

**Verne, B. Michael**

7A(C)(4)

**From:** [REDACTED]  
**Sent:** Friday, April 13, 2012 2:48 PM  
**To:** Verne, B. Michael  
**Subject:** HSR Act (c)(4) Exemption

Mike –

I wanted to confirm that the statutory (c)(4) exemption for “transfers to or from a Federal agency ...” applies to an acquisition of assets of a failed credit union that has been placed into a conservatorship under the supervision of the National Credit Union Administration (“NCUA”).

The transaction will be between NCUA, as Liquidating Agent, and the buyer (another credit union), who will acquire substantially all assets of the credit union in the NCUA conservatorship (largely consisting of consumer loans, residential mortgage loans and cash). No commercial loans will be acquired. The buyer will also assume all the deposits of the failed credit union, and the NCUA will provide financial assistance to the buyer in the form of cash.

This transaction closely tracks several in which the PNO has agreed that (c)(4) exempts sales from FDIC and RTC receiverships or conservatorships (*e.g.*, Interpretations 1011008 (FDIC), 9101007 (RTC), 9205007 (RTC), 9011011 (RTC)). They follow on Interpretation 29 in the 1991 edition of the Premerger Notification Practice Manual, which states that “[w]hen RTC declares a conservatorship and takes over a financial institution, the sale of the financial institution, its assets, its subsidiaries or assets of its subsidiaries will be exempt.” Interpretation 12 in the current edition is consistent with that analysis.

NCUA is a federal agency, governed by a board that is appointed by the President and confirmed by the Senate. Its conservatorships for failed institutions are essentially identical to what the FDIC does and the RTC did.

However, because I was not able to locate any informal interpretations in the FTC database specifically addressing the application of exemption (c)(4) to NCUA-supervised sales, I thought I should confirm its applicability with you.

I know the PNO has also offered an alternative analysis—that the FDIC, RTC and other federal government agencies are not entities under 801.1(a)(2) so that sales by them are not covered by the statute. Interpretations 11 & 12 in the current edition of the Manual explain that reasoning. If that is now the preferred analysis, can you confirm it applies to an NCUA sale of an institution’s assets in conservatorship, and that there is no reportable transaction here?

Thanks. As always, your assistance is much appreciated.

[REDACTED]

[REDACTED]

DO NOT CONCERN

AGREE -  
EXEMPT UNDER 7A(C)(4)  
NO ACQUIRED PERSON  
(SEE PT 6 OF ATTACHED)

Rm 4/17/12

1 – The government is not an entity as defined in § 801.1(a)(2)

2 – Therefore, it cannot be an ultimate parent entity as defined in § 801.1(a)(3)

3 – Therefore, it cannot be a person as defined in § 801.1(a)(1) – “person means an ultimate parent entity and all entities which it controls directly or indirectly”

4 – Therefore, the language in § 801.1(c) “A person holds all assets and voting securities held by the entities included within it; in addition to its own holdings, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly” – cannot apply to the government

5 – Therefore, if an entity (i.e., a corporation or non-corporate entity engaged in commerce) owned by the government buys or sells anything, it is its own ultimate parent entity and the transaction would not be covered by 7A(c)(4), because the government does not hold the assets, voting securities or non-corporate interests that the entity is buying or selling

6 – Conversely, if the government buys or sells assets directly, the transaction is not reportable because there is either no acquiring (if the government is buying) or acquired person (if the government is selling).