The NCUA should adopt the applications attached to the proposed rule. The application should be revised to credit union's operations.

Evaluation of §205(d) Applications

As proposed, this criterion to evaluate an applicant presumably was taken from 12 C.F.R. §308.157. Sections 308.157(a)(2) and (8) should be retained. Section 308.157(a)(2) should be included as revised:

> (2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured credit union ~~depository institution~~ constitutes a threat to the safety or soundness of the insured credit union ~~depository institution~~ or the interests of its members ~~depositors~~ or threatens to impair public confidence in the insured credit union ~~depositary institution~~;

Participation in credit union affairs should be a prerequisite to the NCUA's evaluation. This determination is relevant because without participation in credit union affairs, anyone who comes into contact with the credit union, such as a painting contractor or even a member may be subject to evaluation. Accordingly, this language should be included in the rule.

Lastly, §308.157(a)(8) includes a consideration of whether the applicant is bonded; this should be included in the NCUA rules. If an applicant is not bondable, s/he cannot be hired – this is a relevant consideration and should be retained in the rule.

We appreciate the opportunity to provide comments. If you have any questions about this Comment Letter, please feel free to contact me.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

Lynn W. Esp
Assistant General Counsel

LWE:ko

cc: Legislative Committee
Regulatory Committee
Don Edwards

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Offenses Not Covered by §205(d)

Like the offenses covered, the NCUA should provide a non-exhaustive list of de minimis crimes to which §205(d) does not apply.

As proposed, there is a list of criteria used to determine whether a crime is de minimis. One of the criteria is whether the offense involved an "insured depository institution" or "insured credit union". Where the crime occurred is irrelevant. The fact that the person was convicted for a crime is relevant. This element should be stricken from the de minimis criteria.

Duty Imposed on Credit Unions

Section 205(d) imposes a duty on a credit union to make a "reasonable inquiry" regarding the history of every applicant. As proposed, the NCUA states that at a minimum, a credit union should develop a screening process with information regarding the disclosure of convictions or pretrial diversions. The NCUA should define what is expected. Is a credit union required to conduct criminal background checks? Is an inquiry in an application to disclose criminal convictions or pretrial diversions sufficient? If an employee is bondable, is it sufficient to warrant employment? We do not believe a credit union should be required to conduct backgrounds checks. If the NCUA decides to the contrary, background checks should be required for employers with 50 or more employees and then only for NCUA identified positions. Additionally, the NCUA should identify a time limit on the length of time a conviction may be an employment disqualifier – 10 years should be appropriate.

As proposed, if a credit union discovers a violation of §205(d), a credit union must place the person on a temporary leave of absence pending application with the NCUA. There is no timeframe on the NCUA's response time and one should be identified. This especially is important if the employee is an exempt employee. In Illinois, an employer is required to compensate an exempt employee for a full week, even if s/he is placed on suspension mid-week. To alleviate the financial and operational burden, the NCUA should be required to provide a response within five (5) business days from the credit union's application.

Procedures for Requesting the NCUA Board's Consent Under §205(d)

The proposed IRPS place improper burdens on a credit union. For example, a credit union must explain the circumstances surrounding a conviction or pretrial diversion program. This burden properly is placed on the individual. A credit union may not know the circumstances surrounding the conviction or the person's attorney may not authorize the credit union to do so. This burden should not be placed on a credit union.

Persons covered by §205(d)

As proposed, "persons" is defined broadly and includes those who do not participate in credit union affairs. The intent of §205(d) is to ensure individuals with **control** over credit union business do not have criminal convictions. The statutory language extends much further- it applies to independent contractors, attorneys, appraisers, or accountants- none of these professionals exercise control over credit union affairs. They make recommendations – any conviction is irrelevant. Credit unions should not be saddled with the burden of conducting a background check or be required to create a business application for individuals with a business relationship with a credit union.

The proposed regulation also states "de facto employees" are subject to §205(d) requirements. "De facto employee" is not used in the FCUA and it should not be contained in the rule. Presumably, a de facto employee is an individual who is treated as an employee but is not. That is an independent contractor. To expand the definition to include de facto employees is contrary to the statute. The reference to a de facto employee should be stricken.

As proposed, the definition of independent contractor in the rules is inconsistent with the FCUA. The definition of independent contractor is cross referenced and obtained from §206 of the FCUA. Section 206 defines an independent contractor as anyone one who knowingly or recklessly participates in ***any violation of any law or regulation.*** Section 205(d) applies to persons ***convicted of any criminal offense involving dishonesty or breach of trust or who has agreed to a pretrial diversion***. Section 205(d) applies to convictions. Section 206 applies to violations. The FCUA applies to convictions, not violations. Conviction of a crime is not synonymous with violation of law. Section 205(d) applies to offenses involving dishonesty or breach of trust. Section 206 applies to any law or regulation. These inconsistencies must be addressed and any disparities should be stricken.

Lastly, the rule states "person" does not include business entities. The proposed rule applies to "joint ventures" which are business entities. This reference should be stricken.

Offenses Covered by §205(d)

As proposed, the rules define "dishonesty" and "breach of trust". Although a statutory derivative, these terms require interpretation. Human resource directors should not be relegated with the responsibility of determining whether a crime fits within the definition. The NCUA should provide a non-exhaustive list of crimes. Section 205(d) imposes a ten-year ban for criminal convictions enumerated in 12 U.S.C. §1725. These crimes are not listed and they should be rather than providing statutory cross references. The ten year ban should apply for all criminal convictions.

Illinois Credit Union League
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May 5, 2008

VIA E-MAIL
regcomments@ncua.gov

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

RE: ***Illinois Credit Union League—Comments on Proposed Interpretive Rule and Policy Statement 08-1***

Dear Ms. Rupp:

The Illinois Credit Union League ("ICUL") is pleased to respond on behalf of its 400 member state and federal credit unions to the National Credit Union Administration's ("NCUA") proposed Interpretive Ruling and Policy Statement ("IRPS") regarding §205(d) of the Federal Credit Union Act ("FCUA") which prohibits individuals who have been convicted of certain crimes from participating in credit union affairs. 12 U.S.C. §1785(d). The remainder of this correspondence addresses our response.

The NCUA requests comment on whether the rules should be formatted as an IRPS or regulation. We believe the rules should be contained in a regulation. The Federal Deposit Insurance Corporation and Office of Thrift Supervision have regulations addressing the identical procedures. *See*, 12 C.F.R. §§§303, 308, 509, 585. The regulations are detailed and articulate the respective rights and responsibilities for statutory compliance. The NCUA should use these regulations as its prototype.

Further, since the rules define who may not be hired, an employer should be able to rely on a regulation to defend its actions. This especially is true because the Equal Employment Opportunity Commission ("EEOC") holds an employer's policy of refusing to hire applicants who have been convicted of crimes is unlawful, unless job-related and consistent with business necessity. *EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act (Feb. 4, 1987).* To establish business necessity, an employer must establish a relationship between the job and the nature and gravity of the offense and the time that has passed since the conviction. *Id*. Presumably, a statute which requires a credit union to disqualify individuals with criminal convictions constitutes business necessity. To ensure a credit union has the tools to defend an EEOC charge, the NCUA should draft rules which examine the aforementioned criteria. The IRPS should define crimes which warrant disqualification, positions for which convictions are relevant and the length of time the conviction applies.