Western
FEDERAL CREDIT UNION

PO Box 10018 Manhattan Beach, CA 90267

April 23, 2015

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

Re: Risk-Based Capital (RIN 3133– AD77)

Dear Mr. Poliquin:

On behalf of the more than 170,000 member-owners who have entrusted more than $2 billion in assets, Western Federal Credit Union (Western) thanks the Agency for the opportunity to comment on its second regulatory proposal creating a new "risk-based capital" approach for complex federally-insured credit unions.

While Western appreciates the efforts of the Agency to improve this regulatory proposal, Western does strongly oppose this rule for the basic reason that the Agency has not documented its reason for abandoning the asset-type approach used in 2000 for the asset-size approach in this proposal. It is true that the language of the *Federal Credit Union Act* (Act) dealing with credit union capital requirements has not changed since that 2000 rulemaking. However, the Agency's interpretation of the Act has changed without explanation.

Western stands by its comments made in the first comment period on risk-based capital in a May 2014 letter and repeats them again in this letter. The Agency is clearly going against Congressional intent when the *Credit Union Membership Access Act of 1998* was passed by Congress and signed by President Clinton. Congress did not intend for a capital requirement based upon asset size.

Those comments are repeated here directly.

History of "Complex" Risk-Based Capital Requirements

Federally-insured credit unions had a risk-based capital approach before the enactment of the *Credit Union Membership Access Act* (CUMAA) in August 1998. With CUMAA, Congress determined that a singular capital approach was best for credit unions. CUMAA amended the *Federal Credit Union Act* to mandate a seven percent capital ratio for federally insured credit unions to be considered "well-capitalized."

CUMAA also created an additional capital approach for those credit unions whose assets determined the credit union to be "complex." Western believes that the current proposal does not follow Congressional intent for "complex" credit unions and applies a "one-size fits all" approach.

During its consideration of H.R. 1151, which would become CUMAA, the Senate Banking Committee (Committee) published a report dealing with its consideration of the legislation (Senate Report 105-193, May 21, 1998). In that report's discussion of Section 301 (prompt corrective action) of the legislation, the Committee stated that:

> "For purposes of section 216(d), **"complex" refers to credit unions' portfolios of assets and liabilities**; it does not involve credit unions' field of membership...Other provisions of section 301 are intended to encourage the NCUA, in designing the risk-based capital requirement, to seek and receive broad input – to help assure that the requirement is workable, fair and effective. **(emphasis added)**

During Senate debate on the legislation (July 27, 1998), the issue of "complex" credit unions was specifically mentioned in light of the then-Secretary of the Treasury Robert E. Rubin's letter to Senate Majority Leader Trent Lott expressing the Clinton Administration's support of H.R. 1151. Rubin's letter referenced the extra capital measures that were going to be imposed on "complex" credit unions, not all federally insured credit unions.

In the Supplementary Information for the final "risk based net worth requirement" (RBNW) (65 FR 44954), credit unions asked for a simple asset threshold for meeting the "complex" definition. The Agency declined to act upon those comments. It required meeting the two separate definitions in order for a federally-insured credit union to meet the definition of "complex." Both the asset threshold ($10 million in assets) and the RBNW requirement of six percent capital (portfolios of assets and liabilities) had to satisfied.

The Agency's proposal states that the "complex" designation will be applied to all federally insured credit unions with assets of $50 million or more (Proposed 12 CFR 702.103). The Agency has not demonstrated why it should not comply with Congressional mandates in this definition when it explicitly states "portfolios of assets and liabilities" and why it changed its own definition of "complex" from the original final rule published in 2000.

Western believes that this was not what Congress intended for the "complex" credit union designation and strongly encourages the Agency reject this concept.

Conclusion

The Agency has been trying to change capital requirements for federally-insured credit unions for the better part of the last 18 months. Other than comments about the economic downturn of 2008-2010, the Agency leadership has not provided credit unions with a proactive reason for requiring these capital changes which will not necessarily benefit the credit union members-owners our financial cooperatives serve. Until such as case is made to the credit union community, this regulatory capital effort through the proposed rule must not be finalized.

If I can be of further assistance in this matter, please feel free to contact me at 310-536-5330.

Sincerely,

Greg Badovinac

Greg Badovinac
Assistant Vice President – Compliance & Governmental Relations