

From: smackowitz@verizon.net
To: [Regulatory Comments](#)
Subject: Fwd: FW: Proposal
Date: Sunday, April 26, 2015 8:14:17 PM

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 your proposed Risk Based Capital Rule. I am a credit union employee and member of two great credit unions. Overall I don't believe that the proposed rules, if implemented prior to 2008, would have saved any of the credit unions that we lost. In fact if implemented there may have been more credit unions that would have failed because of the new rules. Below are some of my thoughts and concerns.

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 capitalist 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), and Former Senate Banking Committee Chairman, Honorary Alfonse M. D'Amato (May 7, 2014), 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.

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:

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 tenderness 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.

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 idlers. 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.

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 for the opportunity to comment. Please consider dropping the proposed rule entirely or at least reduce the requirements to a more reasonable level that does not add a major burden to credit unions.

Sincerely,

Stephen K. J. Mackowitz
Warwick, RI