departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g). The Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director for the Antitrust Division, to provide the Antitrust Division's views regarding the potential impact on competition of proposed energy conservation standards on his behalf.

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (89 Fed. Reg. 43770, May 20, 2024), the Direct Final Rule (89 Fed. Reg. 44052, May 20, 2024), and the related Technical Support Documents (TSD) that accompanied them. We have also reviewed the Docket and public comments filed in response to the related Request for Information.

Based on this review, our conclusion is that the proposed energy conservation standards for air-cooled commercial package air conditions and heat pumps are unlikely to have a significant adverse impact on competition.

Sincerely,

/s/

David G.B. Lawrence
Policy Director

[FR Doc. 2024–22081 Filed 9–27–24; 8:45 am]
BILLING CODE 6450–01–C

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 741, 746, 748, and 752

[NCUA–2023–0023]

RIN 3133–AF55

Fair Hiring in Banking

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing this final rule to incorporate Interpretive Ruling and Policy Statement (IRPS) 19–1 and the Fair Hiring in Banking Act (FHBA) into its regulations. The Federal Credit Union Act (FCU Act) generally prohibits, except with the Board's prior written consent, any person who has been convicted of or has a program entry for certain criminal offenses involving dishonesty or breach of trust from participating in the affairs of an insured credit union. The final rule will expand career opportunities for individuals to work and volunteer at insured credit unions. The Board also rescinds IRPS 19–1.

DATES: The final rule is effective October 30, 2024.

FOR FURTHER INFORMATION CONTACT: Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, and Pamela Yu, Special Counsel to the General Counsel, Office of General Counsel, at the above address or by calling (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

Section 205(d) of the Federal Credit Union Act (Section 205(d))

Prior to December 23, 2022, section 205(d)(1) of the Federal Credit Union Act (FCU Act) provided that, except with the prior written consent of the Board (the NCUA refers to applications for such consent as ''consent applications''), 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 the prosecution for such offense (collectively, covered offenses), may not:

- Become, or continue as, an institution-affiliated party (IAP) with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.[1]

[1] 12 U.S.C. 1785(d)(1).

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to participate in the conduct of the affairs of the credit union without Board consent. Section 205(d)(2) restricts the Board from approving a consent application related to a person convicted of certain crimes enumerated in Title 18 of the United States Code (U.S.C.) for 10 years, absent a motion by the Board and approval by the sentencing court. Finally, section 205(d)(3) states that ''whoever knowingly violates'' section (d)(1)(A) or (d)(1)(B) commits a felony, punishable by up to 5 years in prison or a fine of up to $1,000,000 a day, or both. Section 205(d) prohibitions have existed in some form since 1970, and since then federally insured credit unions have been required to make a diligent inquiry as to whether prospective employees or IAPs [2] are subject to a section 205(d) prohibition.[3]

In 2008, the Board adopted IRPS 08–1 to provide direction and guidance to federally insured credit unions and those persons who may be affected by section 205(d).[4] The Board specifically sought comments as to whether the format of the guidance as an IRPS was appropriate or whether a regulation would be more suitable.[5] The Board received some comments supporting guidance in the form of an IRPS and others supporting a regulation, but ultimately chose to issue the guidance through an IRPS.[6]

IRPS 08–1 outlined the actions prohibited under the FCU Act and the procedures for applying the Board's consent on a case-by-case basis. Recognizing that certain offenses are so minor and dated that they would not presently pose a substantial risk to the insured credit union, IRPS 08–1 excluded certain *de minimis* offenses that met specified requirements and juvenile offenses from the need to request consent from the Board. In effect, the IRPS gave automatic consent for these offenses without requiring a consent application or any notice.

In 2019, the Board rescinded IRPS 08–1 and issued IRPS 19–1, a revised and updated IRPS to reduce regulatory burden (also known as the Second Chance IRPS).[7] IRPS 19–1 amended IRPS 08–1 to expand the definition of *de minimis* offenses to reduce the scope and number of offenses that would require submission of a consent application to the Board. Specifically, the IRPS did not require a consent application for convictions involving insufficient funds checks of moderate aggregate value, small-dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults. The Board recognized that many Americans faced hiring barriers due to a criminal record, a great number of whom are not violent or career criminals, but rather people who made poor choices early in life who have since paid their debt to society. The Board found that offering second chances for career opportunities to those who are truly penitent was consistent with our nation's shared values of forgiveness and redemption.

On December 23, 2022, Congress passed the National Defense Authorization Act for Fiscal Year 2023 (NDAA), which amended section 205(d).[8] The NDAA included the FHBA—which became immediately effective on December 23, 2022. The FHBA amends section 205(d) to expand employment opportunities for those with a previous minor or older criminal offense, among other provisions. Generally, the amendments codify a number of elements already contained in the NCUA's current policy regarding section 205(d) but also extend greater relief than what is currently available to certain individuals with prior convictions seeking employment with an insured credit union, particularly individuals with older convictions, expunged convictions, or prior convictions for a misdemeanor, any drug-related possession offense, or certain designated ''lesser offenses.'' The FHBA also clarifies several definitions and the procedures for processing a consent application.[9] The specific provisions of the FHBA are discussed in detail later in this preamble.

Section 19 of the Federal Deposit Insurance Act

Section 19 of the Federal Deposit Insurance Act (section 19) contains a prohibition provision similar to section 205(d) of the FCU Act.[10] Before 2020, the Federal Deposit Insurance Corporation (FDIC) provided the public with guidance relating to section 19 and the FDIC's application thereof through a Statement of Policy similar to the NCUA's IRPS 19–1.[11] Similar to the NCUA's IRPS, the FDIC's Statement of Policy, among other things, instituted a set of criteria to provide for blanket approval of certain low-risk crimes and for persons convicted of such *de minimis* crimes to forgo filing a section 19 consent application.

In 2020, the FDIC revised and incorporated its then existing Statement of Policy into its regulations to, among other purposes, provide for greater transparency as to its section 19 application, provide greater certainty as to the FDIC's application process, and to assist both insured depository institutions and individuals who may be affected by section 19 with understanding its impact and potentially seek relief from its provisions.[12]

In December 2022, the FHBA made amendments to section 19 that are comparable to the amendments made in section 205(d). The FDIC proposed to implement these changes through a notice-and-comment rulemaking in November 2023.[13] The FDIC finalized its rulemaking on August 7, 2024.[14]

Coordination With the FDIC

In the past, the NCUA has drawn on the FDIC's guidance related to section

[2] The NCUA has made its administrative orders against IAPs available in a searchable database on the agency's website. *See https://ncua.gov/news/enforcement-actions/administrative-orders.*

[3] 73 FR 48399, 48401 (Aug. 19, 2008).

[4] *Id.*

[5] The Board had not previously adopted any policies or regulations on section 205(d), as the statute at that time imposed no guidance or limitations on the information that the Board may consider, and the Board received a limited number of applications under section 205(d). However, due to an increasing number of applications requesting the Board's consent under section 205(d), the Board believed it was appropriate to issue guidance on the topic.

[6] Two commenters believed that a regulation was the more appropriate format for the guidance. One of the commenters who favored a regulation thought a regulation provided greater protection to a credit union that might be challenged by a prospective employee. Another commenter believed a regulation was preferable because it would help reinforce a credit union's right to appeal an adverse decision and subject future changes to public notice and comment. The Board concluded that the source of the requirement stems from Federal statute, namely section 205(d). Therefore, the Board believed that the need to comply with Federal law, as augmented by guidance in the form of an IRPS, was sufficient to protect a credit union. The Board believed that credit union officials should be able to adequately understand and apply the guidance styled as an IRPS and that the right to request a hearing contained in the IRPS provided a credit union a sufficient right to appeal a denial of consent by the Board. Additionally, the Board noted that it would not amend its IRPS without providing the public notice and an opportunity to comment. For all these reasons, the Board believed it appropriate to issue the final guidance in the form of an IRPS.

[7] 84 FR 65907 (Dec. 2, 2019).

[8] Public Law 117–263 (Dec. 23, 2022).

[9] Under the FHBA, a ''consent application'' means ''an application filed with [the] Board by an individual (or by an insured credit union on behalf of an individual) seeking the written consent of the Board under [12 U.S.C. 1785(d)(1)(A).'' 12 U.S.C. 1785(d)(6)(A).

[10] 12 U.S.C. 1829(a).

[11] *See* 84 FR 68353 (Dec. 16, 2019).

[12] *Id.*; 85 FR 51312 (Aug. 20, 2020) (FDIC 2020 final rule).

[13] 88 FR 77906 (Nov. 14, 2023).

[14] 89 FR 64353 (Aug. 7, 2024).

19 due to the FDIC's greater experience processing section 19 consent applications. Further, in the Board's view it is beneficial to both insured financial institutions and covered individuals for the NCUA's section 205(d) related requirements to be consistent, to the extent possible, with the FDIC's section 19 requirements. Consistent guidelines between the two agencies with respect to these parallel statutory provisions help streamline the consent 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. The FHBA formalizes the expectation that the agencies implement these comparable statutory provisions similarly and requires the NCUA and the FDIC to consult and coordinate to promote consistent procedures, where appropriate.[15] The Board finds that adopting similar definitions, terminology, and procedures in this final rule will promote consistent implementation of consent applications because even those provisions that fall outside the scope of consent applications are likely to affect how the agency administers those applications. The NCUA and the FDIC have consulted and coordinated on this rulemaking as directed by the FHBA. Additionally, the NCUA has consulted with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency.

II. Proposed Rule and Public Comments

At its October 19, 2023, meeting, the Board issued a proposed rule[16] to add new part 752 to chapter VII of title 12 of the U.S. Code of Federal Regulations (CFR) to codify IRPS 19–1, along with significant changes that are consistent with the FHBA amendments to section 205(d) and the FDIC's comparable implementing regulations.[17] The proposed rule addressed, among other topics, the individuals and types of offenses covered by section 205(d), as well as the NCUA's procedures for reviewing a consent application. The proposed rule provided for a 60-day comment period, which ended on January 8, 2024. The Board received 10 public comments on the proposal from individuals, a fidelity bond provider, a faith-based association advocating for the rights of the accused and incarcerated, and national, state, and regional organizations representing credit unions.[18]

The NCUA requested comments on all aspects of its approach to section 205(d) and, specifically, the following topics:

- the date on which a criminal offense ''occurred'' or was ''committed;''
- the date on which ''sentencing occurred;''
- whether section 205(d) encompasses foreign convictions and pretrial diversions;
- the standard for expungements, sealings, and dismissals;
- ''offenses involving controlled substances;'' and
- *de minimis* offenses.

Most commenters opted to provide general comments rather than address the specific questions posed in the preamble. Only one commenter specifically addressed each of the eight questions presented.

Four commenters expressed broad support for providing second chances and expanding employment opportunities to those with criminal offense backgrounds but did not provide substantive comments on the proposed rule. Of those commenters that provided substantive comments, all were generally supportive of the proposed rule. One commenter noted that the proposed rule enhances the ability of credit unions to make their own hiring decisions and decreases the instances where a consent application would need to be submitted. Two commenters wrote that by modifying and expanding the current *de minimis* offenses deemed automatically approved by the Board, the proposal expands opportunities for individuals seeking employment in the financial services sector. Further, they noted that by expanding the category of *de minimis* offenses, the NCUA better aligns itself with the FDIC.

Several of the commenters indicated their support for the proposed rule but suggested changes to particular provisions or asked for clarification on certain aspects of the proposal. The comments and the Board's responses are addressed in the section-by-section discussion below.

III. Final Rule

The Board is now rescinding IRPS 19–1 and issuing a final rule to incorporate IRPS 19–1 and the FHBA into its regulations. The final rule addresses, among other topics, the types of offenses covered by section 205(d), the effect of the completion of sentencing or pretrial-diversion program requirements in the context of section 205(d), and the NCUA's procedures for reviewing applications filed under section 205(d). The final rule also makes conforming changes and adopts amendments to § 701.14 on changes in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

Substantive comments on specific aspects of the proposed rule are discussed in detail in the following sections of the preamble. For the reasons described, the Board is adopting the proposal with some modifications.

Section-by-Section Discussion

1. Section 752.1—What is section 205(d) of the FCU Act?

This section sets out the scope of new part 752. Paragraph (a) generally describes the requirements of section 205(d). Paragraph (b) of this section clarifies that insured credit unions must make a reasonable, documented inquiry regarding an applicant's history to ensure that a person who is subject to the prohibition provision of section 205(d) is not hired or permitted to participate in the conduct of credit unions' affairs without the written consent of the NCUA.

The Board reiterates that, consistent with the NCUA's current policy, a federally insured credit union's reasonable, documented inquiry should, at a minimum, establish a screening process to obtain information about convictions and program entries from job applicants. If a federally insured 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.

Paragraph (b) provides that insured credit unions are permitted to make conditional offers of employment to prospective applicants. As per the NCUA's existing policy, an insured credit union choosing to adopt a policy to extend conditional offers of employment may establish its own procedures to make criminal record inquiries at any stage of its choosing in its hiring process, so long as applicants

[15] 12 U.S.C. 1785(d)(5)(I), and 12 U.S.C. 1829(f)(9).

[16] The proposed rule was published in the **Federal Register** on November 7, 2023. 88 FR 76702 (Nov. 7, 2023).

[17] The NCUA is issuing a final rule to codify its policy regarding section 205(d) consent applications due to the FDIC's recent codification of its similar section 19 Statement of Policy. The NCUA believes codifying IRPS 19–1 will provide for greater transparency as to its application, provide greater certainty as to the NCUA's application process, and help both credit unions and individuals who may be affected by section 205(d) to understand its impact and potentially seek relief from its provisions.

[18] One comment was indecipherable and included an attachment with no relevance to the proposed rule. This submission was counted in the total number of comments received.

do not commence work for or be employed by the credit union until the applicant is determined to not be prohibited under section 205(d) or receives consent from the Board.

Paragraph (c) addresses the need for a consent application and establishes the standard for an application's approval. The NCUA will evaluate a consent application to determine if a 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 credit union. The burden is upon the applicant to establish that the application warrants approval.

The Board noted in the proposal that the FHBA uses the terms ''national office'' and ''regional office,'' which are inconsistent with the NCUA's organization.[19] To address those technical inconsistencies in the final rule, the Board has replaced references to the NCUA's regional offices and the Office of National Examinations and Supervision (ONES) with the term ''field office'' throughout. The Board has also added paragraph (d) to define the term ''field office'' as a Regional Office or the Office of National Examinations and Supervision, as described in 12 CFR 790.2.

Section 752.1 is otherwise adopted generally as proposed.

2. Section 752.2—Who is covered by section 205(d)?

This section identifies who is covered by section 205(d). Paragraph (a) states that IAPs, as defined by 12 U.S.C. 1786(r), are covered. Similar to IRPS 19–1, volunteer and *de facto* employees are deemed covered under section 205(d) as well. Whether other persons who are not IAPs, such as certain independent contractors, are covered depends upon their degree of influence or control over the management or affairs of an insured credit union. For example, directors and officers of affiliates, or joint ventures of an insured credit union, are covered if they participate in the conduct of affairs of the insured credit union or are able to influence or control the management or affairs of the insured credit union. Generally, those who exercise major policymaking functions of an insured credit union are covered by section 205(d).

Paragraph (b) defines the term ''person'' for the purposes of section 205(d) as an individual only and not a legal entity.

One commenter indicated that the principles-based definition for covered persons in § 752.2 was sufficiently clear as proposed, particularly when read in conjunction with the statutory definition of ''institution-affiliated party.'' The commenter noted that any potential gray areas that arise can be resolved through legal opinions on a case-by-case basis.

The Board is adopting this section largely as proposed. As noted in the proposal, § 752.2 includes less detail than IRPS 19–1 regarding how the NCUA will determine whether a person participates in the conduct of the affairs of an insured credit union. The NCUA intends to publish guidance that further clarifies its intent about other persons who are not IAPs. The guidance will include language similar to IRPS 19–1.

3. Section 752.3—Which offenses qualify as ''Covered Offenses'' under section 205(d)?

This section addresses what constitutes a covered offense under section 205(d).[20] Paragraph (a) states that a conviction or program entry must have been for a criminal offense involving dishonesty or breach of trust. The paragraph defines criminal offenses involving dishonesty and breach of trust. The FHBA defines ''criminal offense involving dishonesty'' as ''an offense under which an individual, directly or indirectly, cheats or defrauds or wrongfully takes property belonging to another in violation of a criminal statute.'' The FHBA further provides that the term includes an offense that Federal, state, or local law defines as dishonest or for which dishonesty is an element of the offense. However, the term does not include a misdemeanor criminal offense committed more than 1 year before the date on which an individual files a consent application, excluding any period of incarceration, or an offense involving the possession of controlled substances.

The FHBA does not define breach of trust. Under this section, breach of trust means a wrongful act, use, misappropriation, or omission with respect to any property or fund that 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. This definition is identical to the definition in IRPS 19–1.

As discussed previously, the FHBA excludes from the scope of such offenses ''an offense involving the possession of controlled substances.'' The Board interprets this phrase concerning controlled substances to exclude from the scope of the prohibition, at a minimum, criminal offenses involving the simple possession of controlled substances and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty or breach of trust, as noted in paragraph (b) of § 752.3. The Board notes that in processing other applications, such as change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition, the NCUA may still consider excluded offenses as appropriate. For example, an offense that is not covered under section 205(d) may bear on an individual's competence, experience, character, or integrity under 12 U.S.C. 1790a and 12 CFR 701.14. Potential applicants may contact their appropriate NCUA field office if they have questions about whether their offenses are covered under section 205(d).

This new regulatory language marks a shift from IRPS 19–1, which requires consent applications for certain simple misdemeanor drug possession offenses. Under IRPS 19–1, a consent application for a simple misdemeanor drug possession offense is required except if the conviction or program entry was classified as a misdemeanor at the time of conviction or program entry, the person had no other conviction or program entry described in section 205(d), and it had been 5 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 the conviction did not involve the illegal distribution (including an intent to distribute), sale, trafficking, or manufacture of a controlled substance or other related offense.

Commenters were generally supportive of the Board's proposal concerning controlled substances. One

[19] *See* 12 CFR 790.2. The NCUA is currently composed of the Board with a Central Office; Field Offices, consisting of three Regional Offices and ONES; the Asset Management and Assistance Center; the Community Development Revolving Loan Program; and the NCUA Central Liquidity Facility.

[20] The Board notes that the approach to criminal offenses mandated by the statute and rulemaking would not have an impact on other processes related to criminal convictions. For example, the NCUA may consider a more expansive scope of convictions related to controlled substances under section 212 of the Federal Credit Union Act in disapproving directors, committee members, and senior executive officers of troubled or newly chartered insured credit unions. *See* 12 CFR 701.14 for the NCUA's implementation of this provision, also addressed elsewhere in this final rule.

commenter wrote that credit unions in rural areas with high addiction rates have indicated that the classification of possession of an illegal substance as a *de minimis* offense would increase the pool of potential employment candidates. The same commenter noted studies have shown employment has therapeutic effects in drug addiction treatment and, in the spirit of assisting communities in reaching their fullest potential, credit unions should have the ability to offer employment opportunities to more eligible candidates, including those battling addiction. Another commenter supported the NCUA's review of its interpretation of crimes involving possession.

The Board believes that the final rule is consistent with the text and purposes of the FHBA and will align the Board's interpretation of section 205(d) as to offenses involving controlled substances more closely with other Federal banking regulators. The FHBA explicitly excludes from the category of ''criminal offense involving dishonesty'' ''an offense *involving* the possession of controlled substances,'' not just the offense of ''possession of controlled substances.'' [21] The modifier ''involving,'' in the Board's view, expands that exclusion beyond simple-possession offenses. The regulatory language, however, will continue to recognize that a drug-related offense *could* potentially involve dishonesty, breach of trust, or money laundering.[22] Moreover, while section 205(d) provides statutory barriers to the employment of certain individuals due to their criminal history, insured credit unions otherwise retain the discretion, under that statute, as to which applicants they want to hire. The Board also notes that this provision does *not* affect its ability to consider drug-related offenses as they pertain to the suitability of an individual under other statutory provisions, including section 212 of the FCU Act.[23]

Paragraph (b) requires that, to determine if the criminal offense is one of dishonesty or breach of trust, the NCUA will look to the statutory elements of the criminal offense or to court decisions in the relevant jurisdiction that have interpreted these statutory elements. This provision is similar to the policy under IRPS 19–1 and is unchanged from the proposed rule.

The FHBA also states that the term ''criminal offense involving dishonesty'' does not include ''a misdemeanor criminal offense committed more than one year before the date on which an individual files a consent application, excluding any period of incarceration.'' [24] The Board interprets the term ''offense committed'' to mean the ''last date of the underlying misconduct,'' based on the plain text of the statute. In instances with multiple offenses, ''offense committed'' means the last date of any of the underlying offenses.

Paragraph (c) includes language reflecting the FHBA's exclusion of certain older offenses from the scope of section 205(d).[25] The FHBA provides that individuals are not subject to a prohibition under section 205(d) if they committed a covered offense and it has been 7 years or more since the offense occurred; or if the individual was incarcerated with respect to the offense, it has been 5 years or more since the individual was released from incarceration; or the individual committed the offense when they were 21 years of age or younger, and it has been more than 30 months since the sentencing occurred.[26]

The Board considers the phrases ''offense committed''—noted previously—and ''offense occurred'' to be substantially similar. Accordingly, the Board interprets the term ''offense occurred'' to mean the ''last date of the underlying misconduct.'' In instances with multiple offenses, ''offense occurred'' means the last date of any of the underlying offenses.

One commenter supported the Board's proposal, noting its interpretation of the term ''offense occurred'' is reasonable and logical.

Paragraph (c) contains another FHBA exception: section 205(d)'s restrictions do not apply to an offense if ''the individual was incarcerated with respect to the offense and it has been 5 years or more since the individual was released from incarceration.'' [27] While the language of the statute is clear, the Board notes that there could be situations in which an individual who was incarcerated with respect to an offense would be permitted to work at an insured credit union before a similarly situated individual who was not incarcerated in connection with an offense. This difference is due to the FHBA's use of a shorter time period for individuals who were incarcerated for an offense than for individuals who did not serve jail time.

Paragraph (c) also tracks the FHBA's language concerning offenses committed by individuals 21 years of age or younger. The FHBA states that, for individuals who committed an offense when the individual was 21 years of age or younger, section 205(d) shall not apply to the offense if it has been more than 30 months since the sentencing occurred.[28] The Board interprets ''sentencing occurred'' to mean the date on which a court imposed the sentence (as indicated by the date on the court's sentencing order), not the date on which all conditions of sentencing were completed. Moreover, paragraph (c) notes that its exclusions—which are derived from the FHBA—do not apply to the enumerated offenses described under 12 U.S.C. 1785(d)(2).

One commenter suggested that the term ''sentencing occurred'' should mean the date that appears on the applicable sentencing order, instead of the date the court's clerk entered the order on the docket, which often occurs days after the order is signed by the judge. The commenter pointed out that the date on the sentencing order can be easily and definitively ascertained from the court records. The Board agrees with this commenter and has modified this paragraph to add a clarifying parenthetical, as indicated previously.

Proposed paragraph (d) added parallel language reflecting the FDIC's long-held position that individuals who are convicted of, or enter into a pretrial diversion program for, a criminal offense involving dishonesty or breach of trust in foreign jurisdictions are subject to section 19, unless the offense is otherwise excluded by 12 CFR 303, subpart L, as stated in the FDIC's rule.

One commenter agreed that section 205(d) should include foreign criminal convictions and pretrial diversions for offenses in foreign jurisdictions involving dishonesty, like fraud and embezzlement, unless the conviction has been expunged, dismissed, or pardoned. Another commenter noted that, as a fidelity bond carrier, it will continue to require full disclosure of all pertinent, known facts in the bond application and renewal process, and all facts related to current or prospective employees will remain relevant to its underwriting decisions.

The Board has not previously had a position on foreign offenses; however, given the congressional mandate to

[21] *See* 12 U.S.C. 1785(d)(6)(B)(iii) (emphasis added).

[22] *See* House Rpt. No. 117–314 (May 10, 2022), *available* at *https://www.congress.gov/congressional-report/117th-congress/house-report/314/1*.

[23] 12 U.S.C. 1790a.

[24] 12 U.S.C. 1785(d)(6)(B)(iii)(I).

[25] *See* 12 U.S.C. 1785(d)(4)(A).

[26] Note that these exceptions do not apply to the offenses described under 12 U.S.C. 1785(d)(2).

[27] *See* 12 U.S.C. 1785(d)(4)(A)(i)(II).

[28] 12 U.S.C. 1785(d)(4)(A)(ii).

consult and coordinate to promote consistent implementation on consent application procedures where appropriate, the Board is adopting the FDIC's interpretation, as proposed. Employers may be unaware of an applicant's foreign offenses without conducting their own inquiry, and many countries have their own application processes to conduct criminal background checks.

The Board notes several non-exhaustive ways in which insured credit unions could comply with this requirement. For credit union operations outside the United States, the insured credit union could conduct a reasonable, documented inquiry to verify an applicant's history by inquiring about potential covered offenses that may have occurred in that foreign country (or countries) in which the credit union conducts operations, as well as the United States. As another example of such an inquiry, if an insured credit union plans to hire someone in the United States who is from a foreign country, the credit union could inquire about potential covered offenses that may have occurred in the United States and in that foreign country. And if a foreign jurisdiction forbade background investigations by an insured credit union, the credit union could note this restriction as part of its reasonable, documented inquiry.

4. Section 752.4—What constitutes a conviction under section 205(d)?

Paragraph (a) states that there must have been a conviction of record for section 205(d) to apply, and that section 205(d) does not apply to arrests, pending cases not brought to trial (unless the person has a program entry as set out in § 752.5), or any conviction reversed on appeal unless the reversal was for the purpose of re-sentencing. The Board is generally adopting paragraph (a) as proposed, with non-substantive modifications to § 752.4(a) to change the tense of the final sentence for consistency with the preceding sentence.

Paragraph (b) clarifies that, absent a program entry, when an individual is charged with a covered offense but is subsequently convicted of an offense that is not a covered offense, that conviction is not subject to section 205(d). IRPS 19–1 does not have this clarification; however, it is included in the FDIC's current part 303. The final rule clarifies that the conviction, not the originally charged offense, is relevant under section 205(d).

Paragraph (c) of this section reflects statutory language related to the treatment of orders of expungement, sealing, or dismissal of criminal records. Under IRPS 19–1, a conviction that has been completely expunged is not considered a conviction of record and does not require a consent application. However, IRPS 19–1 further noted that where an order of expungement has been issued and is intended to be a complete expungement, the jurisdiction 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. Also, the failure to destroy or seal the records will not prevent the expungement from being considered complete for the purposes of section 205(d).

The FHBA provides a two-pronged test to determine whether a covered offense should be considered expunged, dismissed, or sealed and therefore excluded from the scope of section 205(d). First, there must be an ''order of expungement, sealing, or dismissal that has been issued in regard to the conviction in connection with such offense''; second, it must be ''intended by the language in the order itself, or in the legislative provisions under which the order was issued, that the conviction shall be destroyed or sealed from the individual's state, Tribal, or Federal record, even if exceptions allow the conviction to be considered for certain character and fitness evaluation purposes.'' [29]

The FHBA does not address expungements, sealings, or dismissals by operation of law, and the Board has sought to provide a more comprehensive framework as to such records. The Board proposed to add language to the second (intent) prong of the expungement framework to encompass the language in the expungement order itself, the legislative provisions under which the order was issued, *and other legislative provisions.* The Board believes that the additional language is consistent with the purposes of the statute and congressional intent to provide relief to individuals with older or minor offenses. One commenter agreed that the proposed interpretation of expungement to include those by application of law is reasonable and supported finalizing that provision as proposed.

The proposal noted that, similar to IRPS 19–1, covered offenses that have been pardoned—and which are not otherwise excluded by § 752.8—would still require a consent application.

One commenter suggested that pardons should also qualify as an expungement by operation of law. The commenter observed that requiring a consent application for a conviction that has been pardoned seems inconsistent with congressional intent and the presidential pardon power. The commenter suggested that if a conviction has been officially nullified due to a pardon by the President or a state governor, that conviction should be nullified in all respects, including pursuant to the NCUA's regulations. The commenter asked that the Board exclude pardons from the scope of section 205(d) and suggested that pardoned offenses should be treated similarly to expungements, dismissals, or the sealing of a conviction.

The Board declines to adopt this recommendation and notes its longstanding position that covered offenses that have been pardoned, and which are not otherwise excluded from the scope of section 205(d), will still require an application. A pardon typically cancels the punishment for a criminal offense, not the underlying finding of guilt. In contrast, an expungement or sealing is significantly more likely to result, by applicable statute or court order, in the removal of the finding of guilt or otherwise result in a legal determination that the offense should not be used against an individual for employment purposes. Accordingly, in the Board's view, a person with such an expunged or sealed offense tends to present less of a risk to the credit union system than a person whose same offense has been pardoned. The Board notes, however, that while a covered offense that has been pardoned but not expunged will still require an application, in most cases the pardon would generally weigh in favor of approval.

Paragraph (d) excludes ''youthful offender'' judgments for minors from the scope of section 205(d). Paragraph (d) clarifies that it encompasses the term ''youthful offender'' and ''juvenile delinquent'' *and similar terms,* since a court does not have to specifically use these terms in an adjudication in order for paragraph (d)'s provisions to apply.

5. Section 752.5—What constitutes a pretrial diversion or similar program under section 205(d)?

Paragraph (a) defines what constitutes a pretrial diversion or similar program (a program entry). A pretrial diversion or similar program means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service. The FHBA establishes this definition.

[29] 12 U.S.C. 1785(d)(4)(B)(ii).

Paragraph (b) clarifies that when a covered offense either is reduced by a program entry to an offense that would otherwise not be covered by section 205(d) or is dismissed upon successful completion of a program entry, the offense remains a covered offense for purposes of section 205(d). The covered offense will require a consent application unless it is *de minimis* as provided by § 752.8. This language is new as compared to IRPS 19–1 and comes from the FDIC's part 303.

Paragraph (c) states that expungements or sealings of program entry records will be treated the same as expungements or sealings of convictions. This language is new as compared to IRPS 19–1 and comes from the FDIC's part 303.

No commenters objected to these provisions, which the Board generally adopts as proposed.

6. Section 752.6—What are the types of consent applications that can be filed?

The FHBA codifies procedures for consent applications filed with the NCUA. The statute removes the NCUA's existing policy that an insured credit union sponsor a consent application or that an individual seek a waiver of the credit union filing requirement. Specifically, the proposed rule provides that the NCUA will accept applications from an individual or an insured credit union applying on behalf of an individual.

Paragraph (b) provides that an individual consent application or a credit union-sponsored consent application may be filed separately or contemporaneously with the appropriate NCUA field office.

7. Section 752.7—When may an application be filed?

This section notes that before a consent application may be filed, ''all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, conditions of rehabilitation, and probation requirements must be completed, and the case must be considered final by the procedures of the applicable jurisdiction.'' The Board includes this language to accord with several of the FHBA's exclusions from section 205(d) that are not tied to the completion of sentencing requirements.

Furthermore, the FHBA requires the NCUA to ''make all forms and instructions related to consent applications available to the public, including on [its] website.'' [30] These forms and instructions ''shall provide a sample cover letter and a comprehensive list of items that may accompany the consent application, including clear guidance on evidence that may support a finding of rehabilitation.'' [31] While the final rule does not codify these requirements, the agency will comply with the statutory mandate to make appropriate forms and instructions available to the public. The final rule provides generally that the NCUA's consent application forms as well as additional information concerning section 205(d) can be accessed on the NCUA's website. One commenter noted that the availability of forms on the agency's public website will be helpful.

No commenters objected to these provisions, which the Board generally adopts as proposed.

8. Section 752.8—What is the de minimis exemption?

The Board has made a number of changes to this section based on the statutory revisions and helpful comments received. One commenter—to the FDIC's parallel notice of proposed rulemaking under the FHBA [32]—requested that this section be revised to exempt *de minimis* offenses from the scope of the statutory prohibition, to align with the FHBA. The Board agrees, and this section has been revised in the final rule to treat *de minimis* offenses, a category that includes the sub-category ''designated lesser offenses,'' as offenses that are excluded from the prohibitions of section 205(d) (assuming certain conditions are met) and for which offenses no application is required. This is a substantive departure from the Board's longstanding treatment of *de minimis* offenses, in which potential applicants with such offenses on their records did not need to file an application with the Board because the NCUA deemed their (potential) application automatically approved. In other words, the NCUA considered such offenses covered under section 205(d), while the FHBA exempts those offenses entirely from section 205(d). Accordingly, this section of the final rule includes additional language to clarify that the prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to offenses meeting the conditions to qualify for the *de minimis* exemption.

The FHBA removed the use of fake identification from the scope of section 205(d), and paragraphs (a)(1) and (b)(4) reflect this exclusion.[33]

Paragraph (a)(1) states an individual who has been convicted of two or fewer covered offenses need not file if the individual could have been sentenced to a term of confinement in a correctional facility of 3 years or less and/or a fine of $2,500 or less, and the individual actually served 3 days or less of jail time for each, provided that all of the sentencing requirements associated with the conviction have been completed, each conviction or program entry was entered at least 3 years prior to the date of a consent application (assuming there are two convictions or program entries for a covered offense), and each covered offense was not committed against an insured depository institution or insured credit union.

One commenter suggested that the maximum potential fine amount for the *de minimis* criterion in paragraph (a)(1) should be increased from $2,500 to $5,000, in keeping with a certain Federal criminal statute that provides for fines up to $5,000 for certain misdemeanors or infractions. The commenter noted that under the statutory provision there are very few violations of Federal criminal laws for which the potential fine for a violation would be less than $5,000, making many Federal offenses ineligible for *de minimis* treatment. The Board declines to expand the *de minimis* framework as suggested because it considers the current threshold appropriate. The $2,500 amount is comparable to the $2,000 *de minimis* threshold for insufficient-fund offenses under the FHBA.

While the Board acknowledges that offenses falling under the statute the commenter cited may require an application, two factors mitigate this concern. First, some of the offenses or infractions may not involve dishonesty or a breach of trust, which would make them irrelevant under section 205(d). Second, many of those offenses are likely to be misdemeanors, which receive significant relief under § 752.3. Thus, the Board finds the rule gives appropriate relief for minor offenses with the $2,500 threshold.

Paragraph (a)(2) reflects the FHBA's confinement criteria as to the Board's determination of *de minimis* offenses.[34]

To improve the clarity of this section, the final rule adds a sentence explaining that designated lesser offenses need not

[30] 12 U.S.C. 1785(d)(5)(E)(i).

[31] 12 U.S.C. 1785(d)(5)(E)(ii).

[32] *See* 88 FR 77906 (Nov. 14, 2023).

[33] See 12 U.S.C. 1785(d)(4)(C)(iv).

[34] *See* 12 U.S.C. 1785(d)(4)(C)(ii).

meet the other criteria that apply to *de minimis* offenses.

For greater ease of reference, proposed paragraphs (a)(2)(i)–(iii) have been reorganized in the final rule. Under redesignated paragraph (a)(3), jail time is calculated based on the time an individual spent incarcerated as a punishment or a sanction—not as pretrial detention—and does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location. Jail time includes confinement to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental competency grounds. The definition is not intended to include any of the following: persons who are restricted to a substance-abuse treatment program facility for part or all of the day; and persons who are ordered to attend outpatient psychiatric treatment.

Paragraph (a)(4), redesignated from proposed paragraph (a)(3), requires that if there are two convictions or program entries for a covered offense, each conviction or program entry must have been entered at least 3 years prior to the date a consent application would otherwise be required.

Paragraph (a)(5) (redesignated from proposed paragraph (a)(4)) requires that, in order for an offense or offenses to qualify under the general *de minimis* framework, each offense ''must not have been'' committed against an insured depository institution or insured credit union. This language aligns with the current FDIC regulations.

Under the proposed rule, several *de minimis* criteria had qualifiers for offenses committed against ''insured'' credit unions.[35] Two commenters noted that the proposal's references to covered offenses committed against ''insured credit unions'' or ''insured depository institutions'' for determining whether a given offense is *de minimis* was too narrowly focused on whether an institution is insured. One commenter suggested that if an offense is committed against *any* credit union or financial institution, it should not be considered a *de minimis* offense irrespective of the institution's insurance status. Another commenter noted that any prior offense by a covered individual committed against a financial institution, insured or not, increases risks to insured credit unions. Both commenters suggested eliminating the ''insured'' qualifier so that the *de minimis* exemption would not be available for offenses committed against *any* depository institution or credit union—not just insured depository institutions and insured credit unions. After careful consideration, the Board declines to adopt this recommendation. The FHBA and its legislative history indicate lawmakers' preference for broad relief and granting second chances. Adopting the commenters' recommendation would provide *less* relief for individuals with minor offenses committed against non-federally insured credit unions or depository institutions. While this approach to the *de minimis* framework marks a departure from IRPS 19–1, in the Board's view, providing greater relief for *de minimis* offenses—not less—is consistent with the FHBA and congressional intent.

Paragraph (b)(1) (age of person at time of covered offense) provides that a consent application is not required if there are two convictions or program entries for a covered offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger and the convictions or program entries were entered at least 18 months prior to the date of a consent application. For a reduced waiting period to apply before an individual may qualify for the *de minimis* exemption, the underlying convictions or program entries must meet the other *de minimis* criteria in paragraph (a) of § 752.8.

The Board has revised the *de minimis* requirement related to the aggregate total face value of all ''bad'' or insufficient funds checks from $1,000 to $2,000, to conform with the statute.[36] Under paragraph (b)(2), a consent application is not required if an individual has convictions or program entries of record based on the writing of ''bad'' or insufficient funds checks and the following conditions apply: (i) the aggregate total face value of all ''bad'' or insufficient funds checks cited across all the convictions or program entries for ''bad'' or insufficient funds checks is $2,000 or less; (ii) no depository institution or credit union was a payee on any of the ''bad'' or insufficient funds checks that were the basis of the convictions or program entries; and (iii) the individual has no more than one other *de minimis* offense.

The FHBA and the final rule do not require a consent application for convictions or program entries for small-dollar, simple theft. Under paragraph (b)(3), convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) are considered *de minimis* offenses if the following conditions apply: (i) the value of the currency, goods, or services taken is $1,000 or less; (ii) the theft was not committed against an depository institution or credit union; (iii) the individual has no more than one other *de minimis* offense under this section; and (iv) if there are two *de minimis* offenses under this section, each conviction or program entry was entered at least 3 years prior to the date a consent application would otherwise be required, or at least 18 months prior to the date a consent application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger. This exception excludes burglary, forgery, robbery, identity theft, and fraud.

Finally, the Board notes that the FHBA includes ''designated lesser offenses'' in addition to *de minimis* offenses. Designated lesser offenses, including use of fake identification, shoplifting, trespass, fare evasion, or driving with an expired license or tag, are described in the FHBA as low-risk offenses statutorily excluded from the scope of section 205(d). Redesignated paragraph (b)(4), which appeared as § 752.3(d) in the proposed rule, excludes from the scope of covered offenses ''designated lesser offenses,'' (for example, using fake identification), as specified in 12 U.S.C. 1785(d)(4)(C)(iv), if 1 year or more has passed since the applicable conviction or program entry. As explained in paragraph (a) in the final rule, these offenses do not need to meet the other criteria specified for *de minimis* offenses.

The Board has deleted proposed § 752.8(c) concerning fidelity bond coverage and disclosure of *de minimis* offenses to insured credit unions. This now-deleted paragraph had required that, ''Any person who meets the criteria under this section shall be covered by a fidelity bond to the same extent as others in similar positions and shall disclose the presence of the conviction(s) or program entry(ies) to all insured credit unions in the affairs of which he or she intends to participate.''

One commenter expressed concern that § 752.8(c), as proposed, could be misinterpreted as imposing a mandate on fidelity bond carriers to provide coverage to individuals meeting the *de minimis* criteria. Specifically, the use of the phrase ''shall be covered by a fidelity bond'' could be read to imply that the burden for fidelity coverage is on bond providers to provide the required coverage, rather than on the credit union to obtain the required

[35] *See* proposed §§ 752.8(a)(4), (b)(2), (b)(3).

[36] *See* 12 U.S.C. 1785(d)(4)(C)(iii).

coverage. This commenter's concern was seemingly borne out in another comment that recommended that the same ''mandate'' for fidelity bond coverage for individuals meeting the *de minimis* criteria should also be extended to individuals whose consent applications have been approved. This commenter's recommendation illustrated that a misunderstanding of the phrase ''shall be covered by a fidelity bond'' could occur as suggested.

Additionally, one commenter responding to the FDIC's parallel notice asked for clarification concerning *de minimis* offenses and another commenter suggested that *de minimis* offenses should be treated the same way as ''designated lesser offenses'' by excluding both types of offenses from the scope of the statutory prohibition.

Since the FHBA has excluded *de minimis* offenses from the scope of section 205(d), the Board believes that these requirements should no longer attach to individuals who have committed such offenses and has removed this provision from the final rule. Deleting proposed § 752.8(c) also removes the ambiguity of the phrase ''shall be covered by a fidelity bond.'' The Board emphasizes, however, that all federally insured credit union employees and officials continue to be subject to the fidelity bond and insurance coverage rules under 12 CFR 713 and must be bondable to work for or participate in the conduct of the affairs of the credit union.[37]

Paragraph (c), redesignated from proposed paragraph (d), states that any conviction or program entry for specific criminal offenses under Title 18 set out in 12 U.S.C. 1785(d)(2) cannot qualify for a *de minimis* exemption.

9. Section 752.9—How does an individual or a credit union file an application?

This section, adopted as proposed, eliminates the credit union filing requirement and waiver process and indicates that an insured credit union may file an application on behalf of an individual. The individual may also file an application. This section also provides that applications filed by a credit union should be filed with the NCUA field office where the credit union's home office is located (or with ONES for credit unions that office supervises), and applications filed by an individual should be filed with the NCUA field office where the person lives. States covered by each NCUA field office are listed in 12 CFR 790.2.

Along with this final rule, the Board is revising its delegations of authority related to consent applications. Formerly, the Regional Directors and the ONES Director only had delegated authority to act on credit union-sponsored applications, and the Board had retained the authority to approve or disapprove individual applications. Under the revised delegations, the Regional Directors and the ONES Director will have authority to act on both individual and credit union-sponsored applications. Any disapproval of an individual or credit union-sponsored application for consent, including a disapproval of a request for reconsideration, will require the prior concurrence of the General Counsel. Consistent with the FHBA, the General Counsel's concurrence must certify that the denial is consistent with section 205(d). Under the revised delegation, the Board will retain authority to approve or disapprove individual applications for consent involving an offense described under section 205(d)(2)(A) and such other high-level security cases it designates.

10. Section 752.10—How will the NCUA evaluate an application?

Paragraph (a) sets out the factors the NCUA will assess to determine the level of risk the applicant poses to an insured credit union and whether the NCUA will consent to the person's participation in a credit union's affairs. The paragraph reflects new statutory requirements related to the NCUA's review process, including the requirement that the NCUA primarily rely on the criminal history record of the Federal Bureau of Investigation (FBI) in its review and provide such record to the applicant to review for accuracy.[38] The Board interprets the term ''criminal history record'' to mean ''identity history summary checks,'' which are commonly known as ''rap sheets.'' Under paragraph (a)—and in accordance with the FHBA—the NCUA, in reviewing an application, will provide ''such record'' (a copy of the rap sheet) to the individual to review for accuracy.[39] The NCUA will not provide it to the credit union, but only to the individual who is the subject of the application. One commenter stated that the requirement to rely primarily on FBI rap sheets will help improve the consent application process.

One commenter, to the FDIC's parallel FHBA notice of proposed rulemaking, requested that the FDIC establish a deadline to evaluate the application once received and a deadline of 5 days to return the copy of the criminal history record once received from the FBI. The FDIC has adopted this recommendation in part;[40] however, the Board declines to adopt the suggested deadlines in this final rule. While the Board remains mindful that the consent application process may impose inconveniences and uncertainties to covered individuals and credit unions as they await the agency's determination, the Board maintains it is impracticable to establish a timetable for action on applications because each application is fact specific and varies in complexity. Past applications submitted to the NCUA have generally been adjudicated within 60 days from receipt, and often the processing time was significantly less. The Board remains committed to processing consent applications as promptly as practicable. In addition, the NCUA will make reasonable efforts to communicate with the subject of the application within 15 calendar days of receipt of the criminal history record from the FBI to inform the individual that the NCUA will be providing them with a copy of the report and to verify the individual's contact information. The NCUA will also make reasonable efforts to send the report to the individual within 5 business days of successful verification of the individual's contact information. If the individual believes that there are any inaccuracies in the report, the NCUA will direct the individual to the FBI, where the individual can seek corrections.

Paragraph (b) states that the NCUA will not require an applicant to provide certified copies of criminal history records unless the NCUA determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record of the FBI.

Paragraph (c) states that the determining factors in assessing an application are whether the person has demonstrated their fitness to participate in the conduct of the affairs of an

[37] Federally insured, state-chartered credit unions are required by 12 CFR 741.201 to comply with the fidelity bond coverage requirements of part 713. Corporate credit unions must comply with 12 CFR 704.18 in lieu of part 713.

[38] *See* 12 U.S.C. 1785(d)(5)(F).

[39] *Id.*

[40] Under revised 12 CFR 303.229(a)(2), the FDIC will make reasonable efforts to communicate with the subject of the application within 15 calendar days of receipt of this record from the FBI to inform the individual that the FDIC will be providing them with a copy of the report and to verify the individual's contact information. The FDIC will also make reasonable efforts to send the report to the individual within 5 business days of successful verification of the individual's contact information. If the individual believes that there are any inaccuracies in the report, the FDIC will direct the individual to an appropriate contact at the FBI, where the individual can seek corrections.

insured credit union, and whether the affiliation, or participation by the person in the conduct of the affairs of the credit union, may constitute a threat to the safety and soundness of the credit union or the interests of its members or threaten to impair public confidence in the credit union.

Paragraph (d) sets forth the considerations the NCUA will evaluate in conducting an individualized assessment. These considerations are substantively similar to factors under IRPS 19–1. The final rule also clarifies how the NCUA will evaluate evidence of rehabilitation and other evidence, as required by the FHBA.[41]

Paragraph (e) provides that the question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime shall not be at issue in a proceeding under this subpart or under 12 CFR part 746, subpart B.

Paragraph (f) provides that the NCUA will also apply the considerations in paragraph (d) to determine whether the interests of justice are served in seeking an exception in the appropriate court when a consent application is made prior to 10 years after the final conviction or agreement to program entry for certain Federal offenses.[42]

Paragraph (g) provides that all approvals or orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. The final rule clarifies that paragraph (g) applies whether the approval is conferred by order or less formal means, such as an approval letter from a field office.

Paragraph (h) includes statutory language explaining when a new credit union-sponsored application would be necessary due to changes in the scope of an applicant's employment. It provides that when deemed appropriate by the NCUA, credit union-sponsored applications are intended to allow the individual to work for the same employer and across positions. NCUA consent will be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security-screening credentials (that is, any position with higher level access or responsibility, not only security personnel or individuals in the security field).

Paragraph (i) provides that when a person who has received approval under section 205(d) subsequently seeks to participate in the conduct of the affairs of another insured credit union, another application must be submitted.

11. Section 752.11—What will the NCUA do if the application is denied?

Paragraph (a) provides that the NCUA will provide a written denial that will summarize or cite the relevant factors from § 752.10. Paragraph (b) provides that the applicant (either the insured credit union or the subject individual, or both, as a consolidated request) may file a written request for reconsideration or appeal under the administrative review process contained in 12 CFR part 746, subpart B. That subpart includes uniform procedures by which petitioners may appeal initial agency determinations to the Board.

Under part 746, subpart B, prior to submitting an appeal to the Board, the petitioner may make a written request to the appropriate field office to reconsider an initial agency determination within 30 calendar days of the date of that determination. Within 60 calendar days of the date of an initial agency determination or, as applicable, a determination by the field office on any request for reconsideration, a petitioner may file an appeal seeking review of the determination by the Board. Under part 746, subpart B, a petitioner may also request an oral hearing before the Board. These procedures meet the statutory requirement for ''national office review'' of any consent application that is denied by a ''regional office,'' if the individual requests a review by the Board.[43] This option is also substantially similar to the FDIC's current parts 303 and 308, except that under those regulations, an oral hearing is conducted unless the applicant or the insured depository institution waives it in writing and instead makes a written submission.[44]

Technical or Non-Substantive Modifications

In addition to the modifications to the proposal described above, the final rule includes a few minor, technical, or non-substantive revisions. For example, the Board has updated subject headings for clarity and for consistency with the FDIC's final rule. Several paragraphs have also been combined and redesignated for efficiency. Additionally, some adjustments to terminology and for plain language have been adopted in the final rule, such as using ''will'' instead of ''shall'' when explaining actions the NCUA will take.

NCUA Practice on Section 205(d)

In general, the final rule mirrors the FDIC's part 303, and the FDIC's separate rulemaking to implement the FHBA, with minimal, non-substantive changes. Additionally, while there were a few differences between the FDIC's part 303 and IRPS 19–1 before the FHBA, such as some details on *de minimis* offenses, expungements, and treatment of drug-related offenses, the enactment of the FBHA resolved most differences between the two agencies' rules and created a more uniform standard. However, there are a few areas in which IRPS 19–1 provided additional context and discussion on policy and procedures related to section 205(d) compared to part 303. In general, the additional information does not provide any substantive difference from part 303 and instead provides additional clarifying information.

The Board has chosen to omit much of the clarifying information in the final rule to ensure its consistency with part 303; however, the Board also believes credit unions may generally have less experience with section 205(d) than insured depository institutions and are typically smaller in size with fewer resources, so additional guidance may help insured credit unions to discharge their responsibilities under section 205(d). One commenter was supportive of the NCUA issuing guidance to go along with the final rule and suggested that examples be given in the guidance.

Accordingly, after finalizing and implementing this rule, the NCUA intends to issue guidance that provides insured credit unions with additional information about section 205(d). The guidance will include portions of IRPS 19–1 that were not incorporated into the final rule.

For example, IRPS 19–1 provided that 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 a consent application is not required because the covered offense is considered *de minimis* and meets all of the criteria for the exception, or—if the credit union is willing to sponsor the prospective employee's consent application—submit an application requesting the Board's consent. The credit union could also extend a conditional offer of employment and notify the prospective employee that it

[41] While the statute uses the terms ''rehabilitation'' and ''mitigating'' as separate categories of evidence, the terms appear to be substantially similar in the context of section 205(d) consent applications, and the use of both terms in these regulations may create confusion. Therefore, the final rule uses the term rehabilitation, not mitigating.

[42] *See* 12 U.S.C. 1785(d)(2)(A).

[43] 12 U.S.C. 1785(d)(5)(D).

[44] 12 CFR 308.158(d).

is contingent upon a satisfactory background check to determine whether the individual is prohibited under section 205(d). The Board intends no change of position regarding these policies even though they are not included in the final rule.

IRPS 19–1 also stated that persons who will occupy clerical, maintenance, service, or purely administrative positions generally can be approved without an extensive review. A more detailed analysis, however, would be performed in the case of persons who will be able to influence or control the management or affairs of the insured credit union. The final rule does not include a similar delineation between how the NCUA intends to approve consent applications for different types of positions. However, the Board continues to believe that applications for clerical, maintenance, service, or purely administrative positions do not require the same review as applications for other positions that have access to more of the day-to-day financial operations of a credit union. The NCUA plans to address this issue in the guidance.

Other Conforming Amendments

Both the standard FCU Bylaws in appendix A of part 701 and the criteria for determining the insurability of a credit union in 12 CFR 741.3(c) reference section 205(d). In general, both sections prohibit a person who has been convicted of any criminal offense involving dishonesty or breach of trust from serving at an insured credit union, except with the written consent of the Board. The Board believes these references are incomplete because not all convictions of criminal offenses involving dishonesty or breach of trust now serve as the valid basis for a section 205(d) prohibition. Therefore, the final rule replaces the current reference to ''any crime involving dishonesty or a breach of trust'' to refer to the specific crimes covered under section 205(d). Referring directly to the FCU Act also automatically incorporates future statutory changes to section 205(d).

Additionally, as required by the Gramm-Leach-Bliley Act, appendix B to part 748 (Appendix B) contains guidance on creating an effective incident response plan in the event of unauthorized access to member information and the requirements of the notices distributed to the affected members.[45] Appendix B states that credit unions should also conduct background checks of employees to ensure that the credit union does not violate 12 U.S.C. 1785(d). The final rule requires a background check in § 752.1(b), which is consistent with current expectations.[46] Therefore, the final rule amends this footnote to state that insured credit unions must also conduct background checks of employees.

Amendments to § 701.14 on Change in Official or Senior Executive Officer in Credit Unions That Are Newly Chartered or Are in Troubled Condition

In addition to the prohibition on certain individuals participating in the conduct of the affairs of a credit union included in section 205(d), the FCU Act also sets forth conditions under which certain insured credit unions must notify the NCUA in writing of any proposed changes in its board of directors, committee members, or senior executive staff (section 212).[47] The Board implements section 212 through § 701.14 of its rules.[48] Section 701.14 requires generally that insured credit unions that are newly chartered or troubled file notice with the NCUA before adding, replacing, or changing the duties of a board or committee member or a senior executive officer. The Board has not substantively amended § 701.14 since 2012 when the Board revised the definition of troubled condition.[49] The Board proposed to make minor amendments to § 701.14 to clarify when a notice is required, how the NCUA would process the notice, and what information must be included in the NCUA's notice of disapproval to the applicant. Specifically, the Board proposed to:

- Clarify when notice is required by specifying that a credit union must provide notice when adding or replacing any member of its board of directors or committees, employing any person as a senior executive officer of the credit union, or changing the responsibilities of a board member, committee member, or a senior executive officer so that the person would assume a different position;
- Increase the amount of time for NCUA to initially review a notice after its receipt from 10 calendar to 15 calendar days; [50]
- Specify that Regional Director and ONES Director communications under § 701.14 may be done through email; and
- Explicitly state that the notice of disapproval will identify the reason(s) for the denial.

One commenter supported the proposed amendment to clarify that a notice is required when a newly chartered or troubled credit union is adding or replacing any member of its board of directors or committees, employing any person as a senior executive officer of the credit union, or changing the responsibilities of a board member, committee member, or senior executive officer if the person is assuming a different position. The commenter stated that the amendment would provide a necessary clarification but encouraged the NCUA to ensure federally insured state-chartered credit unions remain aware of the notification requirement to their respective state supervisory authority, as currently required under § 701.14(c)(3).

The same commenter, however, was opposed to increasing the amount of time for the agency to initially review a notice for a change in official or senior executive officer from the current 10 calendar day limit to 15 calendar days under § 701.14(c)(3)(iii). While the commenter agreed it is important to conduct a thorough review of each request, the commenter felt that the current timeframe is sufficient and did not support extending the time for NCUA's initial review because of the time sensitivity in these situations, particularly for a troubled credit union.

After careful consideration, the Board is adopting the amendment to the notification requirement as proposed. As discussed in the notice of proposed rulemaking, the 10-day notification requirement is not specified in the statute, and the NCUA has found the 10-day timeframe difficult to meet, as additional information to analyze the request may be required. The Board continues to believe that the additional 5 calendar days will not unduly delay the start or change in position of board members, committee members, or senior executive officers. In making this change, the Board emphasizes that the increase from 10 to 15 days applies only to the amount of time the NCUA has to either determine an application is complete or request additional information. The current 30-day approval timeline remains the same, unless the agency is waiting on additional requested information. An applicant can mitigate any delay by producing requested information expeditiously. The NCUA endeavors to process all applications as quickly as

[45] 12 CFR 748, App. B.

[46] The Board notes that insured credit unions may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union to determine if the applicant is barred under section 205(d).

[47] 12 U.S.C. 1790a.

[48] 12 CFR 701.14.

[49] 77 FR 45285 (July 31, 2012).

[50] *See* 12 CFR 701.14(c)(3)(iii).

possible, irrespective of whether additional information is requested.

The agency did not receive any comments on the other amendments to § 701.14 and the Board is finalizing those changes as proposed. The Board notes that other authorities bear on an individual's ability to work for or participate in the conduct of the affairs of a federally insured credit union.[51]

IV. Other Alternatives Considered

Comments Received by the FDIC

On November 14, 2023, the FDIC published a notice of proposed rulemaking to conform the FDIC's section 19 regulations with the FHBA [52] and the FDIC received several comments and recommendations on its proposal. The NCUA considered these other comments as part of its statutory obligation to consult and coordinate with the FDIC to promote consistent implementation of the FHBA. Aside from the modifications described earlier in this preamble, the Board has decided not to incorporate those recommendations into the final rule.

As discussed previously, almost all of the substantive requirements incorporated into the agency's regulations stem from the FHBA's revisions to section 205(d). The Board had limited discretion in adopting alternatives to those statutory revisions. The Board considered other recommendations that were submitted by the commenters but believes that the final rule represents the most appropriate option for covered entities and individuals.

V. Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[53] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection, unless it displays a valid Office of Management and Budget (OMB) control number.

The NCUA will revise its section 205(d) application form to conform with the changes to section 205(d) under the FHBA. These changes amend the NCUA's existing information collection associated with this rule, entitled ''Application Pursuant to Section 205(d) of the Federal Credit Union Act'' (3133–0203). For this reason, the information-collection requirements contained in this final rule will be submitted by the NCUA to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The final rule extends greater relief than what was formerly available to certain individuals with prior convictions seeking employment with an insured credit union, thereby eliminating the need to submit consent applications for certain offenses, particularly older or expunged convictions, prior misdemeanors, drug possession offenses, and other lesser offenses. The final rule should reduce the number of respondents applying for consent, but it may also increase the number of applications because of a renewed awareness of the statutory prohibition. Thus, the estimated number of respondents applying for consent remains at one. The final rule requires credit unions to make a reasonable, documented, inquiry to verify an applicant's history to ensure that a person who has a conviction or program entry covered by the provisions of section 205(d) is not hired or permitted to participate in its affairs without the written consent of the NCUA. This recordkeeping requirement is minimal.

These program changes would revise the information collection requirement currently approved OMB control number 3133–0203, as follows:

Title of Information Collection: Part 752, Application Pursuant to Section 205(d) of the Federal Credit Union Act.

Estimated Number of Respondents: 4.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Frequency of Response: 1.

Estimated Hours per Response: 0.75.

Estimated Total Annual Burden Hours: 3.

Affected Public: Private Sector: Not-for-profit institutions; Individual or Household.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the effect of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[54] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The Board does not believe the final rule will have a significant economic impact on a substantial number of small entities. In the period from 2019 through 2023, the NCUA received four consent applications. This averages out to one application a year. Therefore, on average, only about one small entity—at most—will be affected by the proposed rule annually.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the final rule will align the NCUA's regulations with the FHBA's provisions and more closely align the NCUA's section 205(d) regulations with those of other Federal financial regulators. Most of the changes were precipitated by the FHBA—which was effective immediately upon passage—and the final rule aligns the NCUA's regulations with these elements of the FHBA; therefore, most of the associated changes in the final rule will have no direct effect on individuals or credit unions. Further, since the NCUA estimates that on average approximately one NCUA-insured institution could be affected by the final rule annually, any direct effects realized because of the final rule are likely to be small and affect a relatively small number of entities.

In light of the foregoing, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. 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.

This final rule will apply to all insured credit unions, including federally insured, state-chartered credit unions. The Board has determined that the final amendments will not have a substantial direct effect on the states, on the connection between the national

[51] *See* 12 U.S.C. 1786(i)(1)(A); 12 U.S.C. 5101 *et seq.;* 12 U.S.C. 5104; Public Law 116–283, codified at 31 U.S.C. 5321(g).

[52] *See* 88 FR 77906.

[53] 44 U.S.C. 3507(d); 5 CFR part 1320.

[54] NCUA IRPS 15–1, 80 FR 57512 (Sept. 24, 2015).

government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the final rule implements a statutory amendment, and the NCUA does not have discretion in implementing the statutory changes to section 205(d). In particular, the Board does not believe that these changes will affect its existing agreements and division of supervisory responsibilities with state regulatory agencies. The Board expects to continue to coordinate with these agencies as appropriate in carrying out its responsibilities under section 205(d) and related provisions. Therefore, the Board has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule may affect family well-being positively within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998). In particular, the NCUA has reviewed the criteria specified in section 654(c)(1) of that act, by evaluating whether this final regulatory action (1) affects the stability or safety of the family, particularly in terms of marital commitment; (2) affects the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by state or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. Under this statute, if the agency determines the regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

The final rule implements legislative amendments that increase employment opportunities for individuals with certain older or minor criminal offenses involving dishonesty or breach of trust. These increased employment opportunities may strengthen the stability of families, help families perform their functions, and increase disposable income. These changes are not likely to affect the rights of parents in the education or nurture of their children. The changes call for Federal rather than state or local government action because the legislation affects the Federal statute governing all federally insured credit unions. The Board also notes that it has limited discretion in whether and how to implement the legislative amendments and thus cannot substantially vary from the legislation. The Board has determined that this final rule may affect family well-being positively within the meaning of this statute.[55]

Small Business Regulatory Enforcement Fairness Act—Congressional Review Act

The Congressional Review chapter of the Small Business Regulatory Enforcement Fairness Act of 1996 generally provides for congressional review of agency rules.[56] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.[57] Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of the statute. As required by the statute, the NCUA will submit this final rule OMB for it to determine if this final rule is a ''major rule'' for purposes of the statute. The NCUA also will file appropriate reports with Congress and the U.S. Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR Part 701

Administrative practice and procedure, Credit, Credit unions.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 746

Administrative practice and procedure, Claims, Credit unions, Investigations.

12 CFR Part 748

Computer technology, Confidential business information, Credit unions, Internet, Personally identifiable information, Privacy, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 752

Administrative practice and procedure.

[55] Public Law 105–277, 112 Stat. 2681 (1998).

[56] 5 U.S.C. 551.

[57] *Id.*

By the NCUA Board on September 19, 2024.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Amend § 701.14 by revising paragraphs (c)(1), (c)(3)(iii), and the second sentence in paragraph (e) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(c) * * *

(1) *Prior notice requirement.* An insured credit union must give the NCUA written notice at least 30 days before the effective date of adding or replacing any member of its board of directors or committee member, employing any person as a senior executive officer of the credit union, or changing the responsibilities of a board member, committee member, or a senior executive officer so that the person would assume a different position if:

(i) The credit union has been chartered for less than 2 years; or

(ii) The credit union meets the definition of troubled condition in paragraph (b)(3) or (4) of this section.

* * * * *

(3) * * *

(iii) *Processing.* Within 15 calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional, specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time the credit union takes to provide the

requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved. Regional Director communications may be done through electronic mail.

* * * * *

(e) * * * The Notice of Disapproval will identify the reason(s) for the denial and advise the parties of their rights to request reconsideration from the Regional Director and/or file an appeal with the NCUA Board in accordance with the procedures set forth in 12 CFR part 746, subpart B.

■ 3. Amend appendix A to part 701, under the heading ''Official NCUA Commentary—Federal Credit Union Bylaws,'' under ''Article V. Elections,'' by revising paragraph *i.*(b) to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Official NCUA Commentary—Federal Credit Union Bylaws

* * * * *

Article V. Elections

i. * * *

(b) The individual cannot have been convicted of a crime covered under section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)) unless the NCUA Board has waived the prohibition for the conviction; and

* * * * *

PART 741—REQUIREMENTS OF INSURANCE

■ 4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 5. Amend § 741.3 by revising the second sentence of paragraph (c) to read as follows:

§ 741.3 Criteria.

* * * * *

(c) * * * No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of a crime covered under section 205(d) of the Federal Credit Union Act (12 U.S.C. 1785(d)), except with the written consent of the Board.

* * * * *

PART 746—APPEALS PROCEDURES

■ 6. The authority citation for part 746 continues to read as follows:

Authority: 12 U.S.C. 1766, 1787, and 1789.

§ 746.201 [Amended]

■ 7. Amend § 746.201, in paragraph (c), by adding ''752.11(b),'' between ''745.201(c),'' and ''subpart J to part 747 of this chapter,''.

PART 748—SECURITY PROGRAM, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS, CYBER INCIDENTS, AND BANK SECRECY ACT COMPLIANCE

■ 8. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(b)(1), 1786(q), 1789(a)(11); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 9. Amend appendix B to part 748 by revising footnote 7 to read as follows.

Appendix B to Part 748—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice

* * * * *

[7] Credit unions must also conduct background checks of employees to ensure that the credit union does not violate 12 U.S.C. 1785(d), which prohibits a credit union from hiring an individual convicted of certain criminal offenses or who is subject to a prohibition order under 12 U.S.C. 1786(g).

* * * * *

■ 10. Add part 752 to read as follows:

PART 752—CONSENT TO SERVICE OF PERSONS CONVICTED OF, OR WHO HAVE PROGRAM ENTRIES FOR, CERTAIN CRIMINAL OFFENSES

Sec.

Authority: 12 U.S.C. 1785(d).

§ 752.1. What is section 205(d) of the Federal Credit Union Act?

(a) This part covers applications under section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d). The NCUA refers to such applications as ''consent applications.'' Under section 205(d), any 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 (program entry) in connection with a prosecution for such offense (collectively, Covered Offenses), may not become, or continue as, an institution-affiliated party (IAP) of an insured credit union; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union without the prior written consent of the NCUA. Section 205(d) 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 (U.S.C.). In order for the Board to grant consent during the 10-year period, the Board must file a motion with, and obtain the approval of, the sentencing court.

(b) In addition, the law prohibits an insured credit union from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 205(d). Insured credit unions must therefore make a reasonable, documented, inquiry to verify an applicant's history to ensure that a person who has a Covered Offense under section 205(d) is not hired or permitted to participate in its affairs without the written consent of the NCUA issued under this subpart. Insured credit unions may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union to determine if the applicant is prohibited under section 205(d), but the applicant may not work for, be employed by, or otherwise participate in the affairs of the insured credit union until the credit union has determined that the applicant is not prohibited under section 205(d) (including persons who have had a consent application approved).

(c) If there is a conviction or program entry covered by the prohibitions of section 205(d), an application under this subpart must be filed seeking the NCUA's consent to become, or to continue as, an IAP; or to otherwise participate, directly or indirectly, in the affairs of the insured credit union. The application must be filed, and consented to, prior to serving in any of the foregoing capacities unless such application is not required under the subsequent provisions of this subpart. The purpose of an application is to provide the applicant an opportunity to

demonstrate that, notwithstanding the prohibition, a 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 credit union. The burden is upon the applicant to establish that the application warrants approval.

(d) The term *field office,* for purposes of this subpart, means a Regional Office or the Office of National Examinations and Supervision, as described in 12 CFR 790.2.

§ 752.2 Who is covered by section 205(d)?

(a) Persons covered by section 205(d) include IAPs, as defined by 12 U.S.C. 1786(r), and others who are participants in the conduct of the affairs of an insured credit union. Therefore, all directors, officers, and employees of an insured credit union who fall within the scope of section 205(d), including *de facto* employees, as determined by the NCUA based upon generally applicable standards of employment law, will also be subject to section 205(d). Whether other persons are covered by section 205(d) depends upon their degree of influence or control over the management or affairs of an insured credit union. For example, section 205(d) would apply to directors and officers of affiliates, subsidiaries, or joint ventures of an insured credit union if they participate in the affairs of the insured credit union or are able to influence or control the management or affairs of the insured credit union. Typically, an independent contractor does not have a relationship with the insured credit union other than the activity for which the credit union has contracted. However, an independent contractor who also influences or controls the management or affairs of the insured credit union would be covered by section 205(d).

(b) The term *person,* for purposes of section 205(d), means an individual and does not include a corporation, firm, or other business entity.

§ 752.3 Which offenses qualify as ''Covered Offenses'' under section 205(d)?

(a) *Categories of Covered Offenses.* The conviction or program entry must be for a criminal offense involving dishonesty or breach of trust.

(1) The term *criminal offense involving dishonesty*—

(i) Means an offense under which an individual, directly or indirectly—

(A) Cheats or defrauds; or

(B) Wrongfully takes property belonging to another in violation of a criminal statute;

(ii) Includes an offense that Federal, state, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) Does not include—

(A) A misdemeanor criminal offense committed more than 1 year before the date on which an individual files a consent application, excluding any period of incarceration; or

(B) An offense involving the possession of controlled substances. At a minimum, this exclusion applies to criminal offenses involving the simple possession of a controlled substance and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty or breach of trust as noted in paragraph (b) of this section. Potential applicants may contact their appropriate NCUA field office if they have questions about whether their offenses are covered under section 205(d).

(iv) The term *offense committed* in paragraph (a)(1)(iii)(A) of this section means the last date of the underlying misconduct. In instances with multiple offenses, *offense committed* means the last date of any of the underlying offenses.

(2) The term *breach of trust* means a wrongful act, use, misappropriation, or omission with respect to any property or fund that 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.

(b) *Elements of the offense.* Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the offense itself or from court determinations that the statutory provisions of the offense involve dishonesty or breach of trust.

(c) *Certain older offenses excluded*—(1) *Exclusions for certain older offenses.* Section 205(d) does not apply to an offense if—

(i) It has been 7 years or more since the offense occurred; or

(ii) The individual was incarcerated with respect to the offense, and it has been 5 years or more since the individual was released from incarceration.

(iii) The term *offense occurred* means the last date of the underlying misconduct. In instances with multiple Covered Offenses, *offense occurred* means the last date of any of the underlying offenses.

(2) *Offenses committed by individuals 21 years of age or younger.* For individuals who committed an offense when they were 21 years of age or younger, section 205(d) does not apply to the offense if it has been more than 30 months since the sentencing occurred. The term *sentencing occurred* means the date on which a court imposed the sentence (as indicated by the date on the court's sentencing order), not the date on which all conditions of sentencing were completed.

(3) *Limitation.* This paragraph (c) does not apply to an offense described under 12 U.S.C. 1785(d)(2).

(d) *Foreign convictions.* Individuals who are convicted of, or enter into a pretrial diversion program for, a criminal offense involving dishonesty or breach of trust in any foreign jurisdiction are subject to section 205(d), unless the offense is otherwise excluded by this subpart.

§ 752.4 What constitutes a conviction under section 205(d)?

(a) *Convictions requiring an application.* There must be a conviction of record. Section 205(d) does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 752.5. Section 205(d) does not cover acquittals or any conviction that has been reversed on appeal, unless the reversal was for the purpose of re-sentencing. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted requires an application.

(b) *Convictions not requiring an application.* When an individual is charged with a Covered Offense and, in the absence of a program entry as set out in § 752.5, is subsequently convicted of an offense that is not a Covered Offense, the conviction is not subject to section 205(d).

(c) *Expungement, dismissal, and sealing.* A conviction is not considered a conviction of record and does not require an application if—

(1) There is an order of expungement, sealing, or dismissal that has been issued regarding the conviction in connection with such offense, or if a conviction has been otherwise expunged, sealed, or dismissed by operation of law; and

(2) It is intended by the language in the order itself, or in the legislative provisions under which the order was issued, or in other legislative provisions, that the conviction shall be destroyed or sealed from the individual's state, Tribal, or Federal record, even if exceptions allow the conviction to be considered for certain character and fitness evaluation purposes.

(d) *Youthful offenders.* An adjudication by a court against a person as a ''youthful offender'' (or similar term) under any youth-offender law applicable to minors as defined by state law, or any judgment as a ''juvenile delinquent'' (or similar term) by any court having jurisdiction over minors as defined by state law, does not require an application. Such an adjudication does not constitute a matter covered under section 205(d) and is not a conviction or program entry for determining the applicability of § 752.8.

§ 752.5 What constitutes a pretrial diversion or similar program under section 205(d)?

(a) The term ''pretrial diversion or similar program'' (program entry) means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilitation, anger management, or community service. Whether the outcome of a case constitutes a program entry is determined by relevant Federal, state, or local law, and, if not so designated under applicable law, then the determination of whether a disposition is a program entry will be made by the Board on a case-by-case basis.

(b) When a Covered Offense either is reduced by a program entry to an offense that would otherwise not be covered by section 205(d) or is dismissed upon successful completion of a program entry, the offense remains a Covered Offense for purposes of section 205(d). The Covered Offense will require an application unless it is *de minimis* as provided by § 752.8.

(c) Expungements, dismissals, or sealings of program entries will be treated the same as those for convictions.

§ 752.6 What are the types of applications that can be filed?

(a) The NCUA will accept applications from—

(1) An individual; or

(2) An insured credit union applying on behalf of an individual.

(b) An individual or an insured credit union may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate NCUA field office, as required by this part.

§ 752.7 When may an application be filed?

Except for situations in which no application is required under section 205(d) and this subpart, an application must be filed when there is a conviction by a court of competent jurisdiction for a Covered Offense by any adult or minor treated as an adult or when such person has a program entry regarding that offense. Before an application may be filed, all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, conditions of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The NCUA's application forms as well as additional information concerning section 205(d) can be accessed on the NCUA's website.

§ 752.8 What is the *de minimis* exemption?

(a) *In general.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, where all of the following *de minimis* criteria are met. (Paragraph (b)(4) of this section contains separate exemption criteria from paragraphs (a) through (b)(3) of this section, and an offense that qualifies for exemption under paragraph (b)(4) is excluded from consideration in the criteria of paragraphs (a) through (b)(3).)

(1) The individual has been convicted of, or has program entries for, no more than two Covered Offenses, including those subject to paragraphs (b)(1) through (3) of this section; and for each Covered Offense, all of the sentencing requirements associated with the conviction, or conditions imposed by the program entry, have been completed (the sentence- or program-completion requirement does not apply under paragraph (b)(2) of this section).

(2) For each Covered Offense, the individual could have been sentenced to a term of confinement in a correctional facility of 3 years or less and/or a fine of $2,500 or less, and the individual actually served 3 days or less of jail time for each Covered Offense.

(3) Jail time under paragraph (a)(2) of this section is calculated based on the time an individual spent incarcerated as a punishment or a sanction—not as pretrial detention—and does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location. Jail time includes confinement to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental-competency grounds. The definition is not intended to include either of the following: persons who are restricted to a substance-abuse treatment program facility for part or all of the day; or persons who are ordered to attend outpatient psychiatric treatment.

(4) If there are two convictions or program entries for a Covered Offense, each conviction or program entry was entered at least 3 years prior to the date an application would otherwise be required, except as provided in paragraph (b)(1) of this section.

(5) Each Covered Offense must not have been committed against an insured depository institution or insured credit union.

(b) *Other types of offenses for which the de minimis exemption applies and no application is required*—(1) *Age of person at time of Covered Offense.* If there are two convictions or program entries for a Covered Offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger, then the *de minimis* criteria in paragraph (a)(4) of this section will be met if the convictions or program entries were entered at least 18 months prior to the date an application would otherwise be required. For this reduction in waiting time to apply, the convictions or program entries must meet the other *de minimis* criteria in paragraph (a) of this section.

(2) *Convictions or program entries for insufficient funds checks.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to convictions or program entries of record based on the writing of ''bad'' or insufficient funds check(s) if the following conditions apply:

(i) The aggregate total face value of all ''bad'' or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for ''bad'' or insufficient funds checks is $2,000 or less;

(ii) 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(ies); and

(iii) The individual has no more than one other *de minimis* offense under this section.

(3) *Convictions or program entries for small-dollar, simple theft.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) if the following conditions apply:

(i) The value of the currency, goods, or services taken was $1,000 or less;

(ii) The theft was not committed against an insured depository institution or insured credit union;

(iii) The individual has no more than one other offense that is considered exempt under this section; and

(iv) If there are two offenses—each of which, by itself, is considered exempt under this section, each conviction or program entry was entered at least 3 years prior to the date an application would otherwise be required, or at least 18 months prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(v) Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

(4) *Convictions or program entries for using fake identification, shoplifting, trespassing, fare evasion, or driving with an expired license or tag.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to the following offenses, if 1 year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.

(c) *Non-qualifying convictions or program entries.* No conviction or 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* exemptions set out in this section.

§ 752.9 How does an individual or a credit union file an application?

Forms and instructions can be obtained from the NCUA's website (*www.ncua.gov*), and the application(s) must be filed with the appropriate field office Director. An application may be filed by an individual or by an insured credit union on behalf of an individual, or by both. The appropriate field office for a credit union-sponsored application is the office covering the state where the insured credit union's home office is located, or the Office of National Examinations and Supervision. The appropriate field office for an application filed by an individual is the office covering the state where the person resides. States covered by each NCUA field office are listed in 12 CFR 790.2.

§ 752.10 How will the NCUA evaluate an application?

(a) *Criminal history records.* In reviewing an application, the NCUA will—

(1) Primarily rely on the criminal history record provided by the Federal Bureau of Investigation (rap sheet); and

(2) Provide such record to the subject of the application to review for accuracy.

(b) *Certified copies.* The NCUA will not require an applicant to provide certified copies of criminal history records unless the NCUA determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record provided by the Federal Bureau of Investigation.

(c) *Ultimate determinations.* The ultimate determinations in assessing an application are whether the person has demonstrated their fitness to participate in the conduct of the affairs of an insured credit union, and whether the affiliation or participation by the person in the conduct of the affairs of the credit union may constitute a threat to the safety and soundness of the credit union or the interests of its members or threaten to impair public confidence in the credit union.

(d) *Individualized assessment.* When evaluating applications, the NCUA will conduct an individualized assessment that will consider:

(1) Whether the conviction or program entry is subject to section 205(d) and the specific nature and circumstances of the offense;

(2) Whether the 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 and soundness of the credit union or the interests of its members or threatens to impair public confidence in the credit union;

(3) Evidence of rehabilitation including the person's age at the time of the conviction or program entry, the time that has elapsed since the conviction or program entry, and the relationship of the individual's offense to the responsibilities of the applicable position;

(4) The individual's employment history, letters of recommendation, certificates documenting participation in substance-abuse programs, successful participation in job preparation and educational programs, and other relevant evidence;

(5) The ability of management of the insured credit union to supervise and control the person's activities;

(6) The applicability of the insured credit union's fidelity bond coverage to the person; and

(7) For state-chartered, federally insured credit unions, the opinion or position of the state regulator; and

(8) Any additional factors in the specific case that appear relevant to the application or the individual.

(e) *No re-consideration of guilt.* The question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime will not be at issue in a proceeding under this part or under 12 CFR part 746, subpart B.

(f) *Factors considered for enumerated offenses.* The foregoing factors will also be applied by the NCUA 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 10-year ban prior to its expiration date under 12 U.S.C. 1785(d)(2)(A) for certain Federal offenses.

(g) *Mandatory conditions of approval.* All approvals or orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. If the NCUA has approved an application filed by an individual and has issued a consent order, the individual must disclose the presence of the conviction(s) or program entry(ies) to all insured credit unions in the affairs of which they wish to participate.

(h) *Credit union-sponsored consent applications: work at same employer.* When deemed appropriate by the NCUA, credit union-sponsored applications are to allow the individual to work for the same employer (without restrictions on the location) and across positions, except that the prior consent of the NCUA (which may require a new application) will be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

(i) *Work at a different employer after certain approvals.* In situations in which an approval has been granted for a person to participate in the affairs of a particular insured credit union and the person subsequently seeks to participate at another insured credit union, another application must be submitted and approved by the NCUA prior to the person participating in the affairs of the other insured credit union.

§ 752.11 What will the NCUA do if the application is denied?

(a) The NCUA will inform the applicant in writing that the application has been denied and summarize or cite the relevant considerations specified in § 752.10.

(b) The denial will also notify the applicant of the right to request reconsideration from the field office, or to file an appeal with the Board, and will include a description of applicable

filing deadlines and time frames for agency responses. The field office and the Board will apply the review process contained in 12 CFR part 746, subpart B, to any request for reconsideration or appeal. For credit union-sponsored applications, either the institution or the subject individual (or both, as a consolidated request) may file a request for reconsideration or appeal. The request for review must include a statement of the underlying facts that form the basis of the request for reconsideration or appeal, a statement of the basis for the denial to which the applicant objects and the alleged error in such denial, and any other support, materials, or evidence relied upon by the applicant that were not previously provided.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

[NCUA–2023–0082]

RIN 3133–AF53

Simplification of Share Insurance Rules

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations governing share insurance coverage. The final rule simplifies the share insurance regulations by establishing a ''trust accounts'' category that will provide for coverage of funds of both revocable trusts and irrevocable trusts deposited at federally insured credit unions (FICUs), provides consistent share insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender, and increases flexibility for the NCUA to consider various records in determining share insurance coverage in liquidations. The changes also increase consistency between the FDIC's Federal deposit insurance rules and the NCUA's share insurance rules.

DATES: This rule is effective on December 1, 2026, except for the amendments to 12 CFR 745.2(c)(2) (instruction 5), 745.3 (instruction 7), and 745.14 (instruction 13), which are effective October 30, 2024.

FOR FURTHER INFORMATION CONTACT: *Office of General Counsel:* Thomas Zells and Rachel Ackmann, Senior Staff Attorneys; or Robert Leonard, Compliance Officer at (703) 518–6540 or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314. *Office of Credit Union Resources and Expansion (CURE):* Paul Dibble, Consumer Access Program Officer; or Rita Woods, Director of Consumer Access at (703) 518–1150 or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

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I. General Background and Legal Authority

A. General Background

The NCUA is an independent Federal agency that insures funds maintained in accounts of members or those otherwise eligible to maintain insured accounts (member accounts) at FICUs, protects the members who own FICUs, and charters and regulates Federal credit unions (FCUs). The NCUA protects the safety and soundness of the credit union system by identifying, monitoring, and reducing risks to the National Credit Union Share Insurance Fund (Share Insurance Fund). Backed by the full faith and credit of the United States, the Share Insurance Fund provides Federal share insurance to account holders in all FCUs and the majority of state-chartered credit unions.

B. Legal Authority

The Board has issued this final rule pursuant to its authority under the FCU Act. Under the Federal Credit Union Act (FCU Act), in the event of a FICU's failure the NCUA is responsible for paying share insurance to any member, or to any person with funds lawfully held in a member account,[1] up to the standard maximum share insurance amount (SMSIA), which is currently set at $250,000.[2] The FCU Act provides that the NCUA Board must determine the amount payable consistently with actions taken by the FDIC under its deposit insurance rules.[3] The FCU Act also grants the NCUA express authority to issue regulations on the determination of the net amount of share insurance paid.[4] The FCU Act further provides that ''in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.'' [5] However, the FCU Act also specifically authorizes the Board to ''define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.'' [6]

The NCUA has implemented these requirements by issuing regulations recognizing particular categories of accounts, such as single ownership accounts, joint ownership accounts, revocable trust accounts, and irrevocable trust accounts.[7] If an account meets the requirements for a particular category, the account is insured, up to the $250,000 limit, separately from shares held by the member in a different account category at the same FICU. For example, provided all requirements are met, shares in the single ownership category will be separately insured from shares in the joint ownership category held by the same member at the same FICU.

The NCUA's share insurance categories have been defined through both statute and regulation. Certain categories, such as the accounts held by

[1] *See* 12 U.S.C. 1752(5).

[2] 12 U.S.C. 1787(k)(1)(A), (k)(6).

[3] 12 U.S.C. 1787(k)(1)(A).

[4] 12 U.S.C. 1787(k)(1)(B). The FCU Act states that ''[d]etermination of the net amount of share insurance . . . ''shall be in accordance with such regulations as the Board may prescribe.''

[5] 12 U.S.C. 1787(k)(1)(B).

[6] 12 U.S.C. 1787(k)(1)(C).

[7] 12 CFR part 745.