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**National Association of Federally-Insured Credit Unions**

December 26, 2023

Melane Conyers-Ausbrooks  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

**RE: Simplification of Share Insurance Rules (Docket No. NCUA-2023-0082)**

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the National Credit Union Administration's (NCUA) proposed amendments to its regulations governing share insurance coverage. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 138 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to provide input on these proposed amendments and support the NCUA's efforts to streamline these regulations, which we believe will significantly benefit credit unions and their members.

**Simplification of Share Insurance Trust Rules**

The proposed rule, which aims to establish a "trust accounts" category, simplifies the share insurance regulations by providing coverage for both revocable and irrevocable trusts deposited at federally insured credit unions (FICUs). The streamlining of these regulations is a positive development, as it tackles the existing intricacies and ambiguities associated with the different and independent rules governing these kinds of trusts. NAFCU's members have reported that the current system, with its distinct criteria and methods for calculating coverage for revocable and irrevocable trusts, has caused significant confusion and, as noted in the proposed rule, led to a high volume of complex inquiries to the NCUA about insurance limits. The proposed regulation, by aligning the eligibility requirements for both revocable and irrevocable trust accounts and introducing an easy-to-use method for determining coverage, aims to resolve these problems. It will offer clear and straightforward guidance for FICUs, their employees, and their account holders.

Moreover, the proposed rule aligns with changes adopted by the Federal Deposit Insurance Corporation (FDIC) in January 2022, ensuring parity between the nation's federal deposit/share insurance programs. This alignment is crucial for maintaining consistency and fairness in the financial system, ensuring that members of the public who use trust accounts receive equal

protection regardless of whether their accounts are maintained at FICUs or other federally insured institutions.

The proposal to use a streamlined calculation method for determining the share insurance coverage for both revocable and irrevocable trusts is highly beneficial. This method, already familiar to FICUs and their members for revocable trusts with five or fewer beneficiaries, will ease the process of calculating coverage, thus improving the efficiency of FICUs. Additionally, the aggregation of funds held in both revocable and irrevocable trust accounts for applying the share insurance limit further simplifies the process and ensures a more straightforward determination of coverage limits. Another significant aspect of the proposed rule is its potential to facilitate the prompt payment of share insurance and streamline the liquidation process of failed FICUs. By reducing the time needed to review trust agreements and determine coverage, the proposed amendments should accelerate the insurance determination process, enabling accountholders to meet their financial needs and obligations more quickly following a FICU liquidation.

Despite these benefits, NAFCU believes that there may be instances where accountholders lack the necessary information to calculate share insurance coverage under the new rule. This could occur in complex trust structures or when there are changes in beneficiaries. Accountholders might not always have immediate access to updated details, making it challenging to determine the number of eligible beneficiaries, particularly in trusts involving multiple generations or those set up for estate planning. Regarding the impact on other types of trusts not described in the proposal, the rule might not fully address trusts like charitable remainder trusts or special needs trusts. These have unique characteristics that could affect insurance coverage calculations. Furthermore, trusts operating under state-specific laws or provisions might have aspects not contemplated in the rule, necessitating a broader consideration.

In regard to grandfathering certain trusts, there are scenarios where it might be appropriate as noted in the rule, such as in trusts with long-term investments like share certificates, where restructuring could lead to financial losses, or in complex estate planning trusts requiring significant legal and administrative changes. Grandfathering in these cases could prevent undue hardship or financial disadvantages for accountholders. If the NCUA opts to avoid grandfathering, it should ensure that it adopts an appropriately delayed implementation date that fully recognizes these potential hardships and allows stakeholders to make necessary adjustments in recognition of the new rules.

### **Amendments to Mortgage Servicing Account Rule**

The proposed amendments to the NCUA's regulations regarding mortgage servicing accounts (MSAs) offer several benefits to credit unions by providing consistent share insurance treatment for all MSA balances held to satisfy principal and interest obligations to a lender. The proposed rule aims to insure the cumulative balance paid into the account by mortgagors or to satisfy mortgagors' principal or interest obligations to the lender up to the limit of the Standard

Maximum Share Insurance Amount (SMSIA) per mortgagor. This approach simplifies the insurance coverage determination for MSAs, making it easier for credit unions to understand and apply the rules. The inclusion of funds paid by mortgagors for taxes and insurance premiums in the insurance coverage further clarifies the extent of protection available under these accounts.

A significant aspect of the proposed amendment is addressing a gap in the current rules. Previously, the coverage only extended to funds "paid into the account by the mortgagors," not including funds from other sources such as the servicer's own operating funds. The amendment proposes to cover advances made by mortgage servicers on behalf of delinquent borrowers, ensuring these funds receive the same level of coverage as direct payments from borrowers. This change is crucial for maintaining the integrity and reliability of the MSA system, as it acknowledges the practical realities of mortgage servicing arrangements and the various sources of funds that may be used to satisfy a borrower's obligations. Additionally, the proposed rule includes coverage for foreclosure proceeds used to satisfy a borrower's principal and interest obligations. This addition is particularly important as the current rule does not address whether foreclosure collections represent payments of principal and interest by a mortgagor. By insuring foreclosure proceeds up to the SMSIA per mortgagor, the NCUA provides a more comprehensive coverage framework, ensuring that all forms of payment used to satisfy a borrower's obligations are accounted for.

Clarity in the treatment of MSAs is essential for both credit unions and their members. It simplifies the complex landscape of financial regulations, enabling credit unions to manage MSAs more efficiently and with greater confidence in their compliance efforts. This clarity also benefits consumers, who can better understand the protection their investments hold, leading to increased trust in their credit union. Moreover, clear regulations help in avoiding potential disputes or confusion regarding the coverage of accounts, thereby fostering a more straightforward and transparent relationship between credit unions and their clients.

The aspect of fairness and inclusiveness in the proposed rule changes is particularly significant. By ensuring that advances made by servicers on behalf of borrowers receive the same level of insurance coverage as direct payments from borrowers, the NCUA is recognizing and addressing a key aspect of modern mortgage servicing. This proposed change not only levels the playing field but also acknowledges the various financial strategies used in mortgage servicing, thereby providing a more equitable insurance coverage framework. Furthermore, the inclusion of servicer principal and interest advances under share insurance coverage can play a pivotal role in promoting financial stability. In situations where borrowers are delinquent, servicers often step in to advance funds to ensure continued payment to lenders. By providing insurance coverage for these advances, the NCUA is supporting the stability of the mortgage market and, by extension, the broader financial system. This stability is crucial during economic downturns or in times of financial stress, where such support can prevent larger systemic risks.

Finally, aligning the NCUA's regulations with those of the FDIC is a strategic move that benefits credit unions and their members. Parity with FDIC regulations ensures a level of consistency in the financial industry, making it easier for consumers to understand the protections available to them, whether they are dealing with a bank or a credit union. It also aids in maintaining a stable financial environment by ensuring that similar standards of safety and soundness are applied across different types of financial institutions. This increased confidence can lead to a stronger member base and potentially more growth and stability for credit unions.

### **Recordkeeping Requirements**

The NCUA's proposed amendments to the recordkeeping requirements in part 745 are a significant step towards clarity for FICUs, their members, and relevant third parties. These amendments, particularly in addressing the roles of agents, fiduciaries, and other third parties in maintaining records, provide essential guidance in complex account management scenarios. For example, a FICU member with an account managed by a legal guardian would benefit from clearer guidelines on maintaining records for proper insurance coverage. However, while these changes improve understanding and compliance, there may be alternative or additional steps that could further align with the NCUA's policy objectives.

One such alternative could be adopting a definition of "account records" similar to the FDIC's "deposit account records." This would standardize the documentation framework, ensuring uniformity and reducing ambiguity in what constitutes necessary records. Additionally, specific provisions for multi-tiered fiduciary relationships, akin to those adopted by the FDIC, would be beneficial in clarifying the responsibilities and recordkeeping obligations in complex arrangements involving multiple parties.

Beyond these alternatives, other amendments could include broader definitions and illustrative examples for various account relationships, such as joint accounts or trusts with multiple beneficiaries. These examples would aid in understanding and compliance, particularly in nuanced scenarios. Furthermore, addressing the increasing role of digital recordkeeping and the impact of technological advancements is crucial. As banking evolves into a more digital domain, ensuring that recordkeeping regulations remain relevant and effective is imperative. Lastly, incorporating a periodic review and update clause for the recordkeeping requirements would ensure that regulations stay current with the evolving banking practices and technologies. This would be especially pertinent for handling international accounts or accounts involved in complex transactions, considering the global nature of modern finance.

### **FDIC Recordkeeping Requirements**

The NCUA should adopt recordkeeping requirements similar to those implemented by the FDIC with caution. While the FDIC's regulations for timely deposit insurance determination are designed to enhance the prompt payment of insured deposits in the event of large insured

depository institution (IDI) failures, the translation of these requirements to FICUs managed by the NCUA needs careful consideration for several reasons. The technological and operational challenges associated with these requirements cannot be overlooked. Configuring information technology systems to calculate insured and uninsured amounts in each deposit account by ownership right and capacity is not only a complex task but also potentially costly. Many credit unions, especially smaller ones, may find this requirement burdensome due to their limited resources. Moreover, core processors, the backbone of many credit unions' IT systems, may not currently have the capability to meet these requirements without significant upgrades or overhauls. This could lead to substantial financial and logistical burdens for credit unions, potentially affecting their efficiency and service to members.

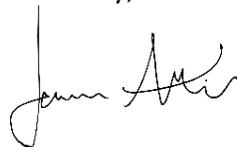
Additionally, imposing such regulations could inadvertently create an uneven playing field, particularly if thresholds are set at lower levels like 500,000 or one million member accounts. While intended to broaden the safety net, this could disproportionately impact smaller credit unions, which often serve crucial roles in their communities, especially in underbanked areas. Given these considerations, if the NCUA decides to implement similar requirements, it would be prudent not to incorporate this into the examination process immediately. This would allow credit unions more time to adapt to these changes without the added pressure of compliance checks, which could divert resources from other critical areas of operation.

While the goal of ensuring timely payment to accountholders in the event of a FICU liquidation is commendable, the NCUA must weigh the potential costs and challenges against the benefits. Any new regulations should be implemented with a phased approach and sufficient support for credit unions to adapt effectively.

## **Conclusion**

NAFCU appreciates the opportunity to comment on the proposed amendments to its regulations governing share insurance coverage. If you have any questions, please do not hesitate to contact me at 703-842-2268 or [jakin@nafcu.org](mailto:jakin@nafcu.org).

Sincerely,



James C. Akin

Senior Regulatory Affairs Counsel