June 29, 2020

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

RE: RIN 3133– AF19; Temporary Regulatory Relief Rule in Response to COVID–19—Prompt Corrective Action

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 temporary regulatory relief rulemaking concerning Prompt Corrective Action.

CUAD applauds the NCUA in its quick and ongoing response to the credit union needs during the COVID-19 pandemic. CUAD supports the NCUA's steps to reduce regulatory burden and administrative burden associated with the temporary increase in shares that many credit unions have experienced. However, CUAD encourages the NCUA to extent this relief beyond December 31, 2020, for the reasons discussed below.

The interim final rule amended 12 CFR 702.201 to provide the NCUA with the ability to temporarily waive the earnings retention requirement for an adequately capitalized FICU. Section 702.201(a) requires that "adequately capitalized" or lower federally insured credit unions (FICU) must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets, and must quarterly transfer that amount (or more by choice) from undivided earnings to its regular reserve account until it is "well capitalized."

Prior to this interim final rule, and currently, FICUs do have the option to submit an application to the NCUA Board for permission to increase the dollar amount of its net worth and quarterly transfer an amount that is less than the amount required under 702.201(a). The interim final rule amended 702.201 (b) to provide NCUA with the option of issuing an "administrative order specifying temporary revisions to the earnings retention requirement, to the extent the NCUA Board determines that such lesser amount— (A) Is necessary to avoid a significant redemption of shares; and (B) Would further the purpose of this part." *85 FR 31956* This amended section is still mindful of overarching safety and soundness requirements by providing that "the Regional Director may require a credit union to submit an earnings transfer waiver under paragraph (b)(1) if the credit union poses an undue risk the National Credit Union Share Insurance Fund or exhibits material safety and soundness concerns." *Id.*

As discussed in the preamble to the interim final rule, "Amending the regulation in this manner will allow the Board to respond to circumstances broadly affecting many FICUs with a single issuance rather than numerous individual waiver approvals. This provision will be effective on May 28, 2020 and will expire on December 31, 2020, consistent with other recent COVID–19 regulatory relief rules that the Board has issued." *85 FR 31954* On June 5, 2020 the NCUA Board issued an Administrative Order per the interim final rule directing that, "Accordingly, the Board hereby orders that any natural-person federally insured credit union whose net worth classification, as defined in part 702 of the NCUA's regulations, is adequately capitalized between March 31, 2020, and December 31, 2020, may decrease its earnings-retention requirement to zero as set forth in part 702. This order is effective from the date of this order through and including December 31, 2020. After that time, the requirements of part 702 apply as before, including the earnings-retention requirement and the associated case-by-case waiver application procedures. This order does not apply to any credit union whose net worth classification falls below adequately capitalized." *June 5, 2020 NCUA Board Temporary Order Decreasing Earnings-Retention Requirement.*

CUAD encourages the NCUA to revise its interim final rule so the amendments to section 702.201(b)(2) do not expire on December 31, 2020. CUAD believes it is important to have this provision in place so if the need arises again the NCUA will be able to act swiftly to issue an administration order granting relief to FICU credit unions. Obviously, the hope would be to never have to use this mechanism again; however, being prepared for the worst and having the ability to react swiftly to events is necessary.

CUAD would also encourage the NCUA to review the state of the credit unions and consider extending its *Order Decreasing Earnings-Retention Requirement* beyond December 31, 2020. It is hard to estimate, but we could potentially see lagging loan delinquency issues and suppressed income well into 2021. There are still high unemployment rates across the Country it may take a while for people to get back in the work force and back to making money so they can make their loan payments. CUAD has concerns that forbearance and deferment are going to magnify the issue.

Furthermore, if our economic recovery lags and consumer confidence is low credit unions could see people building up their savings. Perhaps the NCUA already has plans to reexamine this again as the year progresses, but CUAD believes it would be a relief for credit unions to know these changes are at least good through 2021.

The interim final rule also modified 12 CFR 702.206(c) which relates to Net Worth restoration plans (NWRP), specifically the contents of the said plans. The interim final rule provides administration relief for credit unions by permitting "a credit union that is undercapitalized to submit to the Regional Director a streamlined NWRP plan attesting that its reduction in capital was caused by share growth and that such share growth is a temporary condition due to COVID–19. A streamlined NWRP plan is permitted between May 28, 2020 and December 31, 2020." *85 FR 31957*

The NCUA expanded on the contents of this streamlined NWRP in its Letter to Credit Unions 20-CU-18. As explained in this Letter, "the streamlined NWRP must attest that the reduction in the credit union's net worth ratio was predominantly caused by share growth and that such share growth is a temporary condition due to COVID-19. Credit unions that become classified as undercapitalized based on June or September 2020 Call Report data may submit a streamlined NWRP under this authority if share growth is the predominant factor for the decline in the net worth ratio and the share growth is temporary."

In the preamble to the interim final rule the NCUA notes it, "has determined that it is appropriate to modify the regulation addressing NWRPs given the disruption caused by the COVID–19 pandemic. The Board believes that it will be able to fulfill its statutory duty to evaluate the net worth restoration plan even if the plan is more concise and streamlined than plans submitted prior to the COVID–19 crisis." *85 FR 31955* CUAD encourages the NCUA to retain the flexibility made to 12 CFR 702.206(c) and not allow them to expire in the event other circumstances warrant administration relief being granted to credit unions. Again, the hope is to never need to use it, but having the tools in place to be able to react swiftly.

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

Respectfully,

Jeffrey Olson
CEO/President

Jay Kruse
Chief Advocacy Officer

Amy Kleinschmit
Chief Compliance Officer