



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

June 8, 1992

Gerald L. Jacobs, Esq.
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Resolution Trust Corporation
801 17th Street, N.W.
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Re: Proposed Amendment to ~~Bankruptcy~~ Code
(Your May 4, 1992, Letter)

Dear Mr. Jacobs:

You requested the NCUA's support for an amendment to the United States Bankruptcy Code. The RTC proposes to add a new Section 109(b)(4), precluding "a subsidiary, an affiliate, a corporation, or a partnership, owned or controlled directly or indirectly by an insured depository institution" from becoming a debtor under Chapter 7 or Chapter 11 of the Bankruptcy Code, without prior approval by the appropriate federal regulatory agency. We would request a few changes in the proposal before we could give our support.

Unlike other financial institutions, federal credit unions ("FCUs") do not own or control "subsidiaries" or "affiliates" per se. The entity most closely resembling a subsidiary or affiliate of an FCU is a credit union service organization ("CUSO"). CUSOs are not subject to direct regulation by NCUA; instead, NCUA regulates FCU loans to and investments in CUSOs. CUSOs may be corporations, partnerships, or any other business entities allowed under the law of the state in which they are organized.

We question whether CUSOs would be covered by the amendment as drafted. While a CUSO might be within the definition of "corporation" or "partnership" provided in Section 101(9) of the Bankruptcy Code, there may be instances in which it would take another organizational form. As for the definition of "affiliate" in Section 101(2), we doubt that a CUSO or any entity owned or controlled by an FCU or other insured depository institution would meet that definition, since an affiliate is defined in terms of its relationship to a debtor, and Section 109(b)(2) precludes both FCUs and insured depository institutions from being debtors.

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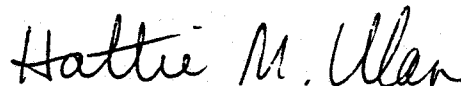
Neither "subsidiary" nor "partnership" is defined in the proposed amendment. Will definitions of these terms be added? If so, we would suggest that the word "subsidiary" be defined to include "a credit union service organization as defined in Section 107(7)(I) of the Federal Credit Union Act, 12 U.S.C. 1757(7)(I), and Section 701.27 of the National Credit Union Administration Rules and Regulations, 12 C.F.R. §701.27." In the alternative, CUSOs could be added to the list of entities in proposed Section 109(b)(4).

We also suggest that the second paragraph under Note be revised to reflect the fact that NCUA (whether in its capacity as regulator, conservator or liquidating agent) is included in the definition of "Federal depository institutions regulatory agency" under Section 101(3), and that NCUA's jurisdiction under the proposed amendment would extend to all "insured credit unions" (see, Section 101(35)(B)), including not only FCUs but federally-insured, state-chartered credit unions ("FISCUs").

Lastly, we would like to see some discussion, in the Comment, of the proposed amendment's effect on NCUA and credit unions (both FCUs and FISCUs), along the lines of the discussion relating to the RTC and FDIC.

I hope that we have been of assistance. If you have any questions, please feel free to call me or Staff Attorney Meg Suuberg of this Office.

Sincerely,



Hattie M. Ulan
Associate General Counsel

cc: Robert Loftus, Director, PACA

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