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[ ]

FROM: Acting Assistant General Counsel  
Hattie M. Ulan

SUBJECT: Nonstandard Bylaw Amendment for [ ]  
(Your October 19, 1988, Memo)

DATE: November 29, 1988

You have requested our review of [ ] ("FCU") request for a nonstandard bylaw amendment to Article XXI of the FCU Bylaws. The proposed change does not violate the FCU Act or the NCUA Rules and Regulations; approval is a policy decision which we defer to your judgment.

The FCU has requested that it add a new Section 2 to Article XXI of the FCU Bylaws which would provide:

Board policies shall be approved by an affirmative vote of a majority of the authorized number of members of the board at a duly held meeting of the Board of Directors. To change an existing policy, an affirmative vote of two-thirds of the authorized number of members of the board shall be required, at a duly held meeting of the Directors.

The FCU Act, NCUA's Rules and Regulations, and the FCU Bylaws do not address the manner in which board policies may be adopted. We see no legal impediment to the FCU adopting the proposed amendment. It is really a policy decision to which we will defer to your judgment.

The proposed amendment tracks the language of Article XXI, Section 1 of the FCU Bylaws which requires that bylaw amendments and charter amendments be adopted by:

an affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter shall become effective, however, until approved in writing by the NCUA Board.

Under the proposed amendment, a change in an existing policy will require "an affirmative vote of two-thirds of the authorized number of members of the board . . . at a duly held meeting of the Board of Directors." We have interpreted "two-thirds of the authorized number of members of the board" in article XXI, Section 1 to require the vote of two-thirds of the absolute number of board members, not merely two-thirds of a quorum of directors. The rationale for this interpretation is that bylaw amendments and charter changes may result in major changes in policy, and that such changes should not be made by less than half of the elected members of the board. The FCU needs to determine if they want this interpretation to apply to changes in board policies. If not, they should modify the proposed amendment appropriately.