

GC\RRD:bhs

SSIC #3700

89-0834

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FROM: Assistant General Counsel

Hattie M. Ulan

SUBJ: Nonstandard Bylaw Amendment, []

(Your August 22, 1989, Memo)

DATE: November 24, 1989

The [] ("FCU") has submitted several nonstandard bylaw amendments for NCUA's review and approval. There are no legal prohibitions for any proposed changes except the change to Article XVIII, Section 2(b) dealing with the definition of "organizations of such persons." We will discuss the requested changes in the same order presented in your memo (attached). Safety and soundness concerns remain in your discretion.

1. Article IV. Receipt for Money

Sections 1 and 2. Section 1 describes how the credit union must evidence receipt of money paid into the credit union. Section 2 describes the replacement procedures in the event a passbook is lost or stolen. The proposed amendment deletes reference to "passbook" in Section 1, and Section 2 is removed. We have no objections.

2. Article VII. Board of Directors.

Section 3. This section describes how the board of directors fills a vacancy on the board, credit committee, or supervisory committee, and how the board and credit committee hold office until the next annual meeting and the supervisory committee appointees "hold office until the first regular meeting of the board" following the next annual meeting. The FCU requests that the reference to "first regular" be removed. The stated purpose of the change is to have the terms of the credit and supervisory committees coincide with the terms of officers. Officers are elected at a meeting (regular or nonregular) held within seven days of the annual meeting. We have no objections.

Section 4(b). The proposed change permits formal board meetings to be held by telephone, in emergency situations, with minutes signed by those participating by phone. We have no objections. We note the FCU Standard Bylaw Amendments and Guidelines provide for telephone meetings under specific circumstances. For consistency, we suggest all FCU's use the standard amendment; however, we have no objections to the proposed change.

3. Article VIII. Executive Officers, Executive Committee, Investment Committee, and Management Staff.

Section 2. The requested change is to allow one or more organizational meetings by the board prior to electing officers. The Standard Bylaws require election of officers at the first meeting after the annual meeting. The election of officers will occur within the required seven days after the annual meeting. We have no objections.

Sections 7 and 7(b). The proposed amendment permits the management official to remove any loan officer appointed by the credit committee who is also an employee of the FCU. The management official would not have the power to remove a loan officer who is not an employee of the FCU. Article VIII, Section 7 of the Standard Bylaws prohibits the board or management official from removing "any loan officer appointed by the credit committee." Article IX, Section 4 authorizes the credit committee to appoint "loan officers to serve at its pleasure." Section 114 of the FCU Act (12 U.S.C. §1761c) grants the credit committee the authority to appoint loan officers. It does not specifically address their

removal. We believe there to be some flexibility in the FCU Act and do not object to the proposed amendment on a legal basis, especially since this credit committee is appointed rather than elected. Issues of safety and internal control remain within your discretion.

4. Article IX. Credit Committee.

Section 2. The proposed amendment changes the regular terms of office for the credit committee from 2 or 3 years to 1, 2, or 3 years. The FCU wants this change so that the credit and supervisory committees have the same terms of office. We have no objections.

Section 4. The proposed amendment permits the FCU manager to remove any loan officer appointed by the credit committee. We have no objections. This is a companion change to Article VIII, Section 7. See our comments thereto.

5. Supervisory Committee

Section 1. The Standard Bylaws provide that the regular terms of the supervisory committee will expire at the first regular meeting of the board following each annual meeting. The requested amendment will change the terms of office for credit and supervisory committee members to coincide with the board officers elected at the board meeting held within seven days after the annual meeting. This change is requested because the change to Article VIII, Section 2 allows one or more organizational meetings by the board prior to electing officers. We have no objections.

Section 4. Reference to passbooks is removed. See the explanation to paragraph 1 above. We have no objections.

6. Article XVIII. Definitions.

This change would amend the definition of "organizations of such persons" from organizations exclusively composed of persons within the field of membership to organizations primarily composed of persons within the field of membership.

We agree with your recommendation to deny this proposed change. We also note that such an amendment could be viewed as diluting the common bond. If the FCU wants to serve organizations composed primarily of those within the field of membership, it can request amendment of Section 5 of its charter to specifically add each organization.

7. Article XX. Operations Following an Attack on the United States or Natural Disaster.

Amendments to Sections 2 and 3 would permit the FCU to carry on operations in the event of natural disaster in addition to an attack on the United States. We have no objection.

8. Article XXI. Indemnification and Exculpation.

This nonstandard bylaw amendment was withdrawn pending further study by the FCU.