

GC/MFR:bhs

SSIC 61 00

95-0116

[ ]

FROM: Richard S. Schulman, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment

(Your Memorandum dated January 10, 1995)

DATE: February 2, 1995

You have asked us to review the legality of a proposed nonstandard bylaw amendment which would allow the board of directors to appoint an advisory board of directors. For the reasons stated below, we have no legal objection to the proposal, but would suggest certain modifications to the proposed wording of the amendments.

The purpose of the amendment is to allow the board to appoint up to three advisory directors as a way of training potential directors. The advisory directors would attend board meetings and participate in the discussion, but would have no vote. The concept of an "advisory board" is not addressed in the Federal Credit Union Act (the Act), the NCUA Rules and Regulations, or the Standard FCU Bylaws. Section 113(13) of the Act, authorizes the board of directors to appoint "any other committees to which it can delegate specific functions."\* In our opinion, this authority would include the appointment of an advisory board.

Since this is a committee, Article XIX, Sections 2 and 4 of the Standard Bylaws relating to confidentiality and recusal from matters affecting pecuniary interest would automatically apply and need not be restated in the proposed amendment. We have added "to serve at its pleasure", so the board can terminate an individual or the committee if the need arises. We would suggest the following wording, so that the language of the bylaw is consistent with other similar provisions.

Article VIII, Section 1.1 shall be added to read as follows:

The board may appoint an advisory committee composed of not more than three associate directors, to serve at its pleasure for the following purposes: director trainees, advisory capacity and merger representation. The following guidelines will apply:

- (a) Associate directors will not have a vote, nor will they be counted in determining the presence of a quorum.
- (b) The term will not exceed three years.
- (c) If an associate director fails to attend regular meetings of the board for 3 consecutive months, or otherwise fails to perform any of the duties of an associate director, the board in its discretion may remove the individual from his or her position.

Although, we have no legal objection to the proposed amendment, we defer to your judgment as to whether it should be allowed.