

## Insights

### Bankruptcy Court Holds Federal Credit Union to be Governmental Unit for Purposes of the United States Bankruptcy Code

January 6, 2021

By: C. Daniel Motsinger

The United States Bankruptcy Court for the District of New Mexico recently held that a federal credit union chartered under the Federal Credit Union Act, 12 U.S.C. §§ 1752, *et seq.*, constitutes an “instrumentality of the United States” included in the definition of a “governmental unit” under the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (“Bankruptcy Code”), qualifying federal credit unions for the longer 180-day deadline to file bankruptcy claims. *In re Marquez*, Case No. 19-10284-j7 (Bankr. D. N.M. Sept. 30, 2020).

The chapter 7 trustee in *Marquez* objected to the timeliness of a proof of claim filed by Sandia Laboratory Federal Credit Union (“SLFCU”). Under the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), creditors in a chapter 7 case must file proofs of claim not later than 70 days following the filing of the bankruptcy case (or 90 days after notice from the clerk of the bankruptcy court, if the case initially was a “no asset” case); however, “governmental units” are given 180 days after the filing of the bankruptcy case to file claims. In this regard, Bankruptcy Rule 3002(c)(1) mirrors Bankruptcy Code § 502(b)(9), which essentially states the same.

In *Marquez*, SLFCU filed its proof of claim three days after the 90-day deadline, but well before the 180-day deadline established by 11 U.S.C. § 502(b)(9) and Bankruptcy Rule 3002(c)(1). SLFCU contended that as a federally chartered credit union, SLFCU qualified for the longer 180-day deadline available to governmental units.

Following a detailed analysis of the relatively sparse case law in this area, the *Marquez* bankruptcy court ruled that “[b]ecause of the important governmental functions federal credit unions perform, combined with their extensive federal regulation, immunity from state taxation, and federal charters . . . a federal credit union is an ‘instrumentality of the United States’ included in the definition of ‘governmental unit’ under [Bankruptcy Code] § 101(27).” Accordingly, the court held that “SLFCU, as a federal credit union, is entitled to the extended claims bar date under [Bankruptcy Code] § 502(c)(9) applicable to governmental units,” so that SLFCU’s claim was filed timely.

Takeaway: In making its ruling, the *Marquez* court noted that apparently only one other bankruptcy court had found that a federal credit union was entitled to the 180-day proof of claim deadline applicable to governmental units. To this end, the *Marquez* court mused that “[f]ederal credit unions offer many of the same types of services as other financial institutions [; m]oreover, treating federal credit unions as governmental units does not appear to



further the purpose of a claims bar date." Nevertheless, the *Marquez* court still ruled in favor of SLFCU for the reasons noted above. However, because *Marquez's* reach is limited to the District of New Mexico and *Marquez* appears to be only the second bankruptcy court to reach this conclusion, prudent federal credit unions should strive to meet the earlier non-governmental unit proof of claim bar date, rather than hoping yet another court will accept *Marquez's* holding that a federal credit union is entitled to the longer 180-day proof of claim bar date.

If you would like to learn more about our Creditors' Rights and Bankruptcy Professionals, please [click here](#).