

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXX FEDERAL CREDIT UNION

Docket BD 01 -13

Request for Consent from NCUA to place XXX  
in Associate Director Position

**Decision and Order**

**Decision**

This matter comes before the National Credit Union Administration Board (Board) pursuant to 12 U.S.C. §1785(d) as a request by XXX Federal Credit Union (XXX) for consent to place Mr. XXX in an associate director position, notwithstanding Mr. XXX's previous conviction of a crime involving dishonesty.

**Background**

Mr. XXX was 20 years old in 1970, and had a pregnant girlfriend. He found another person's credit card and used it to buy a \$130 suit, which he wore to get married. He was caught soon afterward and charged with grand larceny and forgery, both felonies. At trial, he was convicted but not incarcerated. Instead he was placed on indefinite probation and assigned to a probation officer. Approximately a year and a half later, having had no further incidents or encounters with the criminal justice system, he was discharged and released from further probation supervision.

**Applicable Law**

Section 205(d) of the Federal Credit Union Act (the Act) provides that no one who has been convicted of a crime involving dishonesty or breach of trust, or who has agreed to participate in a pre-trial diversion program in connection with such a crime, may serve in any capacity as an employee or a director of an insured credit union without first having obtained the consent of the Board. 12 U.S.C. §1785(d).

**Analysis**

In 2008, the Board issued an Interpretive Ruling and Policy Statement (IRPS) describing the offenses covered, and not covered, under Section 205(d). IRPS 08-1, *Guidance Regarding*

*Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act* (July 24, 2008); 73 Fed. Reg. 48399 (Aug. 19, 2008). The IRPS provides that a Section 205(d) application is not required, and approval is automatically granted, when a covered offense is de minimis. A covered offense is considered de minimis if all of the following requirements are met:

- there is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- punishment for the offense is imprisonment for a term less than one year and/or a fine less than \$1,000, and the court did not incarcerate the offender;
- the conviction date or entry date for a pretrial diversion program precedes the Section 205(d) application by at least five years;
- the offense did not involve an insured depository institution or insured credit union; and
- neither the NCUA Board, under Section 205(d), nor any other federal financial institution regulatory agency, under Section 19 of the Federal Deposit Insurance Act, has previously denied consent for the same conviction or participation in a pretrial diversion program.

IRPS 08-1, at 21. In this case, four of the five criteria outlined above are met. However, Mr. XXX was convicted of a felony, bearing a potential punishment of incarceration of greater than one year and a potential fine of greater than \$1,000. The de minimis exception is, therefore, not available.

The Regional Director supports this application. Explaining her views, the Regional Director noted that Mr. XXX's crime occurred 42 years ago, when Mr. XXX was young. Since that time, he has not had additional trouble with the law. Married for 40 years, he has three adult children, all of whom have graduated college. He has worked as a retail store manager and then a car salesman. He then spent 29 years working for XXX, XXX's sponsor, in various capacities, including XXX, XXX, XXX, and XXX. He retired from the company as XXX Manager, but remains actively involved in providing a mentoring role for the company. Based on his work for XXX, Mr. XXX is familiar to and known by several current XXX directors. He has been active in his community, including membership in the XXX Civic Association and little league baseball coach. He was an assistant football coach at XXX High School.

XXX proposes to place Mr. XXX in an associate director position. According to the application materials, an associate director attends board meetings but does not have a vote. As agreed upon by the board, an associate director may attend training provided to directors. The position is viewed as a learning opportunity potentially leading to a director position. As such, the position provides an opportunity for XXX's current management to observe Mr. XXX's conduct and performance in a relatively controlled environment.

The Board notes that over 40 years have passed since Mr. XXX's offense, during which time he has had no incidents involving criminal behavior. This passage of time supports the conclusion that he has rehabilitated himself. As further evidence of his rehabilitation, the Board notes that Mr. XXX received a restoration of his civil rights from Virginia Governor Robert McDonnell in 2011.

## **Order**

For the reasons set forth above, it is ORDERED as follows:

The Board hereby APPROVES the request filed by XXX Federal Credit Union and grants its consent for XXX to place Mr. XXX in the position of associate director.

So **ORDERED** this 14<sup>th</sup> day of March, 2013, by the National Credit Union Administration Board.

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Mary F. Rupp  
Secretary of the Board