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FROM: Acting Assistant General Counsel Hattie M. Ulan

SUBJ : Nonstandard Amendment, Indemnification of Officials
(Your January 4, 1989, Memorandum)

DATE: February 24, 1989

You have requested our review of [] FCU's request to adopt a nonstandard bylaw amendment concerning indemnification of their board of directors, officers, committee members, and volunteers. We suggest that the amendment be modified to include a reference to Michigan law for indemnification applicable to state-chartered credit unions. The amendment will then be in compliance with Section 701.33 of the NCUA Rules and Regulations (12 C.F.R. §701.33). We have no objection to the amendment being designated as Article XIX, Section 8 of the FCU Bylaws. We would caution the FCU that an attorney's opinion should be obtained in choosing the correct Michigan law applicable to state-chartered credit unions under which the FCU officials will be indemnified.

Pursuant to the recent amendment to Section 701.33 of the NCUA Rules and Regulations, an FCU can indemnify its officials and employees consistent with state law or with the Model Business Corporation Act. The recently amended Section 701.33 [12 C.F.R. §701.33] provides, in part:

(b)(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration. (See Change 5 to NCUA's Rules and Regulations or 53 Fed. Reg. 29640, Aug. 8, 1988, attached.)

The preamble to Section 701.33 (53 Fed. Reg. 29640 (8/8/88)), states, in part:

Under the final amendment, an FCU will be free to choose one of three options: No indemnification; indemnification under the state enabling law applicable to its neighboring state-chartered credit unions; or indemnification under the Model Business Corporation Act. The only caveat is that any FCU bylaw or charter amendment relating to indemnification, like all other such amendments, must be approved by NCUA. (Emphasis added.)

The FCU has elected to indemnify its officials pursuant to Michigan law. The bylaw amendment submitted, with our recommended changes overstruck and underscored, would read as follows:

Each person who is or was a director, officer, committee member, or volunteer of the credit union (including the heirs, executors, administrator or estate of such person) shall be indemnified by the credit union as of right to the full extent permitted or authorized by Michigan law for . indemnification applicable to state-chartered credit unions against any liability, cost or expense asserted against him/her and incurred by

him/her in his/her capacity as a director, officer, committee member, or volunteer. The credit union shall maintain insurance, at its expense, to protect itself and any such person against any such penalty, expenses, judgments, fines, or amounts paid in settlement. The personal liability of each person who is or was a director, officer, committee member, or volunteer of the credit union (including the heirs, executors, administrators or estate of such person) to the credit union or its members shall be limited to the full extent permitted by Michigan law applicable to state-chartered credit unions.

We concur with the approval of the proposed bylaw as revised above.