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FROM: Assistant General Counsel Hattie M. Ulan

SUBJ: Nonstandard Bylaw Amendment (Your January 31, 1989, Memo)

DATE: March 3, 1989

You have asked that we review a group of nonstandard bylaw amendments submitted by []. With the exception of the proposed amendment to Article VII, Section 8, we have no legal objections to the proposed amendments. They involve minor changes to the standard preapproved amendments and do not violate the FCU Act or NCUA's Rules and Regulations. We defer to your judgment with respect to approval of these amendments. Specific comments on the proposed amendments are set forth below.

You raised an objection to a proposed amendment to Article VI, Section 1, that would include the statement that "a brief statement of qualifications and biographical data in such form as shall be approved by the board of directors may be included for each nominee submitted by the nominating committee." (Emphasis added.) The preapproved wording for this sentence states that a statement of qualifications and biographical data "will be included for each nominee submitted by the nominating committee with the written notice to all eligible members." (Emphasis added.) You recommended that this proposal not be approved unless the underlined wording in the standard bylaw amendment is included. Your concern was that without this wording the board could, at its discretion, decide whether or not to include biographical data. You stated that you believed that biographical data should always be provided to members so they can make a fair judgment in voting. This issue is really one of policy; there is no legal requirement that the data be included. We defer to your judgment on this issue.

The proposed amendment to Article VII, Section 8, would permit the board of directors to suspend or remove a member of the supervisory committee by majority vote without calling a special meeting of the members. You recommended disapproval of this request. We agree. Section 115 of the FCU Act (12 U.S.C. 1761d) provides, in part:

Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members shall decide, at a meeting held no less than seven nor more than fourteen days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee.

This provision of the Act requires a special meeting of the members to remove a member of the supervisory committee.

Lastly, you asked us to respond to the FCU's request for an interpretation of the standard bylaw amendment to Article V, Section 3, as it appears on pp. 35-36 of NCUA publication 8001A (FCU Standard Bylaw Amendments and Guidelines). The standard amendment attempts to set up a procedure for a committee of petitioners to meet with the board before a special meeting is held. The FCU has stated the bylaw amendment contains conflicting provisions.' The standard amendment, as presently worded, is confusing and unclear. We are unsure of its intent. We recommend that it be reviewed and redrafted before the next printing of publication 8001A.