



May 6, 2014

Mr. Gerard Poliquin
Secretary, NCUA Board
1775 Duke Street
Alexandria, VA 22314-3428

**REF: Risk-Based Capital: Commenting on Your Future –
Part 5: OVERRIDING CONGRESS!**

Dear Mr. Poliquin:

In prior comment letters it has been pointed out how NCUA's approach to RBC will 1) deter member mortgage lending, 2) damage MBL lending, and 3) severely limit safe CU investments, forcing unnecessarily lower savings returns on CU members. All proposed with utter disregard for the new, well-thought out, and lower RBC standards already in place for all other federally-insured depository institutions.

Today let's look at how NCUA has decided to independently override the U.S. Congress and federal law with the new RBC proposal.

In Section 216 of the 1998 Credit Union Membership Act ("HB 1151"), Congress specifically and purposefully wrote into the Federal Credit Union Act (FCUA) a series of mandatory "net worth" categories and prompt corrective action (PCA) requirements for credit unions. Congress defined statutorily that a credit union was "well capitalized" if its net worth was >7%, "adequately capitalized" if its net worth was >6% but <7%, etc - five categories in all. Congress wrote into the FCUA statute a very, very clear definition of "net worth" - nothing accidental nor haphazard about what Congress meant by "net worth", nor how it was to be used to determine CU capital levels.

NCUA through a sleight-of-hand has rewritten the Congressional definition of "well-capitalized" for CUs.

Let's take a look at the proposed RBC reg:

"The proposal would change the title of Sect. 702.102 from "Statutory net worth categories" to "Capital classifications". NCUA believes that replacing the term "net worth" with the general term "capital categories" better describes the combined "net worth ratio" and "risk-based net worth" measurements that make up the five categories listed in the statute. Moreover, the term "capital" is generally more inclusive of all accounts available to pay losses than the term "net worth" and is more commonly used in the financial services industry. **No substantive changes to the requirements of Sect. 216(c) are intended by these changes in terminology.**"

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"[Several sections of 216] of the Federal Credit Union Act (FCUA) use the term "risk-based net worth" requirement, NCUA believes that **replacing the term "risk based net worth" with the functionally equivalent term "risk-based capital"** in the proposed rule would better describe the equity and assets the requirement would measure. **No changes to the requirements of the statute are intended by the alternative term...**"

Under current law: Credit unions with net worth > 7% are "well capitalized". Under the current risk-based net worth (RBNW) formula, *if a credit union is determined to be "complex"*, it may be required to hold additional capital. *None* of even the 25 largest CUs are currently required to hold capital above their statutory net worth and *most are not complex* under current RBNW standards.

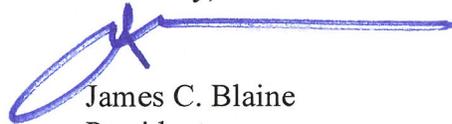
Under the proposed reg: NCUA unilaterally has 1) decreed that all CUs with assets > \$50 million are complex! No test, no evaluation - *as now required by the FCUA* - to determine if a CU is simple or complex. NCUA simply changes a Congressionally approved law to make credit unions above \$50 million in assets complex regardless of the credit union's balance sheet risk. NCUA is attempting to change the Congressionally legislated definition of "well capitalized" to:

"To be well-capitalized a credit union must maintain a net worth ratio of 7% or greater *and, if a complex credit union, (which NCUA has defined as all CU with assets >\$50 million)* must have a risk-based capital ratio of 10.5% or greater..."

NCUA's proposed RBC reg flies in the face of express Congressional intent under the FCUA.

Shouldn't we - on behalf of our 98 million member-owners – expect that Congress make changes, **if necessary**, to credit union statutes? Isn't that what the American Democracy is supposed to be about?

Sincerely,



James C. Blaine
President

JCB/ji