

July 6, 2009

Jeff Hampton
Chief Financial Officer
Operating Engineers Local Union No. 3
Federal Credit Union
P.O. Box 5073
Livermore, CA 94551

Re: Department of Labor Reporting Requirement for Labor Trusts.

Dear Mr. Hampton:

You have asked if a federal credit union (FCU) is obligated to provide financial information to its sponsor labor union (Union) so the Union can file an annual Department of Labor (DOL) report for labor trusts. An FCU is not a trust within the meaning of the applicable DOL rule. Accordingly, an FCU should not provide financial information to its sponsor Union to file an annual financial report to the DOL.

Recently, the DOL issued a rule requiring labor unions to file a disclosure, Form T-1 (T-1), for any trust “to which they contributed money or otherwise provided financial assistance or over which they exercised managerial control.” See 73 Fed. Reg. 57412, 57412 (Oct. 8, 2008). Under the rule, three elements determine whether an entity is a “trust” for the purposes of the T-1 filing. First, the trust must have been “created or established by the labor organization,” or the “labor organization appoints or selects a member of the trust’s governing board.” *Id.* at 57449. Second, the primary purpose of the trust must be to provide benefits to the members of the labor organization. *Id.* Third, the labor organization must select a majority of the board of directors or comprise 50 percent or more of the trust’s receipts over the course of the year. *Id.*

An FCU is not a trust for the purposes of the T-1. While the members of a labor union may make up or be part of an FCU’s field of a membership, an FCU cannot be “created or established” by a labor union. NCUA has sole authority to establish an FCU pursuant to the Federal Credit Union Act (the Act). 12 U.S.C. §1754. Further, a labor union has no authority to “appoint or select” a member of an FCU’s governing board; an FCU’s board of directors is elected by the credit union membership. 12 U.S.C. §1761(a). Thus, the first element is not met.

Additionally, the second element is not satisfied because the primary purpose of an FCU is “promoting thrift among its members and creating a source of credit for

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provident or productive purposes," 12 U.S.C. §1752(1), not to be a conduit for labor union benefits.

Finally, the Act requires directors to be elected by the FCU's members, not the sponsoring organization. 12 U.S.C. §1761(a). Assuming the sponsoring Union is itself a member of the FCU, it cannot select a majority of the board because no member has more than one vote irrespective of the number of shares held. 12 U.S.C. §1760. Also a Union, as a member, is unlikely to comprise 50 percent or more of the FCU's receipts over the course of the year. Accordingly, the third element of the DOL rule is not met.

An FCU is a federally chartered financial institution and not a trust within the definition in the DOL rule; an FCU should not provide financial information to a sponsor Union to file a T-1.

If you have further questions, please feel free to contact Staff Attorney Pamela Yu or me.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

GC/PWY:bhs
09-0547