April 27, 2015

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

RE: Risk-Based Capital Proposed Rule
RIN 3133-AD77

Dear Mr. Poliquin,

I am writing on behalf of Digital Federal Credit Union to provide comments on the National Credit Union's Administration's (NCUA) Notice of Proposed Rulemaking governing Risk Based Capital (RBC). We believe the NCUA's latest proposal, although an improvement from the first proposal, still remains unnecessary and puts credit unions at a disadvantage to other non NCUA regulated financial institutions. Nonetheless, if the NCUA moves forward with implementing this proposal, below are some substantive changes that would bring this current proposal more in line with other Federal Banking Agency requirements:

Asset Size Should Not Define a Credit Union as Complex

The Federal Credit Union Act (FCUA) provides that the NCUA may only adopt RBNW rules for "insured credit unions that are complex, as defined by the Board based upon the portfolios of assets and liabilities of credit unions."[1] While the increased threshold of $100 million represents progress, it still disregards the composition of assets and liabilities of individual credit unions. A more detailed definition of "complex" is warranted.

In addition to the above considerations, we recommend the NCUA increase the proposed asset threshold from $100 million to $1 billion. This threshold should be used in combination with actual operational complexity as measured by the NCUA's Complexity Index. The NCUA discussed a Complexity Index as part of the supplemental information. Thus, it is proposed that all federally insured credit unions with assets under $1 billion be considered non-complex, and that only those credit unions with assets above $1 billion and a Complexity Index value of 20 or higher be required to meet risk-based capital provisions.

Decrease the Minimum Capital Requirement

The NCUA's effort to decrease the minimum RBC requirement from 10.5% to 10.0% in the revised Proposed Rule is appreciated, but further reduction is necessary. The

[1] http://www.ncua.gov/Legal/Documents/fcu_act.pdf (Page 82)

NCUA's basis for the minimum capital requirement was mainly derived from Other Agencies' regulation. The ruling does not consider the uniqueness of credit unions when deriving the minimum RBC requirement.

The overall credit union industry is not looking to be more consistent with banks and has devoted time to being low-risk, cooperative institutions. The strong performance of credit unions throughout the financial crisis demonstrates there is no need for significant RBC requirements. This is consistent with Chairman Matz's statement in the GAO Report to Congress (GAO-12-247) as referenced above. The NCUA should further decrease the minimum RBC requirement prior to implementation of a final rule.

Implementation of the Final RBC Rule Should be Beyond 2019

Thank you for recognizing an effective date of eighteen months was not reasonable. The Proposed Rule has an effective date of 2019, or approximately four years. It is unclear when the NCUA will implement the changes needed on the Call Report system to require information for calculating the RBNW under the final RBC rule. Other Agencies provided seven years with a phase-in requirement. Should the NCUA choose to continue utilizing Other Agencies as a guideline for this Proposed Rule, the final rule should have a similar seven-year implementation period or beyond.

The year of the liquidation of the Temporary Corporate Credit Union Stabilization Fund (TCCUSF), which is scheduled to occur in 2021, should be an additional consideration for the NCUA to further delay the implementation of the final RBC rule. The final rule's implementation date should coincide with TCCUSF liquidation to enable this distribution to become part of the calculation in determining a credit union's RBNW.

Align Risk-Weights for Credit Unions Not Banks

The revised RBC Rule from the original proposal has many positive changes, such as the removal of the cap for the allowance for loan losses and changes to real estate loans risk-weights. Nonetheless, many of the risk-weights within the proposed regulation continue to warrant further evaluation. The NCUA ignores the uniqueness of credit unions and how credit unions handled the effects of the recent economic downturns to its members. Credit unions are known for promoting and conducting responsible lending and managing its financial statements. The diversification and growth opportunities provided by the cooperative nature of credit unions provide a sustainable future for the industry and members of credit unions.

The Proposed Rule is inconsistent with Congress' direction that "design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved."[2] The following outlines risk-weight concerns under the Proposed Rule that require additional attention and reevaluation.

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[2] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998) (S. Rep.)

- **<u>Credit Union Service Organizations (CUSO)</u>**

  The Proposed Rule risk-weights an unconsolidated investment in CUSO at 150%. The comparison of such a credit union investment to Other Agencies investments is not justifiable. I recommend a maximum 100% risk weight to an investment in CUSO is recommended. This would be consistent with the risk weight assigned to loans to CUSOs.

- **<u>NCUSIF Deposit</u>**

  The credit union system has capitalized its own separate, federal insurance fund, years ago. This structure and its current value should not be overlooked. The 1% deposit made by all federally-insured credit unions to the NCUSIF is an asset which should be properly included in any risk-based capital calculation. This amount is fully refundable should a credit union convert to private insurance (where allowed), or convert its structure to a bank. This balance is considered an asset in accordance with Generally Accepted Accounting Standards. The NCUSIF deposit should be included in the RBC calculation.

I appreciate the opportunity to comment on the proposed regulation. The issues highlighted above will have a significant negative impact on the credit union industry and our ability to serve our members. We respectfully request the NCUA consider addressing the concerns noted above.

Sincerely,

David DeWitt

David DeWitt
Vice President Risk Management
Digital Federal Credit Union