PROGRESSIVE CREDIT UNION
UNDER SUPERVISION OF THE NY STATE DEPARTMENT OF FINANCIAL SERVICES

CHARTERED 1918

www.progressivecu.org

131 West 33rd Street, 7th Floor • New York, NY 10001 • T. 212.695.8900
Member Service Fax 212.695.6377 • Lending Fax 212.695.0759

May 28, 2014

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

Sent via email to: regcomments@ncua.gov
Sent via fax to: (703) 518-6319

Re: Proposed Rule: "Prompt Corrective Action – Risk Based Capital"

Dear Mr. Poliquin:

I am writing to you on behalf of Progressive Credit Union, a $685 million federally-insured, state-chartered credit union located in New York City. We appreciate the opportunity to provide the Board with our comments.

Progressive was chartered in 1918 after having been formed as an Oxycia, a fraternal self-help organization. The field of membership originally consisted of a small group of businessmen in the Bronx, New York who pooled their assets in order to provide credit for each other when no other source of funds was available. From the very beginning, the credit union's focus has been on small business lending. At this time, our primary niche market is taxi medallion funding but we also do some commercial real estate lending. Our credit union has helped immigrants and other hard working people become small business owners and provide for themselves and their families.

While we support the use of a risk-based capital framework, we have a number of concerns with the proposed rule, most importantly with the following two items:

1. The proposed risk weighting treatment of Member Business Loans (MBLs) is not based on actual risk.
2. Additional capital requirements may be placed based on the subjective opinion of the examiner.

TREATMENT OF CREDIT UNIONS ENGAGING IN MEMBER BUSINESS LENDING

The proposed assigned risk weighting does not accurately reflect risk. The inappropriate risk weighting is a means of NCUA legislating our offerings and micromanaging credit union business strategy without regard for the success of that strategy.

We find that the formula employed disproportionately impacts credit unions whose primary

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focus is member business lending. These credit unions are being unfairly penalized for helping members grow their businesses and they will, at some point, be limited in their ability to continue to serve them. The inappropriate risk weightings will cause credit unions to make risk-management decisions based on the impact on the risk-based capital ratio as opposed to the actual risk of the assets.

- ***There is no basis for penalizing credit unions that serve the needs of their members.***
  The proposal assigns higher weighting of risk based on the percentage of assets. Business loan risk does not change based on number of business loans in portfolio. The mere fact that we specialize in MBLs, for example, does not mean that our loans are riskier. If anything, many credit unions including our own have more experience underwriting the loans and our low delinquency statistics attest to that fact. Without any history of being riskier, we will be compelled to maintain a higher level of capital. Concentration risk should be determined through the examination process not risk weighting.

  NCUA Board Member Rick Metsger has stated, "[I]n the pursuit of safety and soundness, I am also mindful that credit unions must not be so constrained by their regulator, or so risk-averse that they cannot meet the financial needs of their members. Credit unions must remain relevant in the mix of financial services options available to the American public. A credit union that is safe and sound, but irrelevant to its members' needs, is not a viable outcome of regulation." (http://www.ncua.gov/News/Pages/SP20140225MetsgerGAC.aspx)

  Unfortunately, the new formula will result in credit unions no longer meeting the needs of their membership who want MBLs, simply to comply with an arbitrary regulatory guideline.

- ***All MBLs are not inherently more risky than delinquent consumer loans or residential mortgages.***
  There is an unjustified prejudice against MBLs, so much so that delinquent consumer loans are considered less risky than they are. According to the proposed plan, the risk ascribed to a delinquent unsecured loan is less than that of an MBL with a 20% LTV which is paying as agreed. This does not make sense as MBLs are subject to more stringent underwriting and are both fully collateralized <u>and</u> personally guaranteed.

  Similarly, a residential mortgage is not automatically safer than an MBL. We underwrite, for example, low LTV loans at short terms. The real interest rate and credit risk is substantially less for a three-year 30% LTV taxi medallion loans than a thirty-year 80% LTV residential mortgage loan in a remote location.

- ***The fact that there have been MBL losses at some financial institutions does not translate to an increased risk for experienced MBL lenders.***
  The commentary points out the need for higher risk weighting for MBLs based on historical losses at failed credit unions. Upon review of OIG reports and other information, much of this was due to gross mismanagement, rapid growth of lending in areas outside of their expertise, poor regulatory oversight and in some cases fraud. Losses caused by speculative commercial loans do not give any indication as to the riskiness of MBLs such as taxi medallion loans that are supported by an asset with a stable value, supported cash flow and

personal guarantee.

- ***All MBLs are not the same.***

  According to the commentary, "Supervisory experience has demonstrated that *certain* MBLs present multiple risks for which credit unions should hold additional capital." While noting that all MBLs are not the same, the NCUA has assigned the same risk weighting to all MBLs without considering the degree of risk associated with the loan.

  All Member Business Loans do not present the same level of risk. NCUA is well aware of this from its call report information. They differ based on a variety of factors including the quality of underwriting, location, size of loan, collateral, term, loan-to-value (LTV), and delinquency status. It is not correct to ascribe the same level of risk to both a long term speculative commercial loan in a faraway locale and a short term low LTV loan in a market we understand innately. Progressive, for example, has been underwriting taxi medallion loans since 1959 and has never sustained any loss of principal. Our medallion loans are conservatively underwritten with low loan-to-value and short terms.

  It is unfair to penalize credit unions who have demonstrated quality underwriting. No credits are given for historical and current performance of the business loan portfolio. Yet, interestingly enough, for consumer loans and residential mortgage loans, different weights are assigned to delinquent and non-delinquent loans.

- ***Due to a lack of information, all MBL loans are being classified as riskier and credit unions with higher "concentrations" of MBLs are being punished.***

  According to the commentary, "NCUA considered developing an alternative version of the current method for computing the MBL's 15 percent concentration level that would have addressed the potential for reduced risk in a well-diversified MBL portfolio." It determined that most of the 70 credit unions with MBLs above 15% of assets that would be subject to the higher weights "tended to primarily originate one particular type of MBL." As such it was determined that it would place an undue "reporting burden on credit unions with an uncertain result."

  In a desire to regulate concentration risk, the assumption is being made that all credit unions that specialize in specific loan types contribute to a concentration risk. While Progressive, for example, primarily underwrites taxi medallions, we have diversified our portfolio by offering loans in different geographic locations with different financing structures and different market conditions. It is unfair that the desire not to place a burden on others would place a higher burden on us and require us and other credit unions to maintain a higher capital position without reducing any concentration risk.

  NCUA states that it wants to be more consistent with the regulatory measures used for other financial institutions regulators. However, banks do not have different ratings based on percentage of assets.

- ***Impact on Loan Participations***

Progressive, for example, uses loan participations as a method of managing our balance sheet, increasing liquidity and complying with regulatory requirements. Our participants purchase participations in our loans to diversify their loan portfolios, improve earnings, and generate loan growth. The "moderate" increase in risk-weightings, coupled with the new framework will dissuade credit unions from participating in our MBLs.

OVERLY BROAD EXAMINER DISCRETION WITH NO CLARITY FOR CREDIT UNIONS AND MINIMAL RIGHTS OF APPEAL

The proposed Section 702.105 gives unfettered discretion to an examiner to require a credit union to hold higher levels of risk-based capital. While there is an appeals process, the onus will be on the credit union to prove that the higher level of capital is not appropriate. Further, without clear standards, a credit union will be unable to create a strategy to comply.

- ***The discretion given to examiners is inappropriate. It may harm individual credit unions and may lead to unequal treatment of credit unions.***

  Proposed section 702.105(b) states that "NCUA may establish increased individual minimum capital requirements upon its determination that the credit union's capital is or may become inadequate in view of the credit union's circumstances" and then provides a long, but not all-inclusive, list of examples of when higher capital levels "may be appropriate." In proposed section 702.105(c) it is noted that "the decision is necessarily based, in part, on subjective judgment grounded in agency expertise" and that "the factors to be considered in NCUA's determination will vary in each case." This confers upon examiners overly broad and overreaching powers that they should not have.

  In setting an individual minimum capital requirement, examiners will be making an arbitrary and subjective determination. This will lead to unfair and disparate treatment of like credit unions, based on different examiners' individual opinions. It adds a great deal of subjectivity to what should be an objective standard. To make matters worse, this proposal only allows an examiner to increase, but not decrease, the requirements based on perceived risk. In addition, and it is surely no coincidence, that during this comment period NCUA issued Supervisory Letter 14-04 which assures that examiners will be set loose to write-down all taxi medallion lending once the regulation is adopted as final.

- ***It is impossible to strategically plan for compliance with subjective and unknown standards.***

  Capital requirements should be set by formula only. Proposed section 702.105(c) states that the "appropriate minimum capital levels for an individual credit union cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria." The commentary further elaborates that "For this reason, a supervisory assessment of capital adequacy may differ significantly from conclusions that might be drawn solely from the level of a credit union's regulatory capital ratios." Unlike under PCA regulations, there will no longer be clear rules that give a definitive guidance about what a credit union must do. The requirements can be changed at any time. Without knowing the guidelines, it will be impossible to make meaningful strategic business decisions.

- ***An examiner should not have the authority to determine the individual minimum capital requirements.***

  Under the proposed rule, after "NCUA" determines that a credit union should have a higher capital level, the credit union has 30 days to respond and petition for a rescission of the individual minimum capital requirement. The rule is vague and does not state who in the NCUA has the authority to impose the higher capital standard. If such flexibility is written into the regulation, it is imperative that a higher level of authority agrees that the determination is not arbitrary before putting the burden on the credit union to respond.

- ***The only right of 'appeal' is to the NCUA Ombudsman.***

Given the minimal right of appeal, the Ombudsman will need tools at their disposal to ensure their review and decision on loans or products they might not be familiar with are not based on bias of examiners and Regional Directors. When needed, the Ombudsman should have a budget to allow them to tap outside expert opinions that will support or contradict an examiner's risk weighting conclusions. The process should be transparent allowing all credit unions access to Ombudsman decisions online that redact credit union identification. An open process will shed light on whether the right of appeal is actually meaningful. Credit unions will know full well the extent of the regulation's impact on individual credit unions through the NCUA's new RBNW application.

To conclude, our reading of the proposed rule is that NCUA has deliberately structured the risk weightings to discourage credit unions from offering MBLs to their membership. The proposed rule does not reflect a fair assessment of the actual risks of assets held by any credit union, e.g. all types of business loans should not be risk rated the same and MBLs should not be considered higher risk than other loans which are delinquent. It appears to be regulatory overreach to achieve an anti-MBL agenda.

We understand the need to ensure adequate capital to cover anticipated risks that could potentially impact the security of the share insurance fund. However, if credit unions are required to reserve an excessive amount of capital, service to members as well as credit union growth and opportunities will suffer.

RECOMMENDATIONS

1. **Weighing levels for MBLs are too high and not based on actual mathematical data. We propose that all MBL be given the weight of 100%, which is commensurate with the weighting of commercial loans under Basel III at other small financial institutions.**

2. **MBL weightings should not depend based on percentage of assets, which unfairly penalizes credit unions whose primary role is to provide member business loans.**

3. **If the weighting is not reduced to a more reasonable weighting, then NCUA should not unfairly lump all MBLs into a single category of risk. The proposed rule differentiates between delinquent status for consumer, student and first mortgages but does not do so for MBLs. There should be consistency in delinquency valuation for all types of loans.**

Measurable ways to determine the risk associated with MBLs is type of loan, geographic area, type of collateral used, LTV, historical losses and current delinquency status. These should be taken into account when determining the risk associated with MBLs.

If needed, the call report should be expanded to gather additional information as it is unfair to penalize a credit union for quantity rather than quality of MBLs.

4. **There should be no examiner discretion concerning individual minimal capital requirements. However, if NCUA provides for examiner discretion, we propose that an examiner should have limited discretion to adjust the risk based capital calculation by no more than 10%.**

5. **Provide meaningful appeal rights with appeal results available to the public.**

Thank you very much for the opportunity to provide our comments herein.

Sincerely,

Robert Familant
Treasurer / CEO