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September 27, 2019

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

Via email: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Re: Notice of Proposed Guidance Regarding Prohibitions Imposed by Section 205(d)  
of the Federal Credit Union Act

Dear Mr. Poliquin:

On behalf of CUNA Mutual Group (CUNA Mutual), which includes CUMIS Insurance Society, Inc., we are pleased to provide comments to the National Credit Union Administration (NCUA) on the Proposed Interpretive Ruling and Policy Statement 19-1, Exceptions to Employment Restrictions Under Section 205(d) of the Federal Credit Union Act.

CUNA Mutual is the nation's leading provider of financial products and services to credit unions and credit union members. In addition to fidelity bond coverage, CUMIS offers credit unions a comprehensive suite of coverages so credit unions can appropriately manage property, financial, liability, and accident risks. Company coverages protect the majority of federal and state chartered credit unions as well as many corporate credit unions and credit union service organizations. CUMIS brings nearly 60 years of experience related to these lines of coverage and takes seriously the Company's role in protecting the financial health of the credit union movement.

#### CUNA Mutual Supports Second Chances

Like the NCUA, CUNA Mutual supports second chances. CUNA Mutual appreciates the NCUA's thoughtful proposal to modify and expand the current exception for *de minimis* offenses deemed automatically approved by the NCUA Board for purposes of hiring decisions. Further, CUNA Mutual appreciates the NCUA's aim to make reasonably consistent the *de minimis* exception between the NCUA and the Federal Deposit Insurance Corporation (FDIC). CUNA Mutual commends the NCUA for a balanced proposal tailored to reduce regulatory burden for credit unions while still focused on protecting federally insured credit unions from risk posed by previously convicted individuals.

### NCUA Should Clarify Prior Theft of Any Amount from a Financial Institution Falls Outside the *De Minimis* Exemption

Current proposed language states that incidents of simple theft will be considered *de minimis* where several conditions are met. While the proposal may be read to require that all conditions be met for the *de minimis* exception to apply, CUNA Mutual recommends NCUA further clarify for certainty. Specifically, CUNA Mutual asks the NCUA to confirm that simple theft, of any value, at a depository institution or credit union falls outside the *de minimis* exception.

As a fidelity insurer, CUNA Mutual has experience with small transgressions snowballing. From the Company's perspective, simple theft of any amount from a credit union or other depository institution is directly relevant to bonding decisions and always worth flagging in an individual's history. Following any notice of a history including simple theft is a fact-intensive inquiry by CUNA Mutual prior to a final bonding decision.

### NCUA Should Remove Narrowing Language Related to Financial Institutions

Throughout the proposal, NCUA makes several references to applicant activities that previously took place at an "insured credit union" or "insured depository institution." CUNA Mutual respectfully encourages the NCUA to eliminate the "insured" requirement and change any references to simply "financial institution." The current language is overly specific, putting weight on whether an institution is insured and provides depository services. CUNA Mutual recommends the NCUA instead broaden the proposal's scope to apply more scrutiny where there is any dishonest act, at any financial institution. CUNA Mutual believes prior offenses by an applicant at any financial institution can increase an insured's risk.

## PROPOSED REVISIONS

### 3. Offenses Not Covered

#### *De minimis offenses*

(4) The offense did not involve a financial institution an insured depository institution or insured credit union; and ...

*Additional applications of the de minimis offenses exception. ...*

*Convictions or program entries for small-dollar, simple theft.*

...a conviction or pretrial diversion program entry based on a simple theft of goods, services and/or currency (or other monetary instrument) is considered *de minimis* where all the following conditions are met:

- The aggregate value of the currency, goods, and/or services taken was \$500 or less at the time of conviction or program entry; and
- The person has no other conviction or program entry described in Section 205(d); and

- It has been five years since the conviction or program entry (or 30 months in the case of a person 21 years or younger at the time of the conviction or program entry); and
- It does not involve a financial institution an insured depository institution or insured credit union.

For purposes of the exception, simple theft does not include burglary, forgery, robbery, identity theft, or fraud...The exception is not available, regardless of aggregate amount, if the goods, services, and/or currency (or other monetary instrument) were taken from a financial institution.

With this new rule, CUNA Mutual's bondability review will work largely as it has in the past. In the bond application and renewal processes, as well as when prospective employees are vetted, CUNA Mutual will continue to require full disclosure of all pertinent, known facts to prevent later triggering of the dishonest acts clause in fidelity bond contracts. CUNA Mutual's bond policyholders are also still strongly encouraged to check the Company's Bondability Database. Credit unions share information of this kind with CUNA Mutual every day and the Company is often willing to provide coverage on a fact-intensive, case-by-case basis. We expect all facts related to employees and prospective employees will remain relevant to CUNA Mutual under the proposed rule.

The full implications of the NCUA's proposal may not be known for several years. In considering the proposal, CUNA Mutual anticipates that beyond fidelity bond coverage, there could be impacts for risk management services provided to credit unions as well as business auto and business liability coverages as new general, safety concerns may arise. Currently, CUNA Mutual does not anticipate any immediate premium adjustments for credit unions stemming from the NCUA proposal; the Company will reevaluate that position along with credit unions' experience under the proposed terms over time.

In light of the NCUA's proposed rule, the Company will reexamine our own de minimis category to consider any updates, given the important goals underlying the new rule. Like the NCUA's study now, CUNA Mutual will also study the implications of such an expansion for our insureds prior to making any final decisions.

In closing, CUNA Mutual appreciates the NCUA's consideration of these comments. Please reach out with any questions or if we can offer additional information to support these comments. Thank you.

Sincerely,



Michael F. Anderson  
Senior Vice President and Chief Legal Officer