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3 June 2008

Via Electronic Mail
regcomments@ncua.gov

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Proposed Interpretive Ruling and Policy Statement No. 08-1

Dear Ms. Rupp

On behalf of the United Nations Federal Credit Union (UNFCU), I am pleased to respond to the National Credit Union Administration's (NCUA) request for comment on the proposed Interpretive Ruling and Policy Statement No. 08-1 (IRPS).

The proposed IRPS aims to provide direction and guidance to federally-insured credit unions and persons affected by Section 205(d) of the Federal Credit Union Act (FCU Act) that prohibits the hiring of persons who have a prior criminal conviction or participated in a pretrial diversion program. The proposed IRPS also seeks to clarify, in broad terms, which offenses come within the prohibition provision of Section 205(d) and thus require an application for the NCUA Board's consent and to explain the procedures to request such consent.

UNFCU supports the goal of the proposed IRPS. However, UNFCU believes that the proposed guidance does not provide a clear framework for credit unions to plan their hiring process. The IRPS significantly broadens the scope of the applicability of Section 205(d) of the FCU Act. Therefore, UNFCU believes clarification in relation to the various topics presented in the following paragraphs is warranted.

Institution-Affiliated Parties

The proposed guidance does not clarify the applicability of Section 205(d) of the FCU Act and increases the degree of subjectivity and uncertainty surrounding institution-affiliated parties. By including "consultants," "independent contractors," "agents" of a credit union and "anyone NCUA determines to be a de facto employee in the definition of institution-affiliated parties, applying generally applicable standards of employment law," credit unions may be required to perform background checks on any party with whom it has commercial dealings, including third party vendors and professional service providers such as attorneys and accountants.

Unlike the FCU Act and the proposed IRPS, Section 19 of the Federal Deposit Insurance Corporation Act (FDIC Act) provides that "Except with the written consent of the Corporation no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted of any criminal offense involving dishonesty or breach of trust." While it is clear that the FDIC Act does not apply to credit unions, by way of example, UNFCU notes that the FDIC Act states its terms of applicability without using a subjective, case-by-case approach, resulting in a much smaller pool of persons who must be screened (i.e. directors, officers, and employees).

Participation in The Affairs of An Insured Credit Union

The proposed guidance states that a person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. NCUA adds that it will "not define what constitutes participation in the conduct of the affairs of an insured credit union but rather will analyze each individual's conduct on a case-by-case basis to determine if their conduct amounts to participating in the affairs of an insured credit union."

UNFCU believes that additional guidance would be helpful in relation to areas of participation that are of particular importance in light of Section 205(d) prohibition and to which credit unions should pay particular attention.

Adequate Examination

"Furthermore credit unions that failed to adequately examine prospective employees before hiring will now be on notice of the need to examine their workforce to ensure their compliance with Section 205(d)."

UNFCU seeks guidance as to whether the above statement indicates that credit unions that did not ask current employees at the point of hire whether they had ever been convicted of a criminal offense involving dishonesty or breach of trust or had ever entered into a pretrial diversion or similar program failed to adequately examine these individuals. Additionally, is it considered adequate to ask prospective employees whether they have ever been convicted of a crime other than a misdemeanor or a summary offense and to conduct background checks?

If the latter is not considered to be sufficient, would credit unions be required to take action to identify whether their current employees were ever convicted of a criminal offense involving dishonesty or breach of trust or had entered into a pretrial diversion or similar program in connection with a prosecution for such an offense? Would credit unions also be obliged to scrutinize members of all affiliated parties in a similar manner?

It is our belief that more direction is needed regarding the actions required by credit unions when hiring vendors and consultants. Should credit unions require evidence of background checks for all consultants? Is it sufficient to stipulate in contracts with vendors that no individuals who were convicted of a criminal offense involving dishonesty or breach of trust or who had entered into a pretrial diversion program should have any dealings with the credit union?

Offenses Covered by Section 205(d)

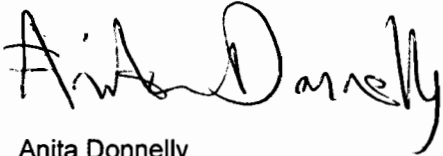
Section 205(d) is very broad in scope regarding types of offenses. The proposed IRPS states that offenses involving dishonesty include acts that show a want of integrity, lack of probity or a disposition to distort, cheat or act deceitfully or fraudulently. Given that probably all offenses involve dishonesty or breach of trust in one form or another; does this mean that virtually all offenses resulting in criminal convictions or entry into diversion programs are included in Section 205(d)?

Procedure for Obtaining NCUA Board's Consent

In response to the NCUA's invitation to credit unions to comment on whether an unstructured application process or a more formalized one would be beneficial, UNFCU believes that a structured application with clear guidance on the nature of the information to be included in the application is preferable. A specific form should be provided by the NCUA. This would avoid applications being denied or delayed because of insufficient documentation and would help eschew information that does not directly support the application or help NCUA in its decision making process.

UNFCU would like to thank you for this opportunity to share its views on this proposed IRPS. Should you have any questions or require additional information please contact me at (347) 686-6701 or email me at adonnelly@unfcu.com.

Respectfully yours,

A handwritten signature in black ink that reads "Anita Donnelly". The signature is written in a cursive style with a large, prominent "A" and "D".

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