

GC/ MM: sg

SSIC 3701

90-1204

[ ]

FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments (Your November 26, 1990, Memo)

DATE: December 11, 1990

You have requested a legal opinion on two separate proposed nonstandard amendments to Article VII, Section 7 of the bylaws. Both amendments concern the number of meetings a board or credit committee member may miss before being subject to removal from office. We have no legal objection to granting either amendment.

#### BACKGROUND

Two federal credit unions (FCU) are requesting nonstandard bylaw amendments to Article VII of the FCU Bylaws. Article VII, Section 7 of the FCU Bylaws states in part that:

If a director or a credit committee member fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or otherwise fails to perform any of the duties devolving upon him/her as a director or a credit committee member, his/her office may be declared vacant by the board and the vacancy filled as herein provided. The board may remove any executive officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

#### ANALYSIS

The first nonstandard bylaw amendment request allows the removal of a credit committee member if he fails to attend six consecutive regular meetings of the credit committee. For purposes of removal, a regular credit committee meeting is defined as one meeting per week. This proposed amendment is more restrictive than the current FCU bylaw. You are inclined to approve this request. The proposed amendment does not violate the FCU Act or NCUA Rules and Regulations. We have no legal objection to this proposed amendment and defer to your judgment on whether it should be granted.

The second nonstandard bylaw amendment request allows the removal of a director if he fails to attend three regular meetings of the board "within a 12 month period of time." This proposed amendment is also more restrictive than the current FCU bylaw. The proposed change does not violate the FCU Act or NCUA Rules and Regulations. We have no legal objection to this proposed amendment. This is really a policy issue. You indicated in your memorandum that you are inclined to deny this request because the proposed change lacks a clear definition and could be subject to various interpretations. We defer to your judgment on the safety and soundness implications of the FCU's proposal.

One additional note. In 1989, this office issued a legal opinion concerning identical nonstandard bylaw amendments as discussed above, requested by the [ ] in Region IV. Attached is a copy of the opinion.

Attachment

GC/JJE:bhs

SSIC 6150

[ ]

FROM: Deputy General Counsel

James J. Engel

SUBJECT: Nonstandard Bylaw Amendment - [ ]

DATE: February 1, 1989

We have no objection to the FCU's requested nonstandard bylaw amendment that would:

- a. permit declaring a director's position vacant for failure of the director to attend three board meetings within a period of twelve consecutive months; and
- b. permit declaring a credit committee member's position vacant for failure of a member to attend three consecutive weekly meetings or six such meetings in any calendar year.