



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

April 1, 1992

Pension Program

Thomas E. Stanek,
Vice President
National CU Services, Inc.
P.O. Box 8063
Madison, Wisconsin 53708

Re: Federal Credit Unions Filing 5500 Reports
(Your February 18, 1992, Letter)

You asked whether federal credit unions ("FCUs") that provide pension programs to their employees are exempt from requirements for the filing of 5500 reports with the IRS. ~~To the best of our knowledge, FCUs are not exempt.~~ However, since NCUA does not have authority to interpret the Internal Revenue Code or ERISA, you should consult the IRS or the Department of Labor or a tax attorney for a definitive answer.

Background

National CU Services, Inc. ("National") provides fiduciary liability and pension bond coverage to credit unions. It is standard practice for National to obtain copies of 5500 statements from credit unions from time to time. Recently, one FCU indicated to National that the FCU was exempt from filing 5500 forms because of its federal charter. The FCU cited portions of the Internal Revenue Code and ERISA as the basis for its alleged exemption. You do not believe that the cited provisions exempt FCUs from 5500 filing requirements. You asked for our opinion on this issue.

Analysis

You forwarded, with your letter, copies of several sections from the Internal Revenue Code and the Pension Reform Act (ERISA). Although your letter does not specify which subsections of these laws the FCU is relying on, it appears to us

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that the FCU claims that its plan is exempt as a "governmental plan" under Section 412(h)(3) of the Internal Revenue Code.

The phrase "governmental plan" is defined in Section 414(d) of the Internal Revenue Code and Section 3(32) of ERISA as "a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." The FCU apparently argues that it is an instrumentality of the federal government. We do not agree.

Among the enclosures with your letter was a copy of Section 501(c) of the Internal Revenue Code. As you may be aware, FCUs are exempt from taxation under Section 501(c)(1) of the Internal Revenue Code as "instrumentalities of the United States." The FCU seems to assume that because FCUs are federal instrumentalities for taxation purposes, they are federal instrumentalities for purposes of the governmental plan exemption under ERISA and the Internal Revenue Code. That is not necessarily the case. ~~We examined this issue a number of years ago~~ and, after consultation with the IRS, the Department of Labor ("DOL") and the Pension Benefit Guaranty Corporation ("PBGC"), ~~determined that FCUs were in all probability not federal instrumentalities for purposes of the governmental plan exemption.~~ In our discussion with the IRS, it was concluded that Congress did not intend to exempt certain plans merely because the sponsoring organization was federally chartered. The position of the IRS, DOL and PBGC, at that time, was that unless the full taxing authority of a governmental agency is backing a plan, it would not qualify as a governmental plan. Under that test, a plan offered by an FCU would not qualify and therefore would not be exempt. However, we do not know whether that test was officially adopted by the IRS, DOL and/or PBGC. Nor do we know whether any of those entities ever adopted any official position on the issue of whether FCU employee pension plans are exempt as "governmental plans," or what their position is today.

In light of our earlier analysis of this issue, including our discussions with the IRS, DOL and PBGC, ~~we do not believe that FCU employee pension plans are "governmental plans."~~ Therefore, it is our belief that FCUs must file 5500 forms as required by the IRS.

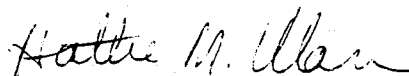
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We caution you, however, that our analysis is based on very limited knowledge of the Internal Revenue Code and ERISA. Furthermore, an NCUA interpretation of either the Internal Revenue Code or ERISA is not binding on the IRS, DOL and/or PBGC. For that reason, we strongly recommend that you consult with those agencies for a definitive opinion on this issue.

Sincerely,



Hattie M. Ulan
Associate General Counsel

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