United Teletech Financial

May 28, 2014

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

Via e-mail: regcomments@ncua.gov

RE: RIN 3133-AD77
Comments on Proposed Rule: Prompt Corrective Action – Risk Based Capital

Dear Mr. Poliquin:

I am writing on behalf of the United Teletech Financial Federal Credit Union. We are a $320 million community credit union serving a large portion of central New Jersey. We appreciate the opportunity to provide comments on the above referenced rule.

Generally we are in support of revised capital rules that are in accordance with the BASEL III standards. We feel however that the implementation of these standards, as they relate to credit unions, should take into account the unique structure of credit unions as required by the Federal Credit Union Act. Further that any rules reflect the resilience of the industry as evidenced following the recent financial crisis. Lastly, that the rules provide at least the same treatment afforded to community banks by the FDIC.

As proposed, the rules don't appear to fulfil the mandate of the Federal Credit Union Act to take into account the unique structure of the industry. Nor do they appear to reflect the fact that credit unions were not the cause of the recent financial crisis and weathered it without Federal bail-out while continuing to provide loans to their members. Frankly the requirements of the rule appear to be more stringent than those applied to community banks. More critically however, in many instances the proposed rule imposes standards, risk weightings and other requirements which would place credit unions at a significant competitive disadvantage to community banks and other financial institutions. One cannot help but wonder if this disadvantage will significantly impair the industry's ability to serve and remain relevant to its members.

Credit unions are different from other financial institutions in that they can only grow reserves through earnings. As proposed, this regulation creates weights and time frames that would require significant growth in reserves to maintain similar levels of capital adequacy that the industry now enjoys. A recent CUNA study of credit unions that will be impacted by the regulation, cites that credit unions will be forced to "increase their capital levels by a net $7.3 billion to maintain their current margins above the proposed "well capitalized" thresholds."

These increased reserves can only come from one of two places: reduction of services to accommodate the new weightings or increased costs borne by members still recovering from the financial crisis. If implemented, the regulation will negatively impact consumers in our trade area and across the country by limiting access to lower cost products and services they need.

It is of interest that the NCUA, in the development of such an impactful regulation, did not seek to partner with industry leaders or trade associations to develop a solution to the BASEL III mandates that balanced protection of the share insurance fund with the protection of our small industry.

Competition from banks and non-banks threatens the viability of our not for profit institutions. Yet this regulation proposes substantially higher risk weights than those being proposed for community banks. Why? The failure to create a partnering between the regulator and the regulated seems to have been a significant missed opportunity to benefit the common good. Perhaps that could be remedied prior to final implementation of the rule?

Under its current balance sheet structure, United Teletech will remain a well-capitalized credit union. However, our member needs are changing and to meet these needs we expect to develop products and services that will meet those needs. Under the proposed rule, in order to implement our plans to expand in business lending, we will have to add reserves to comply with the proposed weighting requirements. The costs of adding these reserves will result in higher loan rates for our members. We will have fewer dollars to lend and at higher rates.

Further, as a small credit union that seeks to achieve scale through collaborative partnering through CUSO's, the seemingly arbitrary weighting of CUSO investments as described in the rule would result in our having to limit the use of this cost saving tool.

Additionally, the proposed rule indicates that the 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. "...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 decision is necessarily based, in part, on subjective judgment grounded in agency expertise." Of concern here is the potential for abuse based on these subjective opinions and criteria. It is difficult to understand how this component of the rule would be workable without a fully developed and independent appeals process. One would hope that this component of the rule would be stricken entirely.

Specific concerns and comments follow below:

CUSOs

The 250 percent risk-weight for investments in CUSOs appears arbitrary, without sufficient rationale, and doesn't reflect the actual risk of investing in CUSOs. We believe that any CUSO investments should be weighted at 100 percent. This weighting would align these investments more closely with that of a loan made to a CUSO and more accurately reflect the risk involved with investing in a CUSO.

Investments

United Teletech has a sizeable investment portfolio. We are concerned by several issues with the proposed rule's treatment of investments when it comes to risk-weighting. The proposed rule doesn't factor in credit union's interest rate exposure offsets such as variable-rate assets or derivatives. In any final rule, NCUA needs to include a way to factor in the interest rate risk mitigation being done by credit unions.

Additionally, we, like other credit unions, already monitor and control for interest rate risk in accordance with NCUA examination and supervision. Why is it necessary for a risk-based capital regime to perform this function?

If the NCUA does keep interest rate risk built into investment risk-weights, that system should not penalize short or medium term investments. An alternative model could condense the investment categories into a smaller number of buckets and allow short-term and mid-ranged investments to be appropriately measured. This alternative structure would still capture the long-term investments that would raise the most interest rate risk flags.

We would ask that the current risk-weights more accurately reflect the interest rate risk for short-term and middle-term investments such as those under a 5 year maturity. Additionally, that an alternative risk-weight system for investments be implemented that doesn't penalize credit unions for all investments with an over a year maturity.

Non-Delinquent First Mortgage Real Estate Loans
The proposed risk-weights for non-delinquent first mortgage real estate loans are too high and penalize too many credit unions for concentrations of loans that are not inherently risky. We would ask that an alternative structure be developed that still incorporates an element of concentration risk for non-delinquent first mortgage real estate loans would be to reduce the number of concentration risk buckets from 3 to 2 and introduce larger ranges of asset concentrations.

Member Business Loans (MBLs)
United Teletech is just building its Member Business Lending program and agrees that some method of mitigating risk here is appropriate. We would ask that credit unions with proven minimal losses in business lending should be given credit for their diversified portfolios and proven underwriting standards. Further, that risk weights be broken down for types of loans such as agricultural MBLs or commercial real estate MBLs and given appropriate risk-weights based on their actual risk.

Corporate Paid-In Capital
United Teletech has Corporate Paid in Capital. We believe that the regulatory changes made to the corporate system over the past five years have significantly mitigated the risk to that sector of our industry. Therefore since many of the risk that caused the losses of the system have been eliminated, these should be reflected in a lower risk weighing for this class of asset. We believe that paid-in capital would be more appropriately weighted at 125 percent to recognize that the corporate credit union structure is different than it once was, and now presents less risk to the credit union system. 125 percent also recognizes that the paid-in capital corporate is more risky than safer investments such as treasuries or consumer loans, but less risky than delinquent loans.

Individual Minimum Capital Requirement
As indicated above, United Teletech has serious concerns over the implementation of the individual minimum capital requirements. Our trade associates have raised concerns about the legal authority of NCUA to enact this portion of the rule. They specifically raise questions about the ability of the NCUA Board have to institute individual minimum capital requirements and whether this authority may be delegated to anyone besides the NCUA Board such as an examiner or regional director.

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Additionally the appeals process does not alleviate any of the underlying concerns with this part of the rule. The process itself lays a great deal of burden on the shoulders of individual credit unions to prove the NCUA action was not an appropriate exercise of discretion by NCUA. The process also requires credit unions to appeal to the same NCUA Board that made the judgment in the first place. While the proposed rule allows credit unions to seek the opinion the NCUA's Ombudsman, the NCUA Board is not bound by or required to give deference to the Ombudsman's recommendations. An independent appeals process where the ultimate deciding body is not the same NCUA Board that made the decision in the first place is a more fair structure for credit unions.

We believe the section should be removed from any final rule. Any appeals process needs to be revised and include an independent resolution.

Implementation Period

We believe that the 18 month time period to implement these changes is unworkable. To safely reposition a balance sheet without incurring losses requires more time. While banks will have up to 9 years to fully implement Basel III, NCUA is only giving credit unions 18 months to comply with the new proposal. Why?

We would ask that an implementation framework be developed that more closely mirrors time frames given to the banking industry by their regulators during the implementation of the BASEL standards.

Goodwill

United Teletech does not hold goodwill on its books, but recognizes the value of good will in accomplishing any future mergers.

We believe that the loss of goodwill within the risk-based capital ratio numerator presents two significant issues. It penalizes credit unions for their past actions. Goodwill is present on the balance sheets of credit unions that have recently been involved in mergers. This proposed rule could remove the benefit that credit unions recently involved in mergers currently receive. Going forward, as consolidations continue, without goodwill available to help balance out the equation going forward, a healthy credit union is less likely to agree to take on a troubled credit union as a partner (even at the request of NCUA). This is going to make it harder and more expensive for NCUA (and the industry as a whole) to find merger partners for troubled or failing credit unions which will ultimately lead to more expensive liquidations for the Share Insurance Fund.

We ask that Goodwill be added back into the numerator for the risk-based capital ratio.

Restriction on Dividends

We disagree with the manner in which dividend payment is restricted under the proposed rule. This component of the rule is onerous, does not reflect consumer expectations relative to timely payment of any dividends and may undermine consumer trust in institutional reputation. One wonders the impact that a failure to pay dividends would have on public trust and liquidity.

Share Insurance Fund Deposit
We do not understand why the NCUA would also require the National Credit Union Share Insurance Fund 1% deposit to be ignored in the risk-based capital calculation. We would ask that this be included in any calculations in the final rule.

In addition to our comments above, we respectfully ask that the agency postpone implementation of the rule and convene a commission of regulators and industry leaders to jointly develop a response to the BASEL III requirements that supports the agency's desire to mitigate risks to the share insurance fund, but also reflects the realities of needing to support the growth of the industry as it seeks to remain relevant to its members.

Thank you for giving us the opportunity to comment on the proposed rule Prompt Corrective Action – Risk Based Capital. Should you have any questions regarding these comments, please feel free to contact me at lrardine@utcu.org or 732.530.8100, ext 3000.

Sincerely,

United Teletech Financial Federal Credit Union

Leo R. Ardine
President/CEO

LRA:dbm

Copy to: United Teletech Board of Directors
New Jersey Credit Union League