

October 5, 2017

Gerald Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

**Re: Request for Comments; Regulatory Reform Agenda**

Dear Mr. Poliquin:

Boeing Employees' Credit Union ("BECU") appreciates the opportunity to respond to the request for comment on the National Credit Union Administration's ("NCUA") regulatory reform agenda, published in the Federal Register on August 22, 2017.<sup>1</sup> BECU supports the efforts of the NCUA's Regulatory Reform Task Force ("Task Force") to identify regulatory requirements that are outdated, ineffective, or excessively burdensome.

BECU respectfully requests that the NCUA reconsider the proposal to defer action on the implementation of a supplemental capital rule until "Year 3" of the regulatory reform work plan.<sup>2</sup> Prompt action on supplemental capital is a necessary adjunct to the implementation of the NCUA's risk-based capital rules. The risk-based capital rules are scheduled to take effect in January 2019. Deferring action on a supplemental capital rule until "Year 3" of the work plan means that the development and implementation of a rule would be pushed back until at least 2020. The NCUA Board should instead move forward now with its work on a supplemental capital rule.

For the past several years, the NCUA has consistently stated that its policy is to implement a new supplemental capital rule prior to the effective date of the new risk-based capital net worth requirements.<sup>3</sup> That position has been endorsed by the NCUA Board Chairman and his predecessor.<sup>4</sup> It is sound policy for many reasons.

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<sup>1</sup> 82 Fed. Reg. 39702 (Aug. 22, 2017).

<sup>2</sup> See 82 Fed. Reg. at 39708.

<sup>3</sup> National Credit Union Administration, Final Rule; Risk-Based Capital, 80 Fed. Reg. 66626, 66660 (Oct. 29, 2015) (hereinafter, "RBC Final Rule") ("the Board plans to address additional forms of supplemental capital in a separate proposed rule, with the intent to finalize a new supplemental capital rule before the effective date of this risk-based capital final rule."); National Credit Union Administration, Frequently Asked Questions about the NCUA's Risk-Based

A well-designed supplemental capital rule will serve as a tool to help credit unions meet the new risk-based capital net worth requirements and, by extension, help support the enhanced resilience and responsible growth of healthy, well-managed credit unions. Including supplemental capital in the risk-based net worth requirements will also ensure that the NCUA's risk-based capital rules are comparable to other bank regulatory agencies, as required by law.<sup>5</sup>

The Task Force report provides no compelling justification for the NCUA Board to reverse course on its policy to implement a supplemental capital rule in conjunction with the new risk-based net worth requirements. The Task Force methodology for assessing the degree of effort and impact is reasonable as a general framework, but its application with respect to supplemental capital falls short. Little consideration is given to the fact that the NCUA Board has consistently stated that its intent is to implement a new supplemental capital rule prior to or simultaneous with the effective date of the new risk-based capital net worth requirements. The notice states that the "Board *should* decide whether or not to authorize credit unions to issue supplemental capital instruments that would only count towards the risk-based net worth requirement."<sup>6</sup> However, based on the NCUA Board's public statements, this affirmative decision has already been made.

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Capital Final Rule (Oct. 2015), <https://www.ncua.gov/Legal/Documents/RBC/RBC-Final-Rule-FAQs.pdf>. Question: "Will credit unions be authorized to raise supplemental capital for purposes of risk-based net worth?" Answer: "Yes." The FAQ document goes on to note that "As the risk-based capital final rule does not take effect until January 1, 2019, there is ample time for the NCUA Board to finalize a new rule to allow supplemental capital to be counted in the risk-based capital numerator before the effective date."

<sup>4</sup> NCUA Board Member Mark McWatters Statement on the Final Risk-Based Capital Net Worth Rule (Oct. 29, 2015),

<https://www.ncua.gov/newsroom/Pages/speeches/2015/october/McWatters-Statement-Final-Risk-Based-Net-Worth-Rule.aspx> (hereinafter, "McWatters Statement") ("I am also concerned that the Board would adopt a rigorous RBNW regulation without also providing—at that time—members of the credit union community with the option of at least partially satisfying the requirements of the rule through the issuance of properly structured supplemental capital."); NCUA Chairman Debbie Matz Statement on the Risk-Based Capital Final Rule (Oct. 29, 2015), <https://www.ncua.gov/newsroom/Pages/speeches/2015/october/Matz-Statement-on-the-Risk-Based-Capital-Final-Rule.aspx> ("As part of modernizing risk-based capital, we are committed to counting supplemental capital. . . . So, we plan to address supplemental capital as soon as possible in a new proposed rule. . . . *The effective date of a final supplemental capital rule would coincide with the effective date of risk-based capital in 2019.*") (emphasis added).

<sup>5</sup> See 12 U.S.C. § 1790d(b)(1)(A); see also Boeing Employees' Credit Union, Comment Letter on Advance Notice of Proposed Rulemaking Regarding Alternative Capital (Apr. 25, 2017) at 4-5 (hereinafter, "ANPRM Comments").

<sup>6</sup> 82 Fed. Reg. at 39708.

The notice does not meaningfully address the fact that substantial work has already been done to develop a supplemental capital rule. The NCUA Board has invited stakeholder input on supplemental capital issues on several prior occasions, first in connection with the risk-based capital rules and again in a stand-alone advance notice of proposed rulemaking on alternative capital. Additionally, an NCUA working group issued a white paper on the subject in 2010. BECU and other parties have submitted multiple rounds of comments, including proposed draft regulatory language. The NCUA should move forward now to capitalize on this momentum.

The suggestion in the Task Force report that the development of a supplemental capital rule must follow changes in the secondary capital regulation for low-income designated credit unions (“LICUs”) is unsupported. These and other related issues, including the current limits on credit union borrowing authority, can and should be addressed in parallel and follow-on rulemakings. Trying to address all of these issues in the initial rule is unnecessary and potentially jeopardizes the ability to implement a focused rule in time for the January 2019 effective date of the risk-based capital regime.

Abandoning the NCUA Board’s policy of moving forward with the development of a supplemental capital rule to coincide with the risk-based net worth requirements is also inconsistent with the goals of the regulatory reform agenda. First, providing credit unions with access to supplemental capital advances the stated regulatory reform goals of supporting job creation and economic growth because it will help credit unions meet their members’ demands for affordable financial services. As Chairman McWatters has stated, “[a] thoughtful, prudently constructed supplemental capital rule would afford the credit union community with a heightened opportunity to extend job creating small business loans thereby strengthening the economic viability of the Main Street business community.”<sup>7</sup> Second, implementing more rigorous risk-based capital net worth requirements without giving credit unions access to some form of supplemental capital may impose a significant regulatory burden on credit unions.

For all of these reasons, BECU respectfully requests that the NCUA reconsider the proposal to defer action on a supplemental capital rule and reaffirm its commitment to implement such a rule prior to the effective date of the risk-based capital net worth requirements.

BECU also supports the NCUA in undertaking a comprehensive review of Part 741, *Requirements for Insurance*, of its regulations. Many of the current requirements in Part 741 rely upon an intricate but inexact system of cross references to other rules. Many of the cross-referenced rules include requirements that do not apply to federally-insured state credit unions. The result is regulatory uncertainty and unnecessary compliance costs. The NCUA should review Part 741 to remove and resolve any ambiguity regarding the insurance-related requirements for federally-insured state credit unions.

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<sup>7</sup> McWatters Statement, *supra* note 3. See also NCUA, *Report to the House Financial Services Committee on the Final Risk-Based Capital Rule 126* (2015)(“a credit union’s inability to raise capital outside of retained earnings limits its ability to grow its field of membership and to offer greater options to eligible consumers.”).

BECU appreciates the NCUA's consideration of these comments and looks forward to continuing to work with the NCUA on these important issues.

Sincerely,



Mike Ryan  
General Counsel & Corporate Secretary  
Boeing Employees' Credit Union