

GC/MM:sg

SSIC 6100

91-0904

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment of []

(Your August 29, 1991, Memo)

DATE: October 4, 1-991

You have asked for a legal opinion on [] request for a nonstandard bylaw amendment to allow the FCU to charge a member a fee if the member has not kept the FCU informed of his current address even if the FCU does not use a locator service to discover the member's correct address. You are inclined to approve the nonstandard bylaw amendment with one change. We have no legal objection to the proposed nonstandard bylaw amendment.

ANALYSIS

[] (FCU) claims it expends a substantial amount of effort attempting to maintain its members' current addresses. Article XIX, Section 7 of the FCU's bylaws limits charges to \$5 per member per year for failure to keep the FCU informed of his/her current address. Such charges can only be made if the FCU uses an outside locator service. The locator service normally used by the FCU is free. However, the FCU claims it incurs costs in researching and maintaining these addresses. The FCU claims it costs approximately \$34.00 per year for each account in the address-unavailable status. To rectify this situation, the FCU is seeking a nonstandard bylaw amendment to allow the FCU to charge a fee to the member if the member has not kept the FCU informed of his current address even if the FCU does not pay for an outside address locator service. The fee would be limited to \$10.00 per quarter.

You are inclined to approve the request with one change. The change would allow the FCU to charge up to \$10 per quarter, but the charge cannot exceed the actual costs incurred by the FCU.

Nothing in the Federal Credit Union Act or NCUA's Rules and Regulations prohibits the proposed nonstandard bylaw amendment. It is our position that FCUs may charge a member a fee to locate his correct address pursuant to section 701.35(c) of NCUA's Regulations which states in part:

A Federal credit union may, consistent with this section, other Federal law and its contractual obligations, determine the..... fees or charges..... affecting the opening, maintaining or closing of a share, share draft or share certificate account.

We have no legal objection to either the nonstandard bylaw amendment as proposed or as modified.