

GC/MRS:sg

SSIC 3700

91-1009

[ ]

FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Proposed Nonstandard Bylaw Amendment - [ ]

(Your October 1, 1991 Memorandum)

DATE: October 21, 1991

You requested our opinion on a number of nonstandard bylaw amendments proposed by [ ]. All of the proposed amendments concern elect on procedures. We have no legal objection to the proposal, but are concerned about the potential effect of one of the requested changes, discussed below. Our comments follow.

[ ] proposes several changes in time periods relating to voting at the annual meeting. Specifically, [ ] wishes to change the time for mailing notice of the annual meeting to 85 days (Article V, Section 2), and to require that the nominating committee be appointed 130 days prior to the annual meeting and file its nominations 100 days before the meeting, that the secretary notify the members of the right to nominate by petition 85 days before the meeting, and that nominations by petition be submitted to the secretary 50 days before the meeting (Article VI, Section 1). [ ] also proposes to place the ballot boxes at the credit union offices ten days prior to the meeting and give members 40 hours to vote (Article VI, Section 2). The amendments would also require that ballots be mailed to the members 35 days prior to the meeting (Article VI, Section 8(b)), and that mail ballots be received by the tellers fifteen days before the meeting (Article VI, Section 8(e)).

We have no objection to any of the provisions discussed in the preceding paragraph. Neither the FCU Act nor the Regulations sets any specific time periods for election procedures. The Standard Bylaw Amendments (p. 22) require only that notice of the annual meeting be mailed to the members at least 7 days before the meeting. Seven days is a minimum requirement, and nothing precludes an FCU from lengthening the time period. With regard to the time periods for the actual voting the Standard Bylaw Amendments (p. 26) state: "The placement of ballot boxes (locations) and time periods (the hours of the day or number of days that ballot boxes or voting machines will be available for voting) can be adjusted to meet the needs of your credit union. The only requirement on setting time periods is that no voting can take place after the date of the annual meeting." We also note that none of the requested changes in time periods would impair the rights or hamper the participation of individuals seeking election, or members wishing to exercise their voting privileges.

[ ] proposes to amend Article V, Sections 4(C), (d) and (e) and Article VI, Sections 1, 2 and 8 by redesigning the titles of various officials. As you note, FCU's have the authority to establish officials' titles pursuant to Letter to Credit Unions No. 70. Therefore, we have no problem with most of these proposed changes. However, we are concerned about the revision of Article VI, Section 2, making the tellers subject to approval by the chairman rather than the board of directors. Unlike "president" and "chairman," the terms "board of directors" and "chairman" do not have the same meaning and are not interchangeable. We believe

that the substitution of the chairman for the board as a whole in this instance may give an individual too much control over the election process. However, the proposed amendment does not violate the FCU Act or the Regulations, and we leave it to you to judge whether it raises safety and soundness concerns.

[ ] also wishes to amend Article VI, Section 2, to eliminate ballot voting at the annual meeting. The stated reason for this proposal is to allow sufficient time and better control in verifying the votes by absentee and ballot box voting. As you point out, balloting at the meeting will be allowed in those instances where sufficient nominations have not been made prior to the meeting and nominations from the floor are taken. We have no legal objection to this proposed amendment.

We defer to your judgment as to whether the proposed amendments should be allowed.