

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133-AF02

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

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Interpretive Ruling and Policy Statement 19-1.

SUMMARY: The NCUA Board (Board) is issuing for public comment a proposal to update and revise its Interpretive Ruling and Policy Statement (IRPS) regarding statutory prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d)(1). Section 205(d) prohibits, except with the prior written consent of the Board, any person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union. Based on its experience with IRPS 08-1 since its issuance in 2008, the Board is proposing to rescind current IRPS 08-1 and to issue a revised and updated IRPS to reduce regulatory burden. The Board is proposing to amend and expand the current *de minimis* exception to reduce the scope and number of offenses that would require an application to the Board. Specifically, the proposed IRPS would not require an

application for insufficient funds checks of aggregate moderate value, small dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults.

DATES: Comments must be received on or before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Notice of Proposed Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Special Counsel to the General Counsel, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

- I. Introduction**
- II. Background**
- III. Proposed Revisions to the IRPS**
- IV. Regulatory Procedures**

I. Introduction

The Board recognizes that many Americans face hiring barriers due to a criminal record, a great number of which are not violent or career criminals, but rather people who made poor choices early in life who have since paid their debt to society. Offering second chances to those who are truly penitent is consistent with our nation’s shared values of forgiveness and redemption. In

keeping with this spirit of clemency, the Board is seeking to expand career opportunities for those who have demonstrated remorse and responsibility for past indiscretions and wish to set on a path to productive living. Toward that end, the Board is proposing to revise its guidance regarding prohibitions imposed by Section 205(d) of the FCU Act.

Section 205(d) of the FCU Act prohibits, without the prior written consent of the Board, a person convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured credit union. In August 2008, the Board issued final IRPS 08-1, to provide direction and guidance to federally insured credit unions and those persons who may be affected by Section 205(d) because of a prior criminal conviction or pretrial diversion program participation by describing the actions that are prohibited under the statute and establishing the procedures for applying for Board consent on a case-by-case basis.¹ The IRPS has not been revised since 2008 and, based on its experience with the IRPS over the past decade, the Board is proposing to update and revise the guidance to reduce regulatory burden while protecting federally insured credit unions from risk by convicted persons. The Board encourages interested parties to provide their input and comments on all aspects of the proposal.

II. Background

¹ 73 FR 48399 (Aug. 19, 2008).

Under Section 205(d)(1) of the FCU Act, except with the prior written consent of the Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

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

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

Recognizing that certain offenses are so minor and occurred so far in the past so as to not currently present a substantial risk to the insured credit union, IRPS 08-1 excludes certain *de minimis* offenses from the need to obtain consent from the Board. However, several recent applications requesting the Board's consent pursuant to Section 205(d) involved fairly minor, low-risk, erstwhile, and isolated offenses that did not fall within the current *de minimis*

exception.² In light of these recent cases, the substantial passage of time since IRPS 08-1 was adopted, and importantly, the Board’s commitment to opening a path forward for those seeking redemption for past criminal activities, the Board has determined it is appropriate to now consider revisions to IRPS 08-1.

In proposing these amendments to IRPS 08-1, the Board is, once again, mindful of a corresponding Statement of Policy (SOP) issued by the Federal Deposit Insurance Corporation (FDIC) to determine whether similar or other changes should be made to IRPS 08-1 to improve consistency between the prudential regulators and to reduce regulatory burden. Section 19 of the Federal Deposit Insurance Act (FDIA) contains a prohibition provision similar to Section 205(d) of the FCU Act. In 1998, the FDIC implemented an SOP regarding prohibitions imposed by Section 19 of the FDIA, and it has subsequently modified and updated its guidance on several occasions.³ In the past, the NCUA has drawn on the FDIC’s SOP for guidance on this topic. In 2018, the FDIC updated and revised its SOP to expand its *de minimis* exception and to make other clarifying changes.⁴ In the Board’s view, it is beneficial to both institutions and covered individuals for the NCUA’s Section 205(d) requirements to be reasonably consistent, to the extent possible, with the FDIC’s Section 19 requirements. Consistent guidelines between our sister agencies with respect to these parallel statutory provisions will help streamline the application process, particularly for those individuals seeking consent from both the NCUA and the FDIC to allow for potential employment at federally insured financial institutions.

² For example, in several recent cases, the offense in question met four of the five *de minimis* criteria but did not qualify for the exception because the *potential*—but not actual—punishment exceeded the standard set forth by the IRPS, the *de minimis* exception was not available. See BD-02-18 (Oct. 18, 2018); BD-01-19 (Mar. 14, 2019).

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

⁴ 83 FR 38143 (Aug. 3, 2018).

III. Proposed Revisions to the IRPS

In addition to some minor grammatical, formatting, and clarifying changes, the Board proposes to revise the IRPS as described in detail below.

A. Background

IRPS 08-1 currently provides background regarding Section 205(d)'s prohibition, and discusses its purpose to provide requirements, direction and guidance to federally insured credit unions and individuals covered by the statutory ban. The background section would be revised to make clear that IRPS 19-1 supersedes and replaces IRPS 08-1.

B. Scope

1. Persons covered

The scope section of the proposed IRPS would be modified to clarify the persons covered by the Section 205(d) prohibition. Under the statute, the prohibition applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act,⁵ and others who are participants in the conduct of the affairs of an insured credit union.⁶

Under Section 206(r), independent contractors are considered institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an

⁵ 12 U.S.C. §1786(r).

⁶ 12 U.S.C. §1785(d).

insured credit union. IRPS 08-1's inclusion of the statutory definition of independent contractors, as contained in Section 206(r), is confusing and unnecessary in determining whether Section 205(d) would apply at the time the individual commenced work for, or participated in the affairs of, the credit union.

Accordingly, proposed IRPS 19-1 would delete reference to certain language in the definition of "independent contractor" contained in 12 U.S.C. 1786(r) that is unnecessary to determine whether Section 205(d) applies. It would clarify that an independent contractor typically does not have a relationship with the insured credit union other than the specific activity for which the insured credit union has contracted, and that the relevant factor in determining whether an independent contractor is covered by Section 205(d)'s prohibition is whether the independent contractor influences or controls the management or affairs of that credit union.

A person who does not meet the statutory definition of institution-affiliated party, as contained in Section 206(r), is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union.

Proposed IRPS 19-1 would update and clarify how the NCUA will determine whether a person qualifies as a participant in the affairs of an insured credit union. Currently, the NCUA does not define what constitutes participation in the conduct of the affairs of an insured credit union, but rather analyzes each individual's conduct on a case-by-case basis. The Board continues to maintain that participants in the affairs of a credit union is a term of art that defies precise definition. However, proposed IRPS 19-1 reiterates the NCUA's current position that agency and court decisions will inform its determination and that, generally, participation will depend

upon the degree of influence or control over the management or affairs of the insured credit union.

2. Offenses covered

Proposed IRPS 19-1 would clarify that, in order for an application to be considered by the Board, the case must be considered final by the procedures of the applicable jurisdiction. In other words, all of the sentencing requirements associated with a conviction or conditions imposed by the pretrial diversion or similar program, including, but not limited to, imprisonment, fines, condition of rehabilitation, and probation requirements, must be completed before the Board will deliberate a consent application.

3. Offenses not covered

De minimis offenses. Proposed IRPS 19-1 would reduce burden on credit unions and covered individuals by modifying the current exception for *de minimis* offenses: first, by updating the general criteria for the exception; and second, by substantially expanding the scope of the exception to include additional offenses to qualify as *de minimis* offenses. Under the current rule, where the covered offense is considered *de minimis*, approval is automatically granted, and an application for the Board's consent is not be required.

Under the NCUA's current policy in IRPS 08-1, a covered offense is considered *de minimis* if it meets all of the following five criteria: (1) there is only one conviction or entry into a pretrial

diversion program of record for a covered offense; (2) the offense was punishable by imprisonment for a term of less than one year and/or a fine of less than \$1,000, and the punishment imposed by the court did not include incarceration; (3) the conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required; (4) the offense did not involve an insured depository institution or insured credit union; **and** (5) the Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

Proposed IRPS 19-1 would modify the *de minimis* offenses exception by updating this general criteria to better align with developments in criminal reform and sentencing guidelines that have occurred since IRPS 08-1 was first adopted in 2008. Specifically, the potential punishment and/or fine provision (criterion (2)) would be updated to allow the following offenses to meet that *de minimis* criterion: those punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and those punishable by three days or less of jail time.

Proposed IRPS 19-1 would also add a definition of “jail time” to clarify the circumstances under which a lesser crime would qualify as *de minimis*. The NCUA is aware that various jurisdictions take different approaches to confinement depending on the nature of the crime (*e.g.*, house arrest, home detention, ankle monitor, voice curfew, work release etc.). The new definition would clarify that the term “jail time” includes any significant restraint on an individual’s freedom of movement, including confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time

periods or both. However, the Board does not intend the term to include individuals on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location.

Additional applications of the de minimis exception. Proposed IRPS 19-1 would also significantly expand the scope of the exception to include additional offenses to qualify as *de minimis* offenses. The Board intends to meaningfully expand the scope of the exception, thereby eliminating the need to submit an application for certain low-risk, isolated offenses. This expansion would result in a significant reduction in regulatory burdens to credit unions, covered individuals, and the agency, while continuing to mitigate the risk to insured credit unions posed by convicted persons.

Age at time of covered offense. The Board recognizes that isolated, youthful mistakes may be worthy of forgiveness and second chances. Individuals who committed minor offenses when they were still at an impressionable age deserve a greater opportunity for redemption. Accordingly, the Board proposes a new age-based exception to the filing requirement. Under the proposal, a person with a covered conviction or program entry that occurred when the individual was 21 years of age or younger at the time of the conviction or program entry, and who otherwise meets the general *de minimis* criteria, will qualify for this *de minimis* exception if: (1) the conviction or program entry was entered at least 30 months⁷ prior to the date an application would otherwise be required and (2) all sentencing or program requirements have been met prior to the date an application would otherwise be required.

⁷ Or, half the regular 5-year period.

Convictions or program entries for insufficient funds checks. The Board also proposes to expand the *de minimis* exception to cover certain convictions for “bad” or insufficient funds checks. In the Board’s view, certain bad check offenses generally are low-risk and can be treated as *de minimis*. Thus, under proposed IRPS 19-1, convictions or pretrial diversion program entries of record based on the writing of “bad” or insufficient funds check(s) will be considered a *de minimis* offense and will not be considered as having involved an insured depository institution or insured credit union if the following conditions apply:

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

Offenses that meet the above criteria would not require an application for the Board’s consent.

Convictions or program entries for small-dollar, simple theft. A substantial number of applications that have come before the Board since 2008 have involved convictions or program entries for relatively minor, low-risk, small-dollar, simple theft (for example, shoplifting, retail theft, etc.). Based on a historical review of Section 205(d) applications, the Board granted its consent to the vast majority of those covered individuals with small-dollar, simple theft convictions, or program entries. Treating this category of offenses as *de minimis* would

streamline the application process, without creating undue or substantial risk to insured credit unions. Accordingly, under proposed IRPS 19-1, a conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) is considered *de minimis* where the following conditions are met:

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

For purposes of the exception, simple theft does not include the offenses of burglary, forgery, robbery, identity theft, or fraud. These crimes would continue to require an application for the Board's consent, unless otherwise qualifying as *de minimis*.

Convictions or program entries for the use of a fake identification card. Under proposed IRPS 19-1, the use of a fake, false, or altered identification card by a person under the legal age to obtain or purchase alcohol, or to enter a premises where alcohol is served and age appropriate identification is required, would be considered *de minimis*, provided there is no other conviction or program entry for the covered offense. The Board has determined that covered individuals with convictions for the use of fake identification pose little risk to insured credit unions.

Convictions or program entries for simple misdemeanor drug possession.

There are a host of significant extrajudicial consequences for individuals with nonviolent drug possession convictions, including not only employment bans but the loss of federal financial aid, eviction from public housing, disqualification from occupational licenses, loss of voting rights, and denial of public assistance. Moreover, research shows that drug convictions are a disproportionate burden on people of color. In addition, the Board recognizes that some uncertainty and confusion exists with respect to marijuana-related offenses, with marijuana now legal in many states but still illegal at the federal level.⁸

While not discounting the public health implications of illegal drug use and possession, the Board maintains that covered persons with single convictions or program entries for simple drug possession pose minimal risk to insured credit unions. Thus, proposed IRPS 19-1 would classify as *de minimis* those convictions or entries for drug offenses meeting the following conditions:

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

⁸ Marijuana laws are rapidly evolving across all 50 states. Multiple states have legalized or decriminalized marijuana in some form at the state level. However, marijuana remains a Schedule I drug under the federal Controlled Substances Act. *See* 21 U.S.C. §812(b)(1). Further information about marijuana legalization may be found online at <https://disa.com/map-of-marijuana-legality-by-state>.

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

Proposed IRPS 19-1 would continue to require that any person who meets the *de minimis* criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. In addition, that person must disclose the presence of the conviction or pretrial diversion program entry to all insured credit unions or insured depository institutions in the affairs of which he or she intends to participate.

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

Expunged convictions. Under the NCUA's current policy, a conviction that has been "completely expunged" is not considered a conviction of record and will not require an application for the NCUA Board's consent under Section 205(d). However, the Board is aware that it is sometimes unclear whether certain state set-aside provisions constitute a complete expungement for Section 205(d) purposes (for example, where or the conviction may still be revealed under certain circumstances or otherwise remains on the individual's record). Accordingly, proposed IRPS 19-1 would clarify the circumstances under which a conviction would be deemed expunged for purposes of Section 205(d).

Specifically, the Board proposes to clarify that if an order of expungement has been issued in regard to a conviction or program entry and is intended by the language in the order itself, or in the legislative provisions under which the order was issued, to be a complete expungement, then the jurisdiction, either in the order or the underlying legislative provisions, cannot allow the conviction or program entry to be used for any subsequent purpose. This includes, but is not limited to, an evaluation of a person's fitness or character. Under proposed IRPS 19-1, the failure to destroy or seal the records would not prevent the expungement from being considered complete for purposes of Section 205(d). Expungements of pretrial diversion or similar program entries would be treated the same as expungements for convictions. Moreover, under proposed IRPS 19-1, convictions set aside or reversed after the applicant has completed sentencing would be treated consistent with pretrial diversions programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

C. Duty Imposed on Credit Unions

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

learns about a job applicant's *de minimis* offense. Thus, proposed IRPS 19-1 would clarify that when a credit union learns that 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.

The proposal would also allow for extensions of conditional offers of employment to prospective employees requiring the Board's consent under Section 205(d). While the Board endeavors to promptly consider all consent applications, it also recognizes that the lapse in time necessary to process an application is inconvenient and burdensome to both credit unions and prospective employees. Thus, under proposed IRPS 19-1, a credit union may extend a conditional offer of employment contingent on the completion of a satisfactory background check to determine if the applicant is barred by Section 205(d). If a conditional offer is extended, however, the job applicant may not commence work for or be employed by the credit union until the applicant is determined to not be barred under Section 205(d) or receives consent from the Board.

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

Proposed IRPS 19-1 would not modify the current procedures for requesting the Board's consent under Section 205(d). It would, however, add language to clarify the distinction between a credit union-sponsored application filed by the institution on behalf of a covered individual and an individual application filed on a covered person's own behalf. Generally, an application must be filed by an insured credit union on behalf of a person (credit union-sponsored application) unless

the Board, for substantial good cause, grants a waiver of that requirement and allows the person to file an application in their own right (individual application). In most cases, a credit union-sponsored application is for a particular person, in a particular job, at a particular credit union. On the other hand, an individual application is typically requesting a blanket waiver for the applicant to be employed or participate in the conduct of the affairs of any insured credit union. As discussed in more detail below, the Section 205(d) application form would also be revised to more clearly distinguish between the two types of applications and the supporting information required for each.

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

The Board is also considering whether delegating responsibility for reviewing certain applications could further streamline the application process and reduce burdens on credit unions and applicants. The Board is particularly interested in receiving public comment on this topic and encourages stakeholders to provide input on this aspect of the proposal.

E. Application Form

Proposed IRPS 19-1 also revises and updates the application form that is required to be used to submit a Section 205(d) consent request, “Application to Request Consent Pursuant to Section 205(d),” to reflect the changes in this proposal and to conform to current regulatory requirements. The modified Section 205(d) application form would also more clearly delineate between the two types of applications (credit union-sponsored versus individual) and the supporting documentation required for each.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. 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 (defined for purposes of the RFA to include credit unions with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule. Proposed IRPS 19-1 would provide regulatory relief by decreasing the number of covered offenses that will require an application to the Board. The NCUA certifies that proposed IRPS 19-1 will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to information collection requirements in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.⁹ For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Proposed IRPS 19-1 will amend the current exceptions for *de minimis* offenses by expanding the scope, thereby eliminating the need to submit an application for certain low-risk, isolated offenses. This amendment would reduce the number of respondents applying for consent from three to one. The proposed IRPS requires credit unions to document when an application is not required because the covered offense is considered *de minimis*. This new recordkeeping requirement is minimal and would only impact those credit unions or individuals who would otherwise have submitted an application for consent.

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

Title of Information Collection: IRPS 19-1, Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act.

Estimated Number of Respondents: 3.

Estimated Annual Frequency of Response: 1.33.

Estimated Total Annual Responses: 4.

⁹ 44 U.S.C. 3507(d); 5 CFR part 1320.

Estimated Hours per Response: 0.75.

Estimated Total Annual Burden Hours: 3.

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

The NCUA invites comments on: (a) whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Comments regarding the information collection requirements should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6016, Alexandria, Virginia 22314, or Fax No. 703-519-8572, or Email at PRAComments@ncua.gov and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission,@OMB.EOP.gov.

C. 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. Proposed IRPS 19-1 would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As such, the NCUA has determined that proposed IRPS 19-1 does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that proposed IRPS 19-1 will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.¹⁰

By the National Credit Union Administration Board, on July 18, 2019.

/S/

Gerard Poliquin

Secretary of the Board

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

¹⁰ Public Law 105-277, 112 Stat. 2681 (1998).

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

I. Background

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

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

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). The statute imposes a ten-year ban against the NCUA Board granting consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code. In order for

the NCUA Board to grant consent during the ten-year period, the NCUA Board must file a motion with, and obtain the approval of, the sentencing court. Finally, Section 205(d)(3) states that “whoever knowingly violates” (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to \$1,000,000 a day.

This IRPS provides guidance to credit unions and individuals regarding who is subject to the prohibition provision of Section 205(d). The IRPS defines what offenses come within the prohibition provision of Section 205(d) and thus require an application for the NCUA Board’s consent to participate in the affairs of an insured credit union. The IRPS also identifies certain offenses that will be excluded from Section 205(d) and do not require the NCUA Board’s consent. In order to assist those who may need the consent of the NCUA Board to participate in the affairs of an insured credit union, the IRPS explains the procedures to request such consent, specifies the application form that must be used, clarifies the duty imposed on credit unions by Section 205(d), and identifies the factors the NCUA Board will consider in deciding whether to provide such consent. Finally, the IRPS explains how an applicant could appeal a decision by the NCUA Board denying an application for its consent. This IRPS supersedes and replaces former IRPS 08-1.¹¹

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

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

1. PERSONS COVERED BY SECTION 205(D)

¹ 73 FR 48399 (Aug. 19, 2008).

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

(a) Institution-affiliated parties.

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

(b) Participants in the affairs of an insured credit union.

A person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly,

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

2. OFFENSES COVERED BY SECTION 205(D)

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

must be considered final by the procedures of the applicable jurisdiction. The following definitions apply:

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

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

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

“Dishonesty” means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a

disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

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

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

3. OFFENSES NOT COVERED BY SECTION 205(D)

(a) *De minimis offenses.*

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

- (i) There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- (ii) The offense was punishable by imprisonment for a term of one year or less and/or a fine of \$2,500 or less, and the individual served three (3) days or less of jail time. The NCUA Board

considers jail time to include any significant restraint on an individual's freedom of movement which includes, as part of the restriction, confinement to a specific facility or building on a continuous basis where the person may leave temporarily only to perform specific functions or during specified time periods or both. However, this definition is not intended to include those on probation or parole who may be restricted to a particular jurisdiction, or who must report occasionally to an individual or to a specified location;

(iii) The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;

(iv) The offense did not involve an insured depository institution¹² or insured credit union; and

(v) The NCUA Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

(2) Additional applications of the de minimis offenses exception to filing.

(i) *Age at time of covered offense.* If the actions that resulted in a covered conviction or pretrial diversion program entry of record all occur when the individual was 21 years of age or younger, then the subsequent conviction or program entry, that otherwise meets the general *de minimis* criteria in (a)(1) above will be considered *de minimis* if the conviction or program entry was entered at least 30 months prior to the date an application would otherwise be required and all sentencing or program requirements have been met.

(ii) *Convictions or program entries for insufficient funds checks.* Convictions or pretrial diversion program entries of record based on the writing of "bad" or insufficient funds check(s)

¹² For purposes of this IRPS, the term "insured depository institution" means any bank or savings association the deposits of which are insured by the FDIC. See 12 U.S.C. §1813(c)(2).

will be considered a *de minimis* offense and will not be considered as having involved an insured depository institution or insured credit union if the following applies:

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

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

(iv) *Convictions or program entries for the use of a fake, false, or altered identification card.*

The use of a fake, false, or altered identification card used by a person under the legal age for the purpose of obtaining or purchasing alcohol, or used for the purpose of entering a premises where alcohol is served but for which age appropriate identification is required, provided that there is

no other conviction or pretrial diversion program entry for the covered offense, will be considered *de minimis*.

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

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

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

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

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

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

competed sentencing will be treated consistent with pretrial diversions or similar programs unless the court records reflect that the underlying conviction was set aside based on a finding on the merits that such conviction was wrongful.

B. Duty Imposed on Credit Unions

Section 205(d) imposes a duty upon every insured credit union to make a reasonable inquiry regarding the history of every applicant for employment. The NCUA believes that inquiry should consist of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or entry into a pretrial diversion program for a covered offense. At a minimum, each insured credit union should establish a screening process which provides the insured credit union with information concerning any convictions or pretrial diversion programs pertaining to a job applicant. This would include, for example, the completion of a written employment application which requires a listing of all convictions and pretrial diversion program entries. When the credit union learns that a prospective employee has a prior conviction or entered into a pretrial diversion program for a covered offense, the credit union should document in its files that an application is not required because the covered offense is considered *de minimis* and meets the criteria for the exception, or submit an application requesting the NCUA Board's consent under Section 205(d) prior to hiring the person or otherwise permitting him or her to participate in its affairs. In the alternative, for the purposes of Section 205(d), a credit union may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union and to determine if the applicant is barred by Section 205(d). In such a case, the job applicant

may not commence work for or be employed by the credit union until such time that the applicant is determined to not be barred under Section 205(d).

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

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

Section 205(d) of the FCU Act serves, by operation of law, as a statutory bar to participation in the affairs of an insured credit union, absent the written consent of the NCUA Board. When an application for the NCUA Board's consent under Section 205(d) is required, the insured credit union must file a written application using the attached form with the appropriate NCUA Regional Director. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing

public confidence in that institution. Such an application should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program. The applicant may also address the relevant factors and criteria the NCUA Board will consider in determining whether to grant consent, specified below. The burden is upon the applicant to establish that the application warrants approval.

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

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

D. Evaluation of Section 205(d) Applications

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

In evaluating an application, the NCUA Board will consider:

1. The conviction or pretrial diversion program entry and the specific nature and circumstances of the covered offense;
2. Evidence of rehabilitation, including the person's reputation since the conviction or pretrial diversion program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry;
3. Whether participation, directly or indirectly, by the person in any manner in the conduct of the affairs of the insured credit union constitutes a threat to the safety or soundness of the insured credit union or the interest of its members, or threatens to impair public confidence in the insured credit union;
4. The position to be held or the level of participation by the person at the insured credit union;
5. The amount of influence and control the person will be able to exercise over the management or affairs of the insured credit union;
6. The ability of management of the insured credit union to supervise and control the person's activities;

7. The applicability of the insured institution's fidelity bond coverage to the person;
8. For state chartered, federally insured credit unions, the opinion or position of the state regulator; and
9. Any additional factors in the specific case that appear relevant.

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

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

In cases in which the NCUA Board has granted a waiver of the credit union-sponsored filing requirement to allow a person to file an application in their own right, approval of the application will be conditioned upon that person disclosing the presence of the conviction(s) or program entry or entries to all insured credit unions or insured depository institutions in the affairs of

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

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

If the NCUA Board withholds consent under Section 205(d), the insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30 days following the date of notification of the NCUA Board's action. The NCUA Board will apply the process contained in regulations governing prohibitions based on felony convictions, found at part 747, subpart D of Title 12, Code of Federal Regulations, to any request for a hearing. The insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may also

waive a hearing and request that the NCUA Board determine the matter on the basis of written submissions.

NATIONAL CREDIT UNION ADMINISTRATION

APPLICATION TO REQUEST CONSENT PURSUANT TO SECTION 205(d)

The estimated total annual burden for this collection of information is estimated to average 3 hours for biographical information. This estimate includes time to gather and maintain data in the required form, to review instructions and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden to: (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6016, Alexandria, Virginia 22314, or Fax No. 703-519-8572, or Email at PRAComments@ncua.gov and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission,@OMB.EOP.gov. An organization or a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

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

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

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

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

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

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

SECTION A – APPLICANT INFORMATION

1. Applicant: Credit union-sponsored Individual

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

2. Applicant Name:

3. Date of Application:

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

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

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

SECTION B – BIOGRAPHICAL INFORMATION CONCERNING THE PROHIBITED PERSON

1. Name of Prohibited Person:

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

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

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

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

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

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

1. Description or Nature of Crime:

a. Date of Conviction:

b. Name and Address of Court:

c. Disposition of the Charges:

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

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

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

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

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

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

SIGNATURE OF THE PROHIBITED PERSON

DATE SIGNED

PRIVACY ACT NOTICE

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

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

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

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

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