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FROM: Assistant General Counsel
Hattie M. Ulan

SUBJ: [] Nonstandard Bylaw Amendment (Your March 21, 19989, Memo)

DATE: May 1, 1989

You have asked that we comment on three proposed nonstandard bylaw amendments submitted by []. We apologize for the delay in our response. Your memorandum was not received by us until the 18th of April. We basically agree with your proposed recommendations on each of the amendments. Our comments on each amendment are addressed separately below.

The first proposed amendment would allow the [] to hold its annual meeting within the period authorized by the FCU Act and in any county within 100 miles of any office of the Credit Union, the [] or any subsidiary of the Credit Union, the []. The FCU Act no longer specifies certain months within which the annual meeting must be held. The rest of the proposed bylaw does not violate the Federal Credit Union Act or NCUA Regulations. We defer to your judgment on whether or not this bylaw should be approved.

The second proposed amendment restricts eligible members from serving on the board of directors if they are not employed by the [] its subsidiaries, or the Credit Union. As you are aware, it has been our longstanding position that the only requirements for FCU board membership are those contained in the Federal Credit Union Act and the Standard FCU Bylaws. That is, as long as an individual is a member (Section 111 of the FCU Act) and has not been convicted of a crime involving dishonesty or breach of trust (Section 205(d) of the FCU Act), or if they have been convicted of such crime the NCUA Board has waived the Section 205(d) prohibition, he or she is eligible to be elected as a director. Article VI, Section 7 of the FCU Bylaws also permits the board to establish a minimum age requirement. NCUA has generally not granted nonstandard bylaw amendments in this area. The FCU nominating committee can establish a policy to nominate only FCU and sponsor employees. However, other members still have the right to submit a petition or be nominated from the floor. We also question whether the FCU realizes that the proposed amendment would prohibit all members who acquired membership through the immediate family member bylaw from serving on the board. We concur with your decision not to approve this amendment.

The third proposed amendment would change the quorum requirement for board meetings from a majority of directors to three directors. The proposed change does not violate the FCU Act or the NCUA Rules and Regulations. There is no legal precedent or requirement that the amendment be either approved or disapproved. The issue is really one of policy. You indicated in your memorandum that you are inclined to deny the request because it would be inappropriate for two directors to be making decisions affecting the entire membership. Your proposed response to the Credit Union is to establish an Executive Committee with certain delegated powers. This would seem to be the prudent course of action. In any case, safety and soundness issues concerning this change are in your discretion.