

April 24, 2015

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

Re: Comment on the Revised Risk Based Capital Regulation Proposal

Dear Mr. Poliquin,

True North Federal Credit Union is a \$130 Million Credit Union open to membership for much of Alaska. Under the revised RBC2 proposal, we remain well capitalized but would definitely fall within the category of credit unions that would be close enough to the 10% mark that the regulation would be a significant strategic concern.

**Eliminate the Capital Adequacy and Additional Capital Requirements:**

The Capital Adequacy Plan component in RBC2 and the creation of examination authority to require additional capital are both unnecessary and outside the scope of the Board's authority. Under these provisions, in addition to the concentration risk, interest rate risk, liquidity risk, and credit risk (to name a few) reports, tests, and shocks, we'll now have yet another. I would very much like to know what the Supervisory Guidance on this plan is going to be, because I fear that in this instance the devil truly will be in the details. What shocks will be required and to what effect? Will the guidance require that we assume the simultaneous worst case scenarios for all possible risks, and then assess our capital adequacy? If an examiner decides more capital is needed, how much time does the credit union have to comply and what are the ramifications if we do not meet those time frames? Will the examiner be forced to consider reputation and strategic risk impacts when evaluating a mandate for more capital? How is the NCUA going to ensure that examiners are using this regulation appropriately? Although the nature of our business is risk management, not risk elimination, much of my conversation with examination staff over the years has been about the latter of the two. If the NCUA uses this tool to eliminate risk, we cannot compete and we cannot serve the needs of our members. If that's the result of this regulation, our industry will be in dire straits indeed.

Additionally, the provision that allows the NCUA through the examination process to require additional capital above and beyond the PCA requirements is highly problematic. They treat PCA definitions as minimum guidelines, which is not stated anywhere in our legislation. If the drafters of the PCA language intended those capital requirements to be only minimums, they would have said so. The Board justifies their authority to do this based upon the FDIC legislation, which does refer to those requirements as minimums. However, the fact that such language was specifically not included in the FCUA is evidence that this was not the drafter's intent. Additionally, in Section 1790(d)(h)(2), the FCUA states that the

Accounts and shares are insured  
by the National Credit Union  
Administration to the maximum  
insurance amount for each member.

NCUA Board “may not delegate its authority to reclassify an insured credit union into a lower net worth category or to treat an insured credit union as if it were in a lower net worth category.” However, by empowering individual examiners with the authority to require additional capital, this regulation is effectively doing just that.

Finally, in addition to being outside the scope of the Board’s authority, this proposal will have an adverse impact on the industry. In my 20 years in this industry, I’ve worked with a lot of examiners. Most of them were hardworking, dedicated employees who cared about the credit union industry or at least about doing their job well. A majority of them actually understood our business and were able to have in depth and meaningful conversation with me about the management of TNFCU. Some simply didn’t understand the things that they were examining. Some had personal opinions about how the credit union should be managed, and attempted to inject those opinions into the examination process despite the lack of NCUA guidance. A few were unprofessional, apathetic or spiteful.

Over the past 10 years, I’ve watched our examiners go from one extreme to another. As the recession took its toll and some credit unions did fail, examiners felt the pressure to become highly conservative. I even had one try to give me a Finding for a date typo in a marketing plan! The notion that you are empowering the examination process with such a critical thing as capital requirements is simply terrifying to me.

#### **Lack of Federal Credit Union Act Authority:**

The revised proposal continues to implement a Well Capitalized Risk Based Capital requirement, which is outside of the NCUA Board’s legal authority under the PCA regulation. That language specifically restricts the Risk Capital requirements to the sufficiency of a credit union’s net worth for adequately-capitalized classification only. The revised proposal states that this position is a misinterpretation of the meaning of the legislation, but you have heard from legislators involved in the writing of that very language, and they have told you that your proposed regulation is contrary to legislative intent. You then go on to state there is further justification for the well capitalized threshold in the PCA regulations for banks, but that is hardly a compelling argument. The FCUA may have been modeled on this other regulation, but it is not a copy and it was modified to make it more appropriate for credit unions. Your Risk Based Capital proposal should do the same. I encourage the NCUA Board to reconsider its position that it has the legal authority to implement these standards, as the preponderance of the evidence indicates that you do not. Your proposed regulation is therefore in violation of the FCUA as well as contrary to legislative intent.

#### **Addition of Supplemental Capital**

I thoroughly support the introduction of Supplemental Capital as a companion piece to a new Risk Based Capital proposal, and applaud the NCUA Board for their vocal support of it. I encourage them, however, to draft this regulation in lock step with the Risk Based Capital changes so that credit unions can plan for compliance with RBC changes with full understanding of all the tools available to them.

In sum, please remember that the NCUA’s job is not to eliminate risk, but rather to ensure that credit unions are managing it. If you want the Credit Union industry to thrive, you must let us be unique – it’s the only way for us to successfully serve our members and compete in a difficult playing field. This

proposal, particularly the Capital Adequacy plan and Additional capital authority, are positioned to push us towards the elimination of risk, and we cannot survive in that environment.

Also, in an effort to redefine the word "comparable", the Board is attempting to regulate credit unions just like the FDIC regulates banks, and is forgetting that we are fundamentally different. I believe the Board is overreaching its authority by establishing the Well Capitalized tier and by treating PCA as a minimum capital requirement. Both provisions should be removed from the proposal.

My thanks for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren MacVay". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Lauren MacVay  
President/CEO