



CREDIT UNION MEMBERSHIP FUNDAMENTALS


February 9, 2023 | Tim Oppelt, Partner
2023 SW&M Hybrid Legal Update Seminar

1

Disclaimer

These materials were prepared by the attorneys of Styskal, Wiese & Melchione, LLP. Although this presentation was prepared with care, it is not designed to be a complete or definitive analysis of the law in this area. This presentation was prepared with the understanding that it reflects the authors' perception of the state of the law as of the submission date to the conference organizer. Furthermore, the information contained in this presentation is not intended to constitute and should not be received as, legal advice and does not in any way create an attorney-client relationship.


If you have any questions, or require further information on these materials, please do not hesitate to call our office at: (818) 241-0103.



2

Roadmap

- FOM & charter strategy & trends
- Developments in admission/expulsion processes



3

FOM, CHARTER STRATEGY & TRENDS



4

FOM Reminders

- California charter:
 - Mix and match communities, employers, associations
- FCU: Pick One
 - Single Community
 - TIP (Industry)
 - Multiple Common Bond: Mix and match employers, associations
 - Plus potential for “underserved”



5

5

Underserved / Low Income / CDFI What am I?

- Low Income:
 - 50% +1 members meet income requirements
 - NCUA tests for it (but can also take statistics in house)
 - Benefit: MBL cap, nonmember deposits, sub-debt as capital
 - Detriment: If use the above, need an exit plan
- CDFI:
 - Apply to Treasury to be eligible to apply for grants
 - Benefit: Eligibility for grants, government programs like ECIP
 - Detriment: “strings” of federal contractor status when you get money



6

6

Underserved = Multiple Common Bond + Community

- Requirements
 - Meets the “well defined local community” test
 - Under 2 million people
 - Census tract level test for poverty measures, and 85% live in qualifying tracts
 - Contiguous census tracts
 - Few enough bank/CU branches
 - Unmet financial needs (that you plan to answer)
- OR – Rural District sub in for “community”
 - Under 1 million
 - Under 100 people per square mile
 - In HQ state or a state contiguous to HQ state



7

7

Underserved Inside Scoop

- New software providers selling a lot
 - “Gerrymanders”
- Geocoding software makes it easier to use
- Extended NCUA application process (over 6 months)

- Maxine Waters bill?
 - Unlikely any time soon



8

8

Associations in Multiple Common Bond & California CUs

- “Members of [Group] in accordance with Bylaws of [date]”
- 20+ year trend – flexible associations
- Has the Back Door become the Front Door?
- Frequent Flyers – ACC and FFA
- California CUs – pay attention to jurisdiction in application process



9

9

Risk Reminders

- FOM is a math equation
 - “Employees of” – no members
 - “Members of” – no employees unless it says so
 - Pay attention for unions
 - “Who work in or are paid from” – Check!
- On your list, but not on regulators?
 - Community charter, but maintain “SEG list” internally
 - What about remote employees?
- FOM needing administration
 - “Employees of Members of Chamber of Commerce” for CACUs
- Concentration Risk



10

10

Memberization Process

- Membership Application
 - FCU – affirmative act (“subscribe to a share”)
 - More flexibility for CACU? (untested)
- \$kin in the Game
 - FCU – Deposit Par Share
 - CACU – three options: share, fee, or (rare) buy membership
 - one or two, but not none
 - What’s the minimum amount?
 - Who has to pay it?
- Qualification for FOM



11

11

Memberization Pitfalls & Exam Items

- When did they join?
 - Association with Bylaws – join association by qualify + pay fee
 - CU pays fee, but doesn’t send until batch at end of month
 - Member didn’t join association yet, so didn’t qualify for CU membership
- Who signed off?
 - Membership Officer
- Adequate Policies?
 - CACU “Membership Plan”
 - Anyone – “promotion for membership” paying fee
 - CA DFPI questioning?
- Discrimination?



12

12

DEVELOPMENTS IN ADMISSION/EXPULSION PROCESSES



13

13

Expulsion Developments: CA

- CA AB269 – Effective only with Bylaw and Policy Changes
- Expulsion changes
 - Expulsion by Membership Committee (as delegated in a Membership Plan)
 - Appeal right only to Board (instead of members)
 - Limited areas for immediate expulsion
 - Violent members
 - Due process after the fact
- Inactivity changes
 - Inactive = no loan + below par share
 - Tell them they are inactive and what they can do to come back
 - Can interpret as having withdrawn if escheat or inactive too long



14

14

Expulsion Developments: CA

- CA AB269 – Effective only with Bylaw and Policy Changes
- Expulsion changes
 - Expulsion by Membership Committee (as delegated in a Membership Plan)
 - Appeal right only to Board (instead of members)
 - Limited areas for immediate expulsion
 - Violent members
 - Due process after the fact
- Inactivity changes
 - Inactive = no loan + below par share
 - Tell them they are inactive and what they can do to come back
 - Can interpret as having withdrawn if escheat or inactive too long



15

15

Expulsion Developments: Federal

- Credit Union Governance Modernization Act
- New paradigm only effective after:
 - NCUA Rulemaking
 - Bylaw Change
 - Policy Enactment
 - Communication to All Members
- Substance:
 - Expulsion on 2/3 vote of a quorum of the Board
 - Limited to specific “cause” definitions
 - Requires notice by specific means, clock starts on receipt
 - Requires phone or electronic hearing (not writing), and another vote



16

16

FCU Expulsion Plans of Action

- Wait for the Final Rule, then Amend Bylaws
 - Save any Bylaws reviews until at least Q3 2023
- Likely Additional Needed Actions:
 - Put expulsion policy in TISA
 - If permitted by NCUA, add to TISA that causing a loss is a violation of the membership agreement
 - If permitted by NCUA, add any other expulsion criteria desired to TISA
(So, save FCU account agreement updates until late 2023)



17

17

QUESTIONS?

Please click the Q&A button on the bottom of your Zoom window to open the Q&A window;

Enter your question into the Q&A box, then click Send.

Audio Settings ^



Chat



Raise Hand



Q&A

Leave Meeting



18

18

THANK YOU!

 550 N. Brand Blvd., Ste. #550
Glendale, CA 91203

 Tim.Oppelt@swmlp.com

 (818) 241-0103

 <https://swmlp.com>

 **SW&M**
FINANCIAL
INSTITUTION
ATTORNEYS

