AlaskaUSA®
Federal Credit Union

Via online submission: *Regcomments@ncua.gov*

January 15, 2019

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Mr. Poliquin:

Re: Alaska USA Federal Credit Union Comments on Notice of Proposed Rulemaking (Fidelity Bonds)

Alaska USA Federal Credit Union (Alaska USA) is a federally chartered credit union with $7.6 billion in assets, and serves over 660,000 members throughout the United States. Chartered in 1948, and now celebrating our 70th anniversary, Alaska USA maintains branches in Alaska, Washington, California and Arizona. We are appreciative of our long and positive relationship with the NCUA.

Alaska USA fully supports NCUA's focus on amending or repealing outdated and excessively burdensome regulations through the regulatory reform agenda. We appreciate the opportunity to comment on the current notice of proposed rulemaking regarding fidelity bonds. Our comments on specific changes are below:

Part 713.2(b): Director Responsibility

We understand the issues that have prompted the NCUA to propose a new paragraph (b) to Part 713.2, however, we do not agree that asking an individual Board member to attest to the information in an application in an attempt to mitigate later rescission risk in the event of executive fraud is the right approach. Given the scope of what is covered in a fidelity bond application, the appropriate signatories are the members of senior management who have been hired by the Board to manage the credit union. Even if the proposed change to Part 713.2 is adopted, we believe insurance carriers will likely require that fidelity bond applications be signed by an appropriate member of senior management, and not a single volunteer director.

Our research also indicates that courts have recognized that it is unreasonable to expect a dishonest employee to identify and describe his or her own dishonesty on an application for fidelity coverage. The "adverse interest" exception to agency principles provides that if an agent acts adversely to his principal and is acting solely for his own benefit or that of another, the agent's knowledge is not imputed to the principal. The adverse interest exception is deeply rooted in case law throughout the country. If the NCUA is insistent upon changing the policy application process to codify the adverse agency exception, we respectfully suggest it is better served by mandating the inclusion of a clause that concealment by the signer is not imputed to the insured. This is consistent with the Restatement (Second) of Agency §280, cmt. c which provides that when an embezzler signs for the company's fidelity insurance, and the application includes a provision representing that "the signer has no knowledge of any prior wrongdoing," then the knowledge of the agent's embezzlement is not imputed to the company as a basis for the insurer

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to rescind the coverage. This is a more appropriate solution than mandating the signature, and involvement of a volunteer official unlikely to have deep knowledge of the credit union's operations.

We also do not agree that a credit union's supervisory committee should be required to conduct a review of all applications to purchase or renew fidelity bond coverage. Requiring both the board of directors and the supervisory committee to perform the same task is simply unnecessary. In addition, we believe the proposal would have the unintended consequence of creating confusion over the respective roles of the board and the supervisory committee, especially if the two bodies arrive at different conclusions regarding the fidelity bond application.

Part 713.3: Bond Coverage

The proposed addition of paragraph (a)(3) to Part 713.3 to allow a liquidating agent to purchase a Discovery Extension is understandable. However, the market consequence to this change will likely be an increase in fidelity bond costs for all credit unions. Put another way, while this change will provide additional options and potential recovery for the Share Insurance Fund in the event of a single credit union liquidation, it will be an added expense to successful credit unions, all of whom will see increases in premium costs as insurers recoup this exposure across their entire risk pool. Smaller credit unions may not be in a position to absorb this type of cost increase without a commensurate decrease in member value.

We agree with the proposed change to Part 713.3(b) to clarify that an individual fidelity bond policy may cover both the credit union and its majority-owned CUSOs.

Thank you for the opportunity to provide these comments.

Sincerely,

John Cassidy
Chief Financial Officer