



Credit Union National Association

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

cuna.org

Filed via: regcomments@ncua.gov

June 2, 2008

Ms. Mary Rupp
Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22315

Re: Comments of the Credit Union National Association
on NCUA's Proposed IRPS 08-1

Dear Ms. Rupp:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the National Credit Union Administration Board's proposed Interpretive Rule and Policy Statement, IRPS 08-01, Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act. By way of background, CUNA is the largest credit union trade organization in this country, representing approximately 90 percent of our nation's nearly 8,300 state and federal credit unions, which serve more than 90 million members.

The NCUA Board's proposed IRPS 08-1 addresses provisions in the Federal Credit Union Act that prohibit persons convicted of criminal offenses from participating in the affairs of a federally insured credit union. More specifically, the Act prohibits individuals convicted of a crime involving dishonesty or breach of trust or who have entered into a pretrial diversion or similar program from such credit union participation, without the prior written approval of NCUA. While the Federal Deposit Insurance Corporation and the Office of Thrift Supervision have provided guidance to the institutions they regulate on this matter, NCUA has not. The agency's proposed IRPS is patterned after the guidance for banks.



OFFICES: | WASHINGTON, D.C. | MADISON, WISCONSIN

Summary of CUNA's Views

- While such guidance may be useful to credit unions as well as to examiners, CUNA recommends several changes to enhance its utility.
- NCUA should establish a more formal process to review credit unions' prior approval requests. Such a process could help protect a credit union from challenges brought by prohibited individuals who sought employment at the credit union.
- While the FDIC has similar guidance, it has also incorporated procedural provisions into its regulation to facilitate compliance for federally insured banks on these issues. CUNA supports this approach to the extent it will make it easier for credit unions to meet their responsibilities.
- The FDIC has developed guidance for federally insured banks on pre-employment background screening that also addresses how the prohibition on persons convicted of certain crimes should be dealt with. NCUA should review this guidance and consider adopting it for credit unions, as appropriately modified.
- NCUA should establish specific timeframes for when it will respond to consent requests and appeals, and address these issues in its regulations.
- NCUA should provide practical examples to illustrate the phrase, "participate, directly, or indirectly, in the conduct of the affairs of any insured credit union."
- NCUA should refrain from using the term "defacto" employees in the guidance and application for consent.
- NCUA asks whether a form similar to the one used by the FDIC should be required for credit unions. While we think the use of a form could be useful, as it will focus on the issues that need to be addressed, NCUA should make the form more user friendly.

Discussion of CUNA's Position

The Act prohibits persons convicted of a criminal offense involving dishonesty or breach of trust or who have entered into a pretrial diversion or similar program from participating in the affairs of the credit union, unless NCUA grants prior written consent. The proposed IRPS excludes certain de minimis and other offenses.

NCUA questions whether such guidance may be useful to credit unions, and we agree that it could be. However, we do have recommendations for improvements that we believe will enhance the usefulness of NCUA's proposed guidance.

NCUA seeks comments on whether it should continue the informal process it uses now to review credit unions' applications for prior approval or whether it should apply more formalized procedures. We believe a more formal process could benefit credit unions as well as NCUA. There would be greater certainty as

to what is required for the application, which could result in reducing extraneous paperwork and increasing efficiencies in the review process. Also, credit unions subjected to challenges from prohibited individuals who are not employed could rely on compliance with the procedures to defend against possible legal challenges.

In addition to developing guidance for the institutions it insures, the FDIC has incorporated several provisions into its regulations to address procedural and other issues, such as the contents of the application for prior approval and the appeals process. We believe NCUA should address these issues in its regulations, particularly the process to appeal an adverse decision, which will reinforce credit unions' ability to appeal. In the future should the NCUA Board decide to revise these provisions, including them in the regulations will ensure that substantive amendments will be subject to prior notice and comments from credit unions and other stakeholders.

The FDIC has also provided guidelines for federally insured banks on pre-employment background screening that also address how the prohibition on persons convicted of certain crimes should be dealt with. We believe such guidance would be useful for credit unions, with appropriate modifications.

We believe that the guidance should address how long NCUA will generally take to respond to credit unions' requests, appeals or related issues. We think that NCUA should amend the guidance to incorporate deadlines for NCUA's response, which we believe should generally be within 14 business days for prior approvals and within 30 days for appeals.

The agency states that it is impossible to define what is meant by "participate directly or indirectly, in the conduct of the affairs of any insured credit union." If it is not possible, than we believe NCUA should at least provide some useful, practical examples in the guidance as to what it means by this phrase, which is central to the understanding of who is covered by the guidance and prohibition.

NCUA's guidance addresses "institution-affiliated parties" and independent contractors, as provided by the FCU Act. Individuals who fit into these categories are covered by the guidance. However, the guidance also identifies "defacto employees" which NCUA may be using to identify independent contractors. The term, "defacto employee" is confusing, particularly since it is not defined by the agency. We urge NCUA to either delete it or develop a definition for this term and allow interested parties to comment on it.

The agency seeks comments on whether credit unions should use a form to apply for prior approvals similar to the one that the FDIC has generated. We believe such a form could be useful as it would help to clarify what information is required from credit unions. However, FDIC's form could be much more user

friendly, and we encourage NCUA to improve the form and modify it for credit unions.

Thank you for the opportunity to comment on the proposed IRPS. Please do not hesitate to contact me if you have questions about CUNA's comments. Thank you for consideration of our views.

Sincerely,

Mary Mitchell Dunn
CUNA Senior Vice President and
Deputy General Counsel