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independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions in paragraph (a)(1) through (3) of this section have been met. If independent legal counsel concludes the conditions have been met, the board of directors may rely on the opinion in authorizing the requested indemnification.

[76 FR 30517, May 26, 2011; 79 FR 12658, Mar. 6, 2014, as amended at 85 FR 62214, Oct. 2, 2020]

§ 750.6 Filing instructions; appeal.

(a) Requests to make excess non-discriminatory severance plan payments pursuant to § 750.1(d)(2)(v) and golden parachute payments permitted by § 750.4 must be submitted in writing to NCUA. In the case of a Federal or state chartered natural person credit union, such written requests must be submitted to the NCUA regional director for the region in which the credit union is located. In the case of a Federal or state-chartered corporate credit union or a ONES credit union under part 700 of this chapter, such written requests must be submitted to the Director of the Office of National Examinations and Supervision. The request must be in letter form and must contain all relevant factual information as well as the reasons why such approval should be granted. If written concurrence by the state supervisory authority is required, the requesting party must submit a copy of its written request to the state supervisory authority where the credit union is located.

(b) A FICU whose request for approval by NCUA, in accordance with paragraph (a) of this section, has been denied may seek reconsideration of the request and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

[76 FR 30517, May 26, 2011, as amended at 78 FR 32545, May 31, 2013; 79 FR 12658, Mar. 6, 2014; 82 FR 50297, Oct. 30, 2017; 85 FR 62214, Oct. 2, 2020; 87 FR 45010, July 27, 2022]

§ 750.7 Applicability in the event of liquidation or conservatorship.

The provisions of this part, or any consent or approval granted under the provisions of this part by NCUA, will

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not in any way bind any liquidating agent or conservator for a failed federally insured credit union and will not in any way obligate the liquidating agent or conservator to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits that are contingent, even if otherwise vested, when a liquidating agent or conservator is appointed for any federally insured credit union, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such liquidating agent or conservator. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IAP contrary to 12 U.S.C. 1786(t)(3).

PART 752—CONSENT TO SERVICE OF PERSONS CONVICTED OF, OR WHO HAVE PROGRAM ENTRIES FOR, CERTAIN CRIMINAL OFFENSES

Sec.

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AUTHORITY: 12 U.S.C. 1785(d).

SOURCE: 89 FR 79393, Sept. 30, 2024, unless otherwise noted.

§ 752.1. What is section 205(d) of the Federal Credit Union Act?

(a) This part covers applications under section 205(d) of the Federal Credit Union Act (FCU Act), 12 U.S.C. 1785(d). The NCUA refers to such applications as “consent applications.” Under section 205(d), any person who

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has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pre-trial diversion or similar program (program entry) in connection with a prosecution for such offense (collectively, Covered Offenses), may not become, or continue as, an institution-affiliated party (IAP) of an insured credit union; or otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union without the prior written consent of the NCUA. Section 205(d) imposes a ten-year ban against the Board granting consent for a person convicted of certain crimes enumerated in title 18 of the United States Code (U.S.C.). In order for the Board to grant consent during the 10-year period, the Board must file a motion with, and obtain the approval of, the sentencing court.

(b) In addition, the law prohibits an insured credit union from permitting such a person to engage in any conduct or to continue any relationship prohibited by section 205(d). Insured credit unions must therefore make a reasonable, documented, inquiry to verify an applicant's history to ensure that a person who has a Covered Offense under section 205(d) is not hired or permitted to participate in its affairs without the written consent of the NCUA issued under this subpart. Insured credit unions may extend a conditional offer of employment contingent on the completion of a background check satisfactory to the credit union to determine if the applicant is prohibited under section 205(d), but the applicant may not work for, be employed by, or otherwise participate in the affairs of the insured credit union until the credit union has determined that the applicant is not prohibited under section 205(d) (including persons who have had a consent application approved).

(c) If there is a conviction or program entry covered by the prohibitions of section 205(d), an application under this subpart must be filed seeking the NCUA's consent to become, or to continue as, an IAP; or to otherwise participate, directly or indirectly, in the affairs of the insured credit union. The application must be filed, and consented to, prior to serving in any of the

foregoing capacities unless such application is not required under the subsequent provisions of this subpart. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the prohibition, a person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that credit union. The burden is upon the applicant to establish that the application warrants approval.

(d) The term *field office*, for purposes of this subpart, means a Regional Office or the Office of National Examinations and Supervision, as described in 12 CFR 790.2.

§ 752.2 Who is covered by section 205(d)?

(a) Persons covered by section 205(d) include IAPs, as defined by 12 U.S.C. 1786(r), and others who are participants in the conduct of the affairs of an insured credit union. Therefore, all directors, officers, and employees of an insured credit union who fall within the scope of section 205(d), including *de facto* employees, as determined by the NCUA based upon generally applicable standards of employment law, will also be subject to section 205(d). Whether other persons are covered by section 205(d) depends upon their degree of influence or control over the management or affairs of an insured credit union. For example, section 205(d) would apply to directors and officers of affiliates, subsidiaries, or joint ventures of an insured credit union if they participate in the affairs of the insured credit union or are able to influence or control the management or affairs of the insured credit union. Typically, an independent contractor does not have a relationship with the insured credit union other than the activity for which the credit union has contracted. However, an independent contractor who also influences or controls the management or affairs of the insured credit union would be covered by section 205(d).

(b) The term *person*, for purposes of section 205(d), means an individual and does not include a corporation, firm, or other business entity.

§ 752.3 Which offenses qualify as “Covered Offenses” under section 205(d)?

(a) *Categories of Covered Offenses.* The conviction or program entry must be for a criminal offense involving dishonesty or breach of trust.

(1) The term *criminal offense involving dishonesty*—

(i) Means an offense under which an individual, directly or indirectly—

(A) Cheats or defrauds; or

(B) Wrongfully takes property belonging to another in violation of a criminal statute;

(ii) Includes an offense that Federal, state, or local law defines as dishonest, or for which dishonesty is an element of the offense; and

(iii) Does not include—

(A) A misdemeanor criminal offense committed more than 1 year before the date on which an individual files a consent application, excluding any period of incarceration; or

(B) An offense involving the possession of controlled substances. At a minimum, this exclusion applies to criminal offenses involving the simple possession of a controlled substance and possession with intent to distribute a controlled substance. This exclusion may also apply to other drug-related offenses depending on the statutory elements of the offenses or from court determinations that the statutory provisions of the offenses do not involve dishonesty or breach of trust as noted in paragraph (b) of this section. Potential applicants may contact their appropriate NCUA field office if they have questions about whether their offenses are covered under section 205(d).

(iv) The term *offense committed* in paragraph (a)(1)(iii)(A) of this section means the last date of the underlying misconduct. In instances with multiple offenses, *offense committed* means the last date of any of the underlying offenses.

(2) The term *breach of trust* means a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity, or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

(b) *Elements of the offense.* Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the offense itself or from court determinations that the statutory provisions of the offense involve dishonesty or breach of trust.

(c) *Certain older offenses excluded*—(1) *Exclusions for certain older offenses.* Section 205(d) does not apply to an offense if—

(i) It has been 7 years or more since the offense occurred; or

(ii) The individual was incarcerated with respect to the offense, and it has been 5 years or more since the individual was released from incarceration.

(iii) The term *offense occurred* means the last date of the underlying misconduct. In instances with multiple Covered Offenses, *offense occurred* means the last date of any of the underlying offenses.

(2) *Offenses committed by individuals 21 years of age or younger.* For individuals who committed an offense when they were 21 years of age or younger, section 205(d) does not apply to the offense if it has been more than 30 months since the sentencing occurred. The term *sentencing occurred* means the date on which a court imposed the sentence (as indicated by the date on the court’s sentencing order), not the date on which all conditions of sentencing were completed.

(3) *Limitation.* This paragraph (c) does not apply to an offense described under 12 U.S.C. 1785(d)(2).

(d) *Foreign convictions.* Individuals who are convicted of, or enter into a pretrial diversion program for, a criminal offense involving dishonesty or breach of trust in any foreign jurisdiction are subject to section 205(d), unless the offense is otherwise excluded by this subpart.

§ 752.4 What constitutes a conviction under section 205(d)?

(a) *Convictions requiring an application.* There must be a conviction of record. Section 205(d) does not cover arrests or pending cases not brought to trial, unless the person has a program entry as set out in § 752.5. Section 205(d) does not cover acquittals or any conviction that has been reversed on appeal, unless the reversal was for the

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purpose of re-sentencing. A conviction with regard to which an appeal is pending requires an application. A conviction for which a pardon has been granted requires an application.

(b) *Convictions not requiring an application.* When an individual is charged with a Covered Offense and, in the absence of a program entry as set out in § 752.5, is subsequently convicted of an offense that is not a Covered Offense, the conviction is not subject to section 205(d).

(c) *Expungement, dismissal, and sealing.* A conviction is not considered a conviction of record and does not require an application if—

(1) There is an order of expungement, sealing, or dismissal that has been issued regarding the conviction in connection with such offense, or if a conviction has been otherwise expunged, sealed, or dismissed by operation of law; and

(2) It is intended by the language in the order itself, or in the legislative provisions under which the order was issued, or in other legislative provisions, that the conviction shall be destroyed or sealed from the individual's state, Tribal, or Federal record, even if exceptions allow the conviction to be considered for certain character and fitness evaluation purposes.

(d) *Youthful offenders.* An adjudication by a court against a person as a “youthful offender” (or similar term) under any youth-offender law applicable to minors as defined by state law, or any judgment as a “juvenile delinquent” (or similar term) by any court having jurisdiction over minors as defined by state law, does not require an application. Such an adjudication does not constitute a matter covered under section 205(d) and is not a conviction or program entry for determining the applicability of § 752.8.

§ 752.5 What constitutes a pretrial diversion or similar program under section 205(d)?

(a) The term “pretrial diversion or similar program” (program entry) means a program characterized by a suspension or eventual dismissal or reversal of charges or criminal prosecution upon agreement by the accused to restitution, drug or alcohol rehabilita-

tion, anger management, or community service. Whether the outcome of a case constitutes a program entry is determined by relevant Federal, state, or local law, and, if not so designated under applicable law, then the determination of whether a disposition is a program entry will be made by the Board on a case-by-case basis.

(b) When a Covered Offense either is reduced by a program entry to an offense that would otherwise not be covered by section 205(d) or is dismissed upon successful completion of a program entry, the offense remains a Covered Offense for purposes of section 205(d). The Covered Offense will require an application unless it is *de minimis* as provided by § 752.8.

(c) Expungements, dismissals, or sealings of program entries will be treated the same as those for convictions.

§ 752.6 What are the types of applications that can be filed?

(a) The NCUA will accept applications from—

(1) An individual; or

(2) An insured credit union applying on behalf of an individual.

(b) An individual or an insured credit union may file applications at separate times. Under either approach, the application(s) must be filed with the appropriate NCUA field office, as required by this part.

§ 752.7 When may an application be filed?

Except for situations in which no application is required under section 205(d) and this subpart, an application must be filed when there is a conviction by a court of competent jurisdiction for a Covered Offense by any adult or minor treated as an adult or when such person has a program entry regarding that offense. Before an application may be filed, all of the sentencing requirements associated with a conviction, or conditions imposed by the program entry, including but not limited to, imprisonment, fines, conditions of rehabilitation, and probation requirements, must be completed, and the case must be considered final by the procedures of the applicable jurisdiction. The NCUA's application forms as

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well as additional information concerning section 205(d) can be accessed on the NCUA's website.

§ 752.8 What is the *de minimis* exemption?

(a) *In general.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, where all of the following *de minimis* criteria are met. (Paragraph (b)(4) of this section contains separate exemption criteria from paragraphs (a) through (b)(3) of this section, and an offense that qualifies for exemption under paragraph (b)(4) is excluded from consideration in the criteria of paragraphs (a) through (b)(3).)

(1) The individual has been convicted of, or has program entries for, no more than two Covered Offenses, including those subject to paragraphs (b)(1) through (3) of this section; and for each Covered Offense, all of the sentencing requirements associated with the conviction, or conditions imposed by the program entry, have been completed (the sentence- or program-completion requirement does not apply under paragraph (b)(2) of this section).

(2) For each Covered Offense, the individual could have been sentenced to a term of confinement in a correctional facility of 3 years or less and/or a fine of \$2,500 or less, and the individual actually served 3 days or less of jail time for each Covered Offense.

(3) Jail time under paragraph (a)(2) of this section is calculated based on the time an individual spent incarcerated as a punishment or a sanction—not as pretrial detention—and does not include probation or parole where an individual was restricted to a particular jurisdiction or was required to report occasionally to an individual or a specific location. Jail time includes confinement to a psychiatric treatment center in lieu of a jail, prison, or house of correction on mental-competency grounds. The definition is not intended to include either of the following: persons who are restricted to a substance-abuse treatment program facility for part or all of the day; or persons who are ordered to attend outpatient psychiatric treatment.

(4) If there are two convictions or program entries for a Covered Offense,

each conviction or program entry was entered at least 3 years prior to the date an application would otherwise be required, except as provided in paragraph (b)(1) of this section.

(5) Each Covered Offense must not have been committed against an insured depository institution or insured credit union.

(b) *Other types of offenses for which the de minimis exemption applies and no application is required—*(1) *Age of person at time of Covered Offense.* If there are two convictions or program entries for a Covered Offense, and the actions that resulted in both convictions or program entries all occurred when the individual was 21 years of age or younger, then the *de minimis* criteria in paragraph (a)(4) of this section will be met if the convictions or program entries were entered at least 18 months prior to the date an application would otherwise be required. For this reduction in waiting time to apply, the convictions or program entries must meet the other *de minimis* criteria in paragraph (a) of this section.

(2) *Convictions or program entries for insufficient funds checks.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to convictions or program entries of record based on the writing of “bad” or insufficient funds check(s) if the following conditions apply:

(i) The aggregate total face value of all “bad” or insufficient funds check(s) cited across all the conviction(s) or program entry(ies) for “bad” or insufficient funds checks is \$2,000 or less;

(ii) No insured depository institution or insured credit union was a payee on any of the “bad” or insufficient funds checks that were the basis of the conviction(s) or program entry(ies); and

(iii) The individual has no more than one other *de minimis* offense under this section.

(3) *Convictions or program entries for small-dollar, simple theft.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to convictions or program entries based on the simple theft of goods, services, or currency (or other monetary instrument) if the following conditions apply:

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(i) The value of the currency, goods, or services taken was \$1,000 or less;

(ii) The theft was not committed against an insured depository institution or insured credit union;

(iii) The individual has no more than one other offense that is considered exempt under this section; and

(iv) If there are two offenses—each of which, by itself, is considered exempt under this section, each conviction or program entry was entered at least 3 years prior to the date an application would otherwise be required, or at least 18 months prior to the date an application would otherwise be required if the actions that resulted in the conviction or program entry all occurred when the individual was 21 years of age or younger.

(v) Simple theft excludes burglary, forgery, robbery, identity theft, and fraud.

(4) *Convictions or program entries for using fake identification, shoplifting, trespassing, fare evasion, or driving with an expired license or tag.* The prohibitions of section 205(d) will not apply, and an application will therefore not be required, as to the following offenses, if 1 year or more has passed since the applicable conviction or program entry: using fake identification; shoplifting; trespassing; fare evasion; and driving with an expired license or tag.

(c) *Non-qualifying convictions or program entries.* No conviction or program entry for a violation of the Title 18 sections set out in 12 U.S.C. 1785(d)(2) can qualify under any of the *de minimis* exemptions set out in this section.

§ 752.9 How does an individual or a credit union file an application?

Forms and instructions can be obtained from the NCUA's website (www.ncua.gov), and the application(s) must be filed with the appropriate field office Director. An application may be filed by an individual or by an insured credit union on behalf of an individual, or by both. The appropriate field office for a credit union-sponsored application is the office covering the state where the insured credit union's home office is located, or the Office of National Examinations and Supervision. The appropriate field office for an application filed by an individual is the

office covering the state where the person resides. States covered by each NCUA field office are listed in 12 CFR 790.2.

§ 752.10 How will the NCUA evaluate an application?

(a) *Criminal history records.* In reviewing an application, the NCUA will—

(1) Primarily rely on the criminal history record provided by the Federal Bureau of Investigation (rap sheet); and

(2) Provide such record to the subject of the application to review for accuracy.

(b) *Certified copies.* The NCUA will not require an applicant to provide certified copies of criminal history records unless the NCUA determines that there is a clear and compelling justification to require additional information to verify the accuracy of the criminal history record provided by the Federal Bureau of Investigation.

(c) *Ultimate determinations.* The ultimate determinations in assessing an application are whether the person has demonstrated their fitness to participate in the conduct of the affairs of an insured credit union, and whether the affiliation or participation by the person in the conduct of the affairs of the credit union may constitute a threat to the safety and soundness of the credit union or the interests of its members or threaten to impair public confidence in the credit union.

(d) *Individualized assessment.* When evaluating applications, the NCUA will conduct an individualized assessment that will consider:

(1) Whether the conviction or program entry is subject to section 205(d) and the specific nature and circumstances of the offense;

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

(3) Evidence of rehabilitation including the person's age at the time of the conviction or program entry, the time that has elapsed since the conviction

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or program entry, and the relationship of the individual's offense to the responsibilities of the applicable position;

(4) The individual's employment history, letters of recommendation, certificates documenting participation in substance-abuse programs, successful participation in job preparation and educational programs, and other relevant evidence;

(5) The ability of management of the insured credit union to supervise and control the person's activities;

(6) The applicability of the insured credit union's fidelity bond coverage to the person; and

(7) For state-chartered, federally insured credit unions, the opinion or position of the state regulator; and

(8) Any additional factors in the specific case that appear relevant to the application or the individual.

(e) *No re-consideration of guilt.* The question of whether a person, who was convicted of a crime or who agreed to a program entry, was guilty of that crime will not be at issue in a proceeding under this part or under 12 CFR part 746, subpart B.

(f) *Factors considered for enumerated offenses.* The foregoing factors will also be applied by the NCUA to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the 10-year ban prior to its expiration date under 12 U.S.C. 1785(d)(2)(A) for certain Federal offenses.

(g) *Mandatory conditions of approval.* All approvals or orders will be subject to the condition that the person be covered by a fidelity bond to the same extent as others in similar positions. If the NCUA has approved an application filed by an individual and has issued a consent order, the individual must disclose the presence of the conviction(s) or program entry(ies) to all insured credit unions in the affairs of which they wish to participate.

(h) *Credit union-sponsored consent applications: work at same employer.* When deemed appropriate by the NCUA, credit union-sponsored applications are to allow the individual to work for the same employer (without restrictions on the location) and across positions, ex-

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cept that the prior consent of the NCUA (which may require a new application) will be required for any proposed significant changes in the individual's security-related duties or responsibilities, such as promotion to an officer or other positions that the employer determines will require higher security screening credentials.

(i) *Work at a different employer after certain approvals.* In situations in which an approval has been granted for a person to participate in the affairs of a particular insured credit union and the person subsequently seeks to participate at another insured credit union, another application must be submitted and approved by the NCUA prior to the person participating in the affairs of the other insured credit union.

§ 752.11 What will the NCUA do if the application is denied?

(a) The NCUA will inform the applicant in writing that the application has been denied and summarize or cite the relevant considerations specified in § 752.10.

(b) The denial will also notify the applicant of the right to request reconsideration from the field office, or to file an appeal with the Board, and will include a description of applicable filing deadlines and time frames for agency responses. The field office and the Board will apply the review process contained in 12 CFR part 746, subpart B, to any request for reconsideration or appeal. For credit union-sponsored applications, either the institution or the subject individual (or both, as a consolidated request) may file a request for reconsideration or appeal. The request for review must include a statement of the underlying facts that form the basis of the request for reconsideration or appeal, a statement of the basis for the denial to which the applicant objects and the alleged error in such denial, and any other support, materials, or evidence relied upon by the applicant that were not previously provided.

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

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760.1 Authority, purpose, and scope.