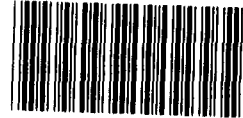




United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-250439



147998

November 18, 1992

The Honorable Patricia Schroeder
House of Representatives

Dear Mrs. Schroeder:

This letter is in response to your July 17, 1992, inquiry concerning the impact of the Resolution Trust Corporation's (RTC) restructuring and downsizing of its Professional Liability Section (PLS). Your letter raised three questions, which are addressed below.

1. In how many savings and loan cases did statutes of limitations expire between the time the RTC initially dismissed lawyers and the reversal of that decision?

Between May 21, 1992, when RTC issued letters informing PLS attorneys of their scheduled transfer to the Federal Deposit Insurance Corporation, and July 16, 1992, when RTC's Legal Division suspended the transfers, the 3-year Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) statute of limitations expired for 18 of the more than 700 financial institutions under RTC control.¹ For each institution, it is possible for RTC to file several types of civil professional liability claims, including claims against former directors, officers, attorneys, and accountants.²

¹Generally, the statute of limitations for tort claims, as stipulated in FIRREA, is for 3 years. It begins to run on the date of appointment of RTC as conservator or receiver, or the date on which the cause of action accrues, whichever is later. Actions may also be brought, in certain circumstances, beyond this 3-year period. First, actions may also be brought under the limitations period applicable under state law. Second, RTC may enter into tolling agreements that temporarily extend the statute of limitations, as it did with 4 of the 18 thrifts.

²We are using the term claim synonymously with case.

GAO/GGD-93-5R, RTC PLS Restructuring

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As of October 8, 1992, RTC had filed a claim in connection with 8 of the 18 institutions before the FIRREA statute of limitations expired. RTC obtained tolling agreements in connection with four other institutions, and settlement negotiations were ongoing concerning each of them as of October 8, 1992. RTC closed out its investigations without filing a claim in the remaining six institutions.

RTC filed at least 1 claim in 8, or approximately 44 percent, of the 18 institutions in which the FIRREA statute of limitations expired between May 21 and July 16, 1992. This percentage could rise if claims are filed pursuant to the four tolling agreements. The percentage of institutions in which at least one claim was filed is comparable to RTC's previous performance: as of May 1992, RTC had filed claims in about 41 percent of the thrifts in which the statute of limitations expired during the first 4 months of 1992.

2. In how many more cases will statutes of limitations expire by the time the RTC restores previous staffing levels?

As we testified in June 1992, RTC has been slow to add attorneys to pursue professional liability claims.³ Even before the restructuring and downsizing plans were announced in March 1992, RTC was operating with approximately half of the professional liability attorneys that RTC officials had previously estimated they needed.

Between March 1, 1992, and July 16, 1992, five of seven senior PLS managers left RTC or were reassigned. During the same period, about 43 percent of all professional liability attorneys left PLS or were subject to reassignment notices. In September of this year, RTC increased the PLS authorized staffing level from 79 to 91 attorney positions. PLS plans to have all the positions filled with either the individuals in place or offers in-hand by early 1993. As of September 30, 1992, RTC had 71 PLS attorneys.

About 80 institutions have statute of limitation periods that have expired or will expire between July 17, 1992, and December 31, 1992. There are about 390 institutions for which RTC must make decisions on whether to file claims between November 1992 and the end of 1994; approximately 210

³Bank and Thrift Failures: FDIC and RTC Could Do More to Pursue Professional Liability Claims (GAO/T-GGD-92-42, Jun. 2, 1992).

of those institutions have statute of limitation periods that will run out in 1993.

3. Is it possible to quantify the potential amount of money the RTC could have recouped if all those cases could have been successfully tried?

It is not possible to quantify the potential amount RTC could have recouped if all those cases could have been successfully tried. This question raises two issues: the possibility of filing claims in connection with all failed institutions and the amount of money to be obtained through those claims, if successful.

First, according to PLS attorneys, it would not have been possible to have successfully tried claims in all of the thrifts for which the statute of limitations expired. The attorneys in PLS did not suspect wrongdoing in all of the institutions with statute of limitation periods expiring between May 21 and July 16, 1992. According to quarterly attorney reports from the last quarter of 1991 and the first quarter of 1992, wrongdoing on the part of directors, officers, or other professionals was suspected in 15 of the 18 institutions.

Even in those matters in which attorneys suspect wrongdoing, RTC often has sound reasons for not filing claims. For example, the particular activity may not meet legal or evidentiary standards or the claim may not be cost-effective. Thus, it would be incorrect to assume that there should be a claim filed in connection with all instances of suspected wrongdoing.

Second, it is impossible to quantify the amount of money that could be recovered if claims were filed in all 18 institutions. Clearly, in cases in which no wrongdoing was discovered, there is no appropriate claim amount. In those instances in which RTC pursues a claim, the damages awarded may differ from the claim amount for a variety of reasons. For instance, the damages associated with the transactions RTC includes in a lawsuit may fluctuate as RTC collects on loans or sells assets related to the transactions. Moreover, the majority of PLS cases have been settled, often for a significantly smaller amount of damages than that stated in the claim. While the total amount of the eight claims that have been filed is \$1,135,000,000, it would be very difficult, if not impossible, to produce realistic estimates of the settlement or award amount.

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This work is being coordinated by Edward Stephenson of my staff. If you have any further questions, you may contact him on 566-0026.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Harold A. Valentine". The signature is written in dark ink and is positioned above the typed name.

Harold A. Valentine
Associate Director, Administration
of Justice Issues

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