

GC/MRS:bhs

SSIC 6100

93-0942

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment (Your September 24, 1993 Memorandum)

DATE: November 1, 1993

You requested our comments on a nonstandard bylaw amendment submitted by '

[]. The proposal would add Article III, Section 5(g), to establish dormant account fees.'

The proposed addition to the FCU's bylaws reads:

A dormant account is a share account that has a balance of less than \$25.00 for a period of more than 6 months and the member has not contacted the Credit Union during this time. If the member has a dormant account at the Credit Union, the member's account will be assessed a \$1.00 dormant account fee p month. If the member share account falls below \$5.00, a fine of 50 cents (\$.50) per month will be assessed.

We have no legal objection to the proposed amendment. As you know, under Section 701.35(c) of the Regulations, an FCU's authority to set fees is limited only by the FCU Act and the Regulations, other federal law, and its contractual obligations. Neither the FCU Act nor the Regulations precludes an FCU from imposing the fees described, a we know of no other federal law that would limit such fees. You may wish to suggest that the FCU consult its own attorney with regard to the possible effect of its member contracts on the establishment of the fees in question.

Although the amendment is legally permissible, we think that one clarification needs be made. It is not clear from the wording of the proposal whether the 50 cent fine (fee?) for dormant accounts with balances of less that \$5.00 is instead of, or addition the \$1.00 dormant fee account. If the fee is additional, the last sentence should read,

"The FCU proposed amending Article IV, Section 3, but you plan to recommend that the change be made as an addition to Article III, Section 5. We agree with your recommendation.

". . . an additional fine of 50 cents (\$.50) will be assessed." If not, we suggest that the last sentence read, "If the member share account falls below \$5.00, the dormant account fee will be reduced to 50 cents (\$.50) per month."

Finally, we wish to point out that once the new truth in savings regulation becomes effective (January 1, 1995), fees such as these will have to be disclosed to members in their account disclosures, rather than simply set out in the FCU's bylaws.