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FROM: Assistant General Counsel
Timothy P. McCollum,

SUBJ: Article VII, Section 7, Nonstandard Bylaw Amendment
(Your April 13, 1988, Memorandum)

DATE: May 18, 1988

You have asked for our comments on a proposed nonstandard bylaw amendment ("the proposed amendment") to Article VII, Section 7, of the Bylaws for Federal Credit Unions. The proposed amendment would alter Section 7 to permit the FCU board of directors to remove a board member for failure to attend three board meetings in any twelve-month period. Under its present bylaws, the board may remove a board member for failure to attend three consecutive board meetings. The board could adopt a standard bylaw amendment allowing it to remove a board member who fails to attend two meetings in four months or four meetings in a calendar year. Though we doubt the FCU needs the further power it seeks, neither the Federal Credit Union Act nor the NCUA Rules and Regulations prohibit the FCU proposal. Approval of the proposed amendment is a policy decision, on which we defer to your judgment.

[] has requested approval of a nonstandard bylaw amendment to Article VII, Section 7 ("Section 7") of the Federal Credit Union Bylaws.

Section 7 provides:

If a director or a credit committee member fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or otherwise fails to perform any of the duties devolving upon him/her as a director or a credit committee member, his/her office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any executive officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and an opportunity to be heard.

When any executive officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of his/her office, the board may by resolution designate another member of this credit union to act temporarily in his/her place. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

The [] proposed amendment would change the first paragraph of Section 7 to the following:

If a director fails to attend three regular meetings of the board in any twelve-month period, or otherwise fails to perform any of the duties devolving upon his/her as a director, his/her office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any executive officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

If a credit committee member fails to attend regular meetings of the credit committee for three consecutive months, or otherwise fails to perform any of the duties devolving upon him/her as a credit committee member, his/her office may be declared vacant by the board and the vacancy filled as herein provided.

The substantive change to the proposed amendment would permit the board of directors to remove a director for failure to attend three regular meetings of the board in any twelve-month period. Thus, the proposed amendment would limit a board member's latitude for missing board meetings but leave unchanged the rule for removal of credit committee members who fail to attend three consecutive credit committee meetings and the board's power to remove executive officers. The second paragraph of Section 7 would remain unchanged.

The Federal Credit Union Standard Bylaw Amendments and Guidelines provide three standard bylaw amendments to Section 7 which restrict the number of meetings a board or credit committee member may fail to attend. The proposed amendment, permitting removal of a board member for failure to attend three board meetings within one year, is more restrictive than any of the three standard amendments but carries the same intent: board member attendance at board meetings. The standard amendment most similar would allow the board of directors to remove a board member for failure to attend two regular meetings within four consecutive months, or failure to attend four meetings in any calendar year. We do not understand why this standard bylaw amendment is inadequate; it would provide almost everything the FCU now seeks.

Neither the FCU Act nor the NCUA Rules and Regulations would prohibit the proposed amendment, however, and we defer to your judgment on the safety and soundness implications of the FCU's proposal.