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 would like to thank you for the opportunity to comment on the NCUA's proposed rule governing Risk-Based Capital (RBC). My concern is the new rule will not only impact my credit union in a negative manner, but it will negatively impact the credit union industry as a whole. As an employee and a proud member of Digital Federal Credit Union, I would like to outline some suggested improvements to the rule for consideration.

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). 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.

Asset Size Should Not Define a Credit Union as Complex

The Federal Credit Union Act (FCUA) provides that the NCUA may only adopt Risk-Based Net Worth (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." 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.

A Separate Interest Rate Risk Rule

It is appreciated that the Board removed the portion of the regulation associated with the interest rate risk component. The current Supervision and Examination process is a more adequate way to address concerns with a small group of potential outliers. Adding additional regulatory burden to credit unions strictly based on asset size is not necessary.

Should the Board decide to issue a proposal in the future, similar to the process utilized for the derivative rule, the issuance of an Advance Notice of Proposed Rulemaking is encouraged. This will enable the Board to receive constructive feedback, prior to deciding on issuing a proposal.

Requirements for Capital Adequacy is Unclear

The Proposed Rule requires that "complex" credit unions "must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital" and "the nature of such capital adequacy assessments should be commensurate with the credit union's size, complexity, and risk-profile." The requirement for credit unions to have a comprehensive written strategy poses excessive regulatory burden to credit unions (see **Significant Under Estimation of the Regulatory Burden** discussed in the next section of this letter) and the ruling is too vague. There are no clear guidelines and/or criterions of an NCUA's defined "comprehensive written strategy" for credit unions and NCUA examiners within the proposed regulation. This results in inconsistently applied requirements throughout the NCUA and its regions. Credit unions already have adequate capital adequacy policies, processes and procedures in place, therefore the NCUA should remove the requirement of a written strategy from the RBC rule. Furthermore, this proposed requirement appears to be a strong resemblance to the Capital Planning and Stress Testing rules issued last year for credit unions with assets of $10 billion or more.

Significant Under Estimation of the Regulatory Burden

The Proposed Rule's Paperwork Reduction Act estimates the additional data collection requirements for an estimated 1,455 complex credit unions to be a one-time 40 hour burden, or $1,276 cost per credit union. The Proposed Rule does not incorporate the estimated burden for establishing a comprehensive written strategy for maintaining an appropriate level of capital and other changes to the credit union's operations other than data collection. The effects of this proposal will be a much greater burden on complex credit unions upon the implementation year and for ongoing years. The NCUA's final rule on Capital Planning and Stress Testing estimated 750 hours of paperwork burden in the initial year and 250 hours in subsequent years.

Other than submitting a plan to the agency, it is unclear how the requirements of this proposal differ from the final rule on Capital Planning and Stress Testing. Using the cost estimate previously utilized by the NCUA, a more reasonable estimate (compared to zero) would be $23,926 per credit union or $34.8 million to the industry for the initial year of the final RBC rule. Additionally, there would be an ongoing annual cost of $7,975 per credit union or $11.6 million to the industry. Over a five year period, the cumulative cost to the industry would be approximately $81.2 million.

Treatment of Mutual Fund Investments

The "full look-through" approach described in the Proposed Rule fails to apply risk-weights to mutual fund investments in a consistent manner to the holding of the same securities by credit unions directly. For instance, a credit union that holds "U.S. Treasuries and Government Securities" would assign a risk-weight of 0% to such holdings. In contrast, an investment fund, with similar U.S. Treasuries and Government Securities, would have a risk- weight of 20% assigned to this asset. This disparity in the treatment of the same asset when held by two different entities unnecessarily discriminates against a credit union's investments in mutual funds by penalizing the credit union for making the same investment indirectly that they could otherwise make directly. Further, the added layer of risk that the Proposed Rule assumes will be present for indirect investments is not a factor with mutual funds. Mutual funds provide daily redemption at net asset value and generally provide sold share proceeds to the investor on the next business day.

The NCUA should revise the RBC regulation so that mutual fund risk-weights are consistent with the risk-weights on the underlying instruments. We suggest a full look-through approach that is attuned to the distinctions between underlying assets that would allow low-risk mutual funds to carry risk ratios ranging between the 0% and 20% based upon the actual risk ratio of their holdings.

We also suggest that the Proposed Rule be clarified to indicate the timing of "the most recently available holdings reports" that are to be used by credit unions employing the full look-through approach for their analysis of investment fund assets.

In conclusion, I sincerely appreciate the opportunity to comment on the proposed regulation. I hope this feedback is helpful, and ask the NCUA to address the concerns and suggestions outlined in this letter.

Sincerely,

Michael J. Canale
Indirect Lending Manager
Digital Federal Credit Union