

GC/MFR:bhs

SSIC 6100

93-1136

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment - []

Your November 16, 1993, Memorandum

DATE: November 24, 1993

You asked for our comments on [] request for a nonstandard bylaw amendment to Article XII, Section 1 of its bylaws. The FCU proposes to amend its bylaws to allow for a loan to [], a charitable organization under Section 501(c)(3) of the Internal Revenue Service Code, without the personal guarantee of the organization's natural members. The Region's proposed amendment to the FCU's by laws reads:

Loans shall be made only to members, and shall be made for provident or productive purposes in accordance with applicable law and regulation. Except as permitted below, loans to members other than natural persons shall not be in excess of their shares in this credit union:

- (1) A loan in excess of shares may be made to a business entity so long as natural person members having a majority interest in the entity are jointly liable for the loan
- (2) A loan in excess of shares may be made to a non-business entity so long as natural person members constituting a majority of the entity's members are jointly liable for the loan
- (3) A loan in excess of shares may be made to [] (a

charitable organization under section 501(c)(3) of the Internal Revenue Code) so long as the loan is approved by a majority of the organization's board of directors.

We have no legal objection to the proposed amendment, except to note that an "or" should be placed between paragraphs (2) and (3). The proposed bylaw is almost identical to the standard amendment for Article XII, Section 1, of the bylaws. The only substantive difference is the addition of (3) which contains the specific requirements for a loan to The special provisions of are in accordance with the special provisions for charitable organizations in the NCUA Regulations. "Loans shall not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not for profit organization as defined by Internal Revenue Service Code (26 U.S.C. 501)." 12 C.F.R. Section 701.21(h)(2)(ii)(B). We would suggest for purposes of clarity maintaining the standard bylaw amendment language and adding the substantive change at the end. so that it would read as follows:

Loans to individuals shall be made only to members, and shall be made for provident or productive purposes in accordance with applicable law and regulations. Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have majority interest; if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right; or if the nonnatural person is [] (a charitable organization under section 501(c)(3) of the Internal Revenue Code), the loan is approved by a majority of the organization's board of directors.

We have no legal objection to the proposed amendment and defer to your

judgment as to whether it should be allowed.