

October 16, 1996

Irv Ackelsberg, Managing Attorney
Community Legal Services, Inc.
3638 North Broad Street
Philadelphia, PA 19140

Re: Secondary Capital (Your September 28, 1996, Letter)

Dear Mr. Ackelsberg:

You represent an insolvent low-income community development credit union that wants to accept "secondary capital" under NCUA Regulation Section 701.34. The credit union is also seeking assistance from the NCUA under Section 208 of the Federal Credit Union Act.

It is our opinion that an insolvent credit union may not solicit or accept secondary capital accounts. By definition, secondary capital "must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings." 12 C.F.R. §701.34(b)(7). As an insolvent credit union, the alleged secondary capital would cease to exist the moment it was received by the credit union. The credit union would be compelled to apply these funds to cover their deficit. In essence, the credit union would be accepting a gift regardless of the donor's knowledge. The credit union may also be subjecting itself to civil as well as criminal actions for fraud and misrepresentation. You are advised to let your client know that they should not solicit secondary capital until they are solvent.

Sincerely,

Richard S. Schulman
Associate General Counsel

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