeal.
- 746.207 Procedures for oral hearing.

AUTHORITY: 12 U.S.C. 1766, 1787, and 1789.

SOURCE: 82 FR 50281, Oct. 30, 2017, unless otherwise noted.

Subpart A—Procedures for Appealing Material Supervisory Determinations

§ 746.101 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4806), which requires the NCUA Board to establish an independent intra-agency appeals process to review