

May 20, 2003

David B. Hutchins, Vice President, Human Resources
US Federal Credit Union
1400 Riverwood Drive
Burnsville, Minnesota 55337

Re: Permissibility of Self-Funded Short-Term Disability Plan.

Dear Mr. Hutchins:

You have asked if your federal credit union (FCU) may establish a self-funded short-term disability plan for its employees to supplement a long-term disability policy purchased from a third-party insurance company. You envision that the long-term disability policy would have a 90-day waiting period for benefits, and the short-term disability plan would provide disabled employees with 60% of their regular salary from day 6 through day 90 of the long-term disability policy's waiting period. As discussed below, we view this self-funded short-term disability plan as a permissible employee benefit for FCU employees under the FCU Act and National Credit Union Administration (NCUA) regulations.

An FCU, like any employer, must pay its employees, and the FCU Act and NCUA regulations allow for reasonable employee compensation and benefits. 12 U.S.C. §1761b(12) and 12 C.F.R. §701.19. An FCU may continue an employee's pay during reasonable periods of temporary absence associated with vacation, training, sickness, or injury. Our view is an FCU's continuation of partial pay for a disabled employee during the 90-day waiting period associated with a third-party long-term disability insurance policy is reasonable. We do not consider the self-funding of your short-term disability plan to be impermissible self-insurance as the short-term disability coverage is only for employee pay and the period and amounts of coverage are limited. See OGC Opinion Letter 95-1148, dated January 30, 1996 (attached).

We caution you about risks associated with short-term disability plans and suggest you consult with your examiner about the safety and soundness of your particular plan. For example, you believe that your short-term disability plan adds little in the way of potential liability to your FCU, in part because of low historical levels of disability absenteeism at your FCU. Your historical experience, however, may not be a good guide. The salary continuation guarantee created by a short-term disability plan introduces some incentive to claim disability and could lead to an increase in absenteeism. In addition, an increase in short-term disability absenteeism could lead to an increase in long-term disability claims, and you should ask your long-term disability insurer if it has objections to your short-term disability plan.

This opinion extends only to the permissibility of the STD plan under the FCU Act and NCUA regulations. We suggest you consult with private counsel on your plan's permissibility under other laws, such as the Employee Retirement Income Security Act.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/PMP:bhs
03-0356
Attachment