

National Credit Union Administration  
**SUPPORTING STATEMENT**

Interpretive Ruling and Policy Statement (IRPS) 19-1;  
Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act  
("Second Chance IRPS")  
**OMB No. 3133-0203**

Summary of Action – Final Rule:

The NCUA has issued a final Interpretive Ruling and Policy Statement (IRPS) regarding statutory prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d)(1). Section 205(d) of the Federal Credit Union Act<sup>1</sup> prohibits, without 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 program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union. The final IRPS amends and expands the current *de minimis* exception to reduce the scope and number of offenses that would require an application, NCUA Form 3250, "Application to Request Consent Pursuant to Section 205(d)" to the Board. Specifically, the IRPS will not require an application for insufficient funds checks of aggregate moderate value, small dollar simple theft, false identification, simple drug possession, and isolated minor offenses committed by covered persons as young adults. This IRPS 19-1 replaces IRPS 08-1.

**A. JUSTIFICATION**

**1. Circumstances that make the collection of information necessary.**

This information collection is required under Section 205(d) of the Federal Credit Union Act (FCU Act) to allow the National Credit Union Administration (NCUA) Board to make an informed decision whether to grant a waiver of the prohibition imposed by law under Section 205(d) of the FCU Act. Section 205(d) of the FCU Act prohibits a 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 a federally-insured credit union except with the prior written consent of the NCUA Board. The Interpretive Ruling and Policy Statement (IRPS) 19-1 prescribes the information collection contained therein, implement the requirements of the FCU Act.

**2. Purpose and use of the information collection.**

Any federally-insured credit union that wishes to seek a waiver for a person who is prohibited under Section 205(d) of the FCU Act must apply for the NCUA Board's written approval before such person may participate in its affairs. NCUA Form 3250, "Application to Request Consent Pursuant to Section 205(d)," is to be used by respondents in requesting a determination as to whether the prohibited person poses a risk

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<sup>1</sup> 12 U.S.C. 1785(d)(1)

to the safety and soundness of the federally-insured credit union (FICU) or the interests of its members or threatens to impair public confidence in the federally-insured credit union. Some applicants that would have previously provided a Form 3250 under IRPS 08-1, are now required to document in their files that an application is not required because the offense is considered *de minimis* and meets the criteria for the exception.

An application must be filed by a FICU on behalf of a person unless the NCUA Board grants a waiver of that requirement and allows the person to file an application in their own right. Such waivers will be consideration on a case-by-case basis where substantial good cause for granting a waiver is shown.

If the Board withholds consent, A FICU may request a hearing (or in the case where a waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30-days following the date of the Board's action.

**3. Use of information technology.**

NCUA Form 3250, is unique to each applicant and requires certification by the prohibited person and, where applicable, the sponsoring credit union official as to the accuracy of the information provided. However the FICU may use any technology to the extent feasible and appropriate in completing the application

**4. Duplication of information.**

There is no duplication of information. Each application is a unique submission of the FICU or of the individual. Similar information is not available from any other source. A FICU or individual prepares the application only when it is necessary to seek the NCUA Board's consent to the participation by a covered person in the affairs of the insured institution.

**5. Efforts to reduce burden on small entities.**

All FICUs, regardless of size, are subject to the application requirements of Section 205(d) of the FCU Act. The information requested on the application form is considered to be the minimum needed by the NCUA to evaluate the application. The applicant is requested to give brief responses.

**6. Consequences of not conducting the collection.**

The FCU Act requires FICUs to receive NCUA approval before they can allow persons prohibited by Section 205(d) of the FCU Act to participate in their affairs. Federally-insured credit unions will apply for approval for such prohibited persons only if necessary.

**7. Inconsistencies with guidelines in 5 CFR 1320.5(d)(2).**

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

**8. Efforts to consult with persons outside the agency.**

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed IRPS, published in the *Federal Register* on July 29, 2019, at 84 FR 36488, providing an opportunity for the public to comment on the information collection requirements. There were no direct comments received in response to the PRA notice; but PRA comments were received in response to the proposed IRPS. These comments were associated with the NCUA Form 3250, “Application to Request Consent Pursuant to Section 205(d)” and discussed in the preamble of the final IRPS as follows:

The IRPS revised and updated the application form (NCUA 325) that is required to be used to submit a Section 205(d) consent request, “Application to Request Consent Pursuant to Section 205(d),” to reflect the proposed changes and to conform to current regulatory requirements. The Section 205(d) application form was also modified to more clearly delineate between the two types of applications (credit union-sponsored versus individual) and the supporting documentation required for each.

Stakeholders who commented on this aspect of the proposal were generally supportive of the proposed edits to the Section 205(d) application form. One commenter, however, noted some credit unions have found the current information requested to be lengthy and onerous to both the credit union and the covered individual, particularly in cases where background information is difficult to obtain from old criminal record systems. Another commenter urged the Board to go further in more expressly encouraging covered individuals to submit individual applications.

Upon review of the comments, the Board has adopted improvements to the Section 205(d) application form. The revised application form will more clearly delineate between the two application options, which will make it more user-friendly and may encourage more applicants to file individual applications for blanket waivers.

While the Board recognizes it may be difficult to obtain older records pertaining to offenses that occurred long ago, it remains incumbent on the applicant to provide pertinent documentation to support the application in order for the NCUA to properly evaluate the merits of the consent request. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the statutory employment restrictions under Section 205(d), the individual is fit to participate in the conduct of the affairs of an insured credit union without posing undue risks to its safety and soundness or impairing public confidence in the insured credit union. The Board maintains that the information requested on the

application form is the minimum amount necessary for the agency to gain an understanding of the circumstances surrounding the conviction or program entry and to evaluate all the relevant factors and criteria the NCUA will consider in determining whether to grant consent. Finally, the Board reiterates that the burden remains upon the applicant to establish that the application warrants approval.

**9. Payment or gifts to respondents.**

No payment or gift will be made to respondents.

**10. Assurance of confidentiality.**

There is no assurance of confidentiality other than provided by law. The information collected is maintained and protected in accordance with the Privacy Act requirements.

**11. Questions of a sensitive nature.**

The System of Records (SORN) associated with this information collection is NCUA-13, Litigation Case Files (75 FR 41539). Records covered by this SORN are maintained in files by the case name of individuals who are: the subject of NCUA investigations made in contemplation of legal action; involved in civil litigation with NCUA or involved in administrative proceedings; involved in litigation of interest to NCUA; or pursuing tort claims.

The application requires sensitive information pertaining to a person's conviction of criminal offense(s) involving dishonesty or a breach of trust. This information includes Personally Identifiable Information (PII), including name, address, telephone number, date of birth and social security number. This information is necessary to assist the NCUA in assessing the merits of the application as required by Section 205(d) of the FCU Act.

**12. Burden of information collection.**

The number of potential respondents includes 5,308 credit unions, the total number of FICUs as of June 2019. The requirements of the IRPS only apply to FICUs that wish to seek the NCUA Board's written approval to permit persons who are prohibited under Section 205(d) of the FCU Act to participate in their affairs. NCUA has received approximately six application requests in the past three years, but with the new expanded *de minimis* exceptions in place, NCUA estimates an average of one annually. Some FICUs that would have previously provided a Form 3250 under IRPS 08-1, are now required to document in their files that an application is not required because the offense is considered *de minimis* and meets the criteria for the exception. There has been one individual waiver request received in the past year and no hearing request since 2008. Below is the summary of the burden:

Information Collection	Type of Burden	# Respondents	# Responses per Respondent (frequency)	Total Annual Responses	Hours per Response	Total Annual Burden	Previously Approved Hours	Difference
NCUA Form 3250, Application to Request Consent to Sec. 205(d)	Reporting	1	1	1	2	2	6	-4
Wavier for individual to submit directly to Board	Reporting	1	1	1	0.50	0.50	1	-0.50
Request hearing of Denial	Reporting	1	0	0	0	0	0	0
Documentation when application is not required	Recordkeeping	2	1	2	0.25	0.50	0	0.50
<b>TOTAL</b>		<b>4</b>	<b>1</b>	<b>4</b>	<b>0.75</b>	<b>3</b>	<b>7</b>	<b>-4</b>

Based on the labor rate of \$35 per hour, the total cost to respondents is \$105.

NCUA anticipates a FICU's application for approval under Section 205(d) of the FCU Act would consist of a cover letter and any documents pertaining to the prohibited person's conviction or participation in a pretrial diversion program. Those documents may already be in the possession of the prohibited person.

**13. Capital start-up or on-going operation and maintenance costs.**

There are no capital start-up or maintenance costs.

**14. Annualized costs to Federal government.**

This collection does not involve any unique costs to the agency. Review of the submissions is part of the usual and customary supervision of credit unions.

**15. Changes in burden.**

The NCUA has expanded the *de minimis* exceptions to reduce the scope and number of offenses that would require an application (NCUA Form 3250) to the Board. Some of those that would have previously provided a Form 3250 under IRPS 08-1, should now document in their files that an application is not required because the offense is considered *de minimis* and meets the criteria for the exception. This IRPS will reduce the total number of applications from three to one, for a total reduction of 4 burden hours for the entire collection requirements under this IRPS; 3 burden hours requested. This final IRPS 19-1 replaces IRPS 08-1.

**16. Information collection planned for statistical purposes.**

The NCUA posts [Board appeal](#) and consent request decisions dating back to 1994, with redactions made for personal privacy in accordance with exemption (b)(6) of the Freedom of Information Act (FOIA). This webpage would include decisions on consent requests submitted via the NCUA Form 3250.



**17. Request non-display the expiration date of the OMB control number.**

The display of an expiration date may cause confusion among respondents when providing information by a prescribed date. Non-display of the expiration date of the OMB approval is requested.

**18. Exceptions to the Certification for Paperwork Reduction Act Submission.**

There are no exceptions to the certification statement.

**A. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.