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,

Thank you for the opportunity to comment on the second version of the proposed Risk-Based Capital rule. I have been a member and employee of Digital Federal Credit Union (DCU) for almost 30 years. DCU and the credit union industry are very important to me. I have written responses to four items below for your review and consideration.

NCUA's Lack of Authority for a Two-Tiered System

There continues to be concern regarding the NCUA's authority to create a two-tiered system. The overriding issue related to this is the legal authority of the NCUA to establish an additional regulatory requirement related to Risked-Based Net Worth (RBNW) for a "well capitalized" credit union meeting the definition of "complex". While there are numerous legal arguments related to if the legal authority exists to implement this regulation, the intent of Congress when the law was enacted should prevail. Based on comment letters from Former Speaker of the House, Honorary Newt Gingrich (May 23, 2014)[1], and Former Senate Banking Committee Chairman, Honorary Alfonse M. D'Amato (May 7, 2014)[2], the current proposal is inconsistent with the intent of Congress. Who better to understand the intent, than the two congressional leaders responsible for the passage of HR 1151.

Despite the belief that this Proposed Rule goes beyond the authority provided to the NCUA by Congress, the following comments are based on the likelihood that the NCUA chooses to move forward with implementation of a Risk-Based Capital (RBC) rule.

[1] http://www.ncua.gov/Legal/CommentLetters/CLRisk20140507AD'Amato.pdf
[2] http://www.ncua.gov/Legal/CommentLetters/CLRisk20140523NGingrich.pdf

Unnecessary Regulation

There is no clear basis for disregarding the current prompt corrective action (PCA) regulations and adopting a completely different model. There were no issues identified as part of the NCUA's most recent review of the regulation performed as part of the NCUA's rolling three-year review of regulations in 2012. This analysis was performed subsequent to the NCUA's December 19, 2011 response, included in the January 4, 2012 United States Government Accountability Office (GAO) Report to Congress (GAO-12-247)[3]. This response by Chairman Matz, indicated:

> It is also worthy to note that consumer credit unions performed very well during the worst financial crisis since the Great Depression, and NCUA was highly successful overall in mitigating failures and losses for consumer credit unions. The 85 consumer credit union failures occurred over a two and a half year period during the height of the economic crisis. As noted in the report, the level of annualized failures is relatively low, only marginally higher than pre-crisis levels, and involved institutions with less than 1% of total credit union assets. NCUA was effective in prioritizing our supervisory resources during the economic crisis to prevent the failure of larger credit unions that came under stress, and in mitigating losses for those that did

In late January 2013, the NCUA's Office of General Counsel released the list of regulations being reviewed, indicating "Regulations under review in 2013 include rules governing member business loans, fair credit reporting, privacy of consumer financial information, appraisals and share insurance. ..... Additionally, NCUA will expand its review of federal credit union bylaws, which began in 2012." Based on this release, it would appear the PCA review was completed in 2012, since it was not expanded into 2013.

The NCUA suggests that the Proposed Rule was written to be more consistent with Other Federal Banking Regulatory Agencies (Other Agencies). The overall credit union industry has consistently been devoted to servicing their members differently than banks. Credit unions have proven to be an economic force in local markets and softened the effects of the recent economic downturns to its members. The overall credit union industry is not looking to be more consistent with banks and has devoted time to being a cooperative in nature.

---

[3] http://www.gao.gov/assets/590/587409.pdf United States Government Accountability Office – Report GAO-12-247 – January 2012

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."[4] 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, I 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.

Other Supplemental Forms of Capital

The NCUA's efforts are strongly supported and urged to extend this work to incorporate supplemental capital for all credit unions. The need for capital modernization continues as credit unions experience the challenges with no alternatives for growth opportunities beyond their ability to generate retained earnings. Credit unions seek supplemental capital as a tool to increase loan portfolios and other growth opportunities for its cooperative plans and goals. If the Proposed Rule is finalized, it should include the supplemental capital within its framework.

Thank you in advance for your consideration of my opinions and comments. I hope that the NCUA does reconsider the proposed Risk-Based Capital rule.

Sincerely,

Julie A. Moran

Julie A. Moran

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