

GC/MRS:sg

SSIC 6100

93-0213

[ ]

FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments - [ ]

(Acting RD Schafer's February 4, 1993, Memorandum)

DATE: March 5, 1993

Acting Regional Director [ ] requested our opinion as to the legality of several nonstandard bylaw amendments sought by [ ]. Although the memorandum states that the FCU proposes three bylaw amendments and one amendment to a board resolution, it appears to us that what the memorandum refers to as a resolution is actually an amendment to Article VI, Section 4 of the FCU's bylaws. We have no objection to the first two amendments. We agree with your Office's recommendation regarding the third amendment (which the memorandum terms an amendment to a board resolution). We also agree that the last proposed amendment violates the FCU Act and should be disallowed. Our specific comments follow.

1. Article VI, Section 8 of the FCU's bylaws currently states that the board of directors "may, by resolution, authorize the conduct of elections by mail ballot, either as the exclusive procedure authorized by this article, subject to the following

conditions: . . ." The Proposed amendment would state that the [ ] board of directors "authorizes the conduct of elections by mail ballot as the exclusive procedure for voting."

The proposed amendment is intended to eliminate the need for a yearly resolution by the board of directors specifying the type of election procedure. Although we do not read the current bylaw as requiring a new resolution each year, we have no objection to this proposed amendment.

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The remainder of the quoted sentence was not included in the FCU's submission.

2. Article VI, Section 8(f) sets forth deadlines for postmarking and receipt of ballots mailed to election tellers. The deadlines are currently expressed in terms of calendar days. The FCU proposes to change the wording to "working days," in order to eliminate problems that the FCU has had with use of the mails. Your Office is inclined to approve the proposed change, as it will extend the time for voting. Your office plans to suggest use of the term "business working days," for purposes of clarity. We have no objection to the proposal or to your recommended change, although we question whether the words "working" and "business" both need to be included. ("Business days" might be the best choice, but that is up to you.)

3. Article VI, Section 4 of the FCU's bylaws currently states that "a parent may not vote for a minor of such tender years that he cannot write." The FCU proposes to change the language to, "A parent may not vote for a minor," in order to eliminate confusion that has resulted in the past. Your Office plans to recommend that the FCU board adopt a minimum voting age under Article VI, Section 7. (We note that the provision allowing the board of directors to establish a minimum voting age seems to be in Article VI, Section 5, rather than Section 7, of this particular FCU's bylaws. See Article VI, Section 5 as quoted by the FCU in its submission.) We agree with that recommendation, and further suggest that either the specific minimum age or Article VI, Section 7 (or Section 5, whichever is correct) be referred to in Article VI, Section 4.

4. The FCU wishes to amend Article VI, Section 5 to prohibit voting in the annual election by any member who is more than sixty days delinquent on a loan or VISA payment as of April 1 of the relevant year. As your Office notes, we have repeatedly stated that voting is one of the two statutory rights of FCU membership, and cannot be withheld absent expulsion. For that reason, we agree that this proposed amendment would violate the FCU Act, and should not be allowed.