

GC/MEC: sg

SSIC 6100

92-1249

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments

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Bylaws, Art. XII, §8 and Art. XIX, §7

DATE: January 13, 1993

You requested review of amendments to the above-referenced bylaw sections. we concur with your proposed decision.

#### BACKGROUND

The FCU has requested approval for two nonstandard bylaw amendments. You are inclined to concur if the nonstandard bylaw amendments are revised as follows:

Art. XII, §8 subject to the limitations of applicable law and regulations, any member whose long term real estate loan is delinquent 15 days or more may be required to pay a late charge not to exceed 5 percent of the principal and interest payment which is late. For all other types and classes of loans, any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

[The justification given by the FCU for this change is to comply with FNMA/FHLMC Uniform Instrument requirements for real estate loans, while giving the FCU flexibility with other loan types.]

Art. XIX, §7 Each member shall keep the credit union informed about his current address. In the event the member fails to do this, a charge may be made to the member's share account for the cost incurred in determining such address subject to applicable law and regulations; Provided however, that the maximum amount and the frequency of assessment of such charge shall be established by the board of directors.

[The justification given by the FCU for this change is to allow the FCU to do locator searches internally instead of through a third party, and to recoup such costs spent.]

#### ANALYSIS

##### **Art. XII, §8**

The FCU Act supplies ample statutory authority for the proposition that FCUs may set their own fees and charges on credit accounts. Section 107(10) of the FCU Act states:

A [FCU) shall have succession in its corporate name during its existence and shall have power -- (10) to levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations

to the FCU. 12 U.S.C. §1757(10).

The Standard FCU Bylaws provide that: "[a]ny member whose loan is delinquent may be required to pay a late charge as determined by the board of directors-" NCUA Standard FCU Bylaws, Art. XII, §8. The Standard Bylaw Amendment makes clear that the limitations placed on late charges are for FNMA/FHLMC purposes only. NCUA FCU Standard Bylaw Amendments and Guidelines, p. 15. In addition, the FCU Act requires the board of directors of an FCU to:

(8) subject to any limitations of this subchapter, determine the interest rates on loans, the security, and the maximum amount which may be loaned and provided in lines of credit;... [and to] (20) establish lending policies.... 12 U.S.C. §1761b(8) and (20).

With this in mind, NCUA has authority to make the change to Art. XII, §8 that you recommend, assuming all Regions are consulted. NCUA Delegations of Authority, SUP 12.

#### **Art. XIX, §7**

The requested amendment deviates from the Standard FCU Bylaws provision only in allowing the FCU to perform locator services internally. FCUs are authorized to receive from members share accounts "subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the board-" 12 U.S.C. §1757(6). NCUA permits FCUs to "consistent with this Section, other Federal law, and its contractual obligations, (to) determine the type of ... fees or charges...." 12 C.F.R. §701.35. Under this authority, your recommended change would be permissible. However, please note the Letter from Steven R. Bisker, Assistant General counsel, to Brian Witt, Esq., Portland, Oregon, dated October 31, 1985 (attached). In the internal memorandum attached to this letter, it is reported that the Regions were not in favor of allowing this nonstandard bylaw amendment at that time.