AMERICA'S CHRISTIAN
CREDIT UNION

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April 24, 2015

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

RE: Comments on Proposed Rule: Risk Based Capital (RBC2)

Dear Mr. Poliquin:

On behalf of America's Christian Credit Union, I appreciate the opportunity to comment on the proposed Risk Based Capital–2 rule. Thank you for the opportunity to provide our credit union's thoughts on this very important proposal. Our views express some of our concerns directly impacting our credit union about the potential negative impact of the proposed rule on us and the credit union industry at large.

As my May 23, 2014 letter regarding the first proposed risk based capital rule ended, *"I respectfully would ask that more time, more thought, and more collaborative consideration might be given to recreating this rule,"* I want to applaud the NCUA Board for hearing my thoughts as well as thousands of others, and for the revisions that have been proposed. Regrettably, I, along with many others within the credit union industry, and Congress, still believe this proposal falls way short of its intended purpose and continues to raise the question – *Is the proposal even necessary or legal?*

We are a credit union that is 57 years old and currently serve over 60,000 members nationwide. We have assets over $300 million with an additional $165 million in off balance faith-based loans which we have the opportunity to service participating credit unions. Our credit union exists to provide *ALL* of our members, with the very finest of financial services and products including both consumer and business services that are specifically geared toward churches. We have a long history with our consumer relationships and continue to see exceptional growth in this sector, especially in the area of providing adoption loan financing for parents looking to expand their family. In our business loan area, we offer our churches the full "banking" experience with checking, savings, and assorted financial services that will help their church thrive. We have been making church loans for over 20 years, and have church loans in 46 states. We have found this sector of our business to be not only missional, but very productive for the success and value of our credit union. It clearly reflects the longstanding mission of the credit union cooperative movement of . . . *"people helping people"*.

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America's Christian Credit Union has a stellar history with excellent financial performance throughout our 57 years. We have shown a profit each and every one of those years, even during the most horrific recession that our nation has experienced in recent history.

I have been with ACCU for 38 years; 29 of those years serving as President/CEO, and have seen the most significant swings in our economy during those times. I experienced the economy when the Prime Rate was at 21% and clearly have experienced the economy during these last several years when it was at its very worst. Again, I am pleased to share that despite the onslaught of regulations and the fragile economy, our credit union continues to be in very excellent financial shape and is a well-capitalized credit union.

With that context, let me be perfectly clear, **we continue to have strong reservations about the proposed RBC2.** We believe that this rule could have very profound unintended consequences devastating to our industry. As you know, since 1999, our industry has had Prompt Corrective Action, and this has served the credit union community well. Adding a risk based capital element considerably increases the regulatory burden, especially if supplemental capital is not a part of this new proposal.

It seems there is a profound and distinct disconnect in much of this proposal by the NCUA Board. This is reflected by the inconsistencies that align credit unions with banks. Credit unions are distinctly separate, different, and governed in a manner that is completely opposite of what banks are. The inconsistencies shown throughout this proposal is very disconcerting as credit unions have a strong cooperative member-owner niche, something that does not follow the structure of banks. It is important that credit unions and its governance from its highest authority, which is Congress and the NCUA Board, clearly understand what credit unions are and their distinctive niche within the financial landscape. To make proposed rules for credit unions that equate to banks in some areas and not in other areas, creates a clear mark of inconsistency to the very nature and essence of what credit unions are.

As I've said, RBC2 represents an improvement from the original proposal issued by the NCUA last year. However, I agree with CUNA's thought wherein they state, *"It is a solution that will not work to a problem that does not exist."* As I've indicated, it appears that NCUA has ignored its charter and mission as well as its obligation to consider the cooperative nature of credit unions when creating a risk based capital system that is comparable to the FDIC. Furthermore, the industry continues to question NCUA's authority to establish a risk based capital standard for the purposes of determining whether a credit union is well-capitalized. The data is abundant and well known that NCUA appears to be working off a marginal legal opinion at best, in supporting its quest for this newfound authority. We would urge the **NCUA Board to .. stop .. look .. and listen . . .** very carefully to not only sound legal minds, but to the industry as well as Congress, before embarking on this proposal, that has fundamental flaws not only legally, but operationally, prior to imposing something like this on over 100 million Americans.

It was made abundantly clear during the previous comment period by Congressmen Peter King and Gregory Meeks, accompanied by a bipartisan majority of over 324 Congressmen that the original proposal was seriously flawed and misguided. Although there has been improvement made RBC2, there

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still remains serious flaws within it. To quote a letter from the aforementioned Congressmen, they state that, *"We specifically encourage the Board to 1) take into account the cost and burden of implementing new risk based capital requirements beyond the current leverage ratio, 2) provide justification and more clarity as to why the proposed risk weights differ from those applied to other community financial institutions and 3) give credit unions more time than the proposal's allotted 18 months to come into compliance after it is finalized."* Further, the former Senate Banking Chairman, Senator Alfonse D'Amato stated in his May 7, 2014 letter that, *"this proposal is not what Congress intended and urge the NCUA Board to quickly and judiciously reconsider the key elements in this proposal."* He further stated that, *"rather than the dual risk based capital system in place for banks with the given risk based capital ratio threshold to be adequately capitalized and a higher risk based capital to be well-capitalized, we instructed the NCUA to construct only a risk based net worth floor to take account of situations where the six percent requirement to be adequately capitalized was not sufficient."* Once again, we could not agree more with these sentiments that form, along with the following points, the opposition that we have to RBC2. Again, we applaud the effort to make some change, but clearly, the NCUA Board is not sufficiently hearing the voice, spirit, and heart of what Congress intended their action to be.

- We are deeply concerned that the NCUA is going down a path without the proper legal authority to implement this proposal. It is our opinion that NCUA lacks the statutory authority to prescribe a separate risk based capital threshold for "well-capitalized" and "adequately capitalized" credit unions. NCUA Board member, J. Mark McWaters, whom we applaud for being the only dissenting vote on the current proposal, called NCUA's lack of legal authority the most "fundamental issue presented before the Board" and offered a lengthy and exhaustive statement supporting the marginal legal opinion that NCUA has received.

  The Federal Credit Union Act expressly provides that NCUA shall implement a risk based net worth requirement that "takes account of any material risk against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection." **The Federal Credit Union Act does not provide NCUA the express authority to implement a separate risk based net worth threshold for the "well-capitalized" net worth category.** Simply put, Congress has not expressly authorized the Board to adopt a two-tier risk based net worth standard.

- The proposal would change the definition of "complex credit union" for the purposes of NCUA's capital requirements. The Federal Credit Union Act directs NCUA to base its definition of "complex" credit unions "on the portfolios of assets and liabilities of credit unions." Under RBC1, credit unions are "complex" and subject to the risk based net worth requirement only if they have quarter end total assets over $50 million and they have a risk based net worth requirement exceeding 6%. The current RBC2 proposal would define the term "complex" credit unions using a single asset size threshold of $100 million as a proxy for a credit union's complexity. In other words, RBC2 seems to run counter-intuitive to the definition as prescribed in the Federal Credit Union Act for what is "complex."

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Defining credit unions by an arbitrary asset size runs the danger of bifurcation of the industry. To be more consistent with the FCU Act, we recommend that NCUA increase the proposed $100 million threshold to $500 million and that the threshold be used in combination with actual operational complexity as measured by the agency's Complexity Index. Thus, we propose that all federally insured credit unions with assets of $500 million or under be excluded from the definition of "complex" and that only those credit unions with assets above $500 million and that have an NCUA Complexity Index value of 17 or higher be required to meet risk based capital provisions.

- To provide context to the above statement is the simple truth that the rule is simply not needed. The rule is unnecessary given the strong performance of natural person credit unions and the NCUSIF during the most recent financial crisis. NCUA itself estimates a cost of $3.75 million to implement the rule while your own analysis shows, that up to 1,455 credit unions covered by RBC2 only 19 credit unions would be required to raise additional capital. In addition to the projected cost that would be borne by NCUA of $3.75 million, NCUA again estimates that this proposal will cost credit unions roughly $5.1 million to read the rule-making and review it against their current policies. Lastly, if this proposal were to be finalized, NCUA estimates credit unions would incur an ongoing expense of $1.1 million to complete the adjusted call report fields.

  It is estimated by some that in order to satisfy the proposal's "well capitalized" threshold, today's credit unions would need to raise an additional $760 million. On the other hand, to satisfy the proposal's "adequately capitalized" thresholds, today's credit unions would need to raise an additional $270 million. This despite your own assertion that only a limited number of credit unions will be impacted, this proposal would force credit unions to hold hundreds of millions of dollars in additional reserves to achieve the same capital cushion levels that they currently maintain.

  The cost associated with this proposal are shocking, given how extremely well-capitalized the credit union industry is today. The proposal is an inappropriate use of credit union resources to address concerns about a few credit union outliers. Given that NCUA's budget is funded exclusively by the credit unions it regulates and insures, we're seriously concerned by how much money this proposal will cost the industry.

- Since the proposal was issued, we are encouraged by the understanding that NCUA is engaged in offering and supporting a supplemental capital proposal. We can only hope this is reality and not unfounded hope. As I stated in my May 2014 letter, *"to truly reform and create a robust risk based capital system, you must incorporate supplemental capital."* This goes back to my previous statement where there seems to be great dysfunction and inconsistency in the logic wherein many of the ratios, weightings and proposals are "bank like" and yet one of the

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fundamental areas of capital reform needs to be having the ability to raise supplemental capital. There seems to be a distinct disconnect in this element versus the other bank like proposals that are embedded within this regulation.

Supplemental capital authority is needed now more than ever considering the restriction brought on by this proposal. We encourage NCUA to call on Congress to pass legislation that resolves and modernizes capital standards that will allow supplemental capital and direct the NCUA Board to design a risk based capital regime for credit unions that take into account material risk instead of the current proposed rule. It is time that supplemental capital becomes a strategic tool for credit unions to have that will enable them to better withstand financial and economic anomalies that will for sure happen in the years to come.

- As alluded to in my opening comments, we applaud the number of positive changes that RBC2 has shown from RBC1's proposed risk ratings. Improvements include some reduction in the risk weightings, for which we are thankful, but again, the illogical and unfounded risk weights that even RBC2 has, fall far short from being fair, objective and compatible with market. In essence, RBC2's risk rates remain too high in key areas, given credit unions' level of risk 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 as detailed in my comment letter on RBC1.

  As example, current first lien residential mortgage loans over 35% of assets would have a risk rate of 75%, 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, as credit unions do not have higher levels of risk associated with holding these assets.** Lowering risk rates for higher concentration and real estate commercial loans would imply lower risk rates for lower concentration of these loans compared to bank risk rates; but this is entirely appropriate given lower loss rates at credit unions.

  Once again, this is a prime example of inconsistencies that are shown in this proposal wherein NCUA takes a bank like approach on some things and an erroneous approach on other areas where data firmly supports **the fact that credit unions' loss rates have been substantially lower than banks.** Again, we would encourage yet another robust and aggressive reduction in the overall risk rating of loans across the board before this proposal is finalized.

- We appreciate the fact that this proposal has recognized that the allowance for loan loss – ALLL should be counted when calculating RBC2, yet we remain deeply concerned that this proposal does not allow our 1% NCUSIF deposit to be counted as capital. History has shown that the NCUA has paid a dividend on this asset in the past, and this should be considered an asset for all federally insured credit unions.

As I said in my May 2014 letter and I will repeat, this proposal is nothing more than an additional "tax" on the industry and over 100 million Americans who proudly call themselves credit union members. It seems history should be reflected on to see that additional taxation is not a catalyst for growth, but usually leads to a constriction of growth and of revenue. It seems as though a more proactive and progressive approach would be to allow capital to continue to be earned and supplemented by a progressive supplemental capital plan. By imposing the multiples and the standards that are embedded in this proposed rule, there is a significant chance that capital will be restricted, revenue growth will see a decline and once again, serious unintended consequences will manifest themselves within the industry. A higher capital tax on MBLs, specifically, will do nothing more than to restrict the ability for credit unions to offer their members good solid member business loans which incidentally, were the motivating factors for many credit unions to exist in our early history. I would strongly **urge the NCUA Board to continue to reduce the proposed risk rates that will impede members' opportunities to acquire their business loans that are the stimulus for Americans' economy as credit unions will be penalized for making such loans.**

This proposed RBC2 rule has the unintended consequence of changing dramatically and significantly for generations to come, the trajectory of where credit unions are headed. Maybe this is the purpose of NCUA, but being a person of hope and faith, I want to believe this is not the intention. This is a seismic moment within our industry and to adopt such an ill-advised proposal that strikes at the very heart of each of the credit unions nationwide is simply not prudent or wise. One size does not fit all, and regrettably, this proposal appears to not only do that, but to be directed at a few while making all to suffer. There is sufficient amount of regulatory authority to demand change by the few and if secondary capital was a part of any risk based capital plan as logically it should be, then I believe we would be on a better track.

Credit union loss rates on comparable loan types are typically lower than that of small banks and the structure and performance of credit unions thus suggests the risk rates should be less stringent. With the exception of consumer loans, **it is clear that NCUA's proposed MBL risk rates are higher than the risk rates applied to community banks under Basil III.** In two important cases, residential mortgages and member business loans, the weights would be significantly higher than the comparable Basil weights; thus this despite the fact for these two categories of loans **credit union losses trend at about half the loss rates of community banks.** It's clear that one of the outcomes will be that if such risk rates are implemented, this would deter the provision for credit unions and their members to acquire mortgage and business loans as they do now. This makes absolutely no reasonable or logical sense.

Thank you for the opportunity to comment on this proposed regulation. I respectfully would ask that more time, more thought, and more collaborative consideration be given to revising this rule even

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further. While we support a form of risk based capital, we feel that this proposal falls short even with the current revisions. With the proper changes along with adding a robust supplemental capital plan that I believe Congress would gladly support, as well as trade groups and over 100 million credit union members, this rule could be the start of an effective process of risk management for all credit unions.

Sincerely,

Mendell L. Thompson
President/CEO

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