In Response To:

NCUA's Second Risk Based Capital Proposal

Achieva Credit Union
April 25, 2015

General Comments Regarding the NCUA's Risk Based Capital Proposal (RBC)

In our response to the NCUA's first RBC proposal, we stated that our capital rating would be permanently damaged by a different type of safety and soundness threat; the proposed RBC rules. In an effort to align with new world order international bank capital requirements, the NCUA is proposing to change the rules of the game for all of America's credit unions. That sentiment has not changed regarding RBC.

While the NCUA did modify its first proposal in ways that are positive and more commonsensical, Achieva Credit Union (ACU) continues to strongly support the fact that our industry does not need the proposed risk based capital regulation. Credit Unions, including ACU, weathered just fine the worst economic storm since the inception of America's credit unions and are still doing fine. Imposing rules on credit unions that are based on the risks inherent in the international banking community do not make sense and are not needed. This proposal is a knee-jerk reaction to the past economic melt-down and an example of "piling on" by the NCUA just to do what our for-profit counterparts are doing in an attempt to ensure Congress a safety and soundness facade in an attempt to put the NCUA Board in in a positive light. Corporate Credit Unions caused the most stress in our industry. Rightfully so, their capital rules were modified to address those concerns. Very few natural-person credit unions caused the NSCUSIF losses. Even though there were losses, isn't that what the NCUSIF was designed to do when our leaders decided several decades ago to self-insure?

Overregulation adds unnecessary costs and adversely impacts consumers since these costs will be passed along to them. Overregulation limits growth. This in turn becomes a barrier to access for consumers that need credit union services. Also, the application of a cookie-cutter approach to regulation stifles the individuality of our institutions. The proposed RBC regulation does all of that. The following two sections are not offered as suggestions to compromise in the proposal, but to explain why the regulation is unneeded and is short-sighted.

Specific to Goodwill Treatment

…"A merger or purchase and assumption is classified by the NCUA as an "emergency merger" where the acquired credit union is either insolvent or "in danger of insolvency" as defined under appendix B to Part 701."

In 2009, Sarasota Coastal Credit Union (SCCU), was around $200 million in assets. SCCU was located in a very economically hard-hit area. The consolidation of Achieva Credit Union (ACU) and SCCU made good business sense since we had no presence in the counties represented by SCCU's field of membership

(FOM) which was contiguous to our FOM on the west coast of Florida. Had they not found a consolidation partner, SCCU likely would have been taken over by Regulators in 2010. This would have cost the NCUSIF millions of dollars and hours upon hours of State and NCUA regulatory staff oversight. Also, SCCU's 20,000 plus members may have been uprooted and forced to find another financial institution on their own. When we were considering this consolidation, we personally visited then NCUA Region 3 Director, Alonzo Swan, and other regional staff in the NCUA's Atlanta Regional Office to present our pro-forma financial statements that illustrated how, under the then new acquisition accounting rules, this transaction would generate millions of dollars of goodwill on our balance sheet. Among other things, we wanted to know how the NCUA would treat goodwill on our balance sheet going forward. The NCUA staff responded that they had not been trained on the new purchase accounting rules and did not have any advice regarding goodwill creation. (They also emphasized that the NCUA was offering no assistance in transactions such as the one we were considering.)

We also visited our State Regulator regarding pros and cons of merging the credit union or letting them take it over first. We elected to merge because each month of inaction meant SCCU's capital situation became more and more bleak.

Our CPA firm advised us that the potential impact on our balance sheet would be negligible since goodwill is static and would have no impact on capital as long as it remained unimpaired. It has passed GAAP impairment testing each subsequent year.

The NCUA and Florida Office of Financial Regulation expeditiously approved the transaction. Who could have known that the NCUA would propose a drastic capital rules change just a few years later?

The preceding paragraphs offer a brief synopsis of the events surrounding our merger with Sarasota Coastal Credit Union in 2009. The resulting goodwill from that transaction has been on our balance sheet for over five years. It has easily passed impairment testing each year. The goodwill currently on our balance sheet technically fits the proposed definition of a supervised merger. Our situation is probably not unlike others. We merged a challenged credit union and saved the NCUSIF from losses and negated the need for many hours of regulatory oversight. This is an illustration of how the industry can support itself during turbulent times without additional regulation.

Consolidation is the growth strategy for many credit unions. It is important for the NCUA Board to note that if the RBC proposal is enacted, healthy, progressive credit unions would be handcuffed to the point that future mutually beneficial credit union consolidations will be unattractive and will not happen due to the treatment of goodwill. The NCUA's RBC proposal would permanently penalize credit unions for their forward-thinking, industry-supporting, business-savvy, strategic activities. Also, there is no logic to support the idea that goodwill derived from a supervisory merger has an expiration date.

Charitable Donation Accounts (CDA's)

Effective December 19, 2013 the NCUA Board authorized federal credit unions to fund CDA's as an "…activity incidental to the business for which the credit union is chartered…". With this authorization the NCUA supported a credit union's positive reputation in the communities they serve. Does the NCUA really want credit unions to take advantage of the opportunity that a prudently managed CDA will provide? With a 300% risk assignment to these investments, it does not seem so. Even the OCC recognizes the value of CDA's and only assigns a 100% risk factor to them in their RBC weighting. We would suggest that safety and soundness is as important to the OCC as the NCUA and encourage the NCUA to remove this risk factor in their proposal in the cases where CDA's pose no significant risk such as when they are capped at 10 – 12 % of capital.

Summary

With purchase accounting rules and the creation of goodwill and approval of CDA's, the NCUA Board made positive regulatory changes. Now with the RBC proposal, The NCUA Board is proposing to turn around and change positives into negatives by quickly and drastically changing the rules of the game. It is a serious mistake to think that the industry will be stronger if we are required to hold back more of our members' capital. Credit unions must differentiate themselves by more than just their charter. By adopting RBC, the NCUA Board and staff would create more bank-like financial institutions and put credit unions out to pasture.

Respectfully submitted by Gary Regoli, President/CEO, Achieva Credit Union