April 24, 2015

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: NCUA's Risk Based Capital Proposal, RIN 3133-AD77

Dear Mr. Poloquin:

As an employee and also a member of Digital Federal Credit Union, (DCU) I appreciate the opportunity to submit comments to the NCUA's second proposed-risk based capital rule. (RBC2) I've been employed by DCU since 1993 and I'm currently the Senior Vice President of Branch Services, and as such, I feel I have an obligation to provide you with my feedback and comments.

NCUA's Lack of Authority for a Two-Tiered System

There continues to be concern regarding the NCUA's authority to create a two-tiered system. The overriding issue related to this is the legal authority of the NCUA to establish an additional regulatory requirement related to Risked-Based Net Worth (RBNW) for a "well capitalized" credit union meeting the definition of "complex". While there are numerous legal arguments related to if the legal authority exists to implement this regulation, the intent of Congress when the law was enacted should prevail. Based on comment letters from Former Speaker of the House, Honorary Newt Gingrich (May 23, 2014)[1], and Former Senate Banking Committee Chairman, Honorary Alfonse M. D'Amato (May 7, 2014)[2], the current proposal is inconsistent with the intent of Congress. Who better to understand the intent, than the two congressional leaders responsible for the passage of HR 1151?

Despite the belief that this Proposed Rule goes beyond the authority provided to the NCUA by Congress, the following comments are based on the likelihood that the NCUA chooses to move forward with implementation of a Risk-Based Capital (RBC) rule.

[1] http://www.ncua.gov/Legal/CommentLetters/CLRisk20140507AD'Amato.pdf
[2] http://www.ncua.gov/Legal/CommentLetters/CLRisk20140523NGingrich.pdf

Requirements for Capital Adequacy is Unclear

The Proposed Rule requires that "complex" credit unions "must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital" and "the nature of such capital adequacy assessments should be commensurate with the credit union's size, complexity, and risk-profile." The requirement for credit unions to have a comprehensive written strategy poses excessive regulatory burden to credit unions (see **Significant Under Estimation of the Regulatory Burden** discussed later in the letter) and the ruling is too vague. There are no clear guidelines and/or criterions of an NCUA's defined "comprehensive written strategy" for credit unions and NCUA examiners within the proposed regulation. This results in inconsistently applied requirements throughout the NCUA and its regions. Credit unions already have adequate capital adequacy policies, processes and procedures in place, therefore the NCUA should remove the requirement of a written strategy from the RBC rule. Furthermore, this proposed requirement appears to be a strong resemblance to the Capital Planning and Stress Testing rules issued last year for credit unions with assets of $10 billion or more.

The Proposed Rule's Paperwork Reduction Act estimates the additional data collection requirements for an estimated 1,455 complex credit unions to be a one-time 40 hour burden, or $1,276 cost per credit union. The Proposed Rule does not incorporate the estimated burden for establishing a comprehensive written strategy for maintaining an appropriate level of capital and other changes to the credit union's operations other than data collection. The effects of this proposal will be a much greater burden on complex credit unions upon the implementation year and for ongoing years. The NCUA's final rule on Capital Planning and Stress Testing estimated 750 hours of paperwork burden in the initial year and 250 hours in subsequent years[3].

Other than submitting a plan to the agency, it is unclear how the requirements of this proposal differ from the final rule on Capital Planning and Stress Testing. Using the cost estimate previously utilized by the NCUA, a more reasonable estimate (compared to zero) would be $23,926 per credit union or $34.8 million to the industry for the initial year of the final RBC rule. Additionally, there would be an ongoing annual cost of $7,975 per credit union or $11.6 million to the industry. Over a five year period, the cumulative cost to the industry would be approximately $81.2 million.

[3] http://www.ncua.gov/Legal/Documents/Regulations/FIR20140424CapitalPlanningStressTesting.pdf (Page 24315)

Decrease the Minimum Capital Requirement

The NCUA's effort to decrease the minimum RBC requirement from 10.5% to 10.0% in the revised Proposed Rule is appreciated, but further reduction is necessary. The NCUA's basis for the minimum capital requirement was mainly derived from Other RBC requirements. This is consistent with Chairman Matz's statement in the GAO Report to Congress (GAO-12-247) as referenced above. The NCUA should further decrease the minimum RBC requirement prior to implementation of a final rule.

The overall credit union industry is not looking to be more consistent with banks and has devoted time to being low-risk, cooperative institutions. The strong performance of credit unions throughout the financial crisis demonstrates there is no need for significant RBC requirements. This is consistent with Chairman Matz's statement in the GAO Report to Congress (GAO-12-247) as referenced above. The NCUA should further decrease the minimum RBC requirement prior to implementation of a final rule.

Implementation of the Final RBC Rule Should be Beyond 2019

Thank you for recognizing an effective date of eighteen months was not reasonable. The Proposed Rule has an effective date of 2019, or approximately four years. It is unclear when the NCUA will implement the changes needed on the Call Report system to require information for calculating the RBNW under the final RBC rule. Other Agencies provided seven years with a phase-in requirement. Should the NCUA choose to continue utilizing Other Agencies as a guideline for this Proposed Rule, the final rule should have a similar seven-year implementation period or beyond.

The year of the liquidation of the Temporary Corporate Credit Union Stabilization Fund (TCCUSF), which is scheduled to occur in 2021, should be an additional consideration for the NCUA to further delay the implementation of the final RBC rule. The final rule's implementation date should coincide with TCCUSF liquidation to enable this distribution to become part of the calculation in determining a credit union's RBNW.

Align Risk-Weights for Credit Unions Not Banks

The revised RBC Rule from the original proposal has many positive changes, such as the removal of the cap for the allowance for loan losses and changes to real estate loans risk-weights. Nonetheless, many of the risk-weights within the proposed regulation continue to warrant further evaluation. The NCUA ignores the uniqueness of credit unions and how credit unions handled the effects of the recent economic downturns to its members. Credit unions are known for promoting and conducting responsible lending and managing its financial statements. The diversification and growth opportunities provided by the cooperative nature of credit unions provide a sustainable future the industry and members of credit unions.

The Proposed Rule is inconsistent with Congress' direction that "design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved."[4] For example, one concern that I have is summarized below:

NCUSIF Deposit

The credit union system has capitalized its own separate, federal insurance fund, years ago. This structure and its current value should not be overlooked. The 1% deposit made by all federally-insured credit unions to the NCUSIF is an asset which should be properly included in any risk-based capital calculation. This amount is fully refundable should a credit union convert to private insurance (where allowed), or convert its structure to a bank. This balance is considered an asset in accordance with Generally Accepted Accounting Standards. The NCUSIF deposit should be included in the RBC calculation.

Thank you again for the opportunity to provide comments on this proposed rule. As a member and employee of a credit union I strongly urge you to make improvements to the proposal based on comments that I have provided in this letter.

Sincerely,

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