American Property Casualty
Insurance Association

January 22, 2019

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

<u>VIA EMAIL</u>: regcomments@ncua.gov

RE: NOTICE OF PROPOSED RULEMAKING (FIDELITY BONDS)

Dear Mr. Poliquin:

The American Property Casualty Insurance Association (APCIA)[1] appreciates the opportunity to comment on the National Credit Union Association's (NCUA) proposed regulatory amendments regarding fidelity bonds. APCIA's membership includes several carriers that offer such coverage in the market, and overall represents nearly 60 percent of U.S. property-casualty insurance marketplace, writing all lines. In addition, APCIA and its predecessor organizations have a long history of supporting and defending the state based regulatory system.

The Notice of Proposed Rulemaking (NPR) indicates that while the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the NCUA Board (Board) has chosen to comply with the spirit of Executive Order 13777 and seeks to support implementing the Federal Credit Union Act (FCUA) in the least costly way possible and to reduce NCUA's involvement in a credit union's operational decisions. For the reasons identified below, APCIA respectfully believes that the proposal to sunset form approvals fails to meet either of these objectives. Additionally, APCIA considers the requirement for the credit union's board of directors to review all applications for approval or purchase of fidelity bond coverage and to designate a non-employee director to sign the purchase or renewal agreement to be unnecessarily burdensome, creating liability exposures for the board of directors.

<u>Sunset</u>

Section (h) of the FCUA requires fidelity bonds "to be in a form approved by the [NCUA] Board." Therefore, APCIA does not object to the proposed regulatory amendments that clarify the Board's basic approval obligation to protect the Board's interests in the bond. However, APCIA does have significant

[1] Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

concern with the 10-year sunset and recommends that proposed subsection 12 CFR 731.4(d) be deleted in its entirety.

The McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, delegates to the states the authority to regulate the business of insurance. Fidelity bonds are a type of insurance, and are therefore subject to state insurance regulation. State insurance regulation requires carriers to submit fidelity forms for review and approval to state insurance departments. For an insurer that operates nationally, this could mean 50 (or more) separate state insurance regulatory review and approval processes to navigate over a period of months or years. An automatic sunset every 10 years will only serve to complicate and extend this process, particularly if the Board and state regulators disagree on form content. Equally important, delay in product delivery could cause market disruptions, which will hurt carriers and their customers alike. Moreover, the 10-year sunset presupposes the Board's human and capital resources commitment to timely review every decade. It is unclear to APCIA whether the Board can meet this obligation.

Finally, in the NPR the Board cites outdated policy provisions and contrary interpretations as the purpose for creating a 10-year sunset. Respectfully, if there is a change in the FCUA or authoritative interpretative guidance that impacts fidelity bonds, the insurer will amend the bond accordingly. Subsequently, pursuant to 12 CFR 713.4, this change would have to be filed with the Board for approval. An automatic 10-year sunset is not necessarily a solution, if the problem is that companies are not filing their forms. Further, there is no set timing for the release of amendments or interpretive guidance of the FCUA, so it is unclear how a sunset of any set interval would help the Board to timely assess for compliance.

Board Review

The proposed amendments would require the board of directors (and, if applicable, the supervisory committee) to review all applications for purchase or renewal of a fidelity bond. Such a requirement is beyond the oversight obligations of the credit union's board of directors. The credit union's board of directors should review the fidelity and insurance coverage to ensure they have adequate coverage, as is required by 12 C.F.R. 713.2(a), based on the recommendations of senior management or appropriate board committees that have the delegated expertise (and/or have consulted with an insurance agent/broker). Also, requiring a non-employee board member to sign the purchase or renewal arrangement could create additional, and unnecessary, director and officer liability exposure. For these reasons, APCIA is concerned the proposed amendments expand the role and responsibility of the board of directors, and respectfully suggest they be deleted.

Thank you for the opportunity to comment, and APCIA would be pleased to answer any questions or discuss our concerns in greater detail.

Respectfully,

Angela Gleason

Angela Gleason
Senior Counsel