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FROM: Assistant General Counsel
Timothy P. McCollum

SUBJ: Review of [] FCU's Request for Nonstandard Bylaw
(Your July 14, 1988, Memorandum)

DATE: October 17, 1988

You have requested our review of [] request to adopt two nonstandard bylaws. The FCU's first amendment would remove the credit committee and delegate loan approval to one or more loan officers. The second amendment would add new Article XXII INDEMNIFICATION to the FCU's bylaws.

We are unclear why the FCU prefers a non-standard bylaw amendment to the FCU Standard Bylaw Amendments and Guidelines [NCUA 8001 A(M3700)] for eliminating the credit committee. From a legal standpoint, we have no objection to its doing so, so long as it makes all the changes made in the standard amendments. As to the addition of the indemnification article, we believe the FCU may be proposing to incorporate the wrong indemnification provision.

[] ("the FCU") has requested to amend Article IX of its bylaws to eliminate the credit committee and delegate loan approval to one or more loan officers. Section 113 of the FCU Act [12 U.S.C. §1761b] provides:

. . . Among other things, the board of directors shall--

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(10) if the bylaws so provide, appoint one or more loan officers and delegate to these officers the power to approve or disapprove loans or lines of credit;

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(17) in the absence of a credit committee, and upon the written request of a member, review a loan application denied by a loan officer.

* * *

Section 114 of the FCU Act [12 U.S.C. §1761c] provides:

(b) If there is not a credit committee, a member shall have a right upon written request of review by the board of directors of a loan application which has been denied

The Federal Credit Union Standard Bylaw Amendments and Guidelines ("Standard Amendments") provides a standard bylaw amendment to replace the FCU credit committee with one or more loan officers. The standard amendment revises several other FCU Bylaw Articles in addition to revising Article IX CREDIT COMMITTEE. We suggest the FCU follow the standard procedures outlined in the Standard Amendments to amend their bylaws rather than request a nonstandard bylaw amendment. However, if you approve of the proposed change as a nonstandard bylaw amendment, we present no objections from a legal standpoint, but suggest amending all bylaw provisions addressed by the Standard Amendments.

The FCU has requested permission to add an indemnification provision to its bylaws. Under the recent amendment to Section 701.33 of the NCUA Rules and Regulations, the FCU has elected to follow the indemnification standards applicable to credit unions in the State of Oregon (See Change 4 to the NCUA's Rules and Regulations or 53 Fed. Reg.

29640 (August 8, 1988)). Section 701.33 (12 C.F.R. §701.33] provides:

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

The FCU's proposed indemnification amendment follows the Oregon Statutes covering indemnification provisions permitted for Oregon for-profit corporations. From discussions with Oregon state officials and the Oregon Credit Union League, it seems the Oregon Nonprofit Corporation Law (Or. Rev. Stat. Ann. Chapter 61 (Butterworth 1988)] governs indemnification of credit unions chartered by the State of Oregon. Specifically, Chapters 61.205, 61.215 and 61.218 pertain to indemnification of nonprofit corporations. We suggest the FCU obtain outside counsel's opinion as to whether the FCU's indemnification provisions are consistent with the indemnification standards applicable to Oregon state chartered credit unions.