



June 30, 2014

Gerard S. Poliquin, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

**RE: Chartering and Field of Membership Manual, 79 FR 24623-01**

Dear Mr. Poliquin,

On behalf of the Credit Union Association of New York, I am writing this letter to comment on NCUA's proposal amending the Chartering and Field of Membership Manual in relation to the membership of associations. The regulation empowers NCUA to deny membership to associations it determines are formed primarily for the purpose of expanding a credit union's field of membership and adds to the criteria used in determining whether an association qualifies for membership in a credit union. CUANY has several concerns with this proposal.

CUANY supports the goal of existing law and regulation: Sham associations should not be eligible for credit union membership. An association that does not advance any of the goals for which it was ostensibly created does not aid the communities in which it operates. Furthermore, a sham association cannot be said to be a distinct "member." By authorizing NCUA to consider, among other things, whether an association holds meetings, sponsors or holds events, abides by membership requirements and mandates the payment of dues, existing regulation gives NCUA all the power it needs to approve only legally distinct associations for credit union membership.

In contrast, this proposal makes it more difficult for valid associations to be included within a credit union's field of membership. Furthermore, it gives regulators too much discretion in determining whether an association meets membership requirements, while providing too little guidance to credit unions as to how to comply with this requirement.

**NCUA should determine whether or not an association is a distinct organization, rather than speculate as to why it is formed.**

NCUA's goal in amending the Chartering Manual is to root out associations that it determines are created as a means of expanding credit union membership. NCUA does not explain where in law it is authorized to divine the motivation of an association before qualifying it for membership or why a credit union's motivation in supporting an association is relevant so long as it is a distinct legal entity.

*Leading the Way*

Specifically, the proposal adds a new section III.A.1.a to the charting manual stipulating that NCUA will not grant associational membership to any association it determines was formed “[p]rimarily for the purpose of expanding credit union membership.” If an association does not meet this “threshold test” then NCUA will not even consider whether it satisfies criteria for membership in a credit union. In addition, whereas specific criteria are used in determining whether an association meets common bond requirements, no such criteria are provided to guide NCUA’s primary purpose determination aside from the requirement that associations be in existence for at least one year before becoming eligible for credit union membership.

If these amendments are promulgated, credit union ABC might start an organization promoting support of a zoo with the hope of gaining additional members; credit union DEF might start an identical organization with no desire to increase membership but rather to support its membership’s commitment to preserving the same zoo. Provided that both associations satisfy the NCUA’s existing criteria for associational separateness, the statute is working exactly as intended: The associations are advancing worthwhile goals and the local community is benefiting from these efforts. Nevertheless, NCUA would deny membership to one credit union while approving it for the other. This arbitrary use of powers based on the viewpoint of an association’s members is of questionable legality. NCUA is fast tracking the membership of groups of which it approves, such as church groups and alumni organizations, while imposing heightened scrutiny on groups formed for reasons it considers suspect.

This is problematic for several reasons. It means that a perfectly valid association may be denied membership in a credit union even if it maintains a membership list, sponsors activities, requires membership dues and has frequent meetings. In addition, since NCUA is not providing any criteria for determining what constitutes an association’s primary purpose, perfectly valid associations will have no way of knowing how to satisfy NCUA membership requirements. Instead, individual regulators will decide on a case-by-case basis which associations violate the regulations and which ones do not based on their own personal judgments.

Furthermore, the amount of time an association has been in existence is totally irrelevant to whether or not it qualifies for membership. Under NCUA’s proposal, associations formed in response to the recent unrest in the Ukraine, or the recent sectarian violence in Iraq would not qualify for membership. Similarly the CUANY opposes the criterion that associations maintain a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the FCU. There are many strong associations that share space with a credit union. This criterion won’t deter the creation of sham associations so much as make it more difficult for legitimate ones to operate.

There are aspects of the proposal that CUANY supports. The intent of the regulations has always been to allow distinct associations to be qualified credit union members. Clearly delineating the criteria to be used in ascertaining whether or not an association is a distinct legal entity is in the interest of both the industry and NCUA. Consequently CUANY supports consideration of several of the factors NCUA will analyze in determining if corporate separateness exists between an association and an FCU, including whether or not:

- Their respective business transactions, accounts, and records are intermingled;
- Each observes the formalities of its separate corporate procedures;
- Each is adequately financed as a separate entity in light of normal obligations reasonably foreseeable in a business of its size and character; and
- Each is held out to the public as a separate enterprise.

We also support NCUA's proposal to fast track organizations that have traditionally been given associational membership status such as alumni and ethnic organizations. These changes will make it easier for some credit unions to take in new members.

With so many regulations being implemented by credit unions, now is not the time to be imposing additional requirements unless they address core industry concerns. Existing regulations ensure that that an association is a distinct legal entity for purposes of credit union membership. There is no need for placing additional constraints on credit unions, many of which have fields of membership that include associations.

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with a large initial "W" and "J" and a stylized "Mellin".

William Mellin  
President/CEO

