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May 28, 2014

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

Re: Comments on Proposed Rulemaking for Prompt Corrective Action and Risk-Based Capital

Dear Mr. Poliquin,

I am the CEO of Educational Employees Credit Union, a $2.2 billion credit union which is located in Fresno, CA. On behalf of our 228,000 members, I appreciate the opportunity to provide comments to the National Credit Union Administration (NCUA) on its proposed rulemaking regarding Prompt Corrective Action and Risk Based Capital.

Given the recent financial crises, it is understandable that the NCUA would be reviewing the existing regulatory framework. After such a challenging period, most organizations attempt to learn from those experiences and better position themselves for the future. As such, I appreciate the effort that the Agency has put into this proposed regulation. Regulators are faced with the difficult challenge of balancing the ability of the industry they regulate to grow and thrive, against their mandate of reigning in undue risks that jeopardize the health of the industry that they regulate.

Comparison to Banking Agencies

There are many references throughout the proposed regulation to Other Federal Banking Regulatory Agencies (Other Agencies) and specifically to the risk-based capital measures used by such Other Agencies. However, it is important to keep in mind that Congress, on many occasions, has noted and maintained the distinctions between credit unions and banks. In fact, the proposed rule recognizes that the NCUA is required to take into consideration the fact that credit unions do not issue capital stock and that they must rely on retained earnings to build their net worth.

Since credit unions are limited to raising capital through retained earnings, it is more difficult for them to meet a higher capital requirement. As such, it is not at all clear why the NCUA would provide a shorter time frame for implementation of any new capital standards that requires a higher level of capital than the Other Agencies would provide for banks. Banks are being given 5 years to phase in the new capital requirements, yet the NCUA is suggesting that 18 months would be ample for credit unions. There is no basis provided for this reasoning, nor is there consideration given for the many other changes - legal, regulatory and market-driven – that credit unions must contend with during this same period.

Additionally, the NCUA appears to be looking at the proposed 2.5% capital conservation buffer being discussed by the Other Agencies, and using that as part of the formula to derive the 10.5% capital requirement for a credit union to be deemed Well Capitalized. However, the Other Agencies are not including this buffer in the PCA requirements for banks. As such, the current proposal demands more capital for a credit union to meet the PCA requirements than a similarly situated bank. I would hope that the NCUA would revisit the 10.5% requirement and consider a lower threshold.

150% Risk-Weighting of Investments – 104©(2)(vii)

Although in certain portions of the proposal the NCUA looks to the requirements of the Other Agencies and refers to Basel III as a rationale for a specific point of the proposed regulation, at other times the proposed regulation differs markedly from the Basel III requirements and yet there is no reason given for such a departure. One example is the risk weighting for investments with a weighted average life (WAL) of between five and ten years. Under Basel III such an investment would be given a 20% weighting, and yet the NCUA proposes a weighting of 150% for credit unions holding such an investment.

The proposal does not seem to distinguish between an investment backed by a GSE, such as Freddie Mac or Fannie Mae, versus a private label investment. This is surprising, given the very different performance of these types of investments during the most recent financial crisis. Although the various conserved corporate credit unions suffered very significant losses as a result of poor performance of private label investments, the GSE investments performed differently, and yet there is no recognition of the difference in the proposed risk weightings.

The current proposal also fails to recognize the differences between first real estate loans made and held by the credit union versus mortgage backed securities (MBSs) purchased from a Government Sponsored Enterprise (GSE) like Fannie Mae or Freddie Mac. When a credit union is facing a difficult environment to make loans (loan demand is still very challenging in certain parts of the country), it must find alternative options to place funds. An MBS that is issued by a GSE has no credit risk and almost no liquidity risk, and yet is it weighted at 150%. It is difficult to understand how the interest rate risk associated with a GSE-issued MBS is significantly higher than a 30 year mortgage held by the credit union, and yet the risk weightings of the 2 vehicles are significantly different. I would hope that the weighting of these investments might be reconsidered.

Submission of Multiple Unapproved NWRP's – 702.111(g)(4)

The proposal attempts to address a situation where the Agency feels that a credit union is attempting to "buy time" and does not adequately address the seriousness of the Agency's concerns. It is understandable that the NCUA might get frustrated by such a situation. However, the proposal as it stands – with the ability to subject a credit union to administrative enforcement actions if 2 plans are submitted and rejected – seems rather overbearing. Given that several organizations – the credit union, the state regulatory agency (SSA) if the credit union is state chartered, and the NCUA (initially the region and later the headquarters in Virginia) – must agree to a plan, it is very easy to contemplate a situation where there is not agreement to a NWRP. This is especially true where there is either a new rule or a significantly revised rule such as the situation being contemplated here.

I served as Deputy Commissioner for Credit Unions for the California Department of Financial Institutions when PCA was first implemented in 2001, and I saw firsthand how challenging it was to initially implement the requirements of Prompt Corrective Action. It was not at all clear what an actual plan would look like, nor was it clear how such a plan would play out. It was common to find that one requirement being imposed by a regulator conflicted with a different requirement, and it took time to sort through such conflicts. Some of those issues arose from the regulators, not the credit union trying to obfuscate the plan.

The difficulty in finding common ground was also very prevalent during the last few years of the financial crisis. It was not uncommon for a credit union, the NCUA region, and the SSA to be in agreement but the NCUA's headquarters in Virginia would not accept a proposed plan. In the current proposal, the credit union could be subjected to very dire enforcement actions notwithstanding a lack of clarity from the regulatory agencies involved.

It would seem that a different and less extreme resolution to this potential problem could be found. Alternatively, at a minimum the number of plans submitted that would trigger such an enforcement action needs to be much higher than 2.

Overall, I would hope that the NCUA takes into consideration the many suggestions that have been made by many credit unions, amend the proposed regulation, and give a second opportunity to provide comments.

Thank you for considering these suggestions.

Respectfully,

Elizabeth J. Dooley, CEO
Educational Employees Credit Union