

May 2, 2005

Mr. Bruce O. Jolly, Jr.
Venable LLP
575 7th Street, NW
Washington, D.C. 20004-1601

Re: XCEL Federal Credit Union's Request to Serve a Trade, Industry or Profession (TIP) Single Occupational Common Bond.

Dear Mr. Jolly:

You have asked NCUA's Region II Director to reconsider XCEL Federal Credit Union's request to convert to a TIP covering employees who work regularly in quasi-governmental agencies, and federal, state, and local government agencies in various counties in New Jersey and New York. We have considered the new information you provided in your letter to Edward Dupcak, NCUA Region II Director, dated March 8, 2005, but we continue to believe the proposed description is too broad. A TIP of employees in the state and local government industry or, alternatively, a TIP of employees in the federal government industry is permissible. The quasi-governmental employees of the Port Authority of New York and New Jersey (PANYNJ) are a distinct, unique category and could either be part of a state and local government industry TIP, or part of another type of TIP, such as a port operations industry TIP.

XCEL Federal Credit Union requested a TIP that would include quasi-public governmental employees in addition to persons working in the state, local, and federal government industry. We have reviewed whether the proposed wording meets the single occupational TIP common bond requirements of NCUA's Chartering and Field of Membership Manual (Chartering Manual). NCUA Interpretive Ruling and Policy Statement (IRPS) 03-1. You have cited a passage from NCUA's 1980 Chartering Manual to support your client's proposal, but we do not believe the proposed wording meets NCUA's current requirements.

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. Chartering Manual, p. 2-1. NCUA permits a person's membership eligibility in a single occupational common bond group to be by employment in the same TIP. Id., p. 2-2. A TIP common bond "can include employment at any number of corporations or other legal entities that - while not under common ownership - have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business." Id., pp. 2-3 to 2-4.

A proposed TIP field of membership description should demonstrate a narrow commonality of interests of those working within a specific trade, industry, or profession to establish “one group that has a common bond of occupation.” 12 U.S.C. §1759(b)(1); Chartering Manual, p. 2-4. The preamble to the Chartering Manual provides that “while there is some latitude in defining trade, industry, or profession, the group must have a close nexus.” 68 Fed. Reg. 18333, 18336 (April 15, 2003).

NCUA previously approved a federal credit union’s request to serve a government TIP single occupational common bond in August 2004. That government TIP was defined as employees who work regularly in the state and local government industry in eight Michigan counties. In that case, we agreed with the concept that persons or entities working in the state and local government industry share a single occupational common bond by virtue of producing similar products, providing similar services, or participating in the same type of business, and also share a nexus, a commonality of interest or characteristic, related to providing state and local public services.

The common bond among employees of state and local government is that they are all public employees whose various jobs and professions are tied together as public service provided by a government to the state’s citizens. The state and local government employees are a distinct entity with one occupational common bond, separate from both federal employees and also from private sector employees who may perform similar functions. We note that a labor union such as the American Federation of State, County and Municipal Employees (AFSCME) is an example of a group comprised primarily of persons in the state and local government industry TIP.

Federal government employees have a separate occupational common bond from state and local government employees as evidenced by, for example: federal employees’ participation in the federal retirement and insurance plans; the portability of seniority and leave when switching from one federal agency to another; administration from common agencies, such as Office of Personnel Management; and representation from common organizations such as the National Association of Retired Federal Employees and the National Federation of Federal Employees.

We believe the quasi-governmental PANYNJ employees could be part of a port operations industry TIP, or a TIP comprised of state and local government employees. According to PANYNJ’s website, <http://www.panynj.gov>, it is a bistate agency that “manages and maintains the bridges, tunnels, bus terminals, airports, PATH and seaport that are critical to the bistate region’s trade and transportation capabilities.” PANYNJ is a financially self-supporting public agency that receives no tax revenues from any state or local jurisdiction and has no power to tax. The governors of New York and New Jersey each appoint six

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members to the PANYNJ's board of commissioners, subject to each state's senate approval. The board of commissioners appoints PANYNJ's executive director to carry out the agency's policies and manage the day-to-day operations. We believe that even though the compact creating the bistate agency received congressional approval, it is not a federal agency. Due to the role of the two states in its governance, its employees are public employees of a bistate agency and would fit within a state and local government TIP, separate from one for federal government industry employees.

Finally, according to NCUA's Chartering Manual, XCEL Federal Credit Union can appeal the denial of its TIP request to the NCUA Board. Such an appeal must be sent to the NCUA Region II Office within 60 days of the date of denial, and must address the specific reason or reasons for the denial. The NCUA Region II Director will then forward the appeal to the NCUA Board. NCUA Central Office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation. Chartering Manual, p. 2-8.

Sincerely,

/s/

Michael J. McKenna
Deputy General Counsel

GC/RMM:bhs
05-0337
cc: Edward Dupcak, Region II Director