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FROM: James J. Engel, Deputy General Counsel'

SUBJ: Nonstandard Bylaw Amendments - []

(Your August 19, 1993, Memorandum)

DATE: September 13, 1993

You asked for our comments on [] proposed nonstandard bylaw amendment, which would add Article VIII, Section 13, providing for the board of directors to appoint a loan review committee. we have no legal objection to the substance of the proposal. However, we do suggest some modifications.

Some years ago, [] adopted standard bylaw amendments to eliminate the credit committee and delegate loan approval and denial power to loan officers appointed by the board of directors. The FCU apparently has experienced some delay in handling appeals of denied loans, and proposes to create a mid-level "loan review committee" with authority to overturn loan denials. The proposed amendment specifies that denials by the loan review committee must be reviewed by the board of directors, upon written request of the member.

Although the Act does not specifically provide for a loan review committee, we believe that there is sufficient authority for such a committee as described in [] proposal. Section 114(b) of the Act provides that, if an FCU has a credit committee, such committee shall review all loan applications denied by loan officers. (The proposed loan review committee differs from a credit committee in that it provides only an interim appeal of a loan denial; the final appeal would be to the board. The Act implies that where an FCU has a credit committee, there is no appeal to the board.) Section 113(17) empowers the board to review denials of loan applications when there is no credit committee, and Section 114(b) states that, where there is no credit committee, a member has the right, upon written request, to a review by the board. [] does not have a credit committee, so, under the Act, the board must review loan denials upon request.

Section 113(13) of the Act states that the board may, if the bylaws so provide, appoint an executive committee "and any other committees to which it can delegate specific functions." In our opinion, Section 113(13) is broad enough to permit [] board to appoint a loan review committee with delegated authority to review loan denials. of course, since the Act grants a member the right to have the board review his loan denial, any denial not overturned by the credit appeals committee must be reviewed by the board upon written request of the member. The proposed amendment clearly contemplates board review, but we suggest that it be amended to specify the procedures for appeal to the board. The amendment should also make clear that the loan review committee is not a substitute for a credit committee.

While we believe that the loan review committee is legally permissible, we defer to your judgment as to whether it should be allowed as a matter of policy. If you choose to allow the establishment of a loan review committee, the number of committee member's and length of their terms should be specified in the amendment. Finally, we believe that it would be more informative for the membership if the amendment were added to the section of [] bylaws dealing with loan officers and procedures, in addition to or instead of to Article VIII. Again, we defer to your judgment on that issue.