



**America's  
Credit Unions**

January 8, 2024

Melane Conyers-Ausbrooks  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314

**RE: Fair Hiring in Banking (RIN 3133–AF55)**

Dear Secretary Conyers-Ausbrooks:

On behalf of America's Credit Unions, I am writing in response to the National Credit Union Administration's (NCUA) Notice of Proposed Rulemaking, "Fair Hiring in Banking" (NPRM). America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide. America's Credit Unions appreciates the opportunity to provide information on the impact of the proposed rule<sup>1</sup> on our members. Overall, we support the NCUA's proposal to codify the Fair Hiring in Banking Act (FHBA)<sup>2</sup> and the flexibilities and exceptions originally implemented under the NCUA Interpretive Ruling and Policy Statement 19-01 ("Second Chance IRPS"). The Second Chance IRPS was supported by both of America's Credit Unions' predecessor organizations — the National Association of Federally-Insured Credit Unions (NAFCU) and the Credit Union National Association (CUNA) — in comment letters submitted on September 26, 2019<sup>3</sup> and September 27, 2019<sup>4</sup>, respectively. Credit unions embody the second chance philosophy and serve a number of populations that may be disenfranchised or unbanked. It is fitting that the provisions of the FHBA and Second Chance IRPS are codified as regulation.

**General Comments**

Section 205(d) of the Federal Credit Union Act ("FCU Act") prohibits, except with the prior written consent of the NCUA 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

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<sup>1</sup> Fair Hiring in Banking (NPRM), 88 Federal Register 76702 (Nov. 7, 2023).

<sup>2</sup> Public Law 117-263, §5705.

<sup>3</sup> NAFCU letter to NCUA Re: Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act (RIN: 3133-AF02), (Sept. 26, 2019).  
[https://www.nafcu.org/system/files/files/Letter%20to%20NCUA%20re%20Second%20Chance%20IRPS\\_09.26.19\\_REV.pdf](https://www.nafcu.org/system/files/files/Letter%20to%20NCUA%20re%20Second%20Chance%20IRPS_09.26.19_REV.pdf).

<sup>4</sup> CUNA letter to NCUA RE: Exceptions to Employment Restrictions Under 205(d) of the Federal Credit Union Act (RIN: 3133-AF02), (Sept. 27, 2019).

program in connection with a prosecution for each offense, from participating in the affairs of an insured credit union without the prior written consent of the NCUA Board.<sup>5</sup>

In 2019, the NCUA Board issued the final Second Chance IRPS, which (1) updated the general criteria for de minimis exceptions to the requirement for consent and (2) expanded the scope to include additional offenses to qualify as de minimis exceptions. This guidance lessened the regulatory burden of applying for consent applications through the NCUA Board and gave credit unions expanded discretion when choosing whether to hire workers whose criminal records consisted of only de minimis offenses. A de minimis offense was originally required to meet five general criteria:

- 1) There is only one conviction for a covered offense;
- 2) The offense was punishable by imprisonment for less than one year and/or a fine of less than \$1,000, and the punishment imposed by the court did not include incarceration;
- 3) The conviction occurred at least five years prior to the date an application would otherwise be required;
- 4) The offense did not involve an insured depository institution or insured credit union; and
- 5) The Board or any other federal financial institution regulatory agency has not previously denied consent for the same conviction.

The Second Chance IRPS updated criteria 2 as follows: The offense was punishable by imprisonment for one year or less and/or \$2,500 or less, and those punishable by three days or less of jail time. It further expanded the scope of de minimis exceptions to include convictions for insufficient funds checks, simple theft under \$500, and use of a fake identification card. It also classified as de minimis convictions that occurred when an individual was 21 years old or younger and who met the de minimis criteria in addition to the conviction having been entered at least 30 months prior to the date an application would otherwise be required and that all sentencing requirements were met prior to the date the application would be required. Finally, it provided clarification for when a conviction was considered “expunged” for purposes of Section 205(d).

On December 23, 2022, Congress passed the National Defense Authorization Act for Fiscal Year 2023 (NDAA) which included the FHBA. The FHBA amended Section 205(d) to expand employment opportunities for those with previous de minimis or aged criminal offenses, among other provisions. While the FHBA primarily codifies elements already applicable through the Second Chance IRPS, it extends greater relief to individuals with older convictions, expunged convictions, or prior convictions for a misdemeanor, any drug-related possession offense, of certain designated “lesser offenses.” The NCUA Board’s rule is consistent with the FHBA and with similar changes recently made by the Federal Deposit Insurance Commission (FDIC).<sup>6</sup>

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<sup>5</sup> 12 U.S.C. §1785(d).

<sup>6</sup> See 88 FR 77906 (Nov. 14, 2023).

The NPRM largely incorporates the provisions of the Second Chance IRPS, which would be rescinded after the publication of the final rule. The proposed rule includes a few changes and updates including expanded relief, allows expunged records, which required a consent application under the Second Chance IRPS, to be removed, and raises the de minimis criteria for excluding instances of passing bad checks from \$1,000 to \$2,000. The U.S. Bureau of Labor Statistics inflation calculator indicates that since 2008, inflation has risen almost 40 percent and since 2019, nearly 20 percent. It is appropriate for the de minimis criteria to keep pace with the cost of living.

The National Institute of Justice (NIJ) said, in 2012, that nearly one-third of American adults have been arrested by age 23.<sup>7</sup> Many of these people, despite having a criminal record that appears on a background check, were not convicted of a crime.<sup>8</sup> Of those who were, many will be unable to find employment, although they have paid their dues, are qualified for the positions for which they apply, and are unlikely to reoffend.<sup>9</sup> Studies funded by the NIJ showed that criminal record reduces the likelihood of a job callback or offer by approximately 50 percent and that number is disproportionately higher for job seekers of color.<sup>10</sup>

Feedback from member credit unions indicate that the reluctance to hire candidates with criminal records may be more strongly influenced by both the need to gain consent from the NCUA Board and the potential bondability of the candidate than concerns regarding the criminal offense. Applying to the Board for consent can be a difficult and time-consuming process. Some find the amount of information requested to be lengthy and onerous and others have had difficulty obtaining certain background information due to the lack of information available on older criminal record systems. America's Credit Unions appreciates the steps to be taken to make the forms available on the public website and to rely primarily on the information in FBI "rap sheets" to consider applications, but encourages the NCUA to weigh the value of information sought against the feasibility of obtaining certain documentation and consider eliminating some of the more stringent requirements for background information.

Further, credit unions in rural areas with high addiction rates have indicated that the classification of possession of an illegal substance as a de minimis offense would increase the pool of potential candidates. The National Institute of Health published a study on the therapeutic effects of employment in treating drug addiction and found that work establishes incentives for promoting and maintaining abstinence from illegal substances.<sup>11</sup> In the spirit of assisting communities in reaching their fullest potential, credit unions should have the ability to offer employment opportunities to more eligible candidates, including those battling addiction.

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<sup>7</sup> Amy Solomon, "In Search of a Job: Criminal Records as Barriers to Employment," National Institute of Justice (2012), [https://nij.ojp.gov/topics/articles/search-job-criminal-records-barriers-employment\\_](https://nij.ojp.gov/topics/articles/search-job-criminal-records-barriers-employment_)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Silverman K, Holtyn AF, Morrison R. The Therapeutic Utility of Employment in Treating Drug Addiction: Science to Application. *Transl Issues Psychol Sci.* 2016 Jun;2(2):203-212. doi: 10.1037/tps0000061. PMID: 27777966; PMCID: PMC5074553.

## **Fidelity Bonds**

Section 120 of the FCU Act requires credit unions to obtain fidelity bonds regarding, “every person appointed or elected” by an FCU “to any position requiring the receipt, payment or custody of money or other personal property” of the FCU. Our member credit unions have raised concerns that employing individuals with de minimis convictions would result in higher premiums or additional fees. Discussions with industry partners have indicated that while premiums have not risen as a result of the Second Chance IRPS, it is still too soon to determine the long-term effect on bondability. Insurance providers still intend to complete a full underwriting of an employee’s risk and their criminal history will be a factor in determining that premium. For that reason, America’s Credit Unions cautions the NCUA to closely monitor the impacts that these changes have on bondability and the affordability of employment for credit unions, especially smaller institutions.

## **Conclusion**

America’s Credit Unions appreciates the opportunity to comment on this matter and the NCUA’s attention to the issues important to credit unions and their members. If you have any questions or concerns, please do not hesitate to contact me at [asmith@AmericasCreditUnions.org](mailto:asmith@AmericasCreditUnions.org) or (703) 842-2803.

Sincerely,

A handwritten signature in black ink that reads "Amanda L. Smith". The signature is written in a cursive, flowing style.

Amanda L. Smith  
Senior Regulatory Affairs Counsel