



National Credit Union Administration

July 22, 2019

CERTIFIED MAIL

XXXXXX XXXXXX

President/CEO

XXXXXX XXXXXX Federal Credit Union

XXXXXX XXXXXX XXXXXX

XXXXXX, XX XXXXXX

RE: XXXXXX XXXXXX FCU, Supervisory Review Committee Appeal Decision (SRC-06-19)

Dear XX XXXXXX:

I am writing to inform you that the NCUA's Supervisory Review Committee (SRC) is denying your appeal and upholding the XXXXXX Region Director's determination on XXXXXX XXXXXX FCU's application for secondary capital. The SRC's decision is discussed below.

XXXXXX XXXXXX FCU filed a notice of appeal to the SRC with the NCUA Board Secretary, pursuant to 12 C.F.R. §746.107, in a letter dated March 14, 2019. Your letter included the following statement of appeal:

"XXXXXX appeals the decision of the NCUA Regional Director (XXXXXX Region; formerly Region X) that denied XXXXXX's Application for Secondary Capital. This decision was submitted to XXXXXX in a letter dated December 20, 2018 ("Denial Letter"). The basis for the denial was later re-stated by the XXXXXX Regional Director ("RD") in her letter dated February 14, 2019. The 2/14/2019 Letter ("Reconsideration Response") was sent in response to XXXXXX's Letter of Reconsideration, dated January 17, 2019."

As a low-income designated credit union, XXXXXX is eligible to request secondary capital authority from the NCUA pursuant to 12 C.F.R. §701.34. A chronology of significant events related to XXXXXX's request for approval to accept secondary capital is as follows:

Date	Activity
November 8, 2018	XXXXXX submitted its secondary capital application to the XXXXXX Region Director (then Region X). XXXXXX requested authority to accept \$XX million in secondary capital.
December 20, 2018	XXXXXX Region Director XXXXXX denied XXXXXX's secondary capital plan, citing deficiencies in the secondary capital plan.
January 17, 2019	XXXXXX submitted its Letter of Reconsideration to the XXXXXX Regional Director. The letter asserted that the original decision was in

	error as the application complied with the five regulatory components of 12 C.F.R. §701.34(b)(1).
February 14, 2019	The XXXXX Regional Director denied XXXXX's request for reconsideration of the revised plan, stating that the request did not address the deficiencies noted in the original denial. The XXXXX Regional Director expressed safety and soundness concerns with respect to three specific issues.
March 14, 2019	XXXXXX filed its Notice of Appeal with the NCUA Board Secretary requesting appeal of the XXXXX Region Director's denial to the NCUA Supervisory Review Committee (SRC).
March 28, 2019	The SRC requested additional information of XXXXX and the XXXXX Region. Both parties responded to these requests.
April 1, 2019; May 15, 2019; and June 17, 2019	The SRC scheduled an oral hearing and sent both parties several letters confirming the oral arguments and hearing, and explaining procedures for the hearing.
June 21, 2019	All parties attended the oral hearing.

Authority to Request SRC Review

The NCUA Regulations allow a credit union to request an SRC review after receiving a written decision issued by a program office in response to a request for reconsideration pursuant to 12 C.F.R. §746.105. The SRC must receive the request for review within 30-days of the credit union receiving the written decision by the appropriate program office on reconsideration, and the matter for review must be a "material supervisory determination."

According to 12 C.F.R. §746.103, a material supervisory determination means any written decision by a program office that may significantly affect the capital, earnings, operating flexibility, or that may otherwise affect the nature or level of supervisory oversight of an insured credit union. 12 C.F.R. §746.103 (a)(5) further defines the term to include a determination on a waiver request or an application for additional authority where independent appeal procedures have not been specified in other NCUA regulations.

The SRC finds that XXXXX's request for SRC review met the regulatory requirements. The XXXXX Regional Directors' denial of the secondary capital application does have a material impact on capital, earnings, and the operating flexibility of the credit union. As the above timeline illustrates, XXXXX requested reconsideration of the denial of its plan from the program office, and then requested SRC review after receiving the written determination regarding its request for reconsideration. XXXXX completed the request for reconsideration and request for SRC review within the timeline required by the applicable regulations.

Supervisory Review Committee Appeal Precedents

The SRC has ruled on four appeals related to the denial of secondary capital applications. In all four cases, the SRC determined the denial of a secondary capital application is a material supervisory determination and appeals of these decisions to the SRC are appropriate. The final determinations made in these four appeals are available on NCUA's website at <https://www.ncua.gov/regulation-supervision/supervisory-review-committee/appeal-decisions>. The four SRC decisions are cited as SRC-01-19, SRC-02-19, SRC-03-19; and SRC-05-19.

Federally insured credit unions submit secondary capital applications pursuant to 12 C.F.R. §741.204, and must further comply with the requirements of 12 C.F.R. §701.34. A regional director's response to secondary capital application requires the consistent application and interpretation of these regulations. The interpretation and application of these regulations is a significant component of XXXXX's SRC appeal, and they have been a part of each of the four prior SRC appeals dealing with secondary capital applications.

At the same time, each request for secondary capital is unique to the credit union applicant. In considering XXXXX's appeal, the SRC reviewed the regional director's application and interpretation of 12 C.F.R. §701.34 and 12 C.F.R. §741.204; XXXXX's original application materials for secondary capital; and the materials submitted as part of its request for reconsideration. The SRC also requested and considered additional information from XXXXX related to its original application.

Brief Review of 12 C.F.R. §701.34 and 12 C.F.R. §741.204

XXXXXX's written appeal and oral testimony argue that 12 C.F.R. §741.204 requires that the regional director **must** approve a plan that meets the requirements 12 C.F.R. §701.34(b)(1). 12 C.F.R. §741.204 is included in Subpart B of Part 741 of the regulations. Subpart A of Part 741 references regulations that apply to both federal credit unions and federally insured state-chartered credit unions. Subpart B of Part 741 references regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions.

12 C.F.R. §741.204 states:

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of §701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of §701.32 of this chapter will be made and reviewed on the same basis as that provided in §701.32 of this chapter for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law. The state regulator shall make the low-income designation with the concurrence of NCUA. The designation will be made and reviewed by the state regulator on the same basis as that provided in §701.34(a) of this chapter for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

(c) Receive secondary capital accounts only if the credit has a low-income designation pursuant to paragraph (b) of this section, and then only in accordance with the terms and conditions authorized for Federal credit unions pursuant to §701.34(b)(1) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions offering secondary capital accounts must submit the plan required by §701.34(b)(1) to both the state supervisory authority and the NCUA for approval. The state supervisory authority must approve or disapprove the plan with the concurrence of NCUA.

(d) Redeem secondary capital accounts only in accordance with the terms and conditions authorized for federal credit unions pursuant to §701.34(d) of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions seeking to redeem secondary capital accounts must submit the request required by §701.34(d)(1) to both the state supervisory authority and the NCUA. The state supervisory authority must grant or deny the request with the concurrence of NCUA

Subpart B lays out obligations of a federally insured credit union to comply with regulations codified elsewhere. To summarize the foregoing, §741.204 requires a federally insured credit to comply with 12 C.F.R. §§701.32, 701.34(a), 701.34(b)(1), and 701.34(d). The only obligation this regulation requires of NCUA is to act in concurrence with the appropriate state supervisory authority for federally insured state-chartered credit unions applying to receive secondary capital. 12 C.F.R. §701.34(a) discusses the designation of low-income status and acceptance of secondary capital accounts by low-income designated credit unions. XXXXX applied for and received a low-income designation on June 30, 2009.

12 C.F.R. §701.34(b) also deals with the acceptance of secondary capital accounts by low-income designated credit unions. Many of the issues in XXXXX's appeals relate to the specific interpretation and application of §701.34(b)(1). Section 701.34(b)(1) reads:

(b) Acceptance of secondary capital accounts by low-income designated credit unions. A federal credit union having a designation of low-income status pursuant to paragraph (a) of this section may accept secondary capital accounts from nonnatural person members and nonnatural person nonmembers subject to the following conditions:

(1) Secondary capital plan. Before accepting secondary capital, a low-income credit union ("LICU") shall adopt, and forward to NCUA for approval, a written "Secondary Capital Plan" that, at a minimum:

(i) States the maximum aggregate amount of uninsured secondary capital the LICU plans to accept;

- (ii) Identifies the purpose for which the aggregate secondary capital will be used, and how it will be repaid;*
- (iii) Explains how the LICU will provide for liquidity to repay secondary capital upon maturity of the accounts;*
- (iv) Demonstrates that the planned uses of secondary capital conform to the LICU's strategic plan, business plan and budget; and,*
- (v) Includes supporting pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years.*

During oral arguments, XXXXX referred to (i)-(v) as the five components or columns of the rule. XXXXX's written appeal and oral arguments make a number of assertions in its interpretation of this regulation. These include:

1. The regional director must approve a plan that contains the minimum components spelled out in (i)-(v);
2. The regional director does not have the authority to take action under the pretext of safety and soundness. However, during oral presentations XXXXX conceded that the safety and soundness is a consideration in any application, but the regional director's consideration of safety and soundness must be based on and in context with C.F.R. §701.34(b)(1); and,
3. Sections 701.34(b)(1)(ii)-(v) exist to protect investors who provide secondary capital.

Supervisory Review Committee Determination – Regulatory Interpretations

The SRC rejects XXXXX's first argument that a regional director must approve a plan that contains the minimum components spelled out in §701.34(b)(1). Prior appeals raised this argument and SRC-01-19, SRC-02-19 discussed this issue. In all of these decisions, the SRC determined that there is no duty for the regional director to approve a secondary capital application simply because the plan meets the five minimum content requirements of the rule. Additionally, as confirmed by the Office of General Counsel (OGC) attorney at the oral argument hearing, there are no other regulations or statutes which when satisfied by a credit union by simply complying with documentary requirements authorize or necessitate automatic approvals. Rather, consistent with other regulations delegated to regional directors, safety and soundness is a primary consideration for applications.

SRC-01-19, SRC-02-19, and SRC-05-19 all note that §741.204(c) imposes obligations on the federally insured credit union with respect to secondary capital, rather than imposing a duty on the regional director to approve secondary capital applications. The SRC does not see within the plain language of §701.34(b)(1) any obligation or requirement for a regional director to approve a plan simply because it includes what XXXXX terms the five components of an application. The plain language of C.F.R. §701.34(b)(1) states that at a "minimum" the application for secondary capital will include XXXXX's compliance with the five components.

The SRC does not reject XXXXXX's second point. In fact, the region and OGC attorney representing the region agree that a regional director must consider safety and soundness within the context of the §701.34(b)(1). XXXXXX and the region both acknowledge that safety and soundness considerations are applicable within the context of the regulation. XXXXXX and the region do not agree on what constitutes an application that represents a safe plan. In this appeal, the XXXXXX Region Director pointed out that in several of five components' minimum requirements XXXXXX's representations were inconsistent with, materially deviated from, or XXXXXX's Plan and letters failed to specifically address the liquidity for repayments, XXXXXX's strategic plan, and XXXXXX's 2-years pro-forma financial statements. The SRC concurs that these shortcomings in XXXXXX's secondary capital plan do, or could, represent unsafe and unsound conditions, and support the XXXXXX Region Director's denial of XXXXXX's Plan.

As pointed out by the OGC attorney at the hearing, the congressional mandated purpose of the NCUA is to ensure the safety and soundness of insured credit unions. The preamble to §701.34(b)(1) is informative as it provides specific examples illustrating why the NCUA Board chose to require approval of plans, and provides examples of unsafe conditions that led to the revised regulation. The preamble cited lenient practices that included: (1) Poor due diligence and strategic planning in connection with expanding member service programs such as ATM's, share drafts, and lending (e.g., member business loans, real estate, and subprime); (2) Failure to adequately perform a prospective cost/benefit business analysis of these programs; (3) Premature and excessively ambitious concentrations of uninsured secondary capital to support unproven or poorly performing programs, and (4) Failure to realistically curtail programs that, in the face of mounting losses, are not meeting expectations. The Board noted these issues contribute to excessive operating costs, high losses from loan defaults, and a shortfall in revenues. The Board's stated objective in requiring an application process were to:

- First, prevent low-income credit unions from accepting and using uninsured secondary capital for purposes and in amounts that are improper and unsound;
- Second, ensure that regions evaluate and critique plans before credit unions implement them; and,
- Third, for both the NCUA and the low-income credit union, support that analyzing a plan for safety and soundness will assist both in determining the proper implementation of the uninsured secondary capital.

When we consider the examples of lenient practices and the Board's stated objectives for the revised rule, it is clear the Board's intent was for regional directors to consider safety and soundness in the review and critique of secondary capital plans.

As acknowledged by both parties, the regional director's review of plan should be based on the criteria spelled out in §701.34(b)(1). The regulation states these are minimum requirements. This allows the regional director discretion to require additional information to address actual or expected safety and soundness concerns with a credit union's plan. The regulation preamble

notes the regional director will also rely on input from the district examiner who regularly oversees the credit union.

With respect to XXXXXX underlying legal arguments, the SRC finds that:

- Neither 12 C.F.R. §701.34 nor 12 C.F.R. §741.204 requires or obligates the regional director to approve a plan for uninsured secondary capital;
- Under both 12 C.F.R. §701.34(b) and 12 C.F.R. §741.204, the regional director is expected to review uninsured secondary capital applications specifically to determine if the credit union's plans and strategies are safe and sound. There is in fact an expectation by the NCUA Board that the regional director will evaluate and comment on those plans; and,
- 12 C.F.R. §701.34(b)(1) and 12 C.F.R. §741.204 are focused on improving the safe and sound operations of low-income designated credit unions. These regulations do not focus on investor protections, even though improving safety and soundness may also improve investor protection.

Third, the SRC was unable to find anything in the plain wording of the regulation or the preamble to the regulation that suggests this regulation exists to protect investors. Section 701.34(b)(11) does require an investor to execute and sign a "Disclosure and Acknowledgement" as set forth in the Appendix to Part 701.34. The preamble to the regulation states the purpose of the regulation was to allow low-income credit unions to begin redeeming uninsured secondary capital accounts when they were within five years of maturity, and to require prior approval of a plan for the use of uninsured secondary capital before a credit union can begin accepting the funds. The Board noted that promoting diligent practices in place of lenient ones cannot help but improve the safety and soundness of low-income credit unions. Thus, the focus of the regulation was improving the safety and soundness of low-income credit unions, not protecting investors. While, improving the safety and soundness of the credit union also reduces risk for investors, the intent of the regulation focuses on low-income credit unions, not the protection of investors.

Supervisory Review Committee Determination – Regional Director Decisions

XXXXXX believes the decisions reached by the XXXXXX Region Director on its application and request for reconsideration are in error because they are based on safety and soundness considerations or require extensive correlation to plans that are admittedly forecasted and may not include all potential provisions and outcomes. However, the SRC concludes that the general forecasting aspect of the plan does not obviate the need for the credit union's application and plan to correlate to and directly reflect essential aspects of the approval consideration and supporting financial information in all material safety and soundness respects. On the contrary, the NCUA Rules and Regulations, and the SRC precedent decisions established that the uninsured secondary capital plan applications require a regional director to review a credit union's plan for uninsured secondary capital, evaluating it based on safety and soundness and make a determination based on the criteria established in 12 C.F.R. §701.34(b)(1). The SRC

rejects XXXXX's assertions that the regional director was obligated to approve XXXXX's application solely because it addressed the minimum plan requirements.

The SRC reviewed both the XXXXX's original and request for reconsideration denial letters, and the XXXXX Region Director's respective responses-both responses cite similar deficiencies. The original denial cited three specific deficiencies as discussed below:

1. *The Plan did not adequately address the negative spread and its effect on earnings associated with the secondary capital cost of 6.75 percent funding investments and loans yielding between 2.97 to 3.08 percent and 5.10 percent, respectively.*

The original denial dated December 20, 2018, notes identifying the spread analysis between source and use is a requirement of 12 C.F.R. §701.34(b)(1)(iii). Your February 14, 2019, letter request for reconsideration, and the oral arguments identified that the Plan in fact demonstrates a positive spread on the secondary capital, however, the SRC does not agree with those representations. While, the aggregate earnings on the \$45 million nonmember deposit program (of which the secondary capital plan is a component) shows a positive spread, the \$5 million secondary capital in fact does not show a positive spread between sources and uses of the funds, and could result in a liquidity mismatch due to the significance of the negative spread.

Additionally, we noted that while your Plan discusses modifying your portfolio composition, the 2-year pro-forma projections do not illustrate a reduction in the concentration of indirect auto loans, and a redistribution into mortgage loans to balance the portfolio. As a result it calls into question the purpose and need for the uninsured secondary capital—particularly if the spread on the \$XX million is significantly negative. The SRC notes this inconsistency as a significant contributing factor to the XXXXX Region Director's, and our denial of your appeal. Clearly, the use and yield on those funds needs to match the source and cost, as well as maturity, to generate a positive spread. Additionally, the pro-forma financial statements need to recognize that balance sheet redistribution to ensure the Plan results in a safe and sound business strategy that detail the positive spread and the ability to repay the secondary capital at it matures.

The XXXXX Region Director was concerned with the level and type of loan growth, and stated that your plans and projections failed to detail loan portfolio composition goals throughout the plan. While your original application included a lending strategy, this strategy lists a number of initiatives including a first-time homebuyer mortgage program expansion. XXXXX's application and reconsideration letters and statements at the oral hearing questioned why the region would expect the credit union to project loan characteristics in its plans, budgets and pro-forma financial statements, and that trying to correlate the uses of the funds and corresponding portfolio redistribution on the pro-forma financial statement was imprecise at best. On the contrary, the SRC considers this approach fundamental to demonstrating the credit union's ability to safely and soundly implement an uninsured secondary capital program, and to appropriately revise business strategies short of

achieving expected results. Several of XXXXX's Plan strategies will require additional training, collections, and internal resources. Simply planning to grow mortgage loans without at least a rudimentary projection of how much and by what time frame prospectively adds to an unplanned and unmonitored business strategy and potential riskier and more leveraged balance sheet the Plan asserts to eliminate. Without preliminary projections, a credit union cannot monitor either progress or success, cannot monitor program profitability, or project operating expense levels, and that ensures liquidity and sources to repay uninsured secondary capital. Moreover, the SRC believes XXXXX's Plan reflects the lenient practices cited in the preamble to the revised regulation it specifically attempted to resolve.

Specifically it reflects limited due diligence on expanding member service programs and a failure to perform prospective cost/benefit business analysis of these programs. With no specific expectations, the credit union cannot assess achievement of expected risk diversification goals and profitability goals to ensure business objectives are met without incurring excessive operating costs and revenue shortfalls in future periods.

The SRC concurs with the XXXXX Region Director's decisions and reasoning. It is the credit union's responsibility to demonstrate that strategic plans, business plans and financial projections align. Simply stating the plan is to grow loans, without specific portfolio composition targets, is overly simplistic and inadequate. Accordingly, the SRC believes the XXXXX Region Director's safety and soundness concerns were correct, and consistent with the regulation.

2. *Deficiencies with the supporting pro forma financial statements, including any off balance sheet items, covering a minimum of the next two years (12 C.F.R. §701.34(b)(1)(v)).*

The XXXXX Region Director's December 20, 2018, letter denying your original application noted your loan redistribution growth expectations. However, there was no detail regarding the loan portfolio composition goals or changes in credit risk characteristics. These are critical details that impact loan loss costs, and net income/net worth projections. The February 14, 2019, reconsideration denial letter noted continued concerns with the same issues and noted XXXXX's reconsideration letter did not address these deficiencies. Notwithstanding the credit union's 90+ page Plan, failing to ensure basic financial information correlates to the credit union Strategic Plan and projections, renders the Plan inadequate.

While the SRC recognizes, as does the XXXXX Region Director, pro-forma financials are not assured of precision, and XXXXX notes in its appeal letter, it is difficult to develop a 10-year financial projections as economic and competitive factors are unpredictable over long periods. However, they do provide a roadmap for progress analysis, and retooling and revising plans that are not working and therefore projections are useful in developing and correcting business strategies, as needed. Additionally, projections allow the region to assess long-term risks and safety and soundness. Unfortunately, XXXXX's financial statement projections provide only summarized balance sheet and income statement information. The regional directors' specific concern with the pro-forma financial statements were the lack of

detail with respect to lending programs. The regulation does not define what constitutes satisfactory pro-forma financial statement. A CPA might say that this includes projected balance sheets, income statements and statements of cash flows. This implies a certain minimum level of detail. An investor expectation may require a higher level of detail; one that more clearly demonstrates how anticipated changes in the relationships among balance sheet items affect future financial developments, including the income and cash flow statements.

What is a reasonable expectation for the level of detail in pro-forma financial statements? Based on the SRC panel's extensive experience with credit unions, a common standard in the credit union industry is a projected financial statement with the same level of detail provided to a credit union's board of directors monthly. This level of detail does include a breakdown of loan and share types in most situations. Most credit unions base their operating plans, budgets, ALM analysis and business strategies and operational efficiencies on this same level of detail. The pro forma financial statements submitted by XXXXX do not meet the level of detail common in a credit union with assets of \$150 million.

The SRC believes the regional directors' expectation for greater loan detail is reasonable, at least for the first two years of pro formal financial statements. The SRC upholds the regional directors' finding that pro forma financial statements do not meet the requirements of §701.34(b)(1)(v). The regional directors have an obligation to evaluate the safety and soundness of the plan. They cannot meet their obligation without information to evaluate how relationships among balance sheet items affect future financial developments.

3. *Deficiencies with the supporting pro forma financial statement, including any off balance sheet items, covering a minimum of the next two years (12 C.F.R. §701.34(b)(1)(v)).* Your January 17, 2019, reconsideration request and the XXXXX Region Director's February 14, 2019, denial letter included three items in this section:

- Your projections do not tie to the purpose for the uninsured secondary capital plan;
- The Plan fails to identify an increase in loans, despite a proposed \$10 million purchase of participation loans (incorrectly citing an NCUA call report instruction that participation pools are to be included in AFS Securities) and does not specify a mortgage expansion amount;
- Inconsistencies in the forecasted loan portfolio redistribution, despite that aspect being a principal and critical component of the Plan and it's presumed success;

The SRC believes the regional directors' decisions to deny the application and reconsideration were appropriate and consistent with the regulation. XXXXX's contention that the Plan submitted reflects a safe and sound plan, irrespective of material omissions, and a lack of correlation to the forecasts, and the region's reasons for denial are not consistent with the five elements on which regional directors should base their decisions. On the contrary, the SRC believes the XXXXX Regional Director's citations show that XXXXX's Plan fails to demonstrate the secondary capital borrowing represents a positive spread and likely liquidity

source to repay the secondary capital at maturity. XXXXX's Strategic Plan documentation does not adequately reflect safety considerations for a leveraged balance sheet and failing to demonstrate the redistribution of the loan portfolio in the pro-forma financial statements to be material shortfalls in its application and reconsideration request.

NCUA regulations require credit unions to develop policies establishing management's risk limits. These include, but are not limited to, a loan policy required by §701.21, an investment policy required by §703.3 and §741.3, an interest rate risk policy required by §741.3, and a liquidity and contingency funding plan required by §741.12.

During the oral presentation, XXXXX noted that the credit union's management plans to revise policies and risk limits after receiving approval to accept uninsured secondary capital. We believe this approach is inconsistent with sound strategic and risk management practices. If management has sound practices and procedures in place, including accountability to their board, they will develop strategic and business plans that are within the credit union board's existing risk policies.

One of the problematic lenient practices cited by the NCUA Board in the preamble to the regulation revision were poor due diligence in strategic planning. Developing an uninsured secondary capital plan that is inconsistent or inadequately correlated to the Plan's approach with the credit union's overall risk management practices and policies (including pro-forma financial statements) represent an example of precisely the situations the NCUA Board was attempting to prevent. It appears XXXXX submitted its original application and request for reconsideration for uninsured secondary capital without ensuring consistency and compliance with the credit union's Strategic Plan and pro-forma financial statements, and accordingly does not adequately meet the requirements of the revised regulation.

Summary Conclusions

In summary, the SRC upholds the XXXXX Region Director's denial of both the original application and the request for reconsideration. The bases for our conclusions are as follows:

- The SRC finds a regional director has no obligation to approve an uninsured secondary capital plan under 12 C.F.R. §701.34 or 12 C.F.R. §741.204. These regulations create obligations for a low-income credit union to meet certain minimum standards when applying for uninsured secondary capital;
- The NCUA Board, in its preamble to C.F.R. §701.34 and C.F.R. §741.204, made it clear that it created an application process with the expectation for regional directors to assess, critique and evaluate plans for safety and soundness.
- The XXXXX Region Director's denial of the plan and denial of the credit unions request for reconsideration were consistent and represented a reasonable interpretation of C.F.R. §701.34(b)(1).

XXXXXX XXXXX

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- The XXXXX Region Director provided an evaluation and critique of the secondary capital plan. Director XXXXX denied the plan for multiple, valid reasons, any one of which individually was a valid reason for denying the Plan.

Pursuant to NCUA's regulations, 12 C.F.R. [§746.109](#), you may appeal this decision to the NCUA Board within 30 calendar days of receiving this letter.¹ Such appeals must follow the requirements established in the regulation, and must be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428. Please refer to the regulation for additional information.

Sincerely,

Mark D. Cantor
Supervisory Review Committee Panel Chair

cc: NCUA Board Secretary Gerard Poliquin
Regional Director XXXXX XXXXX

¹Alternatively, to the extent you intend to reapply instead of appealing this decision to the NCUA Board, the SRC recommends you address the deficiencies discussed in this letter and submit a new secondary capital plan to the XXXXX Region. It remains incumbent upon XXXXX to prepare a more comprehensive risk analysis that is commensurate with the planned levels of risk. The committee also encourages ongoing dialogue with the region to identify the necessary aspects of supporting due diligence most relevant to the underlying safety and soundness issues that were the basis of previous denials, including specifically addressing the XXXXX Regional Director's noted deficiencies in the credit union's liquidity for repayment, Strategic Plan, and Pro-Forma Financial Statements.