

February 7, 1996

Steven R. Bisker  
616 South Washington Street  
Alexandria, Virginia 22314

Re: Consented Overlap and Irrevocable Power of Attorney  
(Your December 19, 1995, Letter)

Dear Mr. Bisker:

You have asked whether NCUA's chartering and field of membership policy permits two federal credit unions to consent on membership overlap issues without NCUA involvement. It is NCUA policy to make "every reasonable effort" to avoid a membership overlap. Chartering Manual, Chapter 1, Section IV.B.1. The two credit unions in question have not asked their NCUA regional office to approve the intentional overlap. If approved by the NCUA, the agreement between the two FCUs will be permissible except for the use of the power of attorney.

#### **ANALYSIS**

FCU #1 wants to add an employee group to its field of membership that is currently being served by FCU #2. The two credit unions are attempting to resolve the overlap issue between themselves before seeking NCUA approval. FCU #1 has been asked to sign an agreement with FCU #2 in which FCU #2 will consent to the overlap of its members. The agreement provides that the consented overlap applies only to those employees of the corporation who work within a 20 mile radius of FCU #1's main or branch office. The agreement also contains other restrictions on FCU #1 and requires the credit union to sign an irrevocable power of attorney. The power of attorney would authorize FCU #2, "TO ACT in [FCU#1's] name, place and stead with respect to communications and correspondence with the [NCUA]. . . concerning the deletion of employees of X Management Inc. from the Field of Membership." The power of attorney would allow FCU #2 to submit to NCUA a charter amendment to delete the overlapped employee group from FCU #1's field of membership in the event FCU#1 breaches the agreement.

Chapter 1, Section IV.B.1, of the Chartering Manual states that:

When a potential overlap situation does arise, officials of the involved credit unions must attempt to work the problem out between or among themselves. . . . If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

The agreement meets the requirements of the Chartering Manual. Our concern is with the irrevocable power of attorney. As you recognized, Article XXI, Section 1 of the FCU Bylaws states that an amendment to the charter may be requested [of NCUA] by a two-thirds vote of the directors. This power cannot be delegated to an outside entity. As an acceptable alternative, the agreement could require FCU #1 to include an exclusionary clause in its field of membership amendment to address the service issue. FCU #2 will have sufficient remedies if FCU#1 breaches the agreement.

Sincerely,

Richard S. Schulman  
Associate General Counsel

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