Missouri Credit Union Association

April 27, 2015

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

Re: NCUA's Risk Based Capital Proposal, RIN 3133-AD77

Filed via regcomments@ncua.gov

Dear Mr. Poliquin:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) appreciates the opportunity to submit comments to the National Credit Union Administration (NCUA) Board's request for comments on the NCUA's second proposed risk-based capital rule (RBC2).

RBC2 is an improvement over NCUA's first risk-based capital proposal issued in 2014. However, MCUA questions NCUA's authority to establish a risk-based capital standard for the purposes of determining whether a credit union is well-capitalized. MCUA continues to have serious concerns regarding the proposal's capital adequacy plans, risk-weights, and treatment of goodwill. The proposed definition of complex credit union does not adequately reflect credit union complexity. In addition, we have provided comments, as requested, on the need for additional interest rate risk (IRR) regulation and the use of supplemental capital for the purposes of this proposed rule.

I. Consideration of Inherent Differences Between Credit Unions and Banks

While the Federal Credit Union (FCU) Act requires NCUA to establish a risk-based capital system comparable to that for FDIC-insured banks, NCUA must also take into account the cooperative character of credit unions. The agency has diligently addressed the comparability requirement but ignored the cooperative nature of credit unions.

Credit unions are not banks. They are not-for-profit institutions with democratic governance that generally avoid excessive risk taking, and are generally less affected by the business cycle due to this lower risk profile. The more credit unions are regulated like banks, the more they will be forced to behave like banks in order to survive. Credit unions are organized for and committed to serving American consumers, and any regulation that may harm credit unions is anticompetitive and will leave consumers with fewer or substandard choices in the financial services marketplace.

II. Questions About NCUA's Authority to Issue This Proposal

The FCU Act directs NCUA to connect risk-based requirements to the sufficiency of a credit union's net worth only for the adequately-capitalized classification. MCUA does not dispute the requirement for a credit union to be adequately-capitalized. However, there is no separate requirement, let alone statutory authority, for a risk-based requirement for a credit union to be well-capitalized. We ask that NCUA not pursue the requirements for well-capitalized credit unions in the proposal.

III. There is No Compelling Need for the Rule

There is little evidence of a need for the revision of credit union capital standards, to a new system modeled on commercial bank risk-based capital requirements. Following the 2007 financial crisis, the National Credit Union Share Insurance Fund (NCUSIF) remained strong. Unfortunately, the bank system experienced much more serious challenges, which has led to substantial changes to the FDIC's funding as well as bank capital requirements. Those changes were justified by events. There is no comparable justification for the NCUA to adopt FDIC-style initiatives.

Economic conditions for all financial institutions in the financial crisis era post-2007 have been the most severe since the Great Depression of the 1930's. Despite the failure of 124 credit unions from 2008-2012, the National Credit Union Share Insurance Fund balance never fell below 1.23% of insured deposits. This result occurred despite the lack of RBC2-style regulations.

IV. Imposition of Stress Testing Requirements on Well-Capitalized and Significantly Smaller Credit Unions

In the new RBC2 proposal, examiners receive great latitude to determine whether a complex credit union needs more capital even if it is well-capitalized (according to standard net worth and risk-based capital ratio requirements). In the proposal, complex credit unions are required to develop a capital adequacy plan, and set aside capital over and above the 7% net worth and 10% RBC requirements. The plan, assessment, and additional capital set-aside are all subject to examiner review.

These requirements are unnecessary for most complex credit unions. Any examiner concerns should be addressed on an individual basis. Subjecting all complex credit unions to a "one size fits all" regulatory regime flies in the face of risk-based examination concepts and ignores the vast differences between credit unions in terms of risk appetite, risk management, market and product characteristics and other criteria.

We further reject the idea that the thresholds for a credit union to be well-capitalized as established by Congress are "minimum" capital requirements. 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.

MCUA requests NCUA to remove the capital adequacy provisions from the RBC2 proposal.

V. A Complex Credit Union Should Be More Complex Than an Asset Threshold

RBC2 uses asset size as a proxy for complexity. Asset size should not be the only criterion for whether RBC requirements apply. For example, the makeup of a credit union's liabilities is also important to understanding complexity. However, raising the asset size from $50 million to $100 million improves upon the previous proposal's definition because it will affect fewer credit unions. Nevertheless, $100 million is not the appropriate cut-off for application of the rule.

If Congress had wanted the application of the Prompt Corrective Action rules to be based on asset size, it simply would have required that NCUA use asset size to determine which credit unions fall under the requirements. MCUA recommends that NCUA increase the proposed $100 million threshold to $500 million. Further, the threshold should be used in combination with operational complexity as measured by the agency's own Complexity Index. Any requirement based on a number that increases with inflation and the general growth of any industry should be indexed. Also, a credit union identified as "complex" by NCUA should be able to present evidence as to why it is not complex and thus, should not be subject to risk-based capital requirements. This process should also be detailed in the final rule.

VI. RBC2 Risk Weights

RBC2's risk weights are too high in key areas, and 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.

Specifically, current first lien residential mortgage loans over 35% of assets would have a risk weight of 75%, which is 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. Also, 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%. These risk weights should be adjusted downward to levels no more than those in place for banks; credit unions do not have higher levels of risk associated with holding these assets, so such higher risk weights cannot be justified. Lowering risk weights for higher concentrations of real estate and commercial loans would imply lower risk weights for lower concentrations of these loans compared to bank risk-weights, but this is entirely appropriate given lower loss rates at credit unions.

We support the proposed treatment of consolidated credit union service organization (CUSO) investments and loans in which no separate risk weighting would apply. However, the risk weight for unconsolidated CUSO investments is too high It 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.

MCUA also does not support the 300% risk weighting for publicly traded equity investments which should be much lower so as not to limit credit unions in their investments for employee benefit funding as well as Class B Visa shares held by many credit unions. A risk weight of no more than 100% to charitable donation account investments to help encourage credit unions to continue supporting charitable endeavors, such as the National Credit Union Foundation is also appropriate.

VII. Treatment of Goodwill and Other Intangible Assets

In RBC2, a subset of goodwill and other intangible assets (OIA) could be retained in the numerator of the RBC ratio until 2025. That subset would be limited to goodwill and OIA arising from “supervisory” mergers prior to one month after publication of the final rule. Supervisory mergers would be broadly defined as assisted mergers, emergency mergers, or where the NCUA or state supervisory authority selected the surviving credit union.

MCUA believes a strong case can be made for the inclusion of all goodwill and OIA in the numerator so long as these intangible assets meet Generally Accepted Accounting Principles (GAAP) requirements. Exclusion of non-supervisory goodwill from the numerator will discourage some well-managed and well-capitalized credit unions from participating in mergers, and many mergers benefit the members of both the surviving and non-surviving credit union. Similarly, mergers can also have a positive influence on safety and soundness – producing institutions that have stronger financials and thus can weather more extreme economic swings. In some cases such mergers head off what might ultimately become a supervisory combination.

MCUA suggests non-supervisory goodwill that meets annual impairment testing should be retained in the numerator over a ten-year phase out period and all previous supervisory goodwill should be grandfathered without time limit, subject to regular impairment testing.

VIII. Options to Provide Additional Call Report Information

MCUA asks NCUA to consider an approach where credit unions will have the *option* of providing the additional, detailed information provided in the proposal. Such an approach could be accomplished by simply including additional optional data fields within the Call Report. NCUA could consult with its fellow regulators for insight into an alternative to the current proposed changes to the Call Report. Any and all changes required of a credit union with regard to Call Report preparation and submission requires the expenditure of resources. Alternatives that will reduce the burden RBC2 will impose must be explored.

IX. NCUA Should Permit the Use of Supplemental Capital for the Purposes of this Proposal

NCUA has the authority to permit use of supplemental capital for RBC purposes. MCUA believes NCUA should include such a provision in the final RBC2.

There is nothing in the FCU Act or GAAP that prevents NCUA from including supplemental capital in the numerator of the risk-based capital ratio for RBC, which already includes items that are not part of net worth. NCUA has already authorized certificates of indebtedness, which have been treated as loans from holders to their credit unions. NCUA should reference the use of these instruments to meet RBC requirements for federal credit unions and, where permitted, for state chartered credit unions.

X. A Separate Interest Rate Risk Rule Is Unnecessary

MCUA strongly disagrees with the notion that a separate IRR standard is needed to reasonably account for IRR at credit unions. NCUA has issued numerous rules and letters addressing the issue of interest rate risk. On September 30, 2012, the NCUA Board's final interest rate risk rule took effect. The rule imposes different requirements on federally insured credit unions depending on their asset size.

There is absolutely no need to burden the overwhelming majority of credit unions—those that are clearly not severe IRR outliers—with a new and complicated one-size-fits-all IRR approach. NCUA can easily identify severe outliers in the supervisory process.

XI. Conclusion

As always, on behalf of Missouri's credit unions and their members, we appreciate the opportunity to respond to this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour

Don Cohenour
President