APCO EMPLOYEES CREDIT UNION
750 17TH STREET NORTH
BIRMINGHAM, ALABAMA 35203
TELEPHONE 205.226.6800

April 30, 2014

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

Re: Comment on Risk-Based Capital Proposal

Dear Mr. Poliquin:

This letter concerns the National Credit Union Administration's proposed risk-based capital rules. I am General Counsel of APCO Employees Credit Union in Birmingham, Alabama. I have been a legal advisor to scores of credit unions over the last quarter century. The Credit Union serves almost 70,000 members and is the second largest credit union in Alabama with approximately \$2.5 billion in assets.

The proposed risk-based capital rules has serious flaws that will be harmful to this Credit Union and costly to its members. Overall, the NCUA's proposal ignores the fact that credit unions did not cause the financial meltdown crisis. Higher capital requirements will mean lower savings rates and higher loan rates for our members.

Allowing an examiner to make a subjective decision to mandate higher capital requirements is a serious problem with the proposal. Under the proposal, an examiner can require an individual credit union to maintain risk capital greater than 10.5%. However, credit unions need an objective standard to plan for reserve requirements. Therefore, provisions allowing for additional case-by-case capital should be removed from the proposal.

Another problem with the subjective standard is the authority to increase capital requirements for a particular credit union is not expressly provided in the Federal Credit Union Act. Legally, an agency cannot issue regulations that exceed the statute passed by Congress. For example, the IRS cannot issue a regulation allowing it to assess a higher tax rate on certain taxpayers.

The proposal also creates a disincentive against making mortgages or holding long-term investments. The proposal assigns mortgages and long-term investments with higher risk weights. Further, the risk assignment numbers often seem arbitrary. For example, why should a credit card or unsecured loan have the same weight as an automobile loan?

Still another problem with the proposal is a legal one. The NCUA was required by law to develop a system "comparable" to bank capital requirements. However, the NCUA did not take into account the unique nature of credit unions. Credit Unions cannot raise capital from outside sources like banks. Therefore, reducing available capital will be harmful to credit unions.

In conclusion, I urge wholesale changes to the proposed risk-based capital rules as outlined here. The proposed rules are harmful to our members. If enacted, the proposal will result in reducing the amount of dividends paid, requiring higher fees, and raising loan interest rates on our members. Thank you for your consideration of this matter.

Yours truly,

Christopher J. Gerety

Christopher J. Gerety, Esq.
General Counsel
APCO Employees Credit Union