

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX FEDERAL CREDIT UNION

Docket BD 04 -17

Request for Consent from NCUA Board to reinstate  
XXXX

**Decision and Order**

**Decision**

This matter comes before the National Credit Union Administration Board (Board) as a request by XXXX Federal Credit Union (XXXX) for consent to reinstate XXXX as a member contact center specialist, notwithstanding XXXX's previous participation in a pretrial diversion program in connection with a crime involving dishonesty.

**Background.** Section 205(d) of the FCU Act specifies that an individual convicted of a crime involving dishonesty or breach of trust, or who has agreed to enter a pretrial diversion or similar program in connection with prosecution for such an offense, may not serve as an employee or director of an insured credit union without first having obtained the written consent of the NCUA Board.<sup>1</sup> XXXX submitted its request to Region III pursuant to this provision in the FCU Act.

**Criminal Charge.** As set forth in the request, XXXX was 25 in 2004 when she was charged with financial identity fraud, a class G felony under North Carolina law.<sup>2</sup> According to the materials submitted by XXXX, the complainant in the case was the former girlfriend of XXXX's husband. The complainant alleged that XXXX had fraudulently applied for a credit card in the complainant's name. XXXX denied any wrongdoing, but, during pretrial negotiations, her attorney persuaded XXXX to enter a pretrial diversion program instead of contesting the charges, as that would be the quickest and least painful resolution of the matter. Accordingly, she entered the program and was required to complete twelve months of unsupervised probation, perform 100 hours of community service, and pay a fee for damages related to the offense. Upon the program's completion, the prosecutor dismissed the charges without leave to re-file. According to XXXX, the pertinent court no longer has copies of the complaint, the indictment, or the final decree of judgment in the case.

The matter was revealed to XXXX after the credit union determined to secure licensed loan officer status for some of its employees, including XXXX. This required her to undergo the

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<sup>1</sup> 12 U.S.C. §1785(d)

<sup>2</sup> N.C. Gen. Stat. §14-113.20.

relatively more extensive background check associated with obtaining a federal mortgage loan originator license under the Secure and Fair Enforcement for Mortgage Licensing Act.<sup>3</sup>

**IRPS 08-1.** In 2008, the Board issued an Interpretive Ruling and Policy Statement (IRPS) describing the scope of offenses covered under Section 205(d).<sup>4</sup> 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 punishment imposed by the court did not include incarceration;
- 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, the potential punishment XXXX faced included imprisonment for a term of up to thirteen months, just slightly greater than that set forth by the IRPS. Thus, even though XXXX received probation, rather than incarceration, the IRPS refers to the potential range of punishment, not the sentence actually handed down to the defendant. Accordingly, the *de minimis* exception is not available.

**Regional Office Evaluation.** The Regional Director supports this application. As documented in the case file, outlined in greater detail in her memo to the General Counsel dated December 1, 2017 (Attachment 2), the Regional Director notes that the incident occurred more than thirteen years ago, when XXXX was a young woman. She has avoided additional incidents with law enforcement since that time. The Region also notes that XXXX considers XXXX to be a model employee since being hired in 2013. The Region notes that XXXX does not wield supervisory or managerial authority in her current position. Further, the Region believes her participation in XXXX's affairs will not constitute a threat to its safety and soundness or to the interests of its members, nor will reinstatement of XXXX impair public confidence in XXXX. The Region also points out that XXXX is a well-run credit union with net worth of almost 9 percent, assets of \$2.2 billion, low delinquency and charge-off rates, and a composite CAMEL 2 rating for the past six years. Its management team is quite capable of overseeing XXXX's day-to-day performance. Finally, the Region notes that XXXX's bonding company has confirmed that XXXX's fidelity coverage remains in place.

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<sup>3</sup> Pub. L. No. 110-289, Title V (2008). XXXX's standard background check went back only seven years; even if it had gone back to 2004, it is unlikely to have revealed this incident, because the case had been dismissed.

<sup>4</sup> 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)

**Analysis.** The Board notes that three aspects of this case support approval of XXXX's service on behalf of XXXX. Each of these is outlined below.

*Time elapsed.* XXXX's arrest and participation in the pretrial diversion program for this offense occurred over thirteen years ago. She successfully completed her sentence, including payment of a fee for damages related to the offense, unsupervised probation, and community service. As a result of this successful completion, the charges were voluntarily dismissed without leave of the prosecutor to refile the charges. Since then she has avoided any further encounters with law enforcement.

*Performance as an employee.* XXXX has been employed with XXXX for approximately four years. Her performance during that time has been satisfactory, with no disciplinary challenges noted. Prior to coming on with XXXX, she worked at GMAC for six years. Her current supervisor at XXXX also worked at GMAC and knew XXXX to be a good employee. Her past performance is a reasonable predictor of continued success in her current position. The fact that XXXX is advocating for her is also significant. In addition, insofar as the charges in this case were dismissed without any conviction, there is little to no likelihood that the incident would come to light later in a way that could create a poor reflection on XXXX or cast it in a negative light.

The position XXXX occupies with XXXX is non-managerial, with relatively low-level duties and responsibilities. She handles questions and inquiries from members in a call center facility, including matters involving both deposits and loans. She is subject to the direct oversight of a supervisor, has no access to cash, and has little to no independent ability to affect the policy or direction of XXXX.

*Denial of criminal conduct.* The Board notes that approval in this case would be consistent with the approach adopted by the Board in other recent cases involving criminal behavior, which are typically cases of youthful, admitted indiscretion, completion of any mandatory probation and/or community service, followed by years of productive living and avoidance of further criminal conduct. In this case, XXXX's denial of actually having committed the crime presents another factor that supports a favorable consideration by the Board.

### **Order**

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

The Board hereby APPROVES the request filed by XXXX Credit Union and grants its consent for XXXX to reinstate XXXX as a member contact center specialist.

So **ORDERED** this 14<sup>th</sup> day of December, 2017, by the National Credit Union Administration Board.

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Gerard Poliquin  
Secretary of the Board