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May 28, 2014

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

Re: Prompt Corrective Action, Risk Based Capital. 12 CFR Parts 700, 701, 702, 703, 713, 723 and 747, RIN 3133-AD77

Dear Mr. Poliquin:

The U.S. Chamber of Commerce ("the Chamber"), the world's largest business federation, represents the interest of more than three million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC believes that appropriate capital requirements are necessary to avoid over-leveraging; however, capital standards that are too arduous can have serious, unintended negative consequences. Allowing suitable levels of risk-taking is a necessary element needed to fuel growth and innovation within the overall economy.

The CCMC has strong concerns and reservations regarding the National Credit Union Administration's ("NCUA") proposed Prompt Corrective Action, Risk Based Capital ("Risk Based Capital proposal") as it attempts to impose Basel III-type bank capital standards on credit unions. This is a mismatch of tools and business models. The CCMC believes that the NCUA has failed to take into account critical aspects of how capital is used and, in some cases, has not paid sufficient attention to procedural detail.

Specifically, the CCMC's concerns are centered upon:

- **Failure to consider impacts on Main Street businesses and the economy;**

- **Enhanced cost-benefit and economic analysis needed before the Risk Based Capital proposal can be finalized;**

- **Resolution of conflicts with other legislative and regulatory initiatives; and**

- **Over-broad application of the Risk Based Capital proposal and truncated implementation period.**

Our comments and concerns are discussed in greater detail below.

<u>Discussion</u>

In November 2008, the CCMC released principles for regulatory reform that included a section on capital and liquidity standards, which states:

> [e]xtreme leverage is an issue that demands regulatory focus, given repercussions during periods of stress in our financial markets. Capital and liquidity requirements will need to be established for *all* significant financial institutions that can have an impact on the stability of our capital and financial markets. These requirements should encourage meaningful prudence taking into account the firm's risk profile, while permitting critically necessary innovation and thoughtful risk-taking.

Accordingly, the Chamber believes that appropriate capital and liquidity requirements are the preferred means of preventing over-leverage and potential excesses in the financial services sector. In fact, the Chamber has consistently proposed capital requirements as a pro-growth alternative to certain regulatory initiatives such as the Volcker Rule. However, differing business models require different approaches to ensure the safety and soundness of financial institutions.

Credit unions are an important and integral part of the diverse mosaic that makes up the financial system. Credit unions are a key fixture that provides the ability of individuals and families to save and borrow to meet the needs of everyday life, prepare for the future or engage in endeavors such as starting or running a business. Additionally, credit unions, while not as large a lender as banks, are an important provider of liquidity for small Main Street businesses.

Credit unions have fulfilled this mission through a low-risk model that avoids over-leveraging and excessive risk-taking. The CCMC is concerned that the NCUA has not considered how the use of bank-style capital levels may adversely impact credit unions or the implications of this rulemaking upon the non-financial business community and the broader economy. This is particularly concerning as capital and liquidity requirements that are *too high* are as dangerous as capital and liquidity requirements that are *too low*.

1. **Failure to Consider Impacts on Main Street Businesses and the Economy**

The NCUA in proposing, finalizing, and implementing the Risk Based Capital proposal must take into account the impact the rulemaking will have upon liquidity and capital formation for non-financial businesses. Credit unions directly or indirectly provide capital to businesses by loaning money or extending credit. This is an important form of lending and liquidity that businesses, mainly small businesses and start-ups, use to grow and create jobs.

Therefore, how the Risk Based Capital proposal impacts the ability of credit unions to lend and extend credit will have a direct bearing upon the ability of non-financial businesses to access the resources needed to operate and expand. Consideration of these issues is critical to ensure that credit unions continue to act as the conduit needed to prime the pump of economic growth. Lax capital standards can lead to inefficient allocations of capital that may result in a financial crisis. Overly prescriptive rules and restrictive capital standards can dry up credit and lead to a similar inefficient allocation of capital, harming business and economic growth. A misapplication of bank-style capital rules to credit unions can have the same negative impacts.

This is particularly true with the fragile economic and job growth market that currently exists. Negative consequences for Main Street businesses will also impact credit unions as fewer jobs and less prosperous businesses will mean fewer credit union members. Rather than provide stability, the Risk Based Capital proposal may create a cyclical chain of events that may be harmful to the credit union industry.

In reviewing the Risk Based Capital proposal, it does not appear that the NCUA has taken into account these broader economic impacts. As will be discussed below, the failure to consider these effects on non-financial businesses, particularly small businesses, requires further analysis and public commentary before the Risk Based Capital proposal can be finalized.

2. Enhanced Cost Benefit and Economic Analysis Needed Before Risk Based Capital proposal can be Finalized

a. Compliance with Executive Orders 13563 and 13579 on Regulatory Reform

While the Risk Based Capital proposal must follow the requirements of the Administrative Procedures Act ("APA"), the CCMC believes that the NCUA should follow the cost-benefit and economic analysis blueprint established by Executive Orders 13563 and 13579, in addition to other requirements they must follow.[1] Doing so would allow meaningful, cumulative analysis that would result in a more coherent final rule with fewer harmful, unintended consequences for the American economy.

Executive Order 13563 places upon agencies the requirement, when promulgating rules to:

1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to justify);

2) Tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

[1] Executive Order 13579 requests that independent agencies follow the requirements of Executive Order 13563.

3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity);

4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

5) Identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made to the public.[2]

Additionally, Executive Order 13563 states that "[i]n applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."

Conducting the rulemaking and its economic analysis under this unifying set of principles will facilitate a better understanding of the rulemaking and its impact and give stakeholders a better opportunity to provide regulators with informed comments and information.

b. Information Collection and OIRA Review

The Risk Based Capital proposal excludes any information regarding the burdens that affected credit unions face in terms of information collection processes to comply with the proposals. Clearly, information gathering and collection is necessary to implement and enforce the Risk Based Capital proposal and such a collection process by definition creates costs and burdens. Yet estimates are not provided for commentators to assess. Accordingly, the Chamber believes that the Risk Based Capital proposal should undergo an OIRA information collection review and for that data to be released and subject to public comment. Failure to do so inhibits the ability of stakeholders to understand the proposal and provide the

[2] Executive Order 13563

regulators with informed commentary that can improve the Risk Based Capital proposal.

3. **Resolution of Conflicts with other Legislative and Regulatory Requirements**

The Risk Based Capital proposal are not being drafted or considered in a vacuum. They are being developed during a period when Basel III capital requirements and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") is being implemented and other regulatory changes are taking place with profound impacts upon the ability of businesses to raise capital. As an example, the one place where many of these issues conjoin is within the treasury function of a business. From that vantage point, the Risk Based Capital proposal will impact lending and liquidity for small businesses and start-ups, Basel III will impact lending and commercial lines of credit for a business; the Volcker Rule could affect a treasurer's ability to raise capital in the debt and equity markets; and derivatives regulations will have a bearing upon their ability to mitigate risk, while the much discussed money market fund reform initiative will impede the capabilities of treasurers to engage in sound, cash management and harm the commercial paper market, driving up competition from larger companies to get capital from other sources of the financial system.

Therefore, the cumulative impacts of these developments must be viewed and understood on a broad, holistic basis. We encourage the NCUA to work with other financial regulators to undertake such a study to better understand and resolve conflicts.

4. **Over-broad application of the Risk Based Capital proposal and the truncated implementation period.**

The CCMC believes that the application of these bank-style capital levels to smaller institutions can have detrimental impacts upon those smaller credit unions and their customers.

The Risk Based Capital proposal is largely based upon the Basel III agreements, which were primarily designed for large interconnected banks that operate on an international level. The United States banking regulators' decisions to apply those standards to smaller banks are creating compliance issues and challenges for the survival of community banks. By applying the Risk Based Capital proposal to credit unions with as little as $50 million in assets, we believe that the Credit Union industry overall will be harmed and their customers deprived of choices and products.

These negative consequences will have a large impact upon the credit and lending to Main Street businesses. It should be understood that large companies can access capital from many sources, including the vast debt and equity markets. Small businesses are more beholden to lending and credit from smaller financial institutions. Applying the Risk Based Capital proposal on smaller credit unions will mean that Main Street businesses will face a disproportionate impact upon their ability to engage in capital formation.

The implementation period contemplated in the Risk Based Capital proposal is also of great concern. The NCUA is only giving credit unions 18 months to apply the new capital standards after the Risk Based Capital proposal is finalized, in contrast to the nine year phase in banking regulators have given banks. Some have estimated that credit unions may have to raise $7 billion in additional capital to comply with the Risk Based Capital rules. It is unrealistic to expect credit unions to be able to raise that amount of capital in that short time frame.

Accordingly, the CCMC would recommend that they phase-in period be extended for five years to provide credit unions of all sizes the ability to raise capital in a timely and orderly manner without harming the underlying safety and soundness of those firms.

Conclusion

The CCMC believes that a balanced approach to capital and liquidity requirements are a pro-growth means of addressing over-leveraging and providing stability in a risk-based free enterprise system. The concerns expressed in this letter are primarily centered upon a lack of information that prevents informed commentary and a failure by the regulators to contemplate capital requirements in the sense of the broader macro impacts upon business lending and the economic growth and job creation that results from such activity.

The CCMC believes that the NCUA needs to address issues related to the application of the Risk Based Capital proposal on Main Street business lending. The inclusion of many smaller credit unions may have additional negative impacts upon Main Street businesses and their growth potentialities. Accordingly, these issues should be addressed the Risk Based Capital proposal is finalized.

Also, increased rigor in the consideration of the Risk Based Capital proposal through an enhanced cost-benefit analysis and compliance with Executive Orders 13563 and 13579 will allow the NCUA to consider the impacts upon lending to nonfinancial businesses and the broader economic impacts of the proposals. Finally, an overall study of the comprehensive impacts of the Risk Based Capital proposal and their interaction with other regulatory and legislative initiatives, such as the Dodd-Frank Act, is needed for all stakeholders and regulators to understand if these capital and liquidity standards can be effective and not cause economic harm.

Thank you again for the opportunity to comment upon the Risk Based Capital proposal. We are happy to discuss these issues in greater detail at your convenience.

Sincerely,

Tom Quaadman