

GC/MRS:sg

SSIC 3700

91-0703

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FROM: James J. Engel, Deputy General Counsel

SUBJ: [] - Nonstandard Bylaw Amendment

(Your June 13, 1991 Memorandum)

DATE: August 1, 1991

You requested our comments on the [] proposed nonstandard amendment to Article VI, Section of its bylaws. While we have no legal objection to the proposed amendment, for the reasons discussed below, we recommend that you not approve it in its present form.

The primary purpose of the proposed amendment is to allow [] to notify its membership of the annual meeting date and election procedures through the use of its quarterly newsletter, rather than in a separate mailing, as required by its current bylaws. Paragraph 2 of the proposed amendment provides:

The secretary shall notify all members eligible to vote that nominations for vacancies may be made by petition signed by one percent of the members with a minimum of 20 and a maximum of 500. That notification shall be through the quarterly mailing of PostScripts which is sent to all members at least 90 days prior to the annual meeting. This written notice shall state that the election will be conducted by mail ballot and that there will be no nominations from the floor.

We have previously opined that an FCU may provide notice of its annual meeting in a newsletter, provided that the newsletter is handed or mailed to each member, in compliance with Article V, Section 2 of the standard amendments. Therefore, we do not object to [] plan to notify its members through the newsletter instead of by a separate mailing.

However, we do have reservations about a conflict relating to the time limits for filing nominations by petition. Although paragraph 4 states that the closing date for receipt of nominations by petition shall extend at least 30 days from the date of the notice, under paragraph 5, nominations by petition must be filed with the secretary at least 65 days prior to the annual meeting. Since the notice is given 90 days before the meeting, paragraph 4 requires that the closing date for receipt of nominations by petition be no earlier than 60 days before the meeting. Thus, there is a conflict between paragraphs 4 and 5.

[] (or your Office) should review the proposed amendment and revise the time frames therein to eliminate the conflict described above. Assuming that those changes are made, we have no objection to the proposed amendment.

In light of the fact that the FCU currently has the standard amendment to Article VI, Section 1, we assume that it also has the standard amendments to Article VI, Section 2 and Article V, Section 2, and has added Article VI, Section 8, as the FCU Standard Bylaw Amendments and Guidelines require an FCU adopting the standard Article VI, Section 1 to adopt those companion amendments. (See p. 23, FCU Standard Bylaw Amendments and Guidelines.) Further, an FCU that has adopted Article VI, Section 8 must use Article VI, Section 2, option 2. (See p. 29, FCU Standard Bylaw Amendments and Guidelines.) It appears from the proposed amendment that intends that [] all voting be done by mail ballot. Therefore, if the proposed amendment is allowed, USPSFCU must have in place the version of Article VI, Section 8 that provides for mail ballots as the exclusive election procedure. Your Office should review Articles V and VI of USPSFCU's bylaws, in order to ensure that all necessary amendments and additions have been made.

We note that paragraph 1 of the proposed amendment requires the nominating committee to file its nominations with

the secretary at least 65 days prior to the annual meeting, instead of the standard 90 days. If [] has adopted, or plans to adopt, the standard Article VI, Section 8 providing for election exclusively by mail ballot, this 65 day period does not present a problem, since that version of Article VI, Section 8 requires that the information on nominees be mailed with the ballots at least 30 days prior to the annual meeting. However, we do not know what requirements [] bylaws impose with respect to this issue. Again, your office should review Article VI of [] bylaws in order to make sure that there are no conflicts.

We defer to your judgment as to whether, as a matter of policy, you wish to allow [] to modify its notice procedures as proposed.