

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION

In the Matter of

XXXX

Docket No. BD-02-19

Request for Consent from NCUA Board to
Participate in the Conduct of the Affairs of
An Insured Credit Union

Decision and Order

Decision

This matter comes before the National Credit Union Administration Board (Board) as a request by XXXX for consent to participate in the conduct of the affairs of an insured credit union, notwithstanding her previous convictions of crimes involving dishonesty or breach of trust.

Background. Section 205(d) of the Federal Credit Union Act (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.¹ XXXX submitted a request on her own behalf to the Director of the Office of National Examinations and Supervision (ONES) pursuant to this provision in the FCU Act.

Between 1985 and 1991, XXXX was convicted of a number of crimes involving dishonesty or breach of trust, including grand theft larceny, principals to robbery, uttering a forged instrument, resisting arrest, retail theft, and petit theft. XXXX has indicated that she was involved in illegal drug use during this period of criminal conduct. XXXX successfully completed court ordered activities and, in 2007, received a full pardon by former Florida Governor Charlie Crist.² She was granted restoration of civil rights by former Florida Governor Jeb Bush in 2001.³ In May 2018, the FDIC granted her a consent waiver under Section 19 of the Federal Deposit Insurance Act.

¹ 12 U.S.C. §1785(d).

² Florida law provides for the state Governor, with the agreement of two cabinet members, to grant clemency to convicted felons for relief from punishment and for restoration of their civil rights. The clemency function is an act of mercy that absolves and individual from all, or any part, of the punishment that the law imposes. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before her conviction, including the right to own, possess, or use firearms. *See*, <https://www.fcor.state.fl.us/clemencyOverview.shtml>.

³ In Florida, a restoration of civil rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms. Such restoration does not relieve an applicant from registration and notification requirements for sexual offenders. *See, Id.*

Over the past 26 years, XXXX has made efforts to reform her life and now wishes to work for XXXX in Pensacola, Florida. Accordingly, XXXX submitted an application for consent to ONES. She requested consent for employment pursuant to Section 205(d) on her own behalf; XXXX did not sponsor her consent application and it is unclear whether she would otherwise qualify for employment with the credit union.

Criminal Charge. As set forth in the request, between 1985 and 1991 XXXX was convicted of a number of crimes:

- On August 28, 1985, XXXX was convicted of two counts of grand theft larceny in violation of Section 812.014 of the Florida Statutes.
- On May 26, 1989, XXXX was convicted of one count of resisting an officer without violence in violation of Section 843.02 of the Florida Statutes.
- On July 17, 1989, XXXX was convicted of one count of forgery in violation of Section 831.01 of the Florida Statutes, uttering a forged instrument in violation of Section 831.02 of the Florida Statutes, and petit theft in violation of Section 812.014 of the Florida Statutes.
- On March 15, 1990, XXXX was convicted of one count of retail theft in violation of Section 812.015 of the Florida Statutes.
- On July 23, 1991, XXXX was convicted of another charge involving petit theft in violation of Section 812.014 of the Florida Statutes.
- On September 4, 1991, XXXX was convicted of one count of principal in the first degree to armed robbery in violation of Sections 777.011 and 812.13 of the Florida Statutes.

In addition, XXXX criminal record includes several probation and community control violations, for which she was sentenced to incarceration.

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).⁴ IRPS 08-1 provides guidance to federally insured credit unions and those individuals subject to the statutory prohibition and establishes the process by which an individual may obtain the Board’s consent to participate in the conduct of the affairs of an insured credit union. IRPS 08-1 requires that a consent application be filed by an insured credit union on behalf of person, “unless the NCUA Board grants a waiver of that requirement and allows the person to file an application in their own right.”⁵ Such waivers are considered case-by-case where the applicant shows good cause for granting a waiver.

In this case, there is good cause to grant a waiver to allow XXXX to file a consent application on her own behalf. XXXX has indicated that disclosure of her criminal record may have hindered her past employment applications and she believes that obtaining the Board’s prior consent may help bolster her future credit union job applications. To the extent that prior consent may improve

⁴ 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).

⁵ IRPS 08-1 at 24.

XXXX employment viability, there is good cause to allow XXXX to individually apply for Board consent.

Program Office Evaluation.

ONES supports this application subject to certain conditions. ONES recognizes that it has been over 25 years since XXXX committed the criminal offenses and she has no record of recent criminal activity. Additionally, XXXX received a full pardon in 2007 and the FDIC granted a similar Section 19 consent request in 2018. ONES has no safety and soundness concerns about the application. The program office notes that XXXX is a large sophisticated credit union with adequate controls and is capable of making an informed business decision about whether to hire an individual with a criminal background. Under the conditions that the approval is only applicable for XXXX and only for non-management positions, and the applicant must be able to qualify for and obtain fidelity bond coverage under XXXX policy, ONES supports approval of the consent request.

Analysis. The Board notes that several aspects of this case support approval of XXXX consent application. Each of these is outlined below.

Time elapsed. It has been more than 25 years since the crimes occurred. XXXX is now a 57 year old mother and grandmother and has been drug free for 26 years after the successful completion of a substance abuse treatment program. She has demonstrated productive living in the considerable time that has elapsed without subsequent criminal conduct. A background check completed by the NCUA showed no recent criminal activity.

Evidence of rehabilitation. XXXX has demonstrated productive living in the ensuing years since her convictions. Most recently, XXXX was employed at What-A-Burger in Pensacola, Florida. In the late 1980s and early 1990s, she had a cosmetology license and nail technician license and owned a beauty salon and a hair and beauty news publication. XXXX also has experience in the mortgage and delinquency control collection industry, has had a mortgage broker license (now lapsed), and has worked in the financial industry as a broker and loan processor. Several letters of recommendation from former employers were included in the application. XXXX is attending college for an associate degree in marketing. She also recently completed real estate school but has not completed the required state examinations. XXXX reports she is very involved in her community, including as a sponsor to other women in the 12 Step Recovery Program. She has expressed deep regret for her past indiscretions and has indicated that she takes full responsibility for her past actions.

Amount of influence and control. XXXX application was not sponsored by a credit union. However, the application indicates she would like to work for XXXX in Pensacola as a mortgage loan processor, in delinquency control, or in member services. These types of entry-level staff positions are typically highly supervised. If hired, XXXX would not be in a position to exercise influence or control over the management or affairs of the credit union. The positions XXXX has expressed interest in are essentially non-management positions that will offer limited to no opportunity to influence credit union policy. XXXX would be unlikely to have unilateral authority to shape credit union procedure, assuming she is hired. Therefore, the Board has determined it is not necessary to limit its approval to XXXX.

Other relevant factors. XXXX was granted restoration of civil rights by former Florida Governor Jeb Bush in 2001. She received a pardon by former Florida Governor Charlie Crist in 2007. In May 2018, the FDIC granted a similar Section 19 consent request for XXXX to file on her own behalf and to participate directly or indirectly in the conduct of the affairs of any insured depository institution. These factors support a favorable consideration by the Board.

Order

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

1. The Board, for good cause, hereby GRANTS a waiver to allow XXXX to individually apply for consent on her own behalf.
2. The Board hereby APPROVES the request filed by XXXX and GRANTS its consent with the following conditions:
 - a. The approval is only for non-management positions (mortgage loan processor, collector, or member services representative).
 - b. XXXX shall be covered by a fidelity bond to the same extent as others in similar positions.

So **ORDERED** this 18th day of April, 2019, by the National Credit Union Administration Board.

Gerard Poliquin
Secretary of the Board