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April 17, 2015
Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: RIN 3133-AD77
Risk Based Capital Revised Proposal Comment Letter

Dear Mr. Poliquin:

Achieva Credit Union ("Achieva") would like to take this opportunity to comment on the National Credit Union Administration ("NCUA") recently issued revised proposal to create a new risk based capital regulation for the credit union industry. Achieva Credit Union is a $1.126 billion asset Florida based community chartered credit union headquartered in Dunedin, Florida with 19 branches in nine counties. It has been in business since 1937 and, at this date, has over 11.2% regulatory capital. I believe Achieva is well regarded by both the Florida Office of Financial Regulation ("OFR") as well as the NCUA.

I certainly want to acknowledge that with the revised proposal the NCUA has made a number of positive changes to the original proposal in reaction to the constructive criticism contained in the comment letters it received in response to the original proposal. For that I want to express my personal appreciation to the board and staff of the NCUA. However, the revised proposal, while a more palatable rule, is still a solution in search of a problem. I know that you have heard this comment over and over but it is still a valid comment.

Before commenting on specific provisions of the proposal I would like to make a few observations:

1.) I don't know that I quite understand why the NCUA feels this proposal is necessary at this time. The natural person credit union ("NPCU") industry has come through one of the worst economic periods in this country's history in relatively good position, certainly in a better position than community banks, with the Prompt Corrective Action ("PCA") and Risk Based Net Worth ("RBNW") requirements currently in place. While there are some exceptions to this statement (mostly smaller NPCU's, **few** larger NPCU's), the losses sustained by the insurance fund were primarily caused by corporate credit unions who operate with a completely different business model than NPCU's. Additionally, a significant portion of the decline in NPCU net earnings during the economic downturn was a result of the impairment charges recorded on corporate credit union investments as well as assessments paid to the corporate credit union stabilization fund. Other points to mention in response to the NCUA's concerns that the current PCA requirement is inadequate for measuring the risk the industry poses to the insurance fund is that the NPCU segment of the industry has not paid an NCUSIF premium since before the financial crisis began in 2008; the NCUSIF insurance fund ratio to insured deposits has ranged from a low of 1.23% to a high of 1.30% for the last 25 years (as opposed to the FDIC insurance fund which has actually been negative [insolvent] in three separate years in the last 25, the most recent time being in 2010); from 2007 through 2013, the losses experienced by the NCUSIF fund have been $0.26/$1,000 of insured deposits versus FDIC losses of $2.30/$1,000.

2.) The significance of the negative impact on the future of the credit union industry, in general, and its balance sheet management, specifically, if this proposal were adopted in its revised form cannot be understated. The financial services industry, of which credit unions are one member, is a risk taking business. As a result there will always be some degree of conflict between the industry, and its need to generate income and capital, and the regulator, and its need to protect the insurance fund, when it comes to determining how much risk is appropriate or "safe and sound". This proposal has the potential to reduce the industry's return on average assets by detrimentally altering the way credit unions serve their members loan needs, detrimentally altering liquidity investment strategies, detrimentally altering the use of CUSO's to generate income and detrimentally reducing the industry's investment in new technologies. All of these potential effects would retard the prudent growth of the industry, reduce its competitive position in comparison to banks and inhibit its ability to survive. Investment losses (loans etal) are inevitable. Financial institution failures are unavoidable. Neither will be eliminated through an overly restrictive and poorly structured risk based capital standard.

3.) The summary section of the revised proposed rule states: "The proposed risk-based capital requirement set forth in this proposal would be more...comparable to the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation...(Other Banking Agencies)". While this statement may be true I question why this should be a NCUA objective. Having been in the banking industry for over 35 years before joining Achieva six years ago, I know first-hand the differences in the business models and operations of credit unions versus banks. These differences significantly change the risk profile of the balance sheet between the two models (I would argue the credit union model presents less risk to its insurance fund versus the bank model to its fund). Additionally, capital management in the credit union industry may be much simpler than the banking industry because of the limited number of options to generate capital (earnings only) but this simplicity makes it much more difficult to generate capital. Penalizing the industry with a complicated, arbitrary and higher capital standard because it "would be more... comparable...to...(Other Banking Agencies)" is an ill-conceived philosophical solution to a problem that does not exist in our industry model as opposed to the banking industry model.

4.) In the somewhat recent past, the Bank Insurance Fund approved a new rule to strengthen the leverage capital requirement for the eight largest banking organizations, a group that brought the economy to its knees in 2008. The new rule requires a 6% leverage ratio to be considered well-capitalized under prompt corrective action. Under the Basel framework only a 3% leverage ratio is necessary to be considered well-capitalized. By taking this action, the banking regulators are consciously moving away from a risk-based capital model to a model that is more like that currently used in the credit union industry. If the banking regulators feel that the risk based capital model is a flawed, then why is the NCUA moving in this direction? Why is the NCUA proposing actions that will put the industry it regulates at a competitive disadvantage? To quote FDIC Vice-Chairman Thomas Hoenig: "Each new Basel standard attempts to correct the errors and unintended consequences of earlier versions. But instead of resulting in better outcomes, each do-over has been more complicated and less effective than the last. Unfortunately, the weightings are more arcane than ever and, therefore, even less useful." I believe the NCUA proposal is exactly what Vice-Chair Hoenig is describing. FDIC Director Jeremiah Norton has also expressed his views on why the new leverage capital rule is a more preferable capital requirement than risk-based capital: "There is recent economic research to support the conclusion that the leverage ratio is a statistically significant predictor of bank default while the Basel Tier 1 risk-based capital ratio is not. Research from the Bank of England on a sample of 45 global banks shows that the leverage ratio is a statistically significant predictor of bank failure, while Tier 1 risk-based capital ratios are not. Likewise OECD economists, studying 94 banks between 2004 and 2011, have shown that the Basel Tier 1 risk-based capital ratio is not a statistically significant indicator of bank default; however, the leverage ratio is very statistically significant." Why is it that the banking regulators are moving toward the credit union PCA capital model while the NCUA is moving toward a flawed banking model?

5.) The NCUA has proposed that the final risk-based capital requirement be effective starting on January 1, 2019. When you consider the magnitude of the effects of this proposal on credit union balance sheets and operations, this time period is too short. The banking regulators have consistently provided for much longer implementation periods recognizing the time it takes to orderly prepare for new, higher capital requirements. Potentially, just when credit unions know with certainty what the new RBC requirements are and the actions they will need to take to prepare themselves for the impact of the new rules, interest rates may be higher, asset values may be lower and the impact of restructuring a balance sheet will be negative for earnings and capital. A period longer than what has been proposed is still needed.

6.) One of the consequences of this proposal on a number of credit unions, whether intended or not, is that the capital cushion they currently enjoy under the prompt corrective action standard will be reduced creating new competitive pressures. With the only way to increase capital being through earnings and with the impact of this proposal potentially being i.) reduced growth which leads to lower earnings, ii.) investment in less risky assets resulting in lower yields which leads to lower earnings and iii.) disposing of assets at losses, two things are needed in the final regulation. A longer implementation period to allow time to rebuild capital and the ability to raise supplemental capital. Even if supplemental capital were only to count toward meeting the risk-based requirement, it would be a major positive step forward.

7.) The members of every NPCU are going to be negatively impacted by this regulation. Since this standard will result in enhanced capital pressures, every NPCU will have to reevaluate the pricing of its loan, deposit and other products and services. The result of this reevaluation is unlikely going to be better pricing for the member. Members at every NPCU that this regulation applies to will pay higher rates for loans, earn less interest on their deposits and pay higher fees for products and services in order to put their credit union in a position of being able to meet the well-capitalized risk based capital ratio requirement.

8.) Consolidation in both the credit union and banking industries has been significant the last several years. In fact, a number of credit union mergers of banks have occurred somewhat recently with the experts opining that this trend would continue if not increase in frequency. The reasons for industry consolidation are many: asset quality problems, earnings pressures, capital inadequacy and the increasing regulatory burden on smaller institutions. It would seem that at least some of the industry consolidation that is taking place for the above reasons is not just welcomed by the regulators but is also openly desired. Both the higher capital requirement within this proposal as well as its treatment of intangibles (the goodwill and core deposit intangible created by mergers) has the potential to drastically reverse this trend, especially for distressed institutions. The double whammy of the leveraging of capital and creation of intangibles and the resulting negative impact on risk-based capital ratios will lead many otherwise willing credit unions to eliminate mergers as an expansion strategy. If this were to happen, the industry would lose an effective and efficient way of increasing branch footprints, adding new members, opening new markets and increasing earnings and capital. In other words, surviving.

I would now like to address a number of specific provisions of the proposal:

1.) Risk Factors and Specific Risk-Weights:
   A.) CUSO - One of the risks identified is equity investments in CUSO's. The revised CUSO investment risk-weighting is proposed at 150%, down from 250% in the original proposal. While I would admit that investments in a CUSO involves risk, a risk-weighting of a multiple of the investment would seem to be extreme since worst case you can only lose 100% of an investment. As a result I would suggest a risk weighting of 100% is more appropriate unless the intent of the NCUA is to discourage the industry from the use of CUSO's to create income and capital that the NPCU CUSO owner could otherwise not generate.
   B.) Mortgage Servicing Asset - Another of the risks identified is mortgage servicing assets ("MSA"). The revised proposal assigns a risk weighting of 250%, unchanged from the original proposal. If the intent of the NCUA is to discourage credit unions from continuing to sell loans servicing retained, which is a means of managing its balance sheet interest-rate risk, then this risk weighting could do it. It would seem from this risk weighting that the NCUA assumes that with a high risk weighting a credit union will adjust its loan pricing to generate a higher gain on sale to offset the higher capital requirement. Unfortunately this will not happen because loan pricing, and the resulting level of gain on sale, is set by the market place. To generate a higher gain would require increasing the interest rate on a loan above market levels which means the borrower will go to another lender to borrow at the current market rate.

      I really believe the proposed risk weighting illustrates a lack of a complete understanding of the accounting for MSA's. MSA's are carried at the lower of cost or market. GAAP requires an annual third party valuation of the asset's carrying value. While the valuation may conclude that the current market value is less than the book value the impact on earnings is to write the asset down to its market value, not write it entirely off.

      The asset value impairment that the revised proposal is attempting to address comes from the refinancing of high rate loans in a low rate environment. The value of servicing assets created over the last five years can only decrease if rates decrease. That is hardly the rate scenario to be expected today. As a result, servicing values are likely to increase from current levels. Longer term, a servicing asset is created over various rate environments somewhat mitigating the negative impact of rate changes on the asset valuation.

      The generation of servicing assets comes from the sale of loans where the servicing of the asset is retained by the selling credit union. Generally the loans that are sold reduce interest-rate risk (long-term fixed-rate loans) or concentration risk (vehicle, mortgage, MBL and credit card loans). Why does the NCUA want to penalize these actions?

      When a loan is sold servicing retained the selling credit union is maintaining the relationship with the member which obviously is a positive.

      This is a higher risk weighting than banks have thereby creating another competitive disadvantage. For all of the above reasons the risk weighting should be the same as other assets (100%).
   C.) Charitable Donation Accounts (CDA) – In December 2013, the NCUA approved Parts 703 and 721 providing for a credit union investment in a CDA. Since CDA investments are primarily in bond and equity Exchange Traded Funds ("ETF"s"), investments that are very liquid, the revised proposal would assign a risk rating to CDA investments of 300%. By regulation, CDA investments

are limited to no more than 5% of total capital, a level that controls the risk of the investment. As a result of the limit in the amount that can be invested in this instrument as well as the highly liquid nature of the investment, I would propose tht following in regards to the risk weighting for these investments:

a.) 0% risk weighting – this risk rating is suggested recognizing that the investment limits and investment strategies present diminimus safety and soundness exposure to the insurance fund; recognizing the public policy implications of providing contributions to charitable foundations; and recognizing that the proposed risk weighting will discourage credit unions from the wide spread use of this investment vehicle.

b.) 100% risk weighting – while higher than my suggestion in a.) above, it is less than what has been proposed; is a level that is on a par with the banking treatment (which the NCUA has expressed is an intent of the proposal); would eliminate the complexity of "look-through" options; and would simplify the overall risk weighting process for non-significant equity exposure.

D.) Corporate Credit Union Perpetual Capital – While the revised proposal reduces the risk weighting for perpetual capital invested in a corporate credit union to 150% from 200%, the revised risk weight is still a dis-incentive for a NPCU to provide more capital to a corporate. Why does the NCUA want to make it harder for a corporate to raise additional capital if needed or desired by the corporate. Corporates provide products and services to NPCU's that may not be available from any other source, especially for a small NPCU. The cost for a small NPCU to get the same products or services from a correspondent bank will be greater than what a corporate charges, if those products and services are even available to a small NPCU. The only way not to have this effect is to reduce the risk weighting to no more than 100%.

2.) Intangible Assets

A.) Capital – The proposal states that it defines capital as measured by GAAP. This is only partly true since qualifying capital for purposes of calculating RBC excludes goodwill and core deposit intangibles recorded in merger accounting. If GAAP says these are assets, then why does the proposal define them differently? I understand that the NCUA is concerned that these assets could become impaired and, if so, would need to be written off; however, the odds of that happening are extremely low and would be a single institution problem as opposed to an industry-wide issue for all institutions involved in mergers. I would also like to note that the core deposit intangible has a stated life and is amortized to expense over that life. It is being written off anyway, why do you feel the process should be accelerated? Lastly, under current GAAP, goodwill is on the books forever unless it becomes impaired. Additionally, even if it becomes impaired it's not automatically totally impaired. Let GAAP deal with the treatment of intangibles as opposed to this proposal.

B.) Goodwill – The revised proposal presents an alternative capital treatment for "supervisory" goodwill, goodwill generated in a "supervisory" merger, allowing such goodwill to be included in the numerator of the calculation until 2025. While I applaud the concept, I would suggest the definition of transactions that qualify as supervisory mergers falls short of identifying all of the merger transactions that were a result of supervisory problems with an institution. Many transactions took place after January 1, 2009 where a distressed credit union was merged into a healthy credit union without going through the regulatory bidding process and without supervisory assistance. In these instances, a healthy credit union felt there was sufficient franchise value left in the distressed credit union that it was willing to "solve" the regulatory problem before the distressed credit union was put into conservatorship thereby saving the insurance fund the cost of the conservatorship process. I would suggest that the proposed supervisory goodwill definition being broadened to include the scenario outlined above. Why would you want to penalize a healthy credit union for saving the insurance fund the cost of curing a problem?

The revised proposal goes further and limits the supervisory goodwill treatment proposed until 2025. I question why this limitation was added to the proposal. Under current GAAP, goodwill has no defined life. It is an asset carried at its originally recorded value unless and until there are events that take place that cause impairment of the asset as defined by GAAP. The GAAP standards for impairment would rarely, if ever, typically be triggered after a credit union merger. That being the case, why is the NCUA proposing the creation of its own impairment standard for supervisory goodwill? I would suggest that the permanent grandfathering of supervisory goodwill should be the standard except for any write downs for impairment required by GAAP.

I'd also like to make one last global comment about the proposed treatment of goodwill. The exclusion of goodwill generated by mergers that took place before the RBC proposals were issued is somewhat Draconian in its effect. Most of the industry consolidation that has taken place up to now was supported/desired by the NCUA. Most of the mergers were either distressed credit unions, credit unions whose boards/management teams wanted to exit the business or credit unions incapable of dealing with the various regulatory and/or compliance burdens. These three issues are not going to go away. However, because of the punitive nature of the goodwill treatment of this proposal, the field of credit unions interested in being an "acquiror" is going to shrink. Maybe so much so that there will not be merger partners for credit unions that the NCUA needs a partner for. If this result is acceptable to the NCUA, then so be it. But if it's not acceptable, then you need to rethink the capital treatment of goodwill or you may increase resolution costs to the insurance fund. While I know you know this, with earnings being the only way to raise capital, taking capital away because of goodwill will take time to replace, potentially longer than until the year 2025.

C.) Core Deposit Intangible (a/k/a – Other Intangibles) - For those credit unions, Achieva included, that merged with a credit union after December 31, 2008, a core deposit intangible was recorded as part of the merger accounting for the transaction. The revised proposal would require the core deposit intangible recorded in this scenario to be deducted from capital before calculating a risk based capital ratio. In other words, the NCUA is going to penalize those credit unions that merged with another credit union, healthy or distressed. The penalty consists of both increasing the surviving credit union's capital requirement to 10% of risk weighted assets and, at the same time, immediately writing off an asset required by GAAP (core deposit intangible) which GAAP says is an asset with a quantifiable life. Under GAAP, a core deposit intangible is amortized to expense over the estimated life of the core deposit relationships of the acquired deposit base. The estimated life is determined by a third party and is based on an analysis of the historical decay rate of the core deposits prior to the merger. The actual performance of these core deposit relationships are tested each year to determine if the original estimate is still holding true. If they are, then no further adjustment is necessary; if they are not, then an impairment adjustment is made to accelerate the amortization of the intangible. I urge the NCUA to rethink the capital treatment of the core deposit intangible and let GAAP determine how the core deposit intangible is to be written off in fairness to the surviving credit union and to encourage future mergers of both healthy and distressed institutions whether with credit unions or with banks.

3.) Section 104(b) – The proposed numerator has several shortcomings in both its additions and deductions:

   A.) NCUSIF deposit – Under GAAP, the NCUSIF deposit is an asset to be carried on the balance sheet of a credit union. Under GAAP, the NCUSIF records the deposit on its balance sheet as a liability. If a credit union converts to a bank charter, the NCUSIF deposit is repaid to the converting credit union (as an asset and liability relationship between two entities should be handled). Further evidence of this asset/liability relationship is the fact that in April of 2014, Achieva received a refund of its deposit that was in excess of its required amount. There is no justification for, in effect, writing off this asset by deducting it from capital. This deduction from capital in the proposal should be eliminated.

   B.) Goodwill – Please see the above discussion.

   C.) Other intangibles – Please see the discussion above.

Lastly, I would like to your information request regarding Supplemental Capital:

A.) Before responding to the specific questions that you have raised in the revised proposal I would like to provide you with some related history on this subject. The savings and loan industry in the 1970's and 1980's was able to count subordinated debt toward its regulatory capital requirements. The balance sheet classification for this instrument was debt not equity. Under GAAP, the terms and structure of this instrument do not meet GAAP requirements to be recorded as equity. It was counted only toward regulatory capital. The structure of the instrument put it behind deposits in liquidation but ahead of stockholders. Both mutual and stock chartered thrifts could include subordinated debt in their regulatory capital. There were two regulatory restrictions on how subordinated debt factored into an issuers capital ratio: 1.) No more than 25% of the issuers regulatory capital could be made up of subordinated debt (I believe 25% is the right number, it was certainly not less but it could have been more); 2.) To be included in regulatory capital an instrument had to have an original term of at least seven (7) years and the amount counted toward regulatory capital was reduced by $1/7^{th}$ each year when the remaining term fell below seven years. You may already be aware of the above, but I thought I would provide this input anyway. If you were not aware, you may want to go back to FHLB/FSLIC regulations to get much more information on the regulatory framework for subordinated debt back then.

B.) Now I would like to address the six specific questions you raised:

   1.) Yes, as subordinated debt it would only receive payment in liquidation if the sale of the assets of the failed institution exceeded the amount necessary to pay off the insured deposits;

   2.) Subordinated debt will never meet the GAAP definition of capital, it is debt. It will only meet the definition of regulatory capital through regulatory fiat. I do not have the expertise to respond to your question regarding the FCUA. Subordinated debt is somewhat of a hybrid form of capital because of its liquidation position.

   3.) The certificates would have to be structured in the same way in a liquidation as subordinated debt. It's repayment would have to come after insured deposits. That still does not make it equity under GAAP (I have no idea under the FCUA but it does create somewhat of a debt/equity hybrid).

   4.) I don't have the expertise to respond to this question.

   5.) I don't have the expertise to respond to this question.

   6.) In the case of subordinated debt, I believe the only way to sell it is through a licensed securities salesperson (someone with at least a Series 7 license). This, in all likelihood means, through an investment banking operation. As a result, suitability, consumer protection and disclosure requirements will have to meet SEC regulations. One of the most important disclosures will be that this instrument is not insured by the NCUA.

In the case of certificates of indebtedness, assuming that they could be sold by someone who is not licensed, a suitability form would have to be completed and signed by every buyer with the signed document being maintained by the issuing credit union as part of its permanent records. The document would have to explain that while it is an insured instrument (up to the insurance of accounts limits) it has a lower priority in liquidation than regular insured deposits.

Thank you for this opportunity to comment on the revised proposed Risk Based Capital regulation. I sincerely hope that the NCUA is committed to once again listening to the concerns expressed by the industry through this comment process and is willing to make additional substantive revisions to the proposal for the sake of the long-term viability of the industry. I would also hope that whatever changes are made by the NCUA to this revised proposal, they are shown to the industry before the regulation is finalized and that the industry will be provided with another opportunity to comment.

Sincerely,

Dennis B. Holthaus

Dennis B. Holthaus
Senior Vice President/Chief Financial Officer
Achieva Credit Union

Cc: U. S. Congressman Gus Bilirakis
U. S. Congressman David Jolly
U. S. Congressman Dennis Ross
U. S. Congresswoman Kathy Castor
U. S. Congressman Vern Buchanan
U. S. Congressman Curt Clawson
U. S. Senator Marco Rubio
U. S. Senator Bill Nelson
Bruce Rica, Chief, Bureau of Credit Unions
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