



Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314– 3428

***Re: Comments on Notice of Proposed Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union***

Dear Mr. Poliquin:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to comment on the National Credit Union Administration Board's (Board) recent proposal to update the Interpretative Ruling and Policy Statement (IRPS) regarding the statutory prohibitions imposed by Section 205(d) of the Federal Credit Union Act (Act). PCUA is a state-wide advocacy organization that represents a majority of the nearly 400 credit unions located in the Commonwealth of Pennsylvania.

We had the opportunity to receive comments from some of our credit union members and those commenting are concerned with the expansion of offenses that will be included as *de minimis* offenses. Credit unions historically are advocates of second chances for their members and potential members. For those members who have endured financial hardships and experienced other difficult times in their lives, credit unions are generally willing to find a way to work with these members so that they can overcome their current financial struggles and reach their goals.

Our Pennsylvania credit unions are also committed to helping community members who have faced challenges due to incarceration. The Pennsylvania Credit Union Foundation in conjunction with the Pennsylvania Department of Corrections and the Pennsylvania Department of Banking & Securities has hosted Financial Reality Fairs for reentrants. The fairs help reentrants by exposing them to real-life experience in money management and budgeting. Credit union employees volunteer their time to help make the fairs a success.

In expanding the *de minimis* offenses, we encourage the Board to be mindful of the statutory prohibition of Section 205(d) of the Act. The Act 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.

Currently, IRPS 08-01 has been in effect since August 2008 and provides direction and guidance to federally-insured credit unions and individuals who may be affected by the prohibitions in

Section 205(d). IRPS 08-01 included definitions and examples to help credit unions determine who would be covered by Section 205(d) and what covered offenses would require approval of the NCUA Board before the person could be involved in the affairs of an insured credit union. IRPS 08-01 introduced the five-factor test for determining if a covered offense could be considered *de minimis*, and, therefore, not require approval of the NCUA Board. To be considered *de minimis*, an offense must meet all the following:

- There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- 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;
- The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;
- The offense did not involve an insured depository institution or insured credit union; and
- 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.

The proposed IRPS would modify the *de minimis* offenses exception by:

- Updating the potential punishment and/or fine provision (criterion (2)) 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 \$2500 or less, and those punishable by three days or less of jail time.
- Clarifying 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; but not to include those individuals on probation or parole.

Our credit unions are not opposed to updating the second criterion to keep up with current sentencing guidelines; but we did receive comments that the definition of jail time should include probation if probation was the only "confinement" imposed as part of an individual's punishment.

NCUA also proposes 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. The proposed IRPS would:

- Expand the scope of the *de minimis* exception to include additional offenses.
  - Subject to some qualifications, expanding the *de minimis* exception to cover certain convictions for "bad" or insufficient funds checks.

- Subject to certain conditions, expanding the *de minimis* exception to include convictions or pretrial diversion program entries based on a simple theft of goods, services and/or currency (or other monetary instrument).
- Expanding the *de minimis* exception for convictions or program entries for the use of a fake ID card by persons under the legal age for the purchase or consumption of alcohol, so long as there is no other conviction or program entry for that offense.
- Expanding the *de minimis* exception to include convictions or entries for drug offenses meeting certain conditions.

Our credit unions are concerned that these new exceptions are too expansive and would put the safety and soundness of the credit union at risk. The primary goal of the prohibitions of Section 205(d) is to protect the share insurance fund from losses that may be incurred by credit unions. Prohibiting individuals who have been convicted of crimes of dishonesty and breach of trust from participating in the affairs of federally-insured credit unions is easy to understand and the current IRPS makes appropriate exceptions so that we are hiring qualified individuals and not putting the credit union at risk.

For example, the proposed exception for insufficient funds checks provides that a conviction for writing insufficient funds checks will be considered *de minimis* and 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 program entry subject to Section 205(d);
- The aggregate total face value of all "bad" or insufficient funds checks cited across all the convictions or program entries is \$1,000 or less; and
- No insured depository institution or insured credit union was payee on any of the "bad" or insufficient funds checks.

This proposed exception only excludes from the exception checks payable to an insured institution. Credit unions and other depository institutions can be the victim of insufficient funds and "bad" checks without being the payee on the checks. In Pennsylvania, the offense of "bad checks" includes an element of knowledge. The person convicted knows that the check will not be honored and issues it anyway.

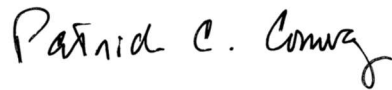
Additionally, under the exception as written, there does not appear to be any requirement that the victim of the loss of the "bad" or insufficient check be made whole. The simple passage of time since a conviction does not provide any reassurance that an offender will not re-commit an offense or has not already re-committed. It is quite possible that an individual convicted of, for example, simple theft has only been convicted one time because the individual was only caught one time. If there was a requirement that restitution had been made to the victim of any financial loss for the bad check or simple theft charges, it would provide more reassurance that an individual is worthy of a second chance.

We understand that the IRPS in effect currently has not been revised since 2008, and we understand that the FDIC revised its similar Statement of Policy in 2018; however, we remind

the Board that federally-insured credit unions are often much smaller than their banking counterparts, and even a small loss at a credit union is much more impactful to that one credit union and the credit union system as a whole than a small loss to a bank.

We support the changes to the IRPS to keep up with current sentencing and fines guidelines; however, we do not support changes to the IRPS if those changes are only to stay consistent with the FDIC. Expanding the scope of the *de minimis* exceptions to the statutory prohibitions of Section 205(d) may put smaller credit unions at a greater risk of loss, when the current IRPS exceptions have been working for many years.

With best regards,

A handwritten signature in black ink that reads "Patrick C. Conway". The signature is written in a cursive, slightly slanted style.

Patrick C. Conway  
President & CEO

cc: PCUA Board  
PCUA Government Relations Committee  
PCUA Regulatory Review Committee