

GC/MEC:sg

SSIC 6100

92-0940

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment

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(Your September 25, 1992 Memorandum)

DATE: October 16, 1992

[] has requested approval of a two nonstandard amendments to its bylaws. These amendments would provide that the board of directors would have exclusive approval authority on all loans to the credit union president, executive vice-president or their immediate family members, including loans on which those individuals are comakers, endorsers or guarantors. An exception would be provided for share secured loans. The purpose of the amendments is to prevent loan officers (the FCU has no credit committee) from acting upon the loan applications of their supervisors. The amendments would also provide better oversight by the board of the management officials' personal dealings with the FCU. Unfortunately, the FCU Act prohibits these amendments.

Proposed Amendments

Art. VII, §5(f) would be amended by adding the underlined provisions:

(f) Appointing one or more loan officers and delegating to these officers the power to approve or disapprove loans, lines of credit, or advances from lines of credit. Provided, however, that all loans except those fully secured by shares, to the credit union president, executive vice-president or there immediate family members or where they are acting as comaker, endorser, guarantor requires the approved (sic - should be approval) of the board of directors.

Art. IX, §3 would be amended by adding the underlined provisions:

No loan or line of credit shall be made unless approved by a loan officer in accordance with applicable laws and regulations. Provided, however, that loans, except those fully secured by shares, to the credit union president, executive vice-president or their immediate family members or where they are acting as comaker, endorser or guarantor requires the approved.

Analysis

Section 107(5)(x) of the FCU Act states "loans must be approved by the credit committee or a loan officer. . . ." 12 U.S.C. §1757(5)(x). Because of the mandatory nature of this provision, the NCUA has no statutory authority to approve the requested proposed amendments.

Short of an outright ban on loans to senior managers, we see two alternatives to address the board's concern. The board could form a credit committee with members appointed by the board to consider senior manager loans. NCUA FCU Standard Bylaw Amendments and Guidelines, Option 2, p. 5 (October 1991) Alternatively, the board could appoint one of its own members as a special loan officer to review and approve or disapprove the senior manager loan applications. 12 U.S.C. §1761b(10). However, this director/special loan officer should be recused from any deliberations of the senior manager loans on appeals for reconsideration of loan application denials under 12 U.S.C. §1761b(17). Recusal would only apply to actual deliberations; the official could answer questions or explain the basis

for the denial. We defer to your judgment as to whether either of these options should be directed to [].