

GC/MRS:sg

SSIC 3700

90-0614

[ ]

FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments - [ ]

(Your June 4, 1990, Memorandum)

DATE: July 2, 1990

This is in response to your request for our opinion as to the legality of five nonstandard bylaw amendments proposed by the [ ]. In our opinion, two of the amendments are prohibited by the Federal credit Union Act (the "Act"); the remaining three amendments are permissible. The proposed amendments and our opinions are discussed individually below.

### Article II, Section 2

The proposed nonstandard amendment would change the requirement for membership from subscription to at least one share and payment of the initial installment thereon, to payment of at least one share.

Section 109 of the Act (12 U.S.C. §1759) states, in part:

Federal credit union membership shall consist of the incorporators and such other persons and incorporated and unincorporated organizations, to the extent permitted by the rules and regulations prescribed by the Board, as may be elected to membership and as such shall each subscribe to at least one share of its stock and pay the installment thereon . . . . (Emphasis added.)

Clearly, the Act permits membership upon payment of only one installment of a share. The proposed bylaw imposes a greater burden on those seeking membership, and thus conflicts with the Act. We are therefore of the opinion that the proposed amendment to Article II, Section 2 is prohibited by the Act.

### Article III, Section 1

This proposed amendment requires that a member deposit the full value of one share upon opening an account. The standard bylaw provides for installment payments. For the reasons discussed in the section on Article II, Section 2, this proposed bylaw conflicts with the Act and should not be approved.

### Article III, Section 3

This proposed amendment provides that where a member has maintained a balance of less than the value of a share for six consecutive months, his shareholdings may be paid to him if less than \$25.00, or absorbed by a late charge if less than \$5.00.

Although the 1970 edition of the standard bylaws provides for absorption by a late fee after two years, Letter to Credit Unions 170 and the 1987 edition of the standard bylaws state that FCUs may specify any time period of not less than six months for a member to complete payment of a full share. We have no problem with this part of the proposed change. With regard to the provision that balances of less than \$25.00 may be paid to the member, we see no legal prohibition. We defer to your judgment as to whether such a policy is sound.

Article III, Section 5(d)

The standard bylaw prohibits a member who is delinquent on loan payments from withdrawing shareholdings below the amount of his liability to the credit union. The proposed amendment adds an exception for withdrawals from automated teller machines provided the number of days delinquent is not more than three. Nothing in the Act or NCUA's regulations prohibits this amendment. It is a policy matter on which we defer to your judgment.

Article III, Section 5(e)

This proposal amends the standard bylaw extending the time for which the account of a deceased member may be kept open for estate administration purposes, from four years to five years. We have no legal problem with the suggested bylaw, and defer to your judgment.