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FROM: Assistant General Counsel
Hattie M. Ulan

SUBJ: Nonstandard Bylaw Amendments -- []
(Your March 13, 1989, Memo)

DATE: April 6, 1989

You have asked for our comments on a group of nonstandard bylaw amendments proposed by [] ("FCU"). Except for the proposed amendment to Article XIX, Section 3, the proposed bylaw amendments do not violate the FCU Act or NCUA's Rules and Regulations. We defer to your judgment on the approval of those amendments. We agree with your determination that the proposed amendment to Article XIX, Section 3 should be denied.

ANALYSIS

The FCU wants to delete Section 3 of Article XIX from its bylaws. This section provides:

Notwithstanding any other provisions in these bylaws, any director, committee member, officer, or employee of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given-him to be heard.

Section 115 of the FCU Act (12 U.S.C. 1761d) provides, in part:

The supervisory committee . . . may by unanimous vote suspend any officer of the credit committee or of the board of directors, until the next members, meeting, which shall be held not less than seven nor more than fourteen days after any such suspension, at which meeting any such suspension shall be acted upon by the members 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 not 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 statute expressly provides members with the right to remove credit committee officers, FCU officers, and supervisory committee members. The FCU cannot take this right away from the members. While the statute only refers to directors who are officers, shareholders of a corporation generally have the right to remove any director. We believe this same principle should apply to an FCU. With respect to the other individuals listed in section 3 of Article XIX to whom Section 115 of the FCU Act does not apply, i.e., members of the credit committee who are not officers and credit union employees, the proposed deletion does not present a violation of the FCU Act or NCUA's Rules and Regulations. However, from a policy/safety and soundness standpoint, we recommend that the amendment be denied in its entirety.

The remaining proposed bylaw amendments do not violate the FCU Act or NCUA's Rules and Regulations. We defer to your judgment on whether they should be granted.