

April 27, 2015

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

Sent via E-mail to: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

Re: Cornerstone Credit Union League Comments on Proposed Rule: Risk-Based Capital;  
RIN 3133-AD77

Dear Mr. Poliquin:

This letter represents the views of the Cornerstone Credit Union League ["Cornerstone"] regarding the NCUA's second proposal on Risk-Based Capital ["RBC"]. Cornerstone is the official trade association serving 546 federal and state chartered credit unions in Arkansas, Oklahoma, and Texas combined, and more than 9.7 million credit union members. Cornerstone appreciates the opportunity to comment on this very important issue.

Cornerstone would like to express appreciation for NCUA's acknowledgement of the flood of comment letters in response to the first Risk-Based Capital proposal ["RBC1"]. The second proposal ["RBC2"] represents an improvement over the original proposal. However, despite the improvements, we cannot support RBC2 as drafted. We urge NCUA to withdraw the proposal or, in lieu of that, encourage NCUA to make additional improvements as discussed below.

*No Need And No Authority For Rule*

NCUA has attempted to justify its rule by stating that it is needed to make the RBC system for credit unions more comparable to banks, to respond to GAO recommendations, and to require credit unions that take more risk on their balance sheets to hold more capital to minimize losses to the share insurance fund.

No evidence has been presented that credit unions have been undercapitalized, not even during the recent financial crisis and Great Recession. NCUA has failed to show that there would have been any material reduction in share insurance losses had RBC2 been in effect at that time.

Although the Federal Credit Union Act ["FCUA"] directs NCUA to devise a risk-based capital requirement that is comparable to banks, it also specifically requires NCUA to take into account the unique nature of credit unions. The clause was added with a purpose: to provide flexibility

for credit unions because they are different from banks. Credit union risk cannot be compared apples to apples to bank risk.

Several legal opinions, as well as statements from members of Congress, demonstrate that NCUA does not have the legal authority to develop the rule as proposed. The FCUA directs NCUA to connect risk-based requirements to the sufficiency of a credit union's net worth for the adequately-capitalized classification only. It does not provide authority for a second higher risk-based capital requirement for well-capitalized credit unions. If NCUA wants to proceed with a two-tiered system, it would have to seek legal authority from Congress. The legal opinion obtained by NCUA provides very weak support for NCUA's position. More powerful is the legal opinion obtained by the Credit Union National Association which sums up our position as, "NCUA's approach is contrary to the express language of Section 1790d... (the two-tiered) provision would be highly vulnerable to being overturned as unlawful by a reviewing court."

While the RBC2 revision lowering the threshold for a well-capitalized credit union from 10.5% to 10% is an improvement, we still believe such an approach is contrary to law.

#### *Definition of Complex Credit Union*

Cornerstone appreciates NCUA listening to the commenters who emphasized the need for changes to the definition of complex credit union. Raising the asset size from \$50 million to \$100 million is a move in the right direction. However, we still believe that additional changes need to be made to the definition.

We believe the asset threshold should be raised further to \$500 million. Two thirds of NCUSIF insured shares are included at that threshold, so little risk exists to the share insurance fund by setting the threshold at that mark.

Additionally, by focusing solely on the size of the credit union, NCUA fails to follow the intent of Congress. The FCUA specifically states that the definition of complex credit union should be based on the portfolios of assets and liabilities of credit unions; the FCUA does not state to base it on asset size alone. As a result, we urge NCUA to amend the proposed definition of complex credit union to reflect factors such as deposit account types, member services, loan and investment types, and portfolio composition.

#### *Risk Weights*

RBC2 makes a number of positive changes to the risk weightings. Unfortunately, the proposed risk weights under RBC2 remain too high in several areas. We urge NCUA to lower the risk weights for assets such as mortgage loans, member business loans, mortgage servicing, and certain investments. Lower risk weightings than banks are appropriate given the differences between banks and credit unions. Credit unions have different incentives to manage risk and a lower loss history.

For example, the proposed risk weights assigned to first lien residential mortgage loans, current and non-junior real estate loans, commercial loans are higher than the weights set for banks.

These weights should be adjusted downward to levels no more than those in place for banks as credit unions do not have higher risk in these areas.

Additionally, the risk weight for unconsolidated CUSO investments is too high and should be the same for CUSO loans, which is 100% under RBC2. The 250% risk weight assigned for mortgage servicing is too high and should be significantly lowered. We also urge lowering the risk weights for publicly traded equity investments and charitable donations.

#### *Treatment of Goodwill*

Treatment of goodwill should not be immediately deducted from the numerator of the risk-based capital ratio. If deducted, it should be phased out over a 10 year period.

In our opinion, all goodwill should be reflected as long as it meets GAAP requirements.

Goodwill arising from previous supervisory mergers should certainly be grandfathered and allowed to be counted as risk-based capital without a time limit. Credit unions that supported NCUA's programs to minimize losses to the NCUSIF in the financial crisis should not be penalized by a change in the rules after the fact. The exclusion of non-supervisory merger goodwill would discourage some well managed and well-capitalized credit unions from participating in mergers, which often best serve the members of both credit unions and benefit the safety and soundness of the insurance fund by producing stronger credit unions.

#### *Capital Adequacy Plan*

Cornerstone opposes the capital adequacy plan requirements proposed in RBC2. Strategic capital planning is undoubtedly very important for credit unions. However, it should not be the subject of examination and supervision. Examiners should not have the power to determine whether a credit union needs more capital even if it is well-capitalized according to standard to net worth and risk-based capital ratio requirements. The proposed capital adequacy plan is not necessary for the vast majority of complex credit unions based on their management, risk profiles and current levels of capital.

#### *Supplemental Capital*

Cornerstone strongly urges NCUA to permit supplemental capital for RBC purposes. We believe NCUA has this authority. Although the FCUA does not permit supplemental capital to be included in net worth, there is nothing in the FCUA or GAAP that prevents NCUA from including it in the numerator of the risk-based capital ratio for RBC. The numerator already includes items that are not part of the net worth.

#### *Extension of Compliance Date*

Cornerstone appreciates that NCUA extended the originally proposed compliance date to 2019. However, we feel additional time is needed. We urge NCUA to extend the date further to 2021 to coincide with the termination of the Corporate Stabilization Fund, at which time credit unions are anticipated to receive refunds.

#### *Interest Rate Risk*

A separate interest rate risk rule is unnecessary. Credit unions already have guidance and best

practices available. Interest rate risk does not need to be part of a new rule. A fixed rule for interest rate risk would unnecessarily restrain credit unions. There is no need to burden the majority of credit unions when focus can be placed on the small number of credit unions that might be considered outliers.

*Summary*

In summary, we urge NCUA to remember that its job is to regulate credit unions so that they may thrive and grow; the NCUA should not be managing the credit union balance sheet. We urge NCUA to withdraw the proposal because it exceeds NCUA's statutory authority and is fundamentally flawed in several areas. Should NCUA proceed, we urge substantial improvements as suggested above.

Thank you for the opportunity to comment on this very important issue. Please feel free to contact me at (800) 442-5762 with any questions you may have.

Sincerely,

A handwritten signature in cursive script, reading "Richard L. Ensweiler".

Richard L. Ensweiler  
President and CEO