Indiana Credit Union League
The association of Indiana credit unions

January 22, 2019

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

Re: Comments Fidelity Bonds; RIN 3133–AE87

Dear Mr. Poliquin:

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposal to amend the regulations related to the fidelity bonds requirements for federally insured credit unions (FICUs). The ICUL member credit unions represent 99% of assets and members of Indiana's credit unions, with those memberships totaling more than 2.5 million consumers.

While we understand NCUA's desire to minimize the potential for loss to the NCUSIF, we have concerns with some of the proposed changes to the regulations related to fidelity bonds. In particular, we are concerned about the board of directors' and supervisory committee's oversight responsibilities, and the extension of the discovery period after a liquidation occurs.

The current regulations require the board of directors to annually review the bond coverage "to ensure it is adequate in relation to the potential risks facing the credit union and the minimum requirements set by…" regulations established by the NCUA Board. The proposal significantly increases the board of directors' responsibility by requiring that the board and supervisory committee "review all applications for purchase or renewal of fidelity bond coverage." In addition, the proposal would require that "the board, after conducting its review, pass a resolution approving the purchase or renewal of fidelity coverage and designating a member of the board, who is not an employee of the FICU to sign the applications for purchase, bond renewals, and any accompanying attestations." The proposal further would require that the board member signing the application rotate each time a new application comes up for review and approval. We believe these added steps are unnecessary, and contrary to the narrative in the proposal stating that these changes "are only a minimal increase in the regulatory burden..." on the board of directors. We disagree with this statement. We believe that these added steps increase both the expectation of the involvement in the overall process by the board of directors and supervisory committee members and increases the perceived personal liability of the board member who is "designated" to sign the application and any accompanying attestations. To properly exercise this added requirement will require much more time spent by the board and supervisory committee throughout the process of evaluating fidelity bond options. We do not agree that this will have a minimal impact on the regulatory burden on FICUs.

We understand that rotating the signing requirement among board members offers NCUA a comfort level that a fidelity bond would be unlikely to be cancelled based on the individual signing the application being aware of fraud at the time of signing. However, we have a strong belief that this additional requirement for a director will result in an increased concern from the board members in regard to their personal liability. NCUA references $10 million in losses since 2010 related to fidelity bonds being canceled but does not indicate how many credit unions were responsible for these losses. We do not believe this is enough justification for making this change, and that the current requirement of an annual review is sufficient and should remain.

NCUA is also proposing that all bond forms contain language that "includes an option for the liquidating agent to purchase coverage that extends the discovery period, the period to discover and file a claim, for at least two years after liquidation." NCUA states that the current practice is to provide notice that there may be a potential claim to the insurer prior to the liquidation being completed. The stated concern with this approach is "it lacks legal clarity and results in unnecessary risk that an insurer may deny a claim following an involuntary liquidation." We do not believe that NCUA has provided sufficient justification for this proposal and are concerned that the insurers will infer an increased risk in this provision that will prompt them to increase the overall cost of the fidelity bond to all credit unions to address this. Based on the information provided, we do not see where the current approach of providing notice of a potential bond does not work, just that it has not been tested legally.

We appreciate the clarification in the proposal for credit unions to be able to purchase a fidelity bond that also covers any CUSOs in which the credit union has greater than 50% ownership interest. We understand that the 2017 legal opinion clarified this as well, but it is more readily apparent when it is in the regulation.

We appreciate the opportunity to comment on the fidelity bonds proposal. If you have any questions regarding our comment letter, please contact me at (317) 594-5320. Thank you again for the opportunity to comment.

Sincerely,

John McKenzie
President, Indiana Credit Union League