January 22, 2019

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

Submitted electronically
to regcomments@ncua.gov

RE: Comments on Notice of Proposed Rulemaking Fidelity Bonds; RIN 3133-AE87

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its proposed rulemaking concerning fidelity bonds.

The NCUA proposes to add a new requirement to section 713.2, specifically "(b) The board of directors, and, if applicable, the supervisory committee of each federally insured credit union, must review all applications for purchase or renewal of its fidelity bond coverage. After review, the federally insured credit union's board must pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the federally insured credit union, to sign the purchase or renewal agreement and all attachments; provided, however, that no board members may be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy." *12 FR 59325*

The NCUA explains that, "the purpose of these requirements is to address the issue of rescission of fidelity coverage when the signatory to the application to purchase or renew coverage is knowledgeable of fraudulent activity. If the signatory to the application for purchase or renewal is knowledgeable of fraudulent activity, the bond issuer may void the policy and not make a payout when losses are discovered." *83 FR 59321* In the discussion of this proposed rule, the NCUA notes that since 2010 it has experienced rescinded fidelity bond coverage on at least three occasions. "As of June 2018, the NCUSIF has already lost in excess of $10 million from fidelity bonds that were voided due to the signatory being aware of the fraudulent activities and litigation related to denied claims is ongoing and may result in additional expenses." *83 FR 59321*

CUAD appreciates the NCUA's responsibility to protect the National Credit Union Share Insurance Fund (NCUSIF), however, CUAD is skeptical that placing an operational task on the volunteers of the credit union will accomplish this. Furthermore, "tricking" the bond company into providing coverage by having a non-employee sign the purchase or renewal agreement and all attachments will be quickly remedied by the insurance company's attorneys drafting new contract provisions and/or amendments to cover this attempted avoidance of the knowledge of facts. Furthermore, if bond companies were forced to cover this fraud, this loss would still be bore by all the other credit unions that had insurance from the same company by increased premiums. Either way, credit unions and their members will pay the cost if fraud occurs in a credit union. The NCUA should not attempt to shift operational roles on this issue. Management is in the best position to make decisions on and sign fidelity bond agreements. NCUA, the board of directors and internal and/or external auditors need to continue to ensure internal controls are sufficient to prevent internal fraud from occurring in the first place.

The NCUA proposes to amend section 713.3 to add subsections (a)(3) and (4) to provide, "(3) Include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extends the discovery period for a covered loss for at least two years after liquidation; and (4) In the case of a voluntary liquidation, remain in effect, or provide that the discovery period is extended, for at least four months after the final distribution of assets, as required in § 710.2(c) of this chapter." *83 FR 59325*

NCUA explains that "Historically, it had been standard for fidelity bonds to permit a reasonable period for discovery and filing a claim following a FICU's involuntary liquidation. The NCUA has identified approximately $1 million in claims paid to the NCUSIF that were identified during an extended discovery period from 2006 to 2013. Since then, however, insurers have removed standard discovery coverage provisions from fidelity bond contracts. Currently, most fidelity bonds provide that the bond's coverage terminates immediately upon a credit union's liquidation and that the ability to purchase an additional period to discover loss is at the *sole discretion of the insurer*." *83 FR 59322* CUAD is concerned that insurance companies will increase premiums for all credit unions in response to this regulatory requirement even though it is the liquidating agent that would purchase the extension of coverage during a discovery period following an involuntary liquidation.

The NCUA also proposes to add subsection (b) to section 713 which would provide, "The requirement in paragraph (a) of this section does not prohibit a federally insured credit union from having a fidelity bond that also covers its credit union service organization (CUSO(s)), provided the federally insured credit union owns more than 50 percent of the CUSO(s) or the CUSO(s) is organized by the federally insured credit union for the purpose of handling certain of its business transactions and composed exclusively of the federally insured credit union's employees." *83 FR*

59325 CUAD supports this revision as it incorporates a previously issued legal opinion letter by the NCUA's Office of General Counsel and allows credit unions some regulatory flexibility.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

Jeffrey Olson
CEO/President

Amy Kleinschmit
Chief Compliance Officer