



The National Association of State Credit Union Supervisors

January 8, 2024

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: NASCUS Comments on NCUA Fair Hiring in Banking; Docket No. NCUA-2023-0023, RIN 3133-AF55

Dear Secretary Conyers-Ausbrooks:

The National Association of State Credit Union Supervisors¹ submits the following comments in response to the National Credit Union Administration's (NCUA's) proposed changes and request for comment regarding the incorporation of its "Second Chance" Interpretive Ruling and Policy Statement 19-1 (IRPS 19-1)² and the Fair Hiring in Banking Act (FHBA)³ into its regulations.

As discussed in the proposed rule⁴, the Federal Credit Union Act (FCUA) prohibits, except with the NCUA Board's prior written consent, any person who has been convicted of certain criminal offenses involving dishonesty or breach of trust (a covered offense), or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense (program entry), from participating in the conduct of the affairs of an insured credit union.

NASCUS thanks the NCUA for the opportunity to comment on this important issue and is generally supportive of the proposed changes. We appreciate the NCUA's effort and commitment to further provide a meaningful second chance to individuals seeking employment within the financial services sector. By modifying and expanding the current de minimus offenses deemed automatically approved by the NCUA Board to make a hiring decision, the proposal expands opportunities for such individuals. Additionally, by expanding the category of de minimus offenses, the NCUA better aligns itself with the Federal Deposit Insurance Corporation (FDIC).

With this proposal, the NCUA has taken a measured approach that balances mitigating the risk to federally insured credit unions, while also reducing regulatory burden, and continuing to protect federally insured credit unions from risks posed by individuals who have been previously convicted of certain criminal offenses. Importantly, the proposed rule would not require a credit union to hire any specific candidate, regardless of their background, but rather provides credit unions flexibility to hire candidates of choice without having to seek NCUA approval.

NCUA is seeking comment on whether the final rule should include additional information on who may fall within the scope of section 205(d), including persons who participate in the conduct of the affairs of an *insured* credit union.

¹ NASCUS is the professional association of the nation's 46 state credit union regulatory agencies that charter and supervise over 1,900 state credit unions. NASCUS membership includes state regulatory agencies, credit unions, and credit union system stakeholders. State-chartered credit unions hold over half the \$2.2 trillion assets in the credit union system and are proud to represent nearly half of the 136.5 million credit union members.

² NCUA Interpretive Ruling and Policy Statement 19-1, Exceptions to Employment Restrictions Under Section 205(d) of the FCUA ("Second Chance IRPS"), 84 Fed. Reg. 65907 (December 2, 2019)

³ Public Law 117-263 (Dec. 23, 2022)

⁴ 88 Fed. Reg. 76702 (November 7, 2023)



The National Association of State Credit Union Supervisors

The proposed rule refers to offenses involving “insured credit unions” or “insured depository institutions” when assessing and determining whether a given offense is “covered” or not. Explicitly stating “insured” credit union or depository institution is problematic as it is too narrowly focused on whether an institution is “insured”. If the offense involved a credit union or financial institution, regardless of whether insured or not, it should be considered a covered offense. NASCUS encourages the NCUA to expand the scope of the proposal’s covered offenses to include offenses involving any credit union.

Proposed Changes to §701.14 -Change in Official or Senior Executive Officer in Credit Unions that are New Chartered or in Troubled Condition

Currently, NCUA’s §701.14 generally requires that insured credit unions that are newly chartered or in troubled condition file a notice with the NCUA before adding, replacing, or changing the duties of a board or committee member or a senior executive officer.⁵ The proposed rule would make minor, clarifying amendments as to when a notice is required, how the NCUA would process the notice, and what information must be included in the NCUA’s notice of disapproval to the applicant.

First, the proposed rule would clarify when a notice is required for such a change and would specify that a credit union must provide notice when adding or replacing any member of its board of directors or committees when employing any person as a senior executive officer of the credit union, or changing the responsibilities of a board member, committee member, or senior executive officer if the person were assuming a different position. NASCUS believes this change does provide necessary clarification but encourages NCUA to ensure Federally Insured State Chartered Credit Unions (FISCUs) remain aware of the notification requirements to their respective state supervisory authority as currently addressed in §701.14(c)(3).

The NCUA also proposes to increase the amount of time the agency has to initially review a notice from the current 10 calendar day limit to 15 calendar days. (See §701.14(c)(3)(iii)). The proposal indicates that NCUA staff has signaled that 10 calendar days is difficult to meet.

While NASCUS agrees it is important to conduct a thorough review of each request prior to approval to ensure an individual is qualified to serve in a credit union, we do not support extending the time for NCUA review to 15 calendar days.

Extending the initial review to 15 calendar days, particularly for a troubled credit union, is problematic. As NCUA understands, time is of the essence in these situations, and the risks of adding 5 extra days to the review process far outweigh any benefit. In consulting with state regulators with experience in reviewing candidates pursuant to state laws and procedures, the consensus view was that 10 calendar days was more than sufficient to conduct the review.

Conclusion

NASCUS supports the alleviation of regulatory burdens while providing more opportunities for individuals to gain employment within a credit union. We support most of the provisions of the proposal, particularly the inclusion of specific detailed information in notices of disapproval. It is important however to reiterate that the decision to extend an offer of employment to any individual candidate rests exclusively with the credit unions. Additionally, any hiring decision should be made through a fair hiring process and unbiased against protected

⁵ 12 CFR 701.14



The National Association of State Credit Union Supervisors

classes. In that respect, we would also urge NCUA to regularly review its disposition of submitted notices to ensure the review of individuals with covered offenses is itself being conducted equitably.

We thank the NCUA for the opportunity to provide comments and would be happy to answer any questions.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson
Vice President, Regulatory Affairs
NASCUS