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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Chapter VII

RIN 3133-AF02

#### Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (“Second Chance IRPS”)

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final interpretive ruling and policy statement 19–1.

**SUMMARY:** The NCUA Board (Board) is updating and revising its Interpretive Ruling and Policy Statement (IRPS) regarding statutory prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act). Section 205(d) prohibits, except with the prior written consent of the Board, any person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union. The Board is rescinding current IRPS 08–1 and issuing a revised and updated IRPS to reduce regulatory burden. The Board is amending and expanding the current *de minimis* exception to reduce the scope and number of offenses that will require an application to the Board. Specifically, the final IRPS will not require an application for convictions involving insufficient funds checks of aggregate moderate value, small dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults.

**DATES:** The final IRPS takes effect January 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Special Counsel to the General Counsel, Office of General

Counsel, at the above address or telephone (703) 518–6540.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Board recognizes that many Americans face hiring barriers due to a criminal record, a great number of which are not violent or career criminals, but rather people who made poor choices early in life who have since paid their debt to society. Offering second chances to those who are truly penitent is consistent with our nation’s shared values of forgiveness and redemption. In keeping with this spirit of clemency, the Board endeavors to expand career opportunities for those who have demonstrated remorse and responsibility for past indiscretions and wish to set on a path to productive living. Toward that end, the Board is revising its guidance regarding prohibitions imposed by Section 205(d) of the FCU Act.

Section 205(d) of the FCU Act prohibits, without the prior written consent of the Board, a person convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured credit union.<sup>1</sup> In August 2008, the Board issued final IRPS 08–1, to provide direction and guidance to federally insured credit unions and those persons who may be affected by Section 205(d) because of a prior criminal conviction or pretrial diversion program participation by describing the actions that are prohibited under the statute and establishing the procedures for applying for Board consent on a case-by-case basis.<sup>2</sup>

The IRPS has not been revised since 2008 and, based on its experience with the IRPS over the past decade, the Board is updating and revising the guidance to reduce regulatory burden while protecting federally insured credit unions from risk by convicted persons.

##### II. Background

Under Section 205(d)(1) of the FCU Act, except with the prior written

consent of the Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution-affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to participate in the affairs of the credit union without Board consent. Section 205(d)(2) imposes a ten-year ban against the Board’s consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the Board and approval by the sentencing court. Finally, Section 205(d)(3) states that “whoever knowingly violates” (d)(1)(A) or (d)(1)(B) commits a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day.

Recognizing that certain offenses are so minor and occurred so far in the past so as to not currently present a substantial risk to the insured credit union, IRPS 08–1 excludes certain *de minimis* offenses from the need to obtain consent from the Board. However, several recent applications requesting the Board’s consent pursuant to Section 205(d) involved fairly minor, low-risk, erstwhile, and isolated offenses that did not fall within the current *de minimis* exception.<sup>3</sup> In light of these recent cases, the substantial passage of time since IRPS 08–1 was adopted, and importantly, the Board’s commitment to opening a path forward for those seeking redemption for past criminal activities, the Board has determined it is appropriate to now amend IRPS 08–1.

In issuing these final amendments to IRPS 08–1, the Board remains mindful of a corresponding Statement of Policy (SOP) issued by the Federal Deposit Insurance Corporation (FDIC) to promote consistency between the

<sup>3</sup> For example, in several recent cases, the offense in question met four of the five *de minimis* criteria but did not qualify for the *de minimis* exception because the *potential*—but not actual—punishment exceeded the standard set forth by IRPS 08–1. See BD–02–18 (Oct. 18, 2018); BD–01–19 (Mar. 14, 2019).

<sup>1</sup> 12 U.S.C. 1785(d)(1).

<sup>2</sup> 73 FR 48399 (Aug. 19, 2008).

prudential regulators and to reduce regulatory burden. Section 19 of the Federal Deposit Insurance Act (FDIA) contains a prohibition provision similar to Section 205(d) of the FCU Act. In 1998, the FDIC implemented an SOP regarding prohibitions imposed by Section 19 of the FDIA, and it has subsequently modified and updated its guidance on several occasions.<sup>4</sup> In the past, the NCUA has drawn on the FDIC's SOP for guidance on this topic. In 2018, the FDIC updated and revised its SOP to expand its *de minimis* exception and to make other clarifying changes.<sup>5</sup> In the Board's view, it is beneficial to both institutions and covered individuals for the NCUA's Section 205(d) requirements to be reasonably consistent, to the extent possible, with the FDIC's Section 19 requirements. Consistent guidelines between our sister agencies with respect to these parallel statutory provisions will help streamline the application process, particularly for those individuals seeking consent from both the NCUA and the FDIC to allow for potential employment at federally insured financial institutions.

### III. Proposed Second Chance IRPS (IRPS 19–1)

In July 2019, the Board published and sought public comment on a proposal to expand exceptions to employment restrictions under Section 205(d).<sup>6</sup> Deemed the "Second Chance IRPS," the Board proposed to amend the current *de minimis* exception to reduce the scope and number of offenses that would require an application to the Board. Specifically, the proposed Second Chance IRPS did not require an application for insufficient funds checks of aggregate moderate value, small dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults. In addition, the Board proposed some minor grammatical, formatting, and clarifying changes.

The Board received a total of twelve comments from national credit union trade associations, state credit union associations, advocacy groups (including one joint letter representing 36 individual groups), one federal credit union, and one fidelity bond provider. The commenters generally supported

the proposed IRPS and appreciated the Board's efforts to reduce regulatory burden, and to expand employment opportunities to those deserving of a second chance. The general consensus among commenters was that the proposed guidance was well-measured, balanced, and flexible and will reduce burdens on credit unions, covered individuals, and the agency, while maintaining appropriate safeguards to ensure the new exceptions do not present undue safety and soundness risks to insured credit unions. Commenters widely applauded the NCUA's efforts to expand employment opportunities for low-risk convicted persons and noted the second chance amendments are consistent with our nation's redemptive spirit. One commenter was particularly gratified that the NCUA's issuance will represent a strong message in support of second chances and act as a signal to other industries that many former offenders are worthy of the opportunity for inclusion and trust.

A joint comment letter representing numerous advocacy groups supported the proposed Second Chance IRPS overall, but asked that the NCUA go further than the proposal to adopt additional reforms and improvements to promote expanded employment opportunities for people with conviction records, including, among other things, additional expansions of the *de minimis* exception; further clarifications regarding expungements, set-asides, and reversed convictions; and clarifications to the evaluation standards for Section 205(d) consent applications.

Substantive comments on specific aspects of the proposed Second Chance IRPS are discussed in detail below. For the reasons described below, the Board is adopting the proposal with a few minor modifications.

### IV. Final Second Chance IRPS

#### A. Background

IRPS 08–1 currently provides background regarding Section 205(d)'s prohibition, and discusses its purpose to provide requirements, direction, and guidance to federally insured credit unions and individuals covered by the statutory ban. The proposed IRPS revised the background section to make clear that IRPS 19–1 supersedes and replaces IRPS 08–1. There were no comments on this aspect of the proposal, and the Board adopts this amendment as proposed.

#### B. Scope

##### 1. Persons Covered

The proposed Second Chance IRPS modified the scope section to clarify the persons covered by the Section 205(d) prohibition. Under the statute, the prohibition applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act,<sup>7</sup> and others who are participants in the conduct of the affairs of an insured credit union.<sup>8</sup>

Under Section 206(r), independent contractors are considered institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices, or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured credit union. Over the years, the definition of independent contractors in Section 206(r), which is included in IRPS 08–1, has created confusion among interested parties. Given that the term is actually unnecessary in determining whether Section 205(d) applies at the time the individual commenced work for, or participated in the affairs of, the credit union, the proposed Second Chance IRPS deleted reference to certain language in the definition of "independent contractor." It also clarified that an independent contractor typically does not have a relationship with the insured credit union other than the specific activity for which the insured credit union has contracted, and that the relevant factor in determining whether an independent contractor is covered by Section 205(d)'s prohibition is whether the independent contractor influences or controls the management or affairs of that credit union.

A person who does not meet the statutory definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. The proposed Second Chance IRPS did not precisely define what constitutes direct or indirect participation in the conduct of the affairs of an insured credit union, but rather updated and clarified how the NCUA will determine whether a person qualifies as a participant in the affairs of an insured credit union.

One commenter specifically agreed the NCUA should not expressly define who qualifies as a participant. Another commenter questioned why it is necessary for the guidance to address both institution-affiliated parties and

<sup>4</sup> The FDIC has revised its SOP multiple times since its implementation in 1998. See 63 FR 66177 (Dec. 1, 1998); 72 FR 73823 (Dec. 28, 2007); 73 FR 5270 (Jan. 29, 2008); 76 FR 28031 (May 13, 2011); 77 FR 74847 (Dec. 18, 2012); 83 FR 38143 (Aug. 3, 2018).

<sup>5</sup> 83 FR 38143 (Aug. 3, 2018).

<sup>6</sup> 84 FR 36488 (July 29, 2019).

<sup>7</sup> 12 U.S.C. 1786(r).

<sup>8</sup> 12 U.S.C. 1785(d).

participants in the affairs of an insured credit union. The commenter encouraged the Board to delete reference to participants as the term appears redundant and does not seem to expand the scope of coverage.

As noted above, the statute expressly applies the employment prohibition to institution-affiliated parties and others who are participants in the conduct of the affairs of an insured credit union. Specifically, Section 205(d) provides that except with prior written consent of the Board—

1. any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

a. become, or continue as, an institution-affiliated party with respect to any insured credit union; or

b. otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union; and

2. any insured credit union may not permit any person referred to in paragraph (1) to engage in any conduct or continue any relationship prohibited under such paragraph.<sup>9</sup>

In the Board's view, for consistency with the operative statute, it is helpful and appropriate for the guidance to continue to address both institution-affiliated parties and participants in the affairs of an insured credit union. While there may be overlap between the two, retaining reference to the two distinct statutory terms in the final IRPS will promote clarity and maintain consistency between the statute and guidance.

The Board continues to maintain that participants in the affairs of a credit union is a term of art that defies precise definition. Thus, the final Second Chance IRPS reiterates the NCUA's current position that agency and court decisions will inform its determination and that, generally, participation will depend upon the degree of influence or control over the management or affairs of the insured credit union. Each individual's conduct will be analyzed on a case-by-case basis to determine if that conduct constitutes participation in the conduct of the affairs of an insured credit union.

## 2. Offenses Covered

The proposed Second Chance IRPS clarified that in order for an application to be considered by the Board, the case must be considered final by the procedures of the applicable jurisdiction. This means all of the

sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion or similar program, including, but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed before the Board will deliberate a consent application. There were no comments on this aspect of the proposal, and the Board is adopting these provisions without modification.

## 3. Offenses not Covered

Currently, where the covered offense is considered *de minimis*, approval is automatically granted, and an application for the Board's consent is not required. The proposed Second Chance IRPS modified the current exception for *de minimis* offenses in two ways: First, by updating the general criteria for the exception; and second, by substantially expanding the scope of the exception to include additional offenses to qualify as *de minimis* offenses.

*De minimis offenses.* Under IRPS 08–1, a covered offense is considered *de minimis* if it meets all of the following five criteria: (1) There is only one conviction or entry into a pretrial diversion program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000, and the punishment imposed by the court did not include incarceration; (3) the conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required; (4) the offense did not involve an insured depository institution or insured credit union; and (5) the Board or the FDIC has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

The proposed Second Chance IRPS updated the general criteria for the *de minimis* offenses exception to better align with developments in criminal reform and sentencing guidelines that have occurred since IRPS 08–1 was adopted in 2008. Specifically, the potential punishment and/or fine provision (current criterion 2) was updated to allow those offenses punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and those offenses punishable by three days or less of jail time, to meet that *de minimis* criterion.

Commenters noted that these changes to the general criteria, while modest, will nevertheless result in a meaningful

reduction in the number of applications to the Board. In particular, several commenters indicated that simply amending criterion 2 from “less than one year” to “one year or less” will result in significant regulatory relief. Commenters also agreed the increase in the dollar threshold better aligns with criminal reform and sentencing guidelines. One commenter was supportive overall of the proposed amendments to the general criteria for the *de minimis* exception, but asserted that the single conviction criterion (criterion 1), which was not modified in the proposal, is too restrictive.

The proposed IRPS also added a definition of “jail time” to clarify that the term includes any significant restraint on an individual's freedom of movement, including confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time periods or both.

One commenter specifically supported the proposed definition of jail time. However, another comment letter expressed concerns that the proposal's definition would include time served in pretrial confinement, for civil infractions, or in home confinement since these penalties impose a “significant restraint on an individual's freedom of movement.” As one example, the comment letter noted low-risk individuals who had their freedom of movement restricted for failure to pay a traffic fine would fall outside of the exception because of the more expansive proposed definition. Thus, this comment letter recommended the Board retain the current language relative to jail time. Another commenter suggested the definition of jail time should include probation if probation was the only confinement imposed as part of an individual's punishment.

After a review and analysis of the comments, the Board is adopting this aspect of the guidance unchanged in the final Second Chance IRPS. The Board anticipates the measured changes to criterion 2 of the general *de minimis* exception alone should result in a fairly significant reduction in regulatory burden. The Board is not inclined to further relax the general criteria at this time to allow for more than one *de minimis* offense to qualify for the general exception. The Board wishes to emphasize, however, that for any offense that does fit a *de minimis* category, an application can still be filed.

The Board also adopts the proposed definition of “jail time” without modification. As discussed in the

<sup>9</sup> 12 U.S.C. 1785(d).

proposal, the NCUA is aware that various jurisdictions take different approaches to confinement depending on the nature of the crime (e.g., house arrest, home detention, ankle monitor, voice curfew, work release) and the proposed definition was intended to improve transparency and enhance compliance in that context. In the Board's view, the new definition is appropriately tailored to address those varied jurisdictional approaches in order to clarify the circumstances under which a lesser crime will qualify as *de minimis*. In response to the comment letter expressing concern that the proposed definition was overly broad to exclude individuals whose freedom of movement is restricted for minor crimes, such as for failure to pay a traffic fine, the Board notes that minor traffic violations are not criminal offenses involving dishonesty or a breach of trust within the scope of Section 205(d).

*Additional applications of the de minimis exception.* The proposed Second Chance IRPS also expanded the scope of the exception to include several additional offenses to qualify as *de minimis* offenses in order to eliminate the need to submit an application for certain low-risk, isolated offenses. The proposed expansion was intended to reduce regulatory burden to credit unions, covered individuals, and the agency, while continuing to mitigate the risk to insured credit unions posed by convicted persons.

Most commenters were very supportive of the expansion of the current *de minimis* exception to include new qualifying offenses. One commenter, however, disagreed with expanding the exception to include additional offenses, preferring the Board have the opportunity to evaluate all aspects of a covered individual's criminal past. Another commenter expressed concern that the new exceptions could risk the safety and soundness of credit unions (particularly smaller institutions), and thus, opposed the addition of new *de minimis* offenses.

As described in more detail below, the Board generally adopts the new qualifying offenses for *de minimis* treatment as proposed, with some minor modifications for improvement.

*Age at time of covered offense.* Under the proposed Second Chance IRPS, a person with a covered conviction or program entry that occurred when the individual was 21 years of age or younger at the time of the conviction or program entry, and who otherwise meets the general *de minimis* criteria, will qualify for this *de minimis*

exception if: (1) The conviction or program entry was at least 30 months<sup>10</sup> prior to the date an application would otherwise be required and (2) all sentencing or program requirements have been met prior to the date an application would otherwise be required.

One commenter generally supported this proposed change, but urged the Board to go further by also modifying the other general criteria applying to offenses committed prior to the age of 21, namely, that the offense be punishable by a jail term of less than one year or a fine of less than \$2,500.

The Board declines this recommendation. While this measured exception is intended to recognize that isolated, youthful mistakes are particularly worthy of forgiveness and second chances, the Board remains mindful of its safety and soundness mandate. Reducing by half the passage of time required for individuals with a minor youthful conviction to qualify for the exception provides meaningful relief while still appropriately mitigating risks to insured credit unions posed by convicted persons. Accordingly, the Board is adopting the age-based *de minimis* treatment, as proposed, in the final Second Chance IRPS.

*Convictions or program entries for insufficient funds checks.* The Board also proposed to expand the *de minimis* exception to cover certain convictions for "bad" or insufficient funds checks, which, in the Board's view, generally are low-risk offenses that can be treated as *de minimis*. Under the proposal, these types of offenses were considered *de minimis* and were not considered as involving an insured depository institution or insured credit union if the following conditions apply:

- Other than for "bad" or insufficient funds check(s), there is no other conviction or pretrial diversion program entry subject to Section 205(d);
- The aggregate total face value of all "bad" or insufficient funds check(s) cited across all the conviction(s) or program entry or entries for bad or insufficient checks is \$1,000 or less; and
- No insured depository institution or insured credit union was a payee on any of the "bad" or insufficient funds checks that were the basis of the conviction(s) or program entry or entries.

One commenter expressed concern with the proposed exception for offenses involving insufficient funds

<sup>10</sup> Half of the regular five-year period applicable to individuals with a covered conviction or program entry that occurred when the individual was over 21 years of age at the time of the conviction or program entry.

checks and asked that the Board readjust the qualifying aggregate total face value amount. The same commenter also suggested this exception category should be revised to impose a qualifying timeframe (e.g., five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry)). Another commenter suggested that references to covered offenses that took place at an "insured credit union" or an "insured depository institution" should be revised throughout the guidance to eliminate the "insured" modifier. In this commenter's view, the proposed language is overly specific as any prior offense by a covered individual involving a financial institution, insured or not, can increase risks to insured credit unions.

The Board agrees that covered individuals with convictions or program entries for crimes involving financial institutions may pose risks to insured credit unions, regardless of the financial institution's insurance status. After careful review, the Board maintains that no offense category should be included in the *de minimis* exception if the covered crime was committed against a financial institution, insured or not. Accordingly, to the extent the distinction between insured and uninsured institutions is immaterial in this context, the final IRPS eliminates the "insured" modifier throughout. However, the Board declines to impose additional conditions on this exception category at this time. Imposing a lower qualifying aggregate total face value amount or a qualifying timeframe for this *de minimis* category would limit its utility and undermine the Board's objective of providing well-balanced, yet meaningful, regulatory relief. The Board continues to take the view that convictions for "bad" or insufficient funds checks generally are low-risk offenses that can be treated as *de minimis*. Thus, offenses that meet all the above-listed criteria, as revised to eliminate the "insured" modifier, will not require an application for the Board's consent under the final Second Chance IRPS.

*Convictions or program entries for small-dollar, simple theft.* As the Board discussed in the proposed Second Chance IRPS, a substantial number of applications that have come before the Board since 2008 have involved convictions or program entries for relatively minor, low-risk, small-dollar, simple theft (e.g., shoplifting, retail theft). Based on a historical review of Section 205(d) applications, the Board granted its consent to the vast majority

of those covered individuals with convictions or program entries related to small-dollar, simple theft. Thus, under the proposal, a conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) was considered *de minimis* where the following conditions are met:

- The aggregate value of the currency, goods, and/or services taken was \$500 or less at the time of conviction or program entry; and
- The person has no other conviction or program entry described in Section 205(d); and
- It has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry); and
- It does not involve an insured depository institution or insured credit union.

For purposes of the exception, simple theft did not include the offenses of burglary, forgery, robbery, identity theft, or fraud. Under the proposal, these crimes continued to require an application for the Board's consent, unless otherwise qualifying as *de minimis*.

Stakeholders providing comment on this aspect of the proposed IRPS generally supported the exception for small-dollar, simple theft. Several commenters supported the express exclusion of burglary, forgery, robbery, identity theft, and fraud from the exception and agreed those offenses should continue to require an application for the Board's consent. Several commenters asked the Board to clarify that all of the stated conditions must be met in order for the exception to apply. A number of commenters also asked the Board to confirm and emphasize in the final IRPS that simple theft, of any value, involving a depository institution or credit union falls outside the *de minimis* exception and will require an application to the Board. One commenter suggested the condition that the conviction or program entry does not involve an insured depository institution or insured credit union should be revised to eliminate the "insured" modifier.

One comment letter was generally in favor of an exception for simple theft, but contended the practical application of the proposed exception is limited because most simple theft convictions involving \$500 or less are likely already covered as *de minimis* under the general criteria (*i.e.*, unlikely to be punishable by imprisonment for a term of more than one year or a fine of more than \$2,500, and the covered person is

unlikely to have served more than three days in jail). Thus, the comment letter urged that the Board go further to exclude from Section 205(d) coverage certain minor dishonesty offenses, such as all convictions for the use of a fake ID (not only limited to alcohol-related use), shoplifting, fare evasion, and other lesser offenses. Alternatively, at a minimum, the comment letter suggested these types of convictions should be excluded from Section 205(d) coverage after one year from the time of conviction or program entry.

Upon careful consideration of the public comments, the Board continues to take the view that the exception is appropriately tailored to streamline the application process without creating undue or substantial risk to insured credit unions, and declines to expand it further at this time to include additional offenses. Accordingly, the final Second Chance IRPS adopts the small-dollar, simple theft exception largely as proposed. A conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) is considered *de minimis* where all of the above-listed conditions are met. As discussed above, the Board agrees, however, that the distinction between insured and uninsured institutions is immaterial in this context. Thus, the final Second Chance IRPS eliminates the "insured" modifier in this exception category. Simple theft, of any value, involving a depository institution or credit union, whether insured or not, falls outside the *de minimis* exception and will require an application to the Board. Where pertinent throughout, the final Second Chance IRPS also adds the word "all" to clarify that all the described conditions must be met in order for the exception to apply.

*Convictions or program entries for the use of a fake identification card.* Under the proposed Second Chance IRPS, the use of a fake, false, or altered identification card by a person under the legal age to obtain or purchase alcohol, or to enter a premises where alcohol is served and age appropriate identification is required, was considered *de minimis*, provided there is no other conviction or program entry for the covered offense.

All commenters that provided feedback on this aspect of the proposal were supportive of the exception and agreed that individuals with convictions or program entries for the use of a fake identification card pose little risk to insured credit unions. Accordingly, the Board adopts as proposed the provision allowing *de minimis* treatment for the use of fake identification by a person

under the legal age for alcohol-related purposes.

*Convictions or program entries for simple misdemeanor drug possession.* While not discounting the public health implications of illegal drug use and possession, the Board continues to believe covered persons with single convictions or program entries for simple drug possession pose minimal risk to insured credit unions.

As discussed in the proposed Second Chance IRPS, there are already a host of significant extrajudicial consequences for individuals with nonviolent drug possession convictions, including not only employment bans but the loss of federal financial aid, eviction from public housing, disqualification from occupational licenses, loss of voting rights, and denial of public assistance. Moreover, research shows that drug convictions disproportionately burden people of color. In addition, the Board recognizes that some uncertainty and confusion exists with respect to marijuana-related offenses, with marijuana now legal in many states but still illegal at the federal level.<sup>11</sup>

Accordingly, the proposed Second Chance IRPS also classified as *de minimis* those convictions or entries for drug offenses meeting the following conditions:

- The person has no other conviction or program entry described in Section 205(d); and
- The single conviction or program entry for simple possession of a controlled substance was classified as a misdemeanor and did not involve the illegal distribution (including an intent to distribute), sale, trafficking, or manufacture of a controlled substance or other related offense; and
- It has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry).

Under the proposal, convictions or program entries for intent to distribute, illegal distribution, illegal sale or trafficking of a controlled substance, or illegal manufacture of a controlled substance continued to require an application for the Board's consent, unless otherwise qualifying as *de minimis*.

Most commenters that provided input on this part of the proposed Second

<sup>11</sup> Marijuana laws are rapidly evolving across all 50 states. Multiple states have legalized or decriminalized marijuana in some form at the state level. However, marijuana remains a Schedule I drug under the Federal Controlled Substances Act. See 21 U.S.C. 812(b)(1). Further information about marijuana legalization may be found online at <https://disa.com/map-of-marijuana-legality-by-state>.

Chance IRPS supported the exception and agreed that individuals with convictions or program entries for single convictions for simple drug possession pose minimal risk to insured credit unions. Several commenters echoed the Board's view that the exception is appropriate given the current uncertainty and confusion with respect to marijuana-related offenses, with marijuana legal under various state laws but still federally illegal. A number of commenters also shared the Board's observation that drug convictions disproportionately burden people of color and impose significant extrajudicial consequences on convicted individuals.

One comment letter, however, recommended the Board more broadly expand the exception to include most drug convictions (beyond simple possession), arguing that drug offenses are not criminal offenses involving dishonesty or breach of trust that should be covered by Section 205(d). The comment letter urged the Board to eliminate the requirement to request consent for persons with a conviction or program entry for any drug possession offense (*i.e.*, not limited to misdemeanors that occurred more than five years ago), as well as for drug offenses involving sales or distribution of a controlled substance. The comment letter further argued that mandatory minimum federal sentences imposed for drug offenses limits the effectiveness of the proposed exception.

After careful review of the comments, the Board maintains that an application should be required for most drug offenses so it can determine the nature of the offense and elements of the crime; thus, it will continue the current requirement that an application be filed for drug offenses that do not qualify as *de minimis*. Moreover, while the Board recognizes the *de minimis* treatment for single convictions or program entries for simple misdemeanor drug possession is relatively narrowly tailored, it once again emphasizes that, as with any offense that does not fit a *de minimis* category, an application can still be filed for any drug crime that does not qualify for *de minimis* treatment. Accordingly, the Board adopts this exception category, without change, in the final IRPS.

**Fidelity bond coverage.** The proposed Second Chance IRPS maintained the agency's current policy to require that any person who meets the *de minimis* criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. In addition, that person must disclose the presence of the conviction or pretrial

diversion program entry to all insured credit unions or insured depository institutions in the affairs of which he or she intends to participate.

One commenter noted that, historically, insurers have increased premiums where an employee has a theft or fraud conviction; thus, some credit unions are concerned about their ability to obtain insurance coverage for covered individuals. This commenter asked the NCUA to weigh the costs and benefits of requiring a fidelity bond for individuals that meet the *de minimis* criteria under the final Second Chance IRPS.

Several commenters expressed some degree of concern that increasing the number of excepted offenses not requiring application could ultimately lead to increased theft or fraud, thereby resulting in increased insurance costs to credit unions (costs that ultimately would be borne by members). However, most of those commenters shared the view that this is a fairly remote possibility and, at least in the short-term, no immediate premium increases are likely to result from the proposed IRPS. Commenters noted that if such a result were to occur, the Board should revisit the IRPS to determine if it should be modified.

Comments from one insurer that provides fidelity bond coverage to credit unions were particularly helpful on this point. Specifically, the commenter indicated that, while the full implications of the proposal may not be known for several years, it currently does not anticipate any immediate premium adjustments for credit unions to result from the proposed changes. The commenter noted, however, that beyond fidelity bond coverage, there could be potential future impacts for risk management services provided to credit unions, as well as business auto and business liability coverages, as new general, safety concerns may arise. This commenter also indicated that, as a fidelity insurer, it will reexamine its own *de minimis* category to consider if updates to its policies are necessary given the important goals underlying the agency's amendments.

The Board continues to maintain that any person who meets the *de minimis* criteria must still be covered by a fidelity bond to the same extent as other employees in similar positions. Fidelity bond coverage provides important protection against losses caused by fraud, dishonesty, theft, and similar activities committed by credit union employees, directors, officers, supervisory committee members, and credit committee members. Based on stakeholder feedback, the Board is

satisfied that, at least in the immediate near-term, the final Second Chance IRPS will not result in higher premiums for insured credit unions. The Board is cognizant of the possibility that, should the incidence of theft or fraud increase as a result of its amendments to the *de minimis* exception, future impacts could mean higher insurance premiums. The Board will continue to monitor whether updates to its policy are necessary if concerns regarding premium adjustments arise.

**Expunged convictions.** Under the NCUA's current policy, a conviction that has been "completely expunged" is not considered a conviction of record and will not require an application for the Board's consent under Section 205(d). However, the Board is aware that it is sometimes unclear whether certain state set-aside provisions constitute a complete expungement for Section 205(d) purposes (*i.e.*, where the conviction may still be revealed under certain circumstances or otherwise remains on the individual's record). Accordingly, the proposed Second Chance IRPS clarified the circumstances under which a conviction is deemed expunged for purposes of Section 205(d). Specifically, if an order of expungement has been issued in regard to a conviction or program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose. This includes, but is not limited to, an evaluation of a person's fitness or character. Under the proposal, the failure to destroy or seal the records did not prevent the expungement from being considered complete for purposes of Section 205(d). Expungements of pretrial diversion or similar program entries are treated the same as expungements for convictions. Moreover, under the proposed Second Chance IRPS, convictions set aside or reversed after the applicant has completed sentencing were treated consistently with pretrial diversion programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

Commenters generally indicated the proposal's clarifications regarding expunged convictions were helpful. Several commenters were particularly supportive of the clarification regarding state set-aside provisions as it is sometimes unclear whether those

provisions constitute a complete expungement for purposes of Section 205(d). One commenter indicated the clarification that the failure to destroy or seal records would not preclude them from being considered expunged is a positive modification that will allow greater flexibility for credit unions.

One comment letter, however, recommended that all expungements be treated as complete expungements for purposes of Section 205(d), regardless of whether the conviction or program entry can subsequently be used for an evaluation of the person's fitness or character. The same comment letter opposed the proposal's clarification regarding state set-aside provisions, interpreting the proposed clarification as creating a new expansion of the Section 205(d) consent requirements to now cover individuals with set aside or reversed convictions where there was not a finding of wrongful conviction.

The Board is adopting this aspect of the proposed guidance unchanged in the final Second Chance IRPS. It notes that its decision to add clarifying language regarding expunged convictions to the Second Chance IRPS is intended to promote transparency in the consent application process and, thereby, to streamline the process and give a measure of regulatory relief to covered individuals and insured credit unions seeking consent from the Board. While the Board acknowledges that making policy clarifications may actually result in a temporary spike in applications (due to an increased awareness of the Section 205(d) employment restrictions generally and/or greater awareness of what constitutes a conviction of record specifically), the Board does not view the clarifying language regarding expunged convictions to represent an expansion of the Section 205(d) consent requirements to cover individuals with set aside or reversed convictions who were not previously covered under IRPS 08-1. Indeed, prior Board decisions on Section 205(d) consent requests have found that certain state set-aside provisions are not the equivalent of an expungement within the meaning of IRPS 08-1, as the conviction may still be revealed under certain circumstances.<sup>12</sup> Thus, the clarifying language regarding expunged convictions does not represent a departure from the Board's past policy in any regard.

<sup>12</sup> See, e.g., BD-05-16, fn 7 (Dec. 20, 2016) (citing *McCully v. Schwenn*, 220 F. App'x 475 (9th Cir. 2007) ("[Ariz. Rev. Stat.] section 13-907 . . . does not expunge or remove the fact of conviction in Arizona.")).

Further, the Board does not consider it appropriate to treat all expungements, set asides, reversed convictions, or other similar case dispositions as complete expungements for purposes of Section 205(d). State law varies and, in some jurisdictions, an expungement is not "complete" and is still subject to subsequent use. In the Board's view, expungements that reflect the intent of the particular jurisdiction to completely purge a conviction or program entry from an individual's background records supports an interpretation that, from a legal and policy perspective, the intent is to place the individual in the same position as if there were no conviction or program entry in the first place. However, an expunged criminal record that is still accessible to be used for subsequent purposes, including an evaluation of the person's fitness or character, reflects the jurisdiction's public policy that that record is still relevant and germane to certain subsequent inquiries. In considering whether an expungement is one that should fall outside the scope of Section 205(d), the Board's key consideration is whether the respective jurisdiction, by statute or court order, intended for the conviction or program entry to be fully purged from the individual's background. Preservation in a jurisdiction's expungement statute or by court order of the ability to use the conviction or program entry for a subsequent purpose indicates the record has not been completely expunged. Under these circumstances, the Board's interpretation is the conviction or program entry comes within the scope of Section 205(d). Again, however, the Board reiterates that covered individuals with expunged convictions or program entries still qualifying as convictions or record for purposes of Section 205(d) may still apply to the NCUA for the Board's consent.

#### C. Duty Imposed on Credit Unions

Section 205(d) imposes a duty upon every federally insured credit union to make a reasonable inquiry regarding the history of every applicant for employment, including taking appropriate steps to avoid hiring or permitting the participation of convicted persons. Under the NCUA's current policy, federally insured credit unions should, at a minimum, establish a screening process to obtain information about convictions and program entries from job applicants. However, the current policy is unclear as to what steps a credit union should or must take when it learns about a job applicant's *de minimis* offense. Thus, the proposed Second Chance IRPS

clarified that when a credit union learns a prospective employee has a prior conviction or program entry for a *de minimis* offense, the credit union should document in its files that an application is not required because the covered offense is considered *de minimis* and meets the criteria for the exception.

Comments on this aspect of the proposal were generally positive. A number of commenters, however, asked for reassurance that a credit union's failure to maintain a record that an application is not necessary because the *de minimis* exception applies will not be subject to supervisory action. These commenters asked for clarification that the recordkeeping requirement is a suggested best practice, not a mandatory compliance obligation. In addition, one commenter noted that, irrespective of the guidance, each credit union retains the right to consider an applicant's past crime(s) and maintains individual discretion in making hiring decisions.

The Board emphasizes that while the source of the consent requirements stem from federal statute, namely Section 205(d), this final IRPS is supervisory guidance, not regulation. The NCUA, along with the other federal prudential regulators, in 2018 issued an interagency statement to reaffirm the role of supervisory guidance.<sup>13</sup> The statement confirmed that, unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the NCUA does not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the NCUA's supervisory expectations or priorities and articulates the agency's general views regarding appropriate practices for a given subject area.

The Board wishes to underscore that documentation of an employee's or applicant's *de minimis* offense is a recommended practice that does not have the force and effect of law, and the NCUA will not take enforcement action based on this guidance. Nevertheless, the Board continues to believe it is helpful to both industry and supervisory staff to clarify the steps a credit union should take when it learns about an employee's or applicant's *de minimis* offense; as such, the Board is adopting this clarification in the final Second Chance IRPS.

The Board encourages industry to offer second chances and to expand employment opportunities for former offenders seeking redemptive paths forward, but no insured credit union is under any obligation to hire or retain an

<sup>13</sup> See FFIEC "Interagency Statement Clarifying the Role of Supervisory Guidance," (Sept. 11, 2018).



employee with a criminal background. Insured credit unions have discretion to establish their own internal employment policies and should make hiring decisions that best suit their own individual needs and risk tolerance.

*Conditional offers.* The proposal provided for extensions of conditional offers of employment to prospective employees requiring the Board's consent under Section 205(d). A credit union may extend a conditional offer of employment contingent on the completion of a satisfactory background check to determine if the applicant is barred by Section 205(d). If a conditional offer is extended, however, the job applicant may not commence work for or be employed by the credit union until the applicant is determined to not be barred under Section 205(d) or receives consent from the Board.

One commenter was skeptical of the practical benefit of this provision, if the credit union does not have a reasonable expectation of the timing of the approval process. Thus, the commenter recommended the Board clarify in the final IRPS the general length of time necessary for the agency to process a consent application. One comment letter urged the Board to instruct credit unions to inquire into an applicant's criminal background only after the conditional offer stage of the hiring process, to safeguard against credit unions unfairly discarding the applications of people with conviction histories. Alternatively, at a minimum, this comment letter urged that the Board clarify credit unions are not required to make criminal record inquiries on an initial job application and may adopt a policy to collect criminal background history only after the conditional offer stage (*i.e.*, credit unions may adopt so-called "ban the box" policies).

The Board is mindful that the Section 205(d) consent application process may impose inconveniences and uncertainties to covered individuals and credit unions, as both applicant and employer remain in indeterminate state during the process of seeking consent from the Board. While the industry's desire for certainty as to the timing of the consent application process is understandable, the Board maintains it is impracticable to establish a timetable for action on consent applications because each individual application is fact specific and varies in complexity. However, past applications submitted to the Board have generally been adjudicated within 60 days from receipt, and, in most cases, the processing time was significantly less. The Board remains committed to streamlining the application process and endeavors to

decide on consent applications as quickly as possible. The Board anticipates that its decision to delegate responsibility for reviewing certain applications, discussed in more detail below, will further speed up the application process and reduce burdens on credit unions and applicants.

The Board also reiterates that insured credit unions are responsible for establishing their own internal employment policies and have discretion to make hiring decisions in their best judgment. The proposal's provision for extensions of conditional offers of employment to prospective employees requiring the Board's consent under Section 205(d) was intended to reduce burdens in the hiring and consent application process; accordingly, the Board is adopting this provision in the final Second Chance IRPS. An insured credit union choosing to adopt a policy to extend conditional offers may establish its own procedures to make criminal record inquiries at any stage of its choosing in its hiring process, so long as applicants do not commence work for or be employed by the credit union until the applicant is determined to not be barred under Section 205(d) or receives consent from the Board.

#### *D. Procedures for Requesting the Board's Consent Under Section 205(d)*

*Application types.* The proposed Second Chance IRPS did not modify the current procedures for requesting the Board's consent under Section 205(d). However, the proposal added language to clarify the distinction between a credit union-sponsored application filed by the institution on behalf of a covered individual and an individual application filed on a covered person's own behalf. Generally, an application must be filed by an insured credit union on behalf of a person (credit union-sponsored application) unless the Board, for substantial good cause, grants a waiver of that requirement and allows the person to file an application in their own right (individual application). In most cases, a credit union-sponsored application is for a particular person, in a particular job, at a particular credit union. On the other hand, an individual application is typically requesting a blanket waiver for the applicant to be employed or participate in the conduct of the affairs of any insured credit union. The Section 205(d) application form was also revised to more clearly distinguish between the two types of applications and the supporting information required for each.

One comment letter urged the Board to go further than the proposal to

expressly encourage individuals to directly file applications in their own right, rather than requiring that a credit union sponsor the application. This letter noted that while the FDIC's Statement of Policy (SOP) on Section 19 contains similar "substantial good cause" language, in practice the FDIC routinely accepts individual applications and the vast majority of applications it processes are not sponsored by a financial institution.

The Board notes that both credit union-sponsored applications and individual applications were permitted under IRPS 08-1 and both options will continue to be available under this final IRPS. While historically consent applications submitted to the NCUA are more typically credit union-sponsored, individuals are not precluded from filing an application in their own right if there is substantial good cause. In the Board's view, highlighting the distinction between individual applications and credit union-sponsored applications in the final Second Chance IRPS may help encourage more individuals to apply for consent without sponsorship by a credit union. The NCUA also intends to publish in the near term an informational brochure to further educate the public about the Section 205(d) process and will highlight the two different application options.

*Regional office for application submission.* Additionally, the proposed IRPS clarified that the appropriate regional office for submission of a credit union-sponsored application is the program office that oversees the credit union (*i.e.*, the program office covering the state where the credit union's home office is located, or the Office of National Examinations and Supervision), and the appropriate regional office for an individual application and waiver of the credit union-sponsored filing requirement is the program office covering the state where the person resides.

One comment letter urged the NCUA to consider creating a central office to accept and review Section 205(d) consent applications and to be a resource to credit unions seeking to verify that covered individuals have received the Board's consent to work. The comment letter further suggested that this centralized office could be delegated the responsibility to only forward applications for Board review that significantly merit additional scrutiny.

Historically, the Board has received less than ten Section 205(d) consent applications on an annual basis. Given this relatively low volume, it is



unnecessary to establish a centralized office to process consent applications. The Board continues to maintain that the appropriate office for submission of a credit union-sponsored application is the program office that oversees the credit union, and the appropriate office for an individual application and waiver of the credit union-sponsored filing requirement is the program office covering the state where the person resides. Accordingly, the Board adopts these clarifications in the final IRPS.

*Delegation of authority.* The proposal requested public comment on whether delegating responsibility for reviewing certain applications could further streamline the application process and reduce burdens on credit unions and applicants.

One commenter was strongly supportive of delegating authority to regional directors to consider 205(d) consent applications, noting that such delegation will likely ensure a more timely response given the region's greater understanding of any relevant local factors or information that may be pertinent to the decision. The same commenter, however, recommended the Board establish a reasonable timeframe for the region's response so that applications are processed expeditiously. One comment letter agreed that delegating responsibility for reviewing certain applications would help streamline the process, but suggested responsibility should be delegated to a central office specifically created to accept and review Section 205(d) applications. A different commenter was not opposed to delegating the review of certain applications, but expressed concern that delegation to third-party entities could compromise sensitive credit union information. This commenter urged the agency to institute proper data security protocols, and requested additional information on the process of delegation, including efforts the NCUA will take to protect sensitive credit union and individual applicant data.

Upon review and careful consideration of the public comments, the Board has determined that in order to further streamline the application process it will delegate authority to program offices to process, review, and act upon credit union-sponsored consent applications. But the Board will retain authority to decide on individual applications, which tend to be more complex and fact-specific. Individual applications also require the Board's waiver of the institution filing requirement for substantial good cause and, typically, request a blanket waiver for the applicant to be employed or

participate in the conduct of the affairs of any insured credit union. These factors support the Board's retention of its authority to consider individual applications for Section 205(d) consent.

However, in delegating responsibility for reviewing credit union-sponsored applications, the Board wishes to assure stakeholders that the NCUA will make all reasonable efforts to duly secure all sensitive information it receives in connection with any consent application. Toward that end, the NCUA has conducted a Privacy Impact Assessment (PIA) on the Second Chance IRPS. Sensitive personally identifiable information (PII) is encrypted if shared intra-agency and data is stored on secured drives with restricted access. The Board does not anticipate that PII will generally be shared outside the agency, however, the NCUA's Office of Continuity and Security Management may conduct criminal background checks that may require contacting a federal, state, or local agency which maintains civil, criminal or other relevant enforcement information or other pertinent information relevant to the Board's decision on a Section 205(d) consent request.

#### *E. Application Form*

The proposed Second Chance IRPS also revised and updated the application form that is required to be used to submit a Section 205(d) consent request, "Application to Request Consent Pursuant to Section 205(d)," to reflect the proposed changes and to conform to current regulatory requirements. The Section 205(d) application form was also modified to more clearly delineate between the two types of applications (credit union-sponsored versus individual) and the supporting documentation required for each.

Stakeholders who commented on this aspect of the proposal were generally supportive of the proposed edits to the Section 205(d) application form. One commenter, however, noted some credit unions have found the current information requested to be lengthy and onerous to both the credit union and the covered individual, particularly in cases where background information is difficult to obtain from old criminal record systems. Another commenter urged the Board to go further in more expressly encouraging covered individuals to submit individual applications.

Upon review of the comments, the Board is adopting the improvements to the Section 205(d) application form in the final Second Chance IRPS. The revised application form will more

clearly delineate between the two application options, which will make it more user friendly and may encourage more applicants to file individual applications for blanket waivers.

While the Board recognizes it may be difficult to obtain older records pertaining to offenses that occurred long ago, it remains incumbent on the applicant to provide pertinent documentation to support the application in order for the NCUA to properly evaluate the merits of the consent request. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the statutory employment restrictions under Section 205(d), the individual is fit to participate in the conduct of the affairs of an insured credit union without posing undue risks to its safety and soundness or impairing public confidence in the insured credit union. The Board maintains that the information requested on the application form is the minimum amount necessary for the agency to gain an understanding of the circumstances surrounding the conviction or program entry and to evaluate all the relevant factors and criteria the NCUA will consider in determining whether to grant consent. Finally, the Board reiterates that the burden remains upon the applicant to establish that the application warrants approval.

## **IV. Regulatory Procedures**

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires the NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (those with less than \$100 million in assets).<sup>14</sup> This final IRPS will provide regulatory relief by decreasing the number of covered offenses that will require an application to the Board. Accordingly, the NCUA certifies that final IRPS 19-1 will not have a significant economic impact on a substantial number of small credit unions.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, requires that the Office of Management and Budget (OMB) approve all collections of information by a federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number.

<sup>14</sup> 5 U.S.C. 603(a).

In accordance with the PRA, the information collection requirements included in this final IRPS has been submitted to OMB for approval under control number 3133-0203.

#### C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.<sup>15</sup> The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final IRPS does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As such, the NCUA has determined that this IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

#### D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

#### E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)<sup>16</sup> generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.<sup>17</sup> An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.” The NCUA does not believe this final IRPS is a “major rule” within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA submitted this final IRPS to OMB for it to determine if the final IRPS is a “major rule” for purposes of SBREFA. The OMB determined that the final IRPS is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

**Authority:** 12 U.S.C. 1752a, 1756, 1766, 1785.

By the National Credit Union Administration Board, on November 21, 2019.

**Gerard Poliquin,**

*Secretary of the Board.*

**Note:** The following text will not appear in the Code of Federal Regulations.

### Interpretive Ruling and Policy Statement 19-1; Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (“Second Chance IRPS”)

#### I. Background

This Interpretive Ruling and Policy Statement (IRPS) provides requirements, direction, and guidance to federally insured credit unions (insured credit unions) and individuals regarding the prohibition imposed by operation of law by Section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d). Section 205(d)(1) provides that, except with the prior written consent of the National Credit Union Administration Board (Board), a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution-affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). The statute imposes a ten-year ban against the Board granting consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code. In order for the Board to grant consent during the ten-year period, the Board must file a motion with, and obtain the approval of, the sentencing court. Finally, Section 205(d)(3) states that “whoever knowingly violates” (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day.

This IRPS provides guidance to credit unions and individuals regarding who is subject to the prohibition provision of Section 205(d). The IRPS defines what offenses come within the prohibition provision of Section 205(d) and thus require an application for the Board’s consent to participate in the affairs of an insured credit union. The IRPS also identifies certain offenses that will be excluded from Section 205(d) and do

not require the Board’s consent. In order to assist those who may need the consent of the Board to participate in the affairs of an insured credit union, the IRPS explains the procedures to request such consent, specifies the application form that must be used, clarifies the duty imposed on credit unions by Section 205(d), and identifies the factors the Board will consider in deciding whether to provide such consent. Finally, the IRPS explains how an applicant may appeal a decision by the Board denying an application for its consent. This IRPS supersedes and replaces former IRPS 08-1.<sup>18</sup>

#### II. Policies and Procedures Regarding Prohibitions Imposed by Section 205(d)

##### A. Scope of Section 205(d) of the FCU Act

##### 1. Persons Covered by Section 205(D)

Section 205(d) of the FCU Act applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act, 12 U.S.C. 1786(r), and others who are participants in the conduct of the affairs of a federally insured credit union. This IRPS applies only to insured credit unions, their institution-affiliated parties, and those participating in the affairs of an insured credit union.

##### *Institution-affiliated parties.*

Institution-affiliated parties include any committee member, director, officer, or employee of, or agent for, and insured credit union; any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of an insured credit union; or any independent contractor (including any attorney, appraiser, or accountant). Therefore, all officials, committee members and employees of an insured credit union fall within the scope of Section 205(d) of the FCU Act. Additionally, anyone the NCUA determines to be a *de facto* employee, applying generally applicable standards of employment law, will also be subject to Section 205(d). Typically, an independent contractor does not have a relationship with the insured credit union other than the activity for which the insured credit union has contracted. As a general rule, an independent contractor who influences or controls the management or affairs of an insured credit union, is covered by Section 205(d). In addition, a “person” for purposes of Section 205(d) means an individual, and does not include a corporation, firm or other business entity.

<sup>18</sup> 73 FR 48399 (Aug. 19, 2008).

<sup>15</sup> 64 FR 43255 (Aug. 4, 1999).

<sup>16</sup> Public Law 104-121.

<sup>17</sup> 5 U.S.C. 551.

*Participants in the affairs of an insured credit union.*

A person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. Whether persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. Those who exercise major policymaking functions of an insured institution are deemed participants in the affairs of that institution and covered by Section 205(d). Participants in the affairs of a credit union is a term of art and is not capable of more precise definition. The NCUA does not define what constitutes participation in the conduct of the affairs of an insured credit union but will analyze each individual's conduct on a case-by-case basis and make a determination. Agency and court decisions will provide the guide as to what standards will be applied. As a general proposition, however, participation will depend upon the degree of influence or control over the management or affairs of the insured credit union. Those who exercise major policymaking functions at an insured credit union fall within this category.

2. Offenses Covered by Section 205(D)

Except as indicated in subsection 3, below, an application requesting the consent of the Board under Section 205(d) is required where any adult, or minor treated as an adult, has received a conviction by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust (a covered offense), or where such person has entered a pretrial diversion or similar program regarding a covered offense. Before an application is considered by the Board, all of the sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion or similar program, including but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The following definitions apply:

*Conviction.* There must be a conviction of record. Section 205(d) does not apply to arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require

an application until or unless reversed. A conviction for which a pardon has been granted will require an application.

*Pretrial diversion or similar program.* A pretrial diversion program, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and, if not so designated under applicable law then the determination of whether it is a pretrial diversion or similar program will be made by the Board on a case-by-case basis.

*Dishonesty or breach of trust.* The conviction or entry into a pretrial diversion program must have been for a criminal offense involving dishonesty or breach of trust.

"Dishonesty" means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

"Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions or pretrial diversion program entries for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances require an application for the Board's consent under Section 205(d) unless they fall within the provisions for the *de minimis* offenses set out below.

3. Offenses Not Covered by Section 205(D)

*De minimis offenses.*

*In general.* Approval is automatically granted and an application for the Board's consent under Section 205(d) will not be required where the covered offense is considered *de minimis*, because it meets all of the following criteria:

- There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- The offense was punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and the individual served three (3) days or less of jail time. The Board considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time periods or both. However, this definition is not intended to include those on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location;
- The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;
- The offense did not involve a depository institution or credit union; and
- The Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

*Additional applications of the de minimis offenses exception to filing.*

*Age at time of covered offense.* If the actions that resulted in a covered conviction or pretrial diversion program entry of record all occur when the individual was 21 years of age or younger, then the subsequent conviction or program entry, that otherwise meets the general *de minimis* criteria above will be considered *de minimis* if the conviction or program entry was entered at least 30 months prior to the date an application would otherwise be required and all sentencing or program requirements have been met.

*Convictions or program entries for insufficient funds checks.* Convictions or pretrial diversion program entries of record based on the writing of "bad" or insufficient funds check(s) will be considered a *de minimis* offense and will not be considered as having involved a depository institution or credit union if the all of the following applies:

- Other than for "bad" or insufficient funds check(s), there is no other conviction or pretrial diversion program entry subject to Section 205(d) and the aggregate total face value of all "bad" or insufficient funds check(s) cited across all the conviction(s) or program entry or

entries for bad or insufficient checks is \$1,000 or less and;

- No depository institution or credit union was a payee on any of the “bad” or insufficient funds checks that were the basis of the conviction(s) or program entry or entries.

*Convictions or program entries for small-dollar, simple theft.* A conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) where the aggregate value of the currency, goods, and/or services taken was \$500 or less at the time of conviction or program entry, where the person has no other conviction or program entry described in Section 205(d), and where it has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry) and which does not involve a depository institution or credit union is considered *de minimis*. Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

*Convictions or program entries for the use of a fake, false, or altered identification card.* The use of a fake, false, or altered identification card used by a person under the legal age for the purpose of obtaining or purchasing alcohol, or used for the purpose of entering a premises where alcohol is served but for which age appropriate identification is required, provided that there is no other conviction or pretrial diversion program entry for the covered offense, will be considered *de minimis*.

*Convictions or program entries for simple misdemeanor drug possession.* A conviction or pretrial diversion program entry based on simple drug possession or illegal possession of a controlled substance where the offense was classified as a misdemeanor at the time of conviction or program entry, where the person has no other conviction or program entry described in Section 205(d), and where it has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry) and which does not involve the illegal distribution (including an intent to distribute), sale, trafficking, or manufacture of a controlled substance or other related offense is considered *de minimis*. Simple possession excludes intent to distribute, illegal distribution, illegal sale or trafficking of a controlled substance, or illegal manufacture of a controlled substance.

Any person who meets all of the foregoing *de minimis* criteria must be covered by a fidelity bond to the same

extent as other employees in similar positions. An insured credit union may not allow any person to participate in its affairs, even if that person has a conviction for what would constitute a *de minimis* covered offense, if the person cannot obtain required fidelity bond coverage.

Any person who meets all the foregoing criteria for a *de minimis* offense must disclose the presence of the conviction or pretrial diversion program entry to all insured credit unions or other insured institutions in the affairs of which he or she intends to participate.

Further, no conviction or pretrial diversion program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1785(d)(2) can qualify under any of the *de minimis* exceptions to filing set out above.

*Youthful offender adjudgments.* An adjudgment by a court against a person as a “youthful offender” under any youth offender law, or any adjudgment as a “juvenile delinquent” by any court having jurisdiction over minors as defined by state law does not require an application for the Board’s consent. Such adjudications are not considered convictions for criminal offenses. Such adjudications do not constitute a matter covered under Section 205(d) and is not an offense or program entry for determining the applicability of the *de minimis* offenses exception to the filing of an application.

*Expunged convictions.* A conviction that has been completely expunged is not considered a conviction of record and will not require an application for the Board’s consent under Section 205(d). If an order of expungement has been issued in regard to a conviction or pretrial diversion program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose including, but not limited to, an evaluation of a person’s fitness or character. The failure to destroy or seal the records will not prevent the expungement from being considered complete for the purposes of Section 205(d) in such a case. Expungements of pretrial diversion or similar program entries will be treated the same as those for convictions. Convictions that are set aside or reversed after the applicant has competed sentencing will be treated consistent with pretrial diversions or similar programs unless the court records reflect that the underlying

conviction was set aside based on a finding on the merits that such conviction was wrongful.

#### *B. Duty Imposed on Credit Unions*

Insured credit unions are responsible for establishing their own internal employment policies and have discretion to make hiring decisions, consistent with applicable law, that best suit their own individual needs and risk tolerance. However, Section 205(d) imposes a duty upon every insured credit union to make a reasonable inquiry regarding the history of every applicant for employment. The NCUA maintains that inquiry should consist of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or entry into a pretrial diversion program for a covered offense. At a minimum, each insured credit union should establish a screening process which provides the insured credit union with information concerning any convictions or pretrial diversion programs pertaining to a job applicant. This includes, for example, the completion of a written employment application which requires a listing of all convictions and pretrial diversion program entries.<sup>19</sup> When the credit union learns that a prospective employee has a prior conviction or entered into a pretrial diversion program for a covered offense, the credit union should document in its files that an application is not required because the covered offense is considered *de minimis* and meets all of the criteria for the exception, or submit an application requesting the Board’s consent under Section 205(d) prior to hiring the person or otherwise permitting him or her to participate in its affairs. In the alternative, for the purposes of Section 205(d), a credit union may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union and to determine if the applicant is barred by Section 205(d). In such a case, the job applicant may not commence work for or be employed by the credit union until such time that the applicant is determined to not be barred under Section 205(d).

If an insured credit union discovers that an employee, official, or anyone

<sup>19</sup> Consistent with applicable law, an insured credit union may establish its own procedures to make conviction history inquiries at any stage of its choosing in its hiring process, so long as applicants do not commence work for or be employed by the credit union until the applicant is determined to not be barred under Section 205(d) or receives consent from the Board.

else who is an institution-affiliated party or who participates, directly or indirectly, in its affairs, is in violation of Section 205(d), the credit union must immediately place that person on a temporary leave of absence from the credit union and file an application seeking the Board's consent under Section 205(d). The person must remain on such temporary leave of absence until such time as the Board has acted on the application. When the NCUA learns that an institution-affiliated party or a person participating in the affairs of an insured credit union should have received the Board's consent under Section 205(d) but did not, the NCUA will look at the circumstances of each situation to determine whether the inquiry made by the credit union was reasonable under the circumstances.

#### C. Procedures for Requesting the NCUA Board's Consent Under Section 205(d)

Section 205(d) of the FCU Act serves, by operation of law, as a statutory bar to participation in the affairs of an insured credit union, absent the written consent of the Board. When an application for the Board's consent under Section 205(d) is required, the insured credit union must file a written application using the attached form with the appropriate NCUA regional office. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that institution. Such an application should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program. The applicant may also address the relevant factors and criteria the Board will consider in determining whether to grant consent, specified below. The burden is upon the applicant to establish that the application warrants approval.

The application must be filed by an insured credit union on behalf of a person (credit union-sponsored application) unless the Board grants a waiver of that requirement and allows the person to file an application in their own right (individual application). Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown. The appropriate regional office for a credit union-sponsored application is the program office that oversees the credit union (*i.e.*, the program office covering the state where the credit union's home office is located, or the Office of National Examinations and

Supervision). The appropriate regional office for an individual filing for waiver of the credit union-sponsored filing requirement is the program office covering the state where the person resides.

When an application is not required because the covered offense is considered *de minimis*, the credit union should document in its files and be prepared to demonstrate that the covered offense meets the *de minimis* criteria enumerated above.

#### D. Evaluation of Section 205(d) Applications

The essential criteria in assessing an application for consent under Section 205(d) are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured credit union, and whether the employment, affiliation, or participation by the person in the conduct of the affairs of the insured credit union may constitute a threat to the safety and soundness of the institution or the interests of its members or threaten to impair public confidence in the insured credit union.

In evaluating an application, the Board will consider:

1. The conviction or pretrial diversion program entry and the specific nature and circumstances of the covered offense;
2. Evidence of rehabilitation, including the person's reputation since the conviction or pretrial diversion program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry;
3. Whether participation, directly or indirectly, by the person in any manner in the conduct of the affairs of the insured credit union constitutes a threat to the safety or soundness of the insured credit union or the interest of its members, or threatens to impair public confidence in the insured credit union;
4. The position to be held or the level of participation by the person at the insured credit union;
5. The amount of influence and control the person will be able to exercise over the management or affairs of the insured credit union;
6. The ability of management of the insured credit union to supervise and control the person's activities;
7. The applicability of the insured institution's fidelity bond coverage to the person;
8. For state-chartered, federally insured credit unions, the opinion or position of the state regulator; and
9. Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the Board to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban for certain enumerated offenses in violation of Title 18 of the United States Code prior to its expiration date. The NCUA believes such requests will be extremely rare and will be made only upon a showing of compelling reasons.

Some applications can be approved without an extensive review because the person will not be in a position to present any substantial risk to the safety and soundness of the insured credit union. Persons who will occupy clerical, maintenance, service or purely administrative positions generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured credit union. Approval by the Board will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions.

In cases in which the Board has granted a waiver of the credit union-sponsored filing requirement to allow a person to file an application in their own right, approval of the application will be conditioned upon that person disclosing the presence of the conviction(s) or program entry or entries to all insured credit unions or insured depository institutions in the affairs of which he or she wishes to participate. When deemed appropriate, credit union-sponsored applications are to allow the person to work in a specific job at a specific credit union and may also be subject to the condition that the prior consent of the Board will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the appropriate Regional Director, require a new application for the Board's consent. When approval has been granted for a person to participate in the affairs of a particular insured credit union and subsequently that person seeks to participate in the affairs of another insured credit union, approval does not automatically follow. In such cases, another application must be submitted. Moreover, any person who has received consent from the Board under Section 205(d) and subsequently wishes to become an institution-affiliated party or participate in the affairs of an FDIC-insured institution, he or she must obtain the prior approval of the FDIC pursuant to Section 19 of the FDIA.

*E. Right To Request a Hearing Following the Denial of an Application Under Section 205(d)*

If a consent application is denied under Section 205(d), the insured credit

union (or, in the case where a good-cause waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30 days following the date of notification of

the denial. The Board will apply the process contained in regulations governing prohibitions based on felony convictions, found at 12 CFR part 747, to any request for a hearing.

BILLING CODE 7535-01-P

OMB No. 3133-0203

**NATIONAL CREDIT UNION ADMINISTRATION**

**APPLICATION TO REQUEST CONSENT PURSUANT TO SECTION 205(d)**

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The estimated average public reporting burden associated with this information collection is 3 hours per response. Comments concerning the accuracy of this burden estimate and or any other aspect of this information collection, including suggestions for reducing this burden should be address to the National Credit Union Administration, ATTN: NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, Virginia 22314. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number.

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Section 205(d)(1) of the Federal Credit Union Act, 12 U.S.C. §1785(d)(1), provides that, except with the prior written consent of the National Credit Union Administration Board (Board), a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not become, or continue as an institution-affiliated party with respect to any insured credit union; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). Section 205(d)(3) states that “whoever knowingly violates” (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day. The statute also prescribes a minimum ten-year prohibition period for certain offenses.

The Board issued Interpretive Ruling and Policy Statement (IRPS) 19-1, entitled *Exceptions to Employment Restrictions under Section 205(d) of the Federal Credit Union Act (“Second Chance IRPS”)*, to assist credit unions and individuals in requesting the Board’s consent pursuant to Section 205(d). IPRS 19-1 is available on the NCUA’s website at <https://www.ncua.gov/regulation-supervision/rules-regulations/interpretive-rulings-policy-statements>, by contacting the Office of General Counsel at 703-518-6540 or [OGCmail@ncua.gov](mailto:OGCmail@ncua.gov) or from any NCUA Regional Office.

All requests for the Board’s consent pursuant to Section 205(d) should be submitted using the attached form. Please consult IRPS 19-1 prior to completing the attached application, as not all criminal convictions require an application to be submitted. IRPS 19-1 also lists the factors the Board will consider when evaluating any application for consent.

Any questions regarding the process to request the Board’s consent pursuant to Section 205(d), including whether an application is required, may be directed to the Office of General Counsel at 703-518-6540 or [OGCmail@ncua.gov](mailto:OGCmail@ncua.gov).

Completed application should be sent to the appropriate NCUA Regional Office or other program office.

**NATIONAL CREDIT UNION ADMINISTRATION**  
APPLICATION TO REQUEST CONSENT PURSUANT TO SECTION 205(d)

**SECTION A – APPLICANT INFORMATION**

1. Applicant:  Credit union-sponsored  Individual

Generally, an application must be filed by an insured credit union on behalf of a person. If the applicant is an individual, please explain why there is substantial good cause for the NCUA Board to grant a waiver of the institution filing requirement.

2. Applicant Name:

3. Date of Application:

4. Address of Applicant (Street, City, County, State, and Zip Code):

I/We have, in connection with preparing this Application, read Section 205(d)(1) & (3) of the Federal Credit Union Act, 12 U.S.C. §1785(d)(1) & (3), which governs requests by insured credit unions for the consent of the National Credit Union Administration Board for a person who has been convicted of a crime involving dishonesty or breach of trust, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of an insured credit union.

In support of this Application, the following statements, representations and information are submitted for the purpose of inducing the National Credit Union Administration Board to grant its written consent to the person identified below (the prohibited person), who has been convicted of a crime involving dishonesty or breach of trust or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of this credit union. **NOTE:** the Biographical Information Concerning the Prohibited Person (Section B) and Information Relative to the Prohibited Person's Convictions (Section C) should be completed by the prohibited person.

**SECTION B – BIOGRAPHICAL INFORMATION CONCERNING THE PROHIBITED PERSON**

1. Name of Prohibited Person:

2. Address of Prohibited Person (Street, City, County, State, and Zip Code):

3. Date of Birth (Month, Day, Year):

4. Place of Birth (City, State, and Country):

5. Social Security Number (See Privacy Act Statement on page 4):

6. Name and Address of Present of Most Recent Employer (Street, City, County, State, and Zip Code):



**SECTION C – INFORMATION RELATIVE TO THE PROHIBITED PERSON’S CONVICTIONS**

1. Description or Nature of Crime:

a. Date of Conviction:

b. Name and Address of Court:

c. Disposition of the Charges:

**NOTE:** Additional conviction(s) or program entry or entries for a crime involving dishonesty or breach of trust discovered subsequent to approval of this Application will require the submission of another application.

2. Briefly describe the nature of the offense and the circumstances surrounding it. Include age of the prohibited person at the time of conviction, date of the offense, and any mitigating circumstances (parole, suspension of sentence, pardon, etc.). Attach additional pages if necessary.

3. Briefly describe the extent of rehabilitation the prohibited person completed (attach supporting documents, if any).

4. Attach documentation of the Indictment, Information, or Complaint and Final Decree of Judgment, if available (Normally these can be obtained from the clerk of court of the relevant jurisdiction. If not provided, explain reasons for unavailability).

5. List any other pertinent facts relative to the crime which are not disclosed in the indictment or other court documents. Attach additional pages if necessary.

I do hereby certify that the Biographical Information Concerning the Prohibited Person (Section B) and Information Relative to the Prohibited Person's Convictions (Section C) are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
**SIGNATURE OF THE PROHIBITED PERSON**

\_\_\_\_\_  
**DATE SIGNED**

**PRIVACY ACT NOTICE**

**Authority:** 12 U.S.C. § 1785(d) ("Section 205(d)")

**Purpose:** The NCUA will use the information provided on this form to evaluate your application for the NCUA Board's consent to allow you to become or continue as an institution-affiliated party, or otherwise participate, directly or indirectly, in the conduct of the affairs of an insured credit union.

**Routine Uses:** This form may be disclosed to render legal advice, as part of judicial or administrative proceedings, to appropriate Federal or State credit union regulatory agencies and law enforcement or other governmental agencies if relevant to processing or necessary for administrative reasons or otherwise. A complete list of Routine Uses is available at [www.ncua.gov/privacy](http://www.ncua.gov/privacy).

**Effects of Not Providing Information:** Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the processing of this application. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form.

**SORN:** [NCUA-13](#), [Litigation Case Files](#), [75 FR 41539](#)