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April 27, 2015

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

RE: Comments on Proposed Prompt Corrective Action – Risk-Based Capital Rule 2.0

Dear Secretary Poliquin;

I am writing on behalf of First Commerce Credit Union (FCCU), which serves 13 counties in the Panhandle of Florida and south Georgia. We have over 40,000 members and our asset base exceeds $475,000,000. The management of First Commerce Credit Union appreciates the opportunity to provide comments to the National Credit Union Association (NCUA) on its proposed rule, Risk-Based Capital Rule 2.0.

We believe, as we stated in a letter to you when the original rule was proposed, that this action is not necessary to protect the share fund or to promote stability in the credit union industry. Evidence of that can be seen by the large number of bank failures that occurred in spite of the fact they have been using risk based capital for over a decade. Risk-based capital should not be addressed in isolation as the proposal would do, but should be part of a multi-faceted capital reform strategy. Under this approach, the NCUA should coordinate with the credit union system and Congress to achieve statutory changes that adjust Tier I net worth ratios and authorize supplemental capital. This proposal would substitute a punitive capital rule for effective examination and supervision. The NCUA should undertake major improvements in the training of examiners to address deficiencies that have contributed significantly to the failures of credit unions. It is disappointing to note that the fact this proposal's well-capitalized risk-based capital requirements violate the Federal Credit Union Act has not dissuaded the agency from promoting this rule. The overall negative impact of this proposal will be far greater than the NCUA has anticipated and will most likely result in a much smaller credit union system over the loan term.

Nevertheless, assuming you will continue to push forward with implementation of this rule, there are a number of areas for which we propose you make changes.

One of our primary concerns lies with the proposal to imbed standardized interest rate risk and concentration risk measures into a risk based capital analysis. We believe that the continuation of rigorous analysis, combined with the NCUA Board focusing its efforts on ensuring that examiners are well-equipped with the right questions to ask when conducting examinations, is far superior to a rule that establishes standardization to be applied to the masses, whether based on credit risk or interest rate risk. This methodology also results in degradation of reliable decision making information. This type of standardization guarantees that the unique risk of an individual credit union will not be appropriately captured. Standardization does not change the need for examiners and the credit union decision-makers to understand the unique risk of an individual credit union.

History shows that when there are real or perceived limits established by regulators, it is not uncommon for human nature to kick in. As a result, policy limits are set at the broadest parameters to avoid crossing any real or perceived lines drawn. Because it is easy to forget that limits were set at the broadest parameters, the risks to the industry can unintentionally increase because the limits do not truly reflect unique appetites for risk. Another unintended consequence could be that additional efforts are no longer made toward maintaining a deeper understanding of a credit union's unique interest rate risks. This could potentially cause decision-makers and/or regulators to rely on achieving the minimum standard as the measure of safety and soundness. This reality places a significant burden on the NCUA to get its standards right, when in all likelihood, there is no "right" standard. Adding a separate IRR standard as a subcomponent of a risk-based net worth requirement to complement the proposed risk-based capital ratio measure would be charging forward into dangerous, uncharted waters for the industry. If the NCUA moves forward with this type of rule and the parameters are inappropriate, the industry and its members could suffer severely.

Standardization will cause confusion among examiners and credit union decision-makers, especially when combined with the proposed requirement, "...the Board believes it necessary to incorporate a broader regulatory provision requiring complex credit unions to maintain capital commensurate with the level and nature of all risks to which they are exposed, and to maintain a written strategy for assessing capital adequacy and maintaining an appropriate level of capital". This latter requirement is a sound business practice and enables credit unions and regulators to keep up with the pace of change in the in industry without being distracted by standardization and a one-size-fits-all approach. However, until the NCUA clarifies how this proposed requirement will be used in the examination process, it should not be included in regulation.

We also have a concern as to how the results of the capital adequacy assessment referred to in the rule will be used in the exam process and in determining a credit union's capitalization classification. We believe the intended regulatory use should be clearly articulated to the industry prior to becoming a regulation.

If the agency feels compelled to proceed with a modification to credit unions' risk-based capital requirements in the absence of legislation to address the issues of statutory net worth ratio (leverage) requirements and supplemental capital, it should follow a Basel-style risk-based capital system with the following characteristics.

- Consistent with current law, and because of higher leverage requirements for credit unions to be well capitalized, the risk-based aspect of prompt corrective action should apply **ONLY** to the adequately capitalized classification. The identical risk-based requirement, coupled with a 7% net worth ratio, would apply to the well-capitalized PCA classification.
- The risk-based requirements should only apply to credit unions that are complex and complexity should not be defined by asset size alone.
- Credit unions should have authority to use supplemental capital to meet risk-based capital requirements.
- Risk weightings should generally be similar to those applied to community banks in the United States, taking into consideration the operational history and organizational structure of credit unions.
- Risk weightings should include the following changes to the system proposed by NCUA:

Given lower historical loss rates on residential mortgage and small business loans at credit unions compared to community banks, and the fact that credit unions with higher concentrations of these loans tend to experience lower loss rates than their peers, weightings and concentration thresholds for these types of loans should be far lower than the proposal indicates and lower than what banks must meet.

Investments with a Weighted Average Life (WAL) of under five years should have a risk weighting of 20%. Those with a WAL over five years should have a risk weight of 100% to the extent they exceed the sum of 50% of core deposits (share drafts and regular savings), borrowings with a WAL of over five years, and member certificates of deposit with a WAL of over five years and sufficient early withdrawal penalties. All other investments with a WAL of over five years (those matched by longer term liabilities) would have a risk weighting of 20%.

- Loans to and investments in CUSOs should have a risk weighting of 100%.
- The NCUSIF deposit should NOT be deducted from the numerator of the risk-based capital ratio.
- Goodwill should not be immediately deducted from the numerator of the risk-based capital ratio. It should be phased out over a ten-year period.
- There should not be Individual Minimum Capital Requirements.
- There should be ample time for credit unions to comply, at least three years or more, and there should be a process for credit unions to receive even more time if needed on an individual basis.
- There should be a risk mitigation credit as there is now under the current PCA system.
- The revised proposal should be reissued for comments.

It is our understanding that the NCUA is required by regulation to take the nature of credit unions into account in the regulation for prompt corrective action. The apparent decision by the NCUA to ignore credit union differences and the lower level of risk that credit unions pose, as evidenced by the large disparity between the number of bank failures and credit union failures since 2008 (10 to 1), had led NCUA to develop a risk-based capital system that will require too much capital from well-managed credit unions. The agency clearly cannot justify the proposal based on the financial performance and projected financial condition of the credit union system or on a likely significant reduction in NCUSIF losses. Consequently, any risk-based capital system that fails to account for the unique structure of credit unions is inherently arbitrary and legally defective.

Another issue of concern is the authority to allow the NCUA to require credit unions on a case-by-case basis to meet an Individual Minimum Capital Requirement (IMCR). This is clearly overreach by the NCUA and had Congress thought this authority was necessary and prudent, they could have included such language in the Federal Credit Union Act. Clearly, that language was omitted by design. Given seemingly arbitrary decisions and recommendations made by examiners in the field, the granting of this authority could be very dangerous to the industry. This is clearly contrary to the U.S. Treasury's description of prompt corrective action for credit unions which states the system should "promote fair, consistent treatment of similarly situated credit unions". Under this proposal, similarly situated credit unions could be subject to far different risk-based capital requirements as a result of the application of this provision by different examiners. As noted previously, rather than require more capital from credit unions, the NCUA should consider additional steps it could take to improve the examination process. Material safety and soundness problems should be identified sooner but without intruding on the ability of credit union boards and management to make reasonable business decisions, even when they reasonably disagree with their examiner.

Overall, it appears that the NCUA's risk-based capital proposal is a solution looking for a problem.

Thank you for the opportunity to comment on this proposed rule and for considering our views on risk based capital requirements.

Sincerely,

Dennis G. Adams

Dennis G. Adams
Senior Vice President & CFO