New Jersey
Credit Union League

April 23, 2015

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

emailed: regcomments@ncua.gov

RE: Comments on Proposed Rule: Risk-Based Capital, RIN 3133-AD77

Dear Mr. Poliquin:

The New Jersey Credit Union League (NJCUL) is the non-profit trade association representing the interests of New Jersey credit unions. Our members hold assets approaching $8.4 billion, serving 774,587 credit union members. NJCUL is committed to the development of the credit union movement by creating a collaborative environment in New Jersey that adds value through shared services, consumer awareness, and innovative market development.

NJCUL appreciates the opportunity to submit comments on the National Credit Union Administration's (NCUA) second proposed rule Risk-Based Capital (RBC2), RIN 3133-AD77**.** While RBC2 is an improvement to the original risk-based proposal with fewer credit unions now being impacted than under the first, NJCUL believes that the risk-based capital rule remains flawed and is unnecessary. Therefore, it is our recommendation that the RBC2 proposed rule be withdrawn. Barring that action, we respectfully submit that NCUA make the appropriate adjustments to its final risk-based capital rule should it be implemented.

NJCUL has concerns regarding the proposal's capital requirements, definition of complex credit unions, risk-weights, treatment of goodwill and the National Credit Union Share Insurance Fund (NCUSIF) deposit, supplemental capital and lack of authority to implement. NJCUL believes the proposed definition of complex credit union does not adequately reflect actual credit union complexity. NJCUL feels it is important that the agency delay the implementation date at least until 2021 should RBC2 be implemented, to provide an adequate period for credit unions to fully digest changes in the final rule and prepare to comply. As requested, we have also provided our comments on the need for additional interest rate risk (IRR) regulation.

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Capital Requirements

NJCUL is concerned about NCUA's proposed additional provisions regarding capital adequacy. Under RBC2 these provisions would grant examiners broad consideration to determine whether a credit union needs more capital even if it is well-capitalized according to standard net worth and risk-based capital ratio requirements. According to the Credit Union National Association's (CUNA) state-by-state analysis of NCUA's RBC2 there are twelve New Jersey Credit Unions that are currently well-capitalized, when NCUA's RBC2 is applied two of those credit unions immediately fall to adequately-capitalized. However, under the proposed provisions examiners would have the leeway to require additional capital of not just the adequately-capitalized credit unions, but in some instances could determine that well-capitalized credit unions need additional capital and perhaps subject them to additional scrutiny regarding not only their capital levels, but also how they plan their capital strategies to balance their risks.

NJCUL believes this action is unnecessary for the majority of complex credit unions. Based on CUNA and NCUA reporting, if NCUA examiners have concerns regarding the credit unions they supervise, they should be required to address those credit unions' situations on an individual basis and not set an overarching rule for all. If a credit union meets the net worth and risk-based capital requirements to be well-capitalized, the sufficiency of its capital should not be an issue in terms of any rule that could require it to hold additional capital to be considered well-capitalized. NJCUL strongly recommends that NCUA delete the capital adequacy provisions from the RBC2 proposal.

Definition of Complex Credit Unions

NJCUL supports the NCUA's raising the asset threshold for credit unions that must comply with the proposed rule from $50 million in assets to $100 million in assets or greater. However, NJCUL requests that the NCUA review and clarify more completely the definition of a "complex" credit union under the proposed rule. Defining "complex" using only an asset size threshold fails to account for the portfolios of assets and liabilities of credit unions, as well as operational complexity. Many larger credit unions have limited service offerings or narrow portfolio composition and should also be exempt from this new regulation.

Risk-Weights

There were positive improvements to the risk-weights in RBC2. Including the removal of weighted average life components from risk weights for investments and changes to risk-weight escalation for higher concentrations of real estate and member business loans. Other examples of improved treatment under RBC2 include the designation of 1-4 family non-owner occupied mortgage loans as residential loans, subject to lower risk weightings than if NCUA had categorized the loans as member business loans. Unfortunately, RBC2's risk weights remain too high in key areas. Given credit unions' level of risk they should be lower than what the federal bank regulators require for assets such as mortgage loans, member business loans, servicing and certain investments. Lower risk weightings for credit unions are appropriate given their different incentives to manage risk as compared to banks, and lower loss history.

Currently, if finalized, RBC2 would include the following risk-weighting:

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- First lien residential mortgage loans over 35% of assets would have a risk weight of 75%, actually higher than the 50% risk weight for banks.
- Current and non-junior real estate loans over 20% of assets would also have higher risk weights than provided for banks.
- Credit union commercial loans over 50% of assets would have a risk weight of 150% while the weighting for bank commercial loans over 50% of assets could be as low as 100%.

Based on lower loss rates at credit unions NJCUL urges NCUA to adjust these risk weights downward to levels no more than those in place for banks, as credit unions certainly do not have higher levels of risk associated with holding these assets.

We support the proposed treatment of consolidated credit union service organization (CUSO) investments and loans in which no separate risk weighting would apply. The risk weight for unconsolidated CUSO investments, though, is still too high and should be the same as for CUSO loans, which is 100% under RBC2. In addition, we believe the 250% risk weighting for mortgage servicing, which was unchanged from the first proposal and is the same as for banks, is too high and should be significantly lower in any final RBC2.

NJCUL also does not support the 300% risk weighting for publicly traded equity investments which should be much lower so that credit unions will not be unduly limited in their investments for employee benefit funding. We also urge NCUA to assign a risk weight of no more than 100% to charitable donation account investments to help encourage credit unions to continue supporting charitable endeavors.

Treatment of Goodwill

The retention of goodwill in a supervisory merger in the risk-based capital numerator until 2025 is an improvement over the original proposal, but does not go nearly far enough. NCUA should include all goodwill and other intangible assets (OIA) in the numerator so long as these intangible assets meet Generally Accepted Accounting Principles (GAAP) requirements. Meeting GAAP standards would automatically make it subject to annual goodwill impairment testing. NJCUL believes the exclusion of non-supervisory goodwill from the numerator may discourage some well-managed and well-capitalized credit unions from participating in mergers In any case, NJCUL would like to see all supervisory goodwill grandfathered without time limit, subject to regular impairment testing.

NCUSIF Deposit Treatment

NJCUL encourages NCUA to reconsider the exclusion of the one percent deposit each credit union makes to the National Credit Union Share Insurance Fund (NCUSIF) in the risk-based capital calculation. By excluding this deposit, a credit union's risk-based capital position is inappropriately lowered. The deposit would be returned to the credit union should they convert to private insurance or to a bank charter. The Financial Standards Accounting Board permits the recognition of such deposit under GAAP and it should be properly included in any risk-based capital calculation.

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Supplemental Capital

NCUA has voiced support for credit unions' use of supplemental capital and should permit the use of such capital in meeting risk-based capital requirements. Further, the agency should pursue legislation that would authorize the use of supplemental capital for all credit unions, not just those with a low-income designation.

Authority and Justification

Historically, credit unions have performed well under current prompt corrective action (PCA) rules, as has the NCUSIF. With that in mind, there is no need for the proposed risk-based capital rule to overhaul credit union capital requirements. In imposing risk-based capital standards comparable to those the Federal Deposit Insurance Corporation (FDIC) imposes on banks, NCUA ignores the cooperative structure of not-for-profit, member owned credit unions. According to CUNA, the stability of the fund only required two premium payments of 24 basis points combined in 2009 and 2010. Further, from 2008-2012 the NCUSIF fund balance never fell below its historical range of 1.2 to 1.3% of insured deposits.

Furthermore, the proposed rule includes a higher risk-based capital requirement for a credit union to be well-capitalized than to the risk-based capital requirement for an adequately capitalized credit union. The Federal Credit Union Act directs NCUA to connect risk-based requirements to the sufficiency of a credit union's net worth for the adequately-capitalized classification only. As such, we reiterate our recommendation that this rule be withdrawn.

Delay of Implementation Date

While NJCUL appreciates the adjustments NCUA made before issuing RBC2, including extending the deadline to comply with a final rule, we are requesting that the deadline be extended several additional years to lessen the impact on credit union members. Additional time will allow impacted New Jersey credit unions to evaluate changes that may need to be made and ensure that member services are not negatively impacted as they mitigate the risk of falling below the newly imposed thresholds. Credit unions will also need time to monitor their financials and understand how new or changing products and services may impact their future risk-based capital calculation. An implementation date of 2021 would be more feasible if NCUA proceeds with finalizing RBC2.

Interest Rate Risk (IRR)

While NJCUL supports NCUA's decision to remove the interest rate risk (IRR) components from the original proposal, it concerns us that NCUA has indicated that it may issue a separate IRR rule in the future. Credit unions have successfully used different strategies to mitigate their IRR commensurate with their given situation. NJCUL believes that IRR is a supervisory matter and a separate rule is not needed. The agency currently has regulation in place that requires credit unions to have an IRR policy in place, board approved. We recommend that NCUA not issue a separate IRR regulation.

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Conclusion

NJCUL is encouraged by NCUA's acknowledgement of the impact the increased regulatory burden the original proposal would have placed on credit unions, and its members, by listening to our concerns and issuing a second risk-based capital proposal with an extended comment period. NJCUL stands resolute in our belief that the proposal is unnecessary and urges NCUA to withdraw the rule in its entirety, but absent that, we ask NCUA to continue listening to credit unions concerns and further recognize that they are facing unprecedented levels of regulations while continuing to strive to serve their members. NJCUL asks that NCUA consider the needs of New Jersey credit unions' members and the important role the credit union system plays in our state and others when evaluating risk-based capital requirements and make appropriate adjustments to a final rule, should one be issued.

Thank you for the opportunity to comment on the second proposed rule Risk-Based Capital (RBC2). If you should have any questions, please contact me at gmichlig@njcul.org or 1-800-792-8861, ext. 106.

Sincerely

Greg Michlig
President/CEO

cc: Deborah Matz, NCUA Chairman
Richard Metsger, NCUA Vice Chairman
J. Mark McWatters, NCUA Board Member

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