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SSIC 6100

90-0812

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment - []

(Your July 26, 1990, Memorandum)

DATE: September 26, 1990

You have asked for our comments on a nonstandard bylaw amendment. [] has requested a nonstandard bylaw amendment to Article VI, Section 2. Currently, the section reads as follows:

All elections shall be determined by plurality vote and shall be by mail ballot except where there is only one nominee for each position to be filled. Any vacancy which occurs prior to the time the new board is constituted shall be filled from the slate of candidates nominated by the nominating committee or by petition. All vacancies shall be filled in descending order of number of votes received, i.e., the candidate receiving the most votes will fill the longest vacant term. There shall be no nominations from the floor unless the number of vacant positions at the time of the meeting exceeds the number of candidates nominated by the nominating committee or by petition. In the event that nominations from the floor, when permitted herein, result in more than one nominee for a position to be filled, and when nominations have been closed, tellers shall be appointed by the president, ballots shall be distributed, the vote shall be taken and tallied by the tellers, and the results announced. When such nominations are permitted from the floor and only one member is nominated for the vacant position, the chair may, at its option, take a voice vote or declare the nominee for the vacant position elected by general consent or acclamation of those present at the annual meeting.

The only substantial change requested by the FCU is the elimination of the second sentence from this section which states: "Any vacancy which occurs prior to the time the new board is constituted shall be filled from the slate of candidates nominated by the nominating committee or by petition." The FCU wants the change to allow the board of directors to fill vacancies on a case-by-case basis, at the board's discretion.

Section 111(a) of the FCU Act (12 U.S.C. 1761(a)) states in part: "Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors." The proposed deletion appears to conform to Section 111(a).

The proposed amendment does not violate the FCU Act or NCUA Rules and Regulations. We have no objection to the proposed amendment. We note that the standard amendments to Article VI, Section 2 do not contain the sentence the FCU seeks to delete. We defer to your judgment on whether the nonstandard amendment should be granted.