CREDIT UNION
ASSOCIATION
OF THE DAKOTAS

September 5, 2017

Gerard Poliquin,
Secretary of the Board
National Credit Union Administration
1775 Duke Street, Alexandria
Virginia 22314–3428

RE: RIN 3133–AE77; Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) represents 67 state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over $6 billion and who have more than 450,000 members. CUAD appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding amendments to requirements for insurance; national credit union share insurance fund equity distributions.

Section 741 under NCUA's rules and regulations set forth requirements for insurance. Section 741.4 implements requirements of the Federal Credit Union Act (FCU Act) Section 202 which provides for capitalization of the National Credit Union Share Insurance Fund (NCUSIF) through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium. In light of the NCUA's consideration for closing the Temporary Corporate Credit Union Stabilization Fund (TCCUSF), which would result in the transfer of the assets from the TCCUSF into the NCUSIF, the NCUA is proposing amendments to provide "greater fairness, transparency and predictability regarding NCUSIF equity distributions." *82 FR 35706*

As is discussed in greater detail in our separate comment letter responding to the NCUA's notice and request for comment regarding closing the TCCUSF and setting the share insurance fund normal operation level, CUAD fully supports NCUA's proposed plans to close the TCCUSF in 2017 and believes closing the TCCUSF prior to the scheduled 2021 date is in the best interests of the credit union industry.

Federally insured credit unions in the Dakotas, as well as around the country, paid significantly as a result of the corporate credit union crisis. Credit unions with membership shares (capital) in the failed corporates have borne losses in corporate capital investments totaling $5.6 billion. In addition, all federally insured credit unions have paid TCCUSF assessments of $4.8 billion in total. Thus, the cumulative cost borne by credit unions through assessments and the loss of corporate capital investments is $10.4 billion.

The NCUA proposes to amend Section 741.4(e) which addresses NCUSIF equity distributions. Currently the regulation, as recognized by the NCUA during their review, may disadvantage federally insured credit unions with less than $50 million in assets. Under the current method for determining a federally insured credit union (FICU's) proportionate share of the NCUSIF equity distribution, the NCUA divides the total dollar amount of the NCUSIF equity distribution by the total dollar amount of the NCUSIF capitalization deposits. The issue arises when the NCUA adjusts the NCUSIF capitalization deposit for small credit unions.

"NCUA adjusts a smaller FICU's NCUSIF capitalization deposit annually in April using insured shares reported on the December 31 Call Report. As a result, for the first 3 months of the calendar year applicable to the NCUSIF equity distribution, the daily NCUSIF capitalization deposit balance is based on Call Report data that is almost two years old. Moreover, for the remainder of the calendar year, the daily NCUSIF capitalization deposit balance is based on the previous year's Call Report data. As a result, this method not only fails to capture insured share growth at a smaller FICU during the calendar year, but also fails to capture insured share growth during the previous calendar year for a full 3 months until NCUA adjusts the NCUSIF capitalization deposit in April…NCUA adjusts a larger FICU's NCUSIF capitalization deposit semiannually in April using insured shares reported on the December 31 Call Report and in October using insured shares reported on the June 30 Call Report. This means that for the last 3 months of the calendar year applicable to the NCUSIF equity distribution, the daily NCUSIF capitalization deposit balance is based on current Call Report data. As a result, this method will capture insured share growth at a larger FICU during the calendar year, giving the larger FICU an unfair advantage over smaller FICUs." *82 FR 35707*

CUAD supports revision of 741.4(e) to rectify this inconsistency. All credit unions, but especially small credit unions, faced substantial financial challenges in the wake of the Great Recession. Unfortunately, some of those small credit unions were not able to survive and the Dakotas has seen many mergers over the last decade. At the end of 2007, there were 101 federally insured credit unions in North and South Dakota. Today there are 77.

CUAD supports a method for calculating a FICU's proportionate share of an NCUSIF equity distribution based on the average of four quarter-end insured share balances reported on the FICU's Call Report. CUAD does not believe a longer look-back period is necessary. CUAD agrees that this method would be better to account for seasonal fluctuations, as opposed to a method that only considers the insured share balances on the December 31 Call Report. The average amount of insured shares for a federal insured credit union would include the separate Call Reports of any credit unions that have merged into the federally insured credit union. A financial institution that converts to federal share insurance or merges into a federally insured credit union during the calendar year would be treated as not having insured shares for periods where it was not federally insured by NCUA. CUAD also supports using Call Report information which is publicly available, periodically reviewed by NCUA and state regulators, and would not increase regulatory burden on FICUs since insured shares are already reported quarterly on Call Reports.

"Newly chartered federally insured credit unions and credit unions that convert from or terminate federal share insurance during the calendar year for which the NCUSIF equity distribution is declared shall not be eligible for that distribution." *82 FR 35713* CUAD supports the exclusion of credit unions that convert from or terminate federal share insurance from receiving a NCUSIF equity distribution. This would result in a more equitable result for FICUs that remain federally insured by the NCUA throughout the calendar year.

This proposed rulemaking would also create a new temporary section, specifically 741.13, regarding NCUSIF equity distributions related to Corporate System Resolution Program. Any NCUSIF equity distributions declared between 2017 and 2021 would be deemed to be resulting from the Corporate System Resolution Program and thus would fall under this temporary regulatory section.

In its discussion of this temporary section, the NCUA opines, and CUAD completely agrees, "that any NCUSIF equity distribution related to the Corporate System Resolution Program should first go towards repaying those FICUs that paid special premiums, generally referred to as corporate assessments, rather than taking the form of a general proportionate distribution to current FICUs under § 741.4. Accordingly, the Board is considering making any NCUSIF equity distributions related to the Corporate System Resolution Program in the form of a series of NCUSIF equity distributions repaying any corporate assessments against FICUs on either a first-in, first-out (FIFO) or a last-in, first-out (LIFO) basis." *82 FR 35710* A FICU that has not paid a corporate assessment would not be entitled to receive an NCUSIF equity distribution related to the Corporate System Resolution Program unless all such corporate assessments are first repaid in full. As noted above, a FICU that terminates federal share insurance before the NCUSIF equity distribution would not be entitled to a distribution.

Under proposed section 741.13(b), temporary procedures would apply to any NCUSIF equity distribution related to the Corporate System Resolution Program declared for calendar years 2017 through 2021. This section would expire December 31, 2022. The proposed procedures include that an NCUSIF equity distribution related to the Corporate System Resolution Program shall take the form of a rebate of assessments. If all assessments for all assessment periods have been repaid to all federally insured credit unions, an NCUSIF equity distribution may take any form as prescribed in § 741.4 which would be determined by the NCUA Board and may include a waiver of insurance premiums, a rebate of insurance premiums, dividends, or any combination thereof. *82 FR 35714*

Also, the proposed temporary procedures are based on a last-in, first-out approach and would require that, "beginning with the last assessment period, an NCUSIF equity distribution related to the Corporate System Resolution Program shall be paid to all federally insured credit unions up to the total dollar amount paid by that federally insured credit union for that assessment period subject to the following: (i) *Insufficient funds.* If the total dollar amount of an NCUSIF equity distribution related to the Corporate System Resolution Program is insufficient to repay all federally insured credit unions the total dollar amount paid by that federally insured credit union for that assessment period, each federally insured credit union shall receive a proportionate share of the NCUSIF equity distribution based on the percentage of the total assessment for the assessment period attributable to that federally insured credit union. Any subsequent NCUSIF equity distribution shall be calculated in the same manner until all assessments for the relevant assessment period have been repaid. (ii) *Excess funds.* If the total dollar amount of an NCUSIF equity distribution related to the Corporate System Resolution Program exceeds the total dollar amount necessary to repay all assessments for all remaining assessment periods, each federally insured credit union shall receive a proportionate share of the NCUSIF equity distribution, after all remaining assessments have been paid, according to § 741.4 of this chapter." *82 FR 35714*

The last-in, first-out approach to the equity distribution of the NCUSIF "ensures that FICUs receive NCUSIF equity distributions for their most recent corporate assessments first, with smaller assessments that took place at the start of the Corporate System Resolution Program being repaid over time as the NGNs mature." *82 FR 35710* CUAD agrees with this approach.

The NCUA requests comment as to whether the four quarter average of insured shares method or the year-end insured share balance method should apply to NCUSIF equity distributions relating to the Corporate System Resolution Program. CUAD believes that the four quarter average should also be applied to the NCUSIF equity distribution relating to the Corporate System Resolution Program to account for seasonal fluctuations, as discussed above.

As noted above, there were many mergers of federally insured credit unions over the last decade. CUAD supports that NCUA's position that any pay equity distribution payments paid to a FICU that has merged into another FICU would be paid to the continuing FICU.

Thank you for this opportunity to share our comments.

Respectfully,

Jeffrey Olson
CEO/President

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VP of Compliance