

GC/MRS:sg

SSIC 3700

91-0328

[ ]

FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: [ ] Proposed Nonstandard Bylaw Amendments

(Your March 22, 1991 Memorandum)

DATE: April 17, 1991

You requested our comments on several nonstandard bylaw amendments proposed by [ ] (the "FCU"). All of the proposed amendments concern voting procedures. We have no legal objection to any of the proposed amendments.

#### Article V, Section 2

Article V, Section 2 deals with notice requirements for annual and special meetings.

The FCU's proposed amendment is identical to the standard bylaw amendment, except that it provides that notice for a special meeting shall be sent "at least 7 days" before the date of the meeting. The explanation of the standard amendment indicates only that the notice period for a special meeting may not be less than seven days; nothing precludes a credit union from lengthening the notice period. Although in our view the standard amendment, as written, already allows for longer notice period, we have no objection to the proposed change.

#### Article VI, Section 1

Article VI, Section 1 concerns nominating procedures.

The FCU suggests several changes to the standard amendment. They are discussed individually below.

1. The FCU wishes to change the word "president" in the first sentence to "chairman" because the FCU's executive official is called the chairman. The FCU also proposes to substitute "chairman" for "President" in Article VI, Section 2. We have no objection to these changes.
2. The standard amendment requires individuals nominated by petition to sign a statement indicating their willingness to serve. The FCU proposes to extend that requirement to individuals nominated by the nominating committee. We have no objection to this amendment.
3. The proposed amendment would require every nomination to be accompanied by a statement of the nominee's qualification and biographical data. This information would be furnished to the members along with the names of the nominees. The standard amendment provides for posting of the nominations a least 35 days prior to the election. Under the proposed amendment, the nominations, and the accompanying information would be mailed to all members instead of merely posted. .

The FCU states that the proposed mailing requirement is intended to better inform the members. In our view, both the mailing requirement and the inclusion of a statement of qualifications and biography would further that informational purpose. We do not object to this proposed amendment.

4. The standard amendment states that nominations by petition shall be signed by "one percent of the members with minimum of 20 and a maximum of 500." The FCU proposes substitute wording stating that "nominations for vacancies

may also be made by petition signed by at least 20 members."

The explanation of the standard amendment contained in the standard bylaw amendment booklet states, "It is suggested that the minimum number of petition signatures should not be less than 20 so that only those persons sincerely interests in serving as officials would file petitions." The FCU's proposal retains the twenty-signature minimum. The "maximum of 500" provision is intended to provide a cap on signature requirements for large credit unions, so that access to nominations will not be unduly restricted. While 500 is the maximum number of signatures that may be required for an individual seeking nomination, nothing precludes such an individual from obtaining signatures in excess of the minimum of 20 or one percent. The proposed change does not operate to unduly restrict individuals from becoming candidates. It lowers the number by eliminating the one percent requirement, assuming that 20 is less than one percent of the membership. However, we have no objection to the proposal.

5. The FCU also proposes to change the order of the wording of the first sentence of paragraph two of the standard amendment. This change is nonsubstantive, and does not alter the meaning of the bylaw. While the proposed amendment is, in our view, unnecessary, we have no legal objection to it.

#### Article VI, Section 2

Article VI, Section 2 relates to methods of voting.

1. The FCU proposes to adopt one of the standard amendments to this section, with two changes. The standard amendment is found on pp. 29-30 of the standard amendment booklet. The first change is the deletion from the second to last sentence of the words "before the beginning of the meeting." The FCU believes that if those words are retained, the bylaw may be read to require that all voting take place before, rather than during, the annual meeting. We disagree with the FCU's interpretation of the standard wording; however, we have no objection to the proposed change.

2. The second change concerns elimination of the ballot box at the credit union. The standard amendment on which the FCU's proposal is based includes provisions for voting by ballot box at the credit union. The FCU does not wish to offer this voting option, and therefore proposes to eliminate all references to ballot box voting at the credit union. Nothing in the FCU Act or NCUA's Rules and Regulations requires a credit union to permit ballot box voting at the credit union prior to the annual meeting, and we have no objection to this proposed deletion.

#### Article VI, Section 8

Article VI, Section 8 deals with use of absentee ballots.

The FCU does not currently have Article VI, Section 8 in place, but proposes to add the standard amendment with one change. Specifically, the FCU wishes to delete from Section 8(c)(1) of the standard amendment the provision that ballots shall contain statements of qualifications and biographical data for the candidates. This is in keeping with the requirement in the FCU's proposed Article VI Section I that such statements be mailed to the members prior to the election. We have no objection to this change.

We note that although the FCU's proposed Article VI, Section 8(f) contains the phrase "or included in a percent in accordance with Article VI, Section 2," you state in your memorandum that that portion of the proposed amendment will be deleted, since the FCU has eliminated the reference to percent procedures in Article VI, Section 2. We agree with you that uniformity requires change.

While we see no legal impediment to any of the proposed amendments, we defer to your judgment as to whether they are in the FCU's best interests.