

April 30, 1991

Mr. Heinz K. Walter Crown Hill Road Wappingers Falls, New York 12590

Re: Board of Directors, IBM Hudson Valley Employees Federal Credit Union (Your April 8, 1991 Letter)

Dear Mr. Walter:

You requested our opinion as to whether the recent election of an individual to the board of directors of the IBM Hudson Valley Employees Federal Credit Union ("IBM HV EFCU") violates Article VII, Section 1 of IBM HV EFCU's bylaws. It is our policy not to render formal opinions on issues of this type.

According to your letter, Article VII, Section 1 of IBM HV EFCU's bylaws states, in part, ". . . the Board shall consist of 9 members, all of whom shall be members of this Credit Union and at least two-thirds (2/3) of whom shall be active employees of IBM." You note further that Ruth Graham, who was recently elected to the board, is not an IBM employee. You indicate that, at the time of Ms. Graham's election, the board already had three members who were not active IBM employees; presumably, those three individuals are still serving as directors. Should Ms. Graham be seated as a director, therefore, the board will have four members who are not active IBM employees, contrary to the two thirds requirement stated in the bylaw. We note that a bylaw requirement that a certain number or percentage of board members be employees of a particular sponsor group would not be approved by NCUA under current policy.

You ask that we issue an official ruling in favor of your position, "which shall be binding on the Board of Directors of IBM HV EFCU and all parties who may have an interest in, control over or an opinion on this matter." While we understand your concern over the board's possible violation of the bylaw, this is an issue that should be resolved by the board or the supervisory committee.

A credit union's bylaws function as a contract governing the relationship between a credit union and its members. Bylaws are interpreted according to the corporate common law of the state in which the credit union is located. It has long been our policy not to become involved in bylaw disputes, unless the alleged bylaw violation poses a threat to the safety and soundness of the federal credit union in question or unless there are issues relating to the Federal Credit Union Act or NCUA Rules and Regulations. The issue you raise does not cause safety and soundness concerns or conflict with the Act or Regulations. We do not believe that it would be appropriate for NCUA to insert itself into what is essentially an internal problem within the credit union's power to resolve. Should you wish to pursue this matter, we suggest that you contact local counsel for an opinion based on New York corporate common law.

I hope that we have been of assistance.

Sincerely,

Hattie M. Ulan
Associate General Counsel

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