May 26, 2014

By email to regcomments@ncua.gov

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

Re: Comments on Proposed Risk Based Capital Rule RIN 3133–AD77

Dear Mr. Poliquin,

I'm writing on behalf of Colorado Credit Union a $120 million SEG and Community based Credit Union. We have approximately 10,000 members, with 4 branches serving 4 different areas of the Denver metropolitan area.

I must say in general I've been a proponent of a reasonable risk based net worth calculation. History shows us that many of the credit union failures over the last 10 years and beyond were driven by credit union management and their boards venturing in to riskier business models without the appropriate level of capital associated to those risks. Being from Colorado I witnessed first-hand how two credit unions without proper internal controls and seasoned experience in the leadership roles caused significant losses to the NCUSIF. That being said, the failures in my opinion wouldn't have been solved by this new proposed model.

Ultimately in both of these cases, the business models and 3rd party partnerships weren't properly vetted and both credit unions relied very heavily on their new business partners. Significant concentrations in high risk loans were the down fall of both. Many credit unions nationwide, mine included, tried both of these products on a limited basis and realized the risks early on and got out.

Credit unions are in the risk business. We manage it every day from every loan we make to every check we cash. Credit unions survived, and in many cases thrived, through the worst economic disaster we've seen in our lifetimes because they didn't have the risks in their portfolios that we saw in the banking industry. This conservative management of our respective credit unions is the rule not the exception. This new proposal is designed to force credit unions out of the risk management business and into a very low risk model that for all intents and purposes will eliminate what little margins we have and cause a huge consolidation in the market place.

Shortly after the RBC proposal was released, Chairman Matz on March 26, 2014 made the following comment: ""Advancing financial literacy is a top priority for NCUA, and it's a core mission for credit unions," Matz said. "While consumer education is a year-round effort, Financial Literacy Month is a good reminder about the importance of learning how to manage money and build financial security. Credit unions should use this month to help their members become smarter consumers." I couldn't agree with her more. The problem is that by promoting financial literacy, which we should all be doing, we are encouraging our members to save, which inflates our deposits. We are able to sustain this growth with our current capital levels and our relatively strong earnings. However, under the new RBC proposal, we will immediately have to stop growing our deposits, drive down returns to our savers, and focus solely on earnings. Earnings which will be negatively impacted due to the significant changes in our business model this proposal will force.

Asset Threshold

Arbitrarily picking all credit unions over $50 million is concerning. The regulatory burden for smaller credit unions associated with this is reason enough to raise the threshold to a more reasonable size of $250 million. NCUA recently released their new derivatives rule allowing credit unions over the $250 million threshold to participate in the derivative market without additional NCUA approval. Credit unions between $50 million and $249,999,999 will have to seek NCUA approval to have the same opportunities to participate in the derivative market. NCUA stated that credit unions under $250 million as a whole weren't sophisticated enough to enter that market. In many cases I would agree with that comment but the exclusion puts all credit unions under the $250 million threshold at a competitive disadvantage as we are being held to the same standard for capital but in most cases won't have the same investment opportunities.

NCUA also announced that credit unions over the $250 million threshold will be examined on an annual basis, recognizing that higher asset levels as a pivotal threshold for safety and soundness. While the FCUA clearly states that the risk should be assessed based on the complexity of the credit union, if NCUA is going to draw a line in the sand it seems reasonable to me that NCUA reconsider the $50 million threshold and keep it consistent with other recent rulemakings at the $250 million threshold.

Loan Participation Accounting

The most glaring and improper consequence for Colorado Credit union is the loans sold with recourse portion of the rule. We currently participate in the Federal Home Loan Bank's (FHLB) Mortgage Partner Finance Program (MPF). The MPF program is an outlet for CCU to sell a funded first mortgage loan and its associated servicing rights. The program provides benefits and potential for risk of loss that differ from typical secondary market Agency (Fannie Mae/Freddie Mac) loan sale relationships.

Under all other existing secondary market options, CCU sells a loan "without recourse." With the MPF program, in return for an ongoing revenue stream, there is potential for CCU to be liable for a portion of a loss associated with a sold loan. Each loan sold into the program is individually assigned a risk obligation (percentage of the loan amount, currently averaging 2.338% for CCU). These individual potential loss obligations are placed into an aggregate "bucket" that continues to grow as more loans are sold to MPF. As of December 31, 2013, CCU had $31,089,000 in this program. The aggregate/bucket dollar amount of $726,861 represents the total contractual liability/recourse for CCU under a worst case scenario.

The accounting for these loans on the call report asks if we sell loans with recourse, to which the answer is yes, and then asks for a total dollar amount of those loans, or the $31,089,000. The call report either needs to add another line for the actual dollar amount subject to recourse or the $726,000. This inequity in the call report is taking CCU from "Well-Capitalized" at 10.96% to "Adequately Capitalized" at 8.81%. This improper accounting for our risk immediately forces the change in our business model I discussed above. With all of our focus moving to generating income, rather that serving our members and encouraging them to save with CCU.

CUSO Risk Weighting

As I discussed earlier CCU is a $120 million credit union with four branches. With this structure we are constantly working to keep operating expenses down. We are currently a big proponent of CUSO's and use them for our Data Processing System, Commercial Loan Underwriting and Servicing, Indirect Lending, and the Shared Branching Network. With all four of these CUSO's we've been able to reduce operating expenses by sharing those expenses with the other credit unions that participate. With the exception of the DP CUSO we are an owner in each of the other three CUSO's. Having an ownership stake big or small at least gets you a voice and allows you to more actively monitor and participate in the direction of these organizations. I believe because of a few bad CUSO's nationwide all of the good ones are being aggressively penalized with the risk weighting factor of 250%. This is an area where it appears NCUA is trying to manage credit unions out of the CUSO ownership arena. CUSO's are credit union owned set up to serve its credit unions, normally with a focus on lowering operating expenses. Most are very well run providing exceptional services to credit unions that couldn't do it on their own. Forcing a change will drive up costs by encouraging 3rd party vendors with significantly different profit motives to enter the market. In CCU's case our operating expenses would jump significantly if we couldn't participate in a collaborative environment. NCUA should be encouraging collaboration not trying to kill it.

Mortgage Lending

Treating all mortgages the same based on duration and loan-to-value isn't appropriate. CCU is a relatively large mortgage lender for our asset size and has developed a very solid program over the years. Saying every mortgage carries the same amount of risk per this policy is inaccurate. We have a pretty affluent membership base who have considerable equity, great credit, and typically want a shorter term loan. Our average maturity is between 15 to 20 years, with a loan-to-value in the low 70% with average credit scores above 740. Saying that these mortgages are as risky as a 30 year fixed, 80% loan-to-value, with a 680 credit score, just doesn't make any sense. Our credit union and many other credit unions have moved our portfolios into the more secure mortgage base, and have had good performance with very low delinquency. Throughout the nationwide struggles of the last several years we had two foreclosures with a total loss of $40,000. As a result of the excessive risk-weights in place for higher concentrations of real estate loans under the proposed rule, we will be forced to move those dollars into what we believe are riskier loans such as indirect auto lending, unsecured loans, and credit cards. If NCUA's intent is to reduce risk this philosophy seems a little counter intuitive.

I would think from a risk/return standpoint NCUA would encourage us to invest in our members (who we know) with loans yielding around 4% and not be forced to sell them into the secondary market. Instead it would appear that you'd rather have us to sell and then buy back those loans through mortgage backed securities yielding around 2%. With good credit risk management up front we are basically picking up an additional 2% return with very little additional risk. With interest margins already compressed we need the additional revenue to serve our members.

Individual Minimum Capital Requirement (IMCR)

Any regulation that gives a regulatory body complete discretion to move capital requirements based on an individual examiner's recommendation is inappropriate. This portion of the rule needs to be removed entirely. Credit unions should be judged on a level playing field and not at the discretion or whim of individual examiners. At the bare minimum any deviation from standard capital requirements should be controlled with clear documented standards both parties can review, and a very robust appeal process.

Credit unions need to know the rules to game prior to implementing new or innovative products in their credit union. To give NCUA a "carte blanche" to change the rules is going to kill innovation and set us all up to fail.

Implementation Period

An 18 month implementation for these new capital requirements simply isn't long enough for credit unions to adapt and raise capital, if needed, to comply. Credit unions can only raise capital through earnings and 18 months simply isn't long enough. It is my understanding that with the banks the BASEL III implementation period is a 5 year window, and that's with access to the capital markets. I would recommend moving the implementation period to a minimum of 5 years, with an 8 year implementation more preferable.

Closing Comments

I would like to go back to a comment I made earlier, that credit unions are in the risk management business. Historically, minus a few bad apples, credit unions have done a very nice job of balancing the risk to create a return and serve our members. I respect NCUA's task of trying to quantify the risk and put new standards in place for the industry. I don't, however, believe NCUA hit the mark with this proposed rule and it is apparent that NCUA's direction is to try and regulate risk out of our organizations. Credit unions can't survive without measured risk in their portfolios. Each credit union is unique and we all have differing business models to serve our members, a very definitive one size fits all risk model simply won't work. The current CAMEL model looks at all the different facets but doesn't micro-regulate individual credit union business plans. I would hope NCUA realizes that credit unions have performed very well through this crisis and extensive new regulation to significantly change what is working isn't necessary.

Respectfully,

Michael A. Williams
CEO/President
Colorado Credit union