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FROM: Assistant General Counsel
Timothy P. McCollum

SUBJ: Nonstandard Bylaws Amendments, []
(Your June 1, 1988, Memorandum)

DATE: July 19, 1988

[] has submitted extensive nonstandard bylaw amendments to their bylaws. The changes simplify and clarify [] bylaws and conform them to present

[] practice. The changes do not violate the Federal Credit Union Act ("FCU Act") or NCUA's Rules and Regulations. Any violation of safety and soundness is for your determination. Also, there remain references to "Administrator" in the proposed bylaws which should be changed to "NCUA Board" to comply with the definition in Article 1.

We fear, however, that such an extensive overhaul of an FCU's bylaws may lead to difficulties in determining FCU Act and NCUA regulatory compliance if also done by other FCU's which wish to customize their bylaws. We believe the better approach is to add additional standard FCU bylaw amendments so that all larger or geographically dispersed FCU's may choose standard bylaw amendments pre-approved by the NCUA Board.

The present [] bylaws were adopted prior to the NCUA's issuance of the Standard Bylaws for FCU's. It appears that [] is revising the August 1970 version NCUA Bylaws with parts of the October 1986 Standard FCU Bylaws, the Federal Credit Union Standard Bylaw Amendments, nonstandard bylaw amendments. We question whether the [] should merely adopt the October 1986 Standard Bylaws. We realize [] may be approaching these amendments to the August 1970 NCUA Bylaws in this manner to minimize administrative confusion or retain certain beneficial sections which do not appear in the most recent standard bylaws. We have reviewed the amendments and have determined that the changes do not violate the Federal Credit Union Act or NCUA's Rules and Regulations, except for the need to identify the financial officer as the treasurer.

The major substantive nonstandard bylaw amendments and our comments are as follows:

1) Definitions (currently Article XVIII) have been moved to Article I, and a new Article XVIII (Standing Committees) has been added.

Sections 113(13) and (14) of the FCU Act permit an FCU board to create and delegate specific functions to any committee created by an FCU Board. Creation of a standing committee is permitted under this section.

2) References to and compliance with the Accounting Manual for Federal Credit Unions has been removed from Article IV and Article VII, Section 5(c).

Since our source of authority for requiring compliance with the Accounting Manual is our Regulations, this change may be permitted.

3) The addendum to Article VIII, designating titles of board officers and management officials, has been eliminated. Precise titles currently in use have been incorporated throughout the bylaws.

Section 112 of the FCU Act [12 U.S.C. 1761a] provides in part that "[t]he (FCU) board shall elect from their number a financial officer who shall give adequate fidelity coverage in accordance with section 113(2) of this [FCU] Act." The [] changes remove any reference to the financial officer and replace it with the treasurer. The bylaws should identify the treasurer as the financial officer.

4) Article VIII, Section 1, has been modified to state that no board officer may be compensated as such. This is in compliance with the FCU Act (12 U.S.C.

1761) and NCUA's Rules and Regulations (12 C.F.R. 701.33).

5) The responsibilities of the Treasurer, as an officer of the board, and the Chief Executive Officer/President have been separated. At Navy, the President is responsible for the day-to-day management of the Credit Union, whether or not he is a member of the board.

This amendment is permitted by Article VIII, Sections 5 and 6 of the Standard FCU Bylaws and Standard Bylaw Amendments. Section 5 provides in part that "[t]he financial officer shall manage this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager" (emphasis added). Section 6 provides:

The board may appoint a management official who shall not be a member of the board and who shall be under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in section 5 of this article. The board shall determine the title and rank of each management official and shall record them in the addendum to this article.

These two sections permit the board to transfer the duties of the financial officer ([] treasurer) to a president/manager of the FCU. The restriction in Section 6 which prevents such a manager to be a board member can be removed using the FCU Standard Bylaw Amendments, which permit the manager to be a board member.

6) Board responsibilities for routine management functions, such as approval of membership forms and approving new members (Article II, Section 2] and the supervision of a collection program (Article VII, Section 5(c)], have been deleted.

Approval of membership forms and appointing a membership officer are permitted under Section 113 of the FCU Act [12 U.S.C. 1761b]. This section of the FCU Act allows an FCU board to appoint a membership officer provided such a person is not the paid member of the board, the financial board officer (the treasurer at [] any assistant to the paid officer of the board or to the financial officer, or any loan officer.

The amendment changing the requirement of the board to establish a loan collection program to a requirement that the board cause a loan collection program to be established does not violate the FCU Act or NCUA's Rules and Regulations.

7) The order in which board officer and management staff duties are depicted has been rearranged. This is simply a housekeeping amendment.

Again, with such an extensive change to an FCU's bylaws, we are concerned that other FCU's may follow with similar changes. Extensive nonstandard bylaw amendments by many FCU's tend to create a confusing patchwork of customized FCU bylaws which may hinder NCUA's ability to determine if a particular credit union's bylaws comply with the Federal Credit Union Act and NCUA Rules and Regulations. Perhaps it would be better if the NCUA issued standard bylaw amendments which could accommodate larger geographically dispersed FCU's such as []. As to the specific [] bylaw amendments, we see no violation of the FCU Act or NCUA Rules and Regulations, except for the need to identify the financial officer as the treasurer. However, issues of safety and soundness remain in your discretion.