CREDIT UNION ASSOCIATION OF NEW MEXICO

May 27, 2014

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

Re: Comments on Proposed Rule: PCA – Risk-Based Capital 12 CFR Parts 700, 701, 702, 703, 713, 723, and 747 RIN 3133–AD77

Dear Mr. Poliquin:

The Credit Union Association of New Mexico represents 47 credit unions in the State of New Mexico and has worked with these credit unions to gain an understanding of the impact of the proposed rule-making. It is our opinion that a risk-based capital structure is a sound concept, however the proposal now being considered by NCUA is neither sound nor well researched and will harm credit unions, their members and the economic health of the State of New Mexico.

There is no evidence that the risk weightings as proposed are anything more than blind guesses at anticipating the risk associated with any given category. No independent third-party analysis has been conducted to determine associated risk. Further no analysis has been conducted to anticipate either the impact on the economy or the long-term impact on the credit union industry. How many credit unions will be forced to curtail lending, change strategic plans, or delay mergers? What impact on the economy will be felt when credit unions cut back on lending? How many underserved members will be shut off from financial services?

These questions have not been answered by the NCUA nor is there any way such questions could be answered. The proposed rulemaking comment period was opened on January 27. However the actual rule was not published in the Federal Register until February 28. The comment period lasted just 90 days from publication. We are concerned about the reasons for such a rush to approve this type of sweeping regulation, a regulation that in our opinion is the most wide-ranging and impactful on the industry in nearly three decades. The rush is also evident in the implementation plan. Currently the regulation would be implemented in just 18 months. Bank regulators typically provide years for their institutions to implement rulemaking. We oppose such a short implementation period given the fact that there is no impending financial crisis to be avoided by such action.

As for economic impact, New Mexico credit unions will be hit with a $65.5 million reduction in the buffer they maintain to keep their institutions in a “well capitalized” position. This reduction will seriously limit their ability to provide lending, member services to the underserved and access for members who rely upon credit unions as their only source of financial services.

Hindering economic growth in New Mexico may seem like a small impact to the NCUA. However the state's economy is among the worst in the country and is struggling to recover from the recession. The University of New Mexico's Bureau of Business and Economic Research shows New Mexico ranks 48 among states when it comes to job growth. New Mexico has the largest gap of any state when it comes to the disparity between its upper and lower class incomes. Credit unions play a major role in the economy of our state with nearly one in three residents belonging to a credit union, many of our residents are struggling to survive and a large number can be considered underserved. We are concerned that the NCUA has done little to understand the economic impact of their rulemaking at a time when our fragile economy is not able to withstand another ill-timed effort to protect against a speculative future recession.

The NCUA states it is proud to join regulators from around the world to protect against a future banking crisis, unfortunately the NCUA doesn't understand that credit unions didn't cause the collapse, didn't issue subprime mortgages and were able to bail out the corporate credit union system and still come out of the recession with strong capital positions. Why is it necessary now to show other regulators how NCUA deals with systemic risks, when the credit union system was among the only systems not to have such risks? It is our opinion that the credit union system should be a model for other regulators. We oppose the risk-based capital proposal because it is not supported by the facts concerning the recession and the part that credit unions played in the economic downturn.

As proposed, the risk-based capital rule sets a threshold of $50 million dollars in assets as the standard after which a credit union would be determined to be complex enough to fall under this requirement. We believe that this arbitrary threshold is far too low and is not indicative of a complex credit union. Assets alone are a poor measure of the complexity of a credit union's operations and the risk it may present to the share insurance fund. More practical and definitive standards are needed to better set a risk level after which a risk-based system should be used.

The risk-based capital proposal actually acts as a barrier to entry for both new credit unions and small credit unions that wish to grow. Why would a new or small credit union wish to grow beyond $50 million? Once the threshold is reached and the credit union must change its asset mix and come under additional regulatory pressure, there is no incentive to grow and serve its members. It may even enter a PCA trap where it can't meet new higher capital standards because its asset mix doesn't fit predetermined and arbitrary regulatory limits. It would not be able to grow capital because it couldn't grow loans under the rule.

The Credit Union Association of New Mexico is continually apprised of the practices of NCUA field examination teams. Frequently we hear of examiners commenting to credit unions that they are too small or should close. We also know of examiners making arbitrary determinations that are not supported by either regulation or the Federal Credit Union Act. These factors give us great concern when we learn that examiners will be able to arbitrarily assign risk factors to credit unions with no written plan or standard to do so. This is an example of a regulator that is no longer regulating, but managing credit unions. Such a provision, no matter how many good faith assurances are given, is clearly an overreach on the part of the regulator.

The NCUA should re-examine the Federal Credit Union Act, which prohibits rulemaking that does not take into account the unique nature of credit unions. Section 216 of the FCUA requires a system of prompt corrective action and clearly spells out:

> “The Board shall design the system required under subparagraph (A) to take into account that credit unions are not-for-profit cooperatives that – (i) do not issue capital stock; (ii) must rely on retained earnings to build net worth; and (iii) have boards of directors consisting primarily of volunteers. “

Creating risk weights that are more restrictive than those used by banks clearly decreases a credit union’s ability to earn capital. This is not in keeping with section 216 of the FCUA, which requires that the NCUA allow for the fact that credit unions do not issue capital stock. It is our belief that the risk-based capital proposal is in violation of the Federal Credit Union Act.

In summary the Credit Union Association of New Mexico sees the current risk-based capital proposal as harmful to the economic recovery of our state. It limits the ability of credit unions to serve their members and places barriers on a credit union’s ability to grow. There is already a system of evaluating risk and adjusting capital to meet that risk, a duplicative system layered on top of an existing system is not necessary. The NCUA Board has not presented any credible independent third-party analysis of the economic impact of this rule on the state of New Mexico, nor any other state. Neither has any analysis been presented on the impact to the credit union system or credit union members. While a risk-based capital rule may be appropriate, the current proposal is not and in fact, is in violation of the Federal Credit Union Act.

We respectfully urge the NCUA Board to scrap the current risk-based capital proposal and engage in a more thorough examination of the issue. Further analysis is needed to understand any such proposal and certainly 90 days for comments and 18 months for implementation is too short of a period to do such an analysis.

Sincerely,
Credit Union Association of New Mexico

Paul B. Stull

Paul B. Stull
President/CEO

CC: Chris Fitzgerald, CUNAM Board Chair
Honorable United States Senator, Martin Heinrich
Honorable United States Senator, Thomas Udall