EasCorp
What together we can do.®

January 22, 2019

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

Re: Fidelity Bonds

Dear Mr. Poliquin:

On behalf of Eastern Corporate Federal Credit Union (EasCorp), I am writing in response to the National Credit Union Administration's (NCUA) proposed rulemaking on fidelity bonds. We appreciate the opportunity to comment on this proposed rulemaking, along with NCUA's initiative for updating regulations to reflect high standards of operational safety and soundness.

With respect to credit union service organizations (CUSOs), EasCorp supports the codification of the 2017 Office of General Counsel Legal Opinion Letter that permits a natural person federal credit union's fidelity bond to include coverage for certain credit union service organizations (CUSOs).

With respect to other provisions, we encourage you to re-consider, and discuss with independent insurance professionals, the potential long-term adverse economic impacts on the credit union community. Indeed, we recently undertook this exercise. As a result, we believe that many provisions of the proposed rule do not take into account lessons learned during the financial crisis.

The country's financial crisis approximately one decade ago resulted in many financial institutions closing, either voluntarily or involuntarily. Particularly for credit unions, the collapse of US Central created a systemic risk to both corporate and natural person credit unions. This period in time created great uncertainty within the insurance market, and also caused many distressed credit unions to seek coverage. The worst time to purchase insurance is under distress, and newly-offered terms and conditions reflected this reality. In this and all circumstances, insurers are on the hook for losses, and exposure to employment claims, lender losses, and fidelity losses are increased when employees feel pressure due to an organization's profitability, and when economic opportunities cause criminal activities to increase. The financial crisis gave rise to both of these circumstances. Insurers responded to poor risk opportunities with less-than-favorable terms. Generally, the inability of insurers to control their exposure to risk causes a reduction in interest and leads to increased insurance premiums as the number of firms competing for business reduces. This becomes apparent to insurers as a direct result of the changes to forms review and discovery period requirements specifically referenced in the proposed rule. It will not be in the interest of insurance companies to function within the credit union space when the credit union regulator attempts to regulate the insurance companies, and does so in a manner that restricts the ability of insurance companies to manage exposure to risk. This will leave many credit unions paying more, unable to secure insurance, or with an increase in the number of policies they purchase; perhaps all three.

With respect to the requirement for a member of the Board to sign insurance applications, we believe that the proposed rule is an over-reach in application. It should be sufficient that the rule only requires signature by the Chairman. We discourage the NCUA from requiring that the CU Board adopt a resolution because 1) most board members have limited knowledge about insurance, and certainly limited knowledge about purchasing insurance for a business, more specifically, a financial institution; 2) adoption of a resolution likely would have no influence as to an insurance company's position with regard to rescinding coverage; and 3) many if not most insurance companies have requirements on acceptable positions of individuals to sign an insurance application. What's more, many will not accept a signature outside of defined positions (usually Chairman, CEO, CFO, Secretary or Risk Manager). We believe that having the insurance application signed by the Chairman or Secretary of the Board would be meaningful in reduction of exposure to rescinded coverage, but disagree with any contention that the proposed approach is not more burdensome and won't create other concerns.

With respect to approved bond forms, we note three areas of concern with regard to this proposed rule change. First, the NCUA Board has implemented no time frame under which a submitted form must be reviewed and approved. This raises question with regard to the ability of the market to function properly, and could potentially cause a significant delay in the NCUA Board responding to insurance carriers. The proposed rule may significantly alter the landscape of commercial insurance availability, and may have a negative impact on the marketplace for credit unions. Insurance companies underwrite credit unions based upon several factors and characteristics. In the course of underwriting, credit unions that have experienced adverse losses, non-renewal for poor performance, poor financial condition, poor loan portfolios, regulatory activity, board or senior leadership changes or other negative indicators present themselves less favorably to insurers. The ability of many credit unions to obtain insurance following the financial crisis, for example, was conditioned upon the ability of insurers to offer restricted coverage, often under very tight timelines. With the adoption of such a requirement by the NCUA, the risk is very likely that, during another financial crisis, many credit unions will not be able to secure insurance, leaving them uninsured.

Second, there are a limited number of insurers willing to provide coverage to credit unions, especially in comparison to commercial bank peers. An additional regulatory burden upon insurers (of which the NCUA currently has no regulatory oversight), will further reduce the number of insurers interested in this space, or prevent entry into the space by insurance companies unwilling to be subject to another regulator.

We believe that NCUA may be overreaching with regard to authority, and appears to be applying additional burdens which will impact both credit unions and insurers, and could lead to less favorable conditions. Potentially, insurers may file a basic form for purposes of satisfying NCUA requirements, and then offer enhanced coverage on a separate policy that would address other insuring agreements, thereby causing inefficiencies as a credit union is required to purchase multiple policies where currently only one or two are purchased.

With respect to the Discovery Period proposed change, we believe that insurers will not respond favorably to this requirement for two reasons. First, insured status on the policy only extends to the named insured, or the credit union purchasing coverage. The NCUA is not a named insured, and therefore has questionable rights to the policy.

Second, the requirement to extend coverage would come at a significant cost to credit unions. Similar to extended reporting periods on liability policies, the ability to purchase an additional discovery period for fidelity bonds would add burdens that many insurance companies would be unwilling to absorb. This could lead to developments within the credit union insurance market such as a reduction in the number of insurers willing to write coverage for credit unions as the additional burden would be viewed as too great; a reduction in the extension of long-term policies (three-years) to which credit unions have become accustomed, which may cause insurance purchasing to happen annually; increased costs of insurance as insurers look to absorb high exposure to potential losses, especially for those credit unions viewed to present greater risk due to financial performance, loan portfolio or geographic economics; and a lack of insurance options for distressed credit unions, as insurers will not provide coverage where the reporting period would be detrimental.

In conclusion, once again, EasCorp appreciates the opportunity to comment on this proposed rulemaking. If you have any question or require additional information, please contact me at (781) 994-3318 or jcmelch@eascorp.org.

Sincerely,

Jane C. Melchionda

Jane C. Melchionda
President/CEO