

April 5, 1995

William J. Sayres
Avery Road
Garrison, N.Y. 10524

Re: Election procedures at Hudson Valley FCU
Your March 10, 1995, Letter

Dear Mr. Sayres:

You requested our opinion on the implications of the nomination policies of Hudson Valley Federal Credit Union (FCU). This office can only give you its legal analysis of the policies in question.

The nominating committee policy that affects you states a "credit union employee and/or his/her spouse cannot be considered for nomination until five (5) years after the cessation of that employment in order to avoid conflict of interest." As Region I Director Layne L. Bumgardner advised you on December 7, 1994, the nominating committee can establish eligibility standards it will consider for nominations to the board. The policy in question is legally permissible and was previously approved by the NCUA.

Although you do not qualify for nomination under the nominating committee's criteria, you are eligible for nomination by petition. You advise that the requirements for nomination by petition make it very difficult for an individual to achieve nomination through this process. One of the policies you complain of is the requirement that the name and address on the petition must "exactly" match and identify the person who signed the petition and their signature card. While the policy does not appear to be excessively burdensome on its face, it may be unfairly applied. An example of an unfair application of the policy would be if the nominating committee invalidates a petition signature when it is clear that the signature is authentic except for a missing middle initial or the address lacks the zip code.

We agree that the FCU's policy of not permitting petition solicitations on credit union premises makes it difficult to gather the requisite number of signatures for nomination. Barring any potential safety or security hazards, the FCU could establish a controlled procedure whereby candidates could station themselves in an unobtrusive location on or near the FCU at certain hours and on certain dates. As this issue is not addressed by either the FCU Act or NCUA's Rules and Regulations, it is within the credit union's discretion to set this policy.

It is NCUA's policy not to become involved in election disputes that do not pose a threat to the safety and soundness of the credit union or conflict with the Act or Regulations. This office advised Mr. Heinz Walter of Hudson Valley FCU, formerly known as IBM Hudson Valley Employees FCU of this policy when the credit union was previously involved in an election dispute. (See attached April 30, 1991, Letter from Hattie M. Ulan, Associate General Counsel to Mr. Heinz Walter.)

We have opined that it is permissible for an FCU to require the petitions for board of director nominations include the account numbers of members signing the petition. (See attached February 8, 1990, Letter from Hattie M. Ulan, Associate General Counsel to Michael LaBarbera, Esq.). If you believe the FCU's policies make it practically impossible to independently run for the board, you should contact private counsel for advice on New York corporate common law and other assistance.

Sincerely,

Richard S. Schulman
Associate General Counsel

GC/MFR:bhs
SSIC 3100
95-0328

Enclosures

cc: Region I Director