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January 25th Webcast: NCUA Share Insurance Coverage: Expectations & Disclosures

Below are Q&A's drafted from questions submitted during the webcast. We have tried to answer the questions as presented, if you have follow-up questions – please contact us at compliance@nafcu.org. Please indicate your question is in reference to the January 25th webcast.

Note: The webcast presentation included an example of a Complex Revocable Trust situation – slide 18 of the PowerPoint - with an incorrect final amount for the share insurance coverage. The correct insured amount should have been \$1,250,000 rather than \$450,000. The Q&As below include a detailed example which accurately describes the share insurance coverage for a Complex Revocable Trust. Apologies for any inconvenience or confusion this error may have caused.

Revocable Trust Accounts

Question: *Does an account need to have “payable-on-death” (POD) or “in trust for” (ITF) in the account title in order to be covered under the revocable trust rules?*

Answer: NCUA does not require the account title to reflect that the account is POD or ITF. However, NCUA does require that the credit union's account records provide evidence of the member's intent for the funds to pass to one or more beneficiaries upon the member's death. Here is the underlying requirement from [12 C.F.R. 745.4\(b\)](#):

*“(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**

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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.” (Underlining/bold added, italics in original).

While NCUA does not require the account title to include POD or ITF, it might be something to consider as the account title provides clear, upfront evidence of the member’s intent while including the intent in the account records may not be as accessible or consistent.

Note: The FDIC requires banks include POD or ITF in account titles.

Question: *If our member opens an account without POD or ITF in the account title but lists a beneficiary, would this be an informal revocable trust account?*

Answer: Yes – if the member’s intent was clearly evidenced in the “account records.” NCUA indicates in their Share Insurance FAQs that “account records” include account ledgers, signature cards, share certificates, passbooks and certain computer records.

Question: *If our member lists their trust as the beneficiary on the account will NCUA insure this account as a revocable trust account?*

Answer: NCUA has indicated that accounts where a trust is listed as a beneficiary will be treated as a revocable trust and NCUA will look to the trust’s beneficiaries to determine the share insurance coverage. Here is from the preamble to a 2009 final rule on share insurance:

“Moreover, consistent with the interim final rule, where a payable- on-death (POD) account owner names his or her living trust as a beneficiary of the POD account, for insurance purposes, NCUA will consider the beneficiaries of the trust to be the beneficiaries of the POD account.” [74 Fed. Reg. 55748](#).

For the [share insurance calculator](#), NCUA’s instructions indicate that credit unions should input these accounts as living trust accounts with the settlor of the trust as the “owner” and the beneficiaries of the trust listed as the beneficiaries on the account.

“Step 5: Identify the ownership type for this account. If the account names beneficiaries, use either ITF/POD or Living Trust. Use ITF/POD when a formal trust is not involved and the beneficiaries are simply identified on the credit union's account records. Use Living Trust when the account is held in the name of a formal revocable trust (also called a family trust) or if the account names a revocable trust as the beneficiary. IRA includes all types of IRAs (traditional, Roth and Simple IRAs).

Important: Accounts that name a living or revocable trust as the beneficiary should be entered as if the account were held in the name of the revocable trust. The owner(s)

(grantor/settlor/trustor) of the trust should be identified as the owner(s) of the account, and the actual people or entities who receive trust assets after the death of the owner should be identified as beneficiaries of the account.”

The instructions and help for the share insurance calculator [can be found here](#).

Question: *One of the examples had an account: Joe POD Sue, Sally & Bill. The presentation indicated that the account would be insured for up to \$750,000. Shouldn't the coverage be up to \$1,000,000 as there are four persons and each would receive \$250,000 in coverage?*

Answer: No. The share insurance coverage for revocable trust accounts comes from the beneficiaries. The owner of the account does not also receive additional coverage solely due to the fact that they are the owner of the funds. Thus, Joe would receive up to \$250,000 in share insurance coverage for Sue; up to \$250,000 in coverage for Sally; and up to \$250,000 for Bill. He does not obtain an additional \$250,000 for himself.

Question: *If the beneficiary on our member's revocable trust account also has accounts at our credit union, is the insurance coverage impacted?*

Answer: No, your member's share insurance coverage for the revocable trust account is not impacted if the beneficiary maintains accounts at your credit union. Similarly, the beneficiary's accounts will be insured under the regular share insurance rules and are not impacted.

Complex Revocable Trust Accounts

Question: *On slide 18 of the presentation there was an example of a complex revocable trust account: account balance more than \$1,250,000 and more than five beneficiaries. The example indicated the account would be insured for \$450,000. I thought for revocable trust accounts the share insurance coverage was the “greater of” the \$1,250,000 or the aggregate amount of the interests of each beneficiary (up to \$250,000 each). Can you run through the example again?*

Answer: First off, you are correct. The insurance coverage for complex revocable trusts uses a “greater of” test when the account has more than \$1,250,000 and more than five beneficiaries. Here is from [12 C.F.R. 745.4\(e\)](#):

“(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 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.” (Emphasis added).

The “SMSIA” is currently \$250,000 representing the maximum insurance coverage.

Let’s run through the example again. Joe has an account “Joe POD Jane and 10 Non-Profits.” The account has \$2,000,000. The account records indicate that Jane will receive 90% of the funds upon Joe’s death and each non-profit will receive 1%.

This account falls under the “complex revocable trust” rules of 12 C.F.R. 745.4(e) because it has more than \$1,250,000 and more than five beneficiaries. Thus, the insurance coverage for the account will be the greater of five times \$250,000 (\$1,250,000) or “the aggregate amount of the interests of each different beneficiary named in the trusts, to a limit of [\$250,000] per different beneficiary.”

The interest of each non-profit is \$20,000 (1% of the account balance) and would provide Joe with \$200,000 in coverage when added together. Jane’s interest in the account is 90% (\$1,800,000) but her interest will be limited to \$250,000. Thus, the “aggregate amount” would be the \$20,000 for each non-profit (\$200,000) plus Jane’s \$250,000 for a total of \$450,000.

Because the complex revocable trust rules include a “greater of” test – we need to take an additional step to determine the share insurance coverage. The first part of the “greater of” test – five times the SMSIA (\$250,000) – results in \$1,250,000 while the second part – the “aggregate amount” – results in \$450,000. **By following the “greater of” language, Joe’s revocable trust account would be insured for \$1,250,000 leaving \$750,000 uninsured.**

Noninterest-bearing Transaction Accounts

***Question:** We have a question about the requirement to notify members if we alter their noninterest-bearing transaction account. Our credit union currently offers only noninterest-bearing transaction accounts – which are fully insured until December 31, 2012. If we added a new checking account which would offer dividends would we be required to notify members? What about if members switched from our noninterest-bearing transaction account to our new product that pays dividends?*

Answer: Great questions. Let’s tackle them separately. For the first question, the credit union would not be required to notify members when you add a new product that pays dividends. Your members with the existing noninterest-bearing transaction account are not being impacted by the creation of the new product. The terms and conditions on the existing noninterest-bearing transaction account are not being altered and, thus, no notice would be required to the members. Those accounts will remain fully insured until December 31, 2012.

For the second question, the credit union would not be required to notify members that voluntarily close their noninterest-bearing transaction account and open an account that pays dividends. The credit union has not made a change to the terms of the noninterest-bearing transaction account and, thus, no notice would be required.

That being said, it would be a good member service to notify members that their decision to close their noninterest-bearing transaction account and move toward a dividend-paying transaction account could impact their share insurance coverage. While not required, this notification could be important – especially for members with large balances.

Question: *In the example on slide 10 of the presentation, Joe has three accounts held in an individual capacity. Joe has \$100,000 in a share account, \$20,000 in a checking account and \$200,000 in a share certificate. The example indicated that Joe would be insured for up to \$250,000 – leaving \$70,000 uninsured. What if the checking account was a noninterest-bearing transaction account? Would that change the share insurance coverage?*

Answer: Yes. If Joe's checking account was a noninterest-bearing transaction account it would be insured separately from Joe's other accounts – even though it is also held in an individual capacity. Dodd-Frank changed the share insurance coverage for noninterest-bearing transaction accounts and requires that these accounts be fully insured and insured separately from other accounts until December 31, 2012. Thus, the \$20,000 in the noninterest-bearing transaction account would be fully insured separately than Joe's share and share certificate.

Joe would then have \$250,000 in insurance coverage for his individual accounts and an additional \$20,000 in coverage for the noninterest-bearing transaction account. Thus, Joe would have \$270,000 of insured funds and \$50,000 uninsured.

Note: Joe could move \$50,000 from his share account to his noninterest-bearing transaction account and become fully insured. Joe would then have \$50,000 in his share account, \$70,000 in his noninterest-bearing transaction account (checking) and \$200,000 in his share certificate. Joe would be fully insured. Of course, Joe might want to move more than \$50,000 to ensure any future dividends paid on the share and share certificate would also be insured.

Official Advertising Statement

Question: *Our main webpage includes the required Official Advertising Statement. Are we covered if a member accesses our homepage on their smartphone (iPhone, Android, Blackberry, etc.)? We are concerned that the disclosure will be very small on their phone.*

Answer: Unfortunately, the regulations were not written (or updated) with the current technology in mind. That being said, your underlying website has the proper disclosure that could be viewed by your member on their phone. If the member zooms in on the website, the official advertising statement would enlarge as well – which would bring your disclosure within the “clearly legible” and font size requirements.