

GC/MRS:sg

SSIC 6100

92-1246

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendment (Your December 17, 1992, Memorandum)

DATE: February 12, 1993

You requested our opinion on several nonstandard bylaw amendments proposed by [ ]. We have no legal objection to any of the proposals, but we do have some comments.

The FCU indicates that it wants to delete references to passbooks and passbook accounts in Article III, Section 5(b) and Article IV, Sections 1 and 2. The reason for this requested change is that the FCU does not offer, and does not intend to offer, passbook accounts. We have no problem with permitting the deletion of references to passbooks and passbook accounts. However, the proposed amendment to Article III, Section 5(b) is identical to the standard bylaw. Therefore, it seems as though the FCU has made an error in that portion of the request. If the FCU currently has a nonstandard version of Article III, Section 5(b) that makes reference to passbooks, it may, of course, change to the standard bylaw. You state, in your December 17, 1992, letter to the FCU, that you have denied the request to amend Article III, Section 5(b) and Article IV, Sections 1 and 2. While we do not object to the proposal, we defer to your judgment on whether to allow the request.

The FCU also wants to amend Article VII, Section 7, to give the board of directors authority to excuse one additional absence over the number allowed a director by the standard amendment. Your letter to the FCU indicates that you have denied this requested amendment because it conflicts with the standard amendment's directive that if a director misses more than the allowable maximum number of meetings, his office shall be declared vacant. The mandatory language in the standard amendment is not derived from the FCU Act or the NCUA Regulations and, therefore, it is not legally required. However, if you choose to allow the amendment, we would suggest inserting the phrase, "(unless excused by the board as provided herein)" after the words, "in a calendar year" in the first sentence. This would, we think, avoid confusion that could otherwise arise. Again, we defer to your judgment as to whether the proposed amendment should be permitted.

The FCU's last proposal would add a new Article II, Section 5, implementing the FCU's "once a member policy-" The standard version of Article II, Section 5 provides that members who cease to be within the FOM lose their membership, but allows the board to resolve that such members may retain their membership if they meet criteria established by the board. Under the proposal, Article II, Section 5 would state that a member who leaves the FOM will retain his membership as long as his account is in good standing and he meets any other criteria established by the board. The FCU's stated purpose for this amendment is to stabilize membership by making it more difficult for the "once a member policy" to be rescinded, since a bylaw amendment requires a two-thirds vote of the board, while a resolution can be passed by a simple majority.

We do not have any legal problem with the proposed amendment. [ ], of your office, has advised Meg Suuberg, of this Office, that at least one Regional Director objects to the proposal, on the grounds that it will not accomplish the FCU's purpose because under the proposed bylaw, the board will still be able to establish qualifications by resolution. We understand the RD's concern, and agree that the amendment may not accomplish as much as the FCU intends. However, the proposed Article II, Section 5 is not legally objectionable, and we defer to your judgment as to whether it should be permitted.