

February 6, 2003

Ms. Bozena Kajewska-Pielarz

(b)6

Re: Election Procedures.

Dear Ms. Kajewska-Pielarz:

You have asked several questions concerning federal credit union (FCU) election procedures.

First, you want to know if an FCU may require a member to provide the following information on a petition to nominate a candidate to the board of directors: the member's full name, share account number, address, and phone number. The FCU is also requiring that the member's signature match a signature in the FCU's possession for purposes of account transactions.

Our view is that an FCU should not require members to disclose their account numbers on a nomination petition. The other requested information appears to be reasonably calculated to assist the FCU in verifying the authenticity of the petition, including the requirement that a member provide a signature that will match a signature in the FCU's possession. The requirement that the member provide an account number does not violate the NCUA's consumer privacy regulation, which, by its terms, governs disclosures a credit union makes. 12 C.F.R. Part 716. Nevertheless, requiring disclosure of an account number conflicts with NCUA's Guidelines for Safeguarding Member Information and our guidance on preventing identity theft. 12 C.F.R. Part 748, Appendix A; NCUA Letters to Credit Unions No. 00-CU-02 and No. 01-CU-09. We also note the statement in Part 748 that a "credit union's information security program should be designed to: ensure the security and confidentiality of member information." 12 C.F.R. Part 748, Appendix A, II, B.

You have also asked if there is any prohibition on directors and supervisory committee members also serving on the nominating committee. The FCU Bylaws require the chair to appoint a nominating committee of at least three members. FCU Bylaws, Article V, Section 1. The FCU Bylaws do not restrict members of the nominating committee simultaneously from holding other FCU positions.

Next, you ask if it is permissible for an FCU's board to appoint a publicity committee to promote candidates nominated by the nominating committee in an upcoming election. The committee will use FCU funds to accomplish this. There is no prohibition on an FCU using FCU funds to promote its elections or the candidates selected by its nominating committee. You have also asked if the board may appoint a current board member to serve as Vice President of marketing, a compensated position, whose duties, you believe, include promoting the FCU elections and the candidates selected by the nominating committee. There is no prohibition on a board member serving as an employee of the FCU, unless prohibited by the number limitation in the FCU's bylaws. FCU Bylaws, Article VI, Section 2. An FCU selects the number of directors it permits to serve as paid employees but is limited by the bylaws to less than a majority of the board. *Id.*

Finally, you asked if NCUA has the jurisdiction to oversee the activities of a company the board has hired to tally election ballots. NCUA's longstanding policy is not to become involved in election or bylaw disputes, unless the alleged violation poses a safety and soundness concern to the FCU or is a violation of the FCU Act or NCUA's regulations. Based on the information you provided, the board's action in hiring this company does not appear to violate the FCU Act or NCUA regulations. If you wish to pursue this or the

other issues discussed above, we suggest you consult with your own local, legal counsel for an opinion based on New York state law.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR/SAA:bhs
03-0106

cc: Layne Bumgardner, Region I Director