From: Western Vista Federal Credit Union
To: Gerard Poliquin, Secretary of the Board. NCUA
Subject: Risk Based Capital Comments

03 March 2015

Here at Western Vista Federal Credit Union, we acknowledge that the NCUA has addressed a number of pertinent issues such as the risk weighting and implementation period in its most recent RBC proposed rule. However, numerous concerns continue to revolve around significant elements with the rule as proposed. It is our contention that this rulemaking is redundant and will only result in the imposition of more unwarranted regulatory burden on an already extremely well-capitalized industry.

Impact on Credit Union Capital

a. Cost projections as proposed by the NCUA are still unclear and thus inaccurate.

b. NCUA's claim that only a limited number of credit unions will be affected is a point in time snapshot and its future impact is unknown.

c. We would have to hold a significant amount of additional reserve only to maintain the same capital cushion we currently have.

d. Limits industry growth by sequestering funds that might be used elsewhere such as loans and various other services to membership.

e. Unsubstantiated costs and burdensome compliance related issues.

f. NCUA has already increased its reserves for unknown losses. So by increasing credit union capital requirements it adds an additional capital burden on credit unions for some catastrophic event that is undefined and may never happen. But the credit union's mission is undermined by diverting capital resources to undefined protection rather than economic production.

Legal Authority

a. *The Federal Credit Union act* (FCUA) requires NCUA to update risk-based capital standards to be "*comparable*" with the federal banking agencies with no mention of mirroring the FDIC's timelines.

b. The Agency relied on a solicited "*opinion letter*" to justify their legal authority to modify the existing rule.

c. "Any findings of a court with jurisdiction over the NCUA cannot be predicted by this opinion letter." (*Paul Hastings*)

"Section 216 of the Federal Credit Union Act is, at best, ambiguous with respect to the statutory authority of the NCUA to implement a two-tier RBNW [risk-based net worth] requirement for complex credit unions, as the language can be interpreted in multiple ways." Accordingly, "an agency's interpretation will generally be deemed permissible and given controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute." (Paul Hastings citing *Chevron, U.S.A. v. NRDC, Inc.* (1984)

Arguably, many elements of this proposal are arbitrary. In addition, pursuant to *The Federal Credit Union act* with respect to "*comparable,*" NCUA Chairman Matz's referencing that we are a year behind the FDIC having already made changes, gives rise to capriciousness in that the FCUA does not set out timelines by which Credit Unions must achieve "comparability."

In closing, RBC2 as proposed is clearly an unfitting use of credit union resources to address concerns about a few credit union outliers. We firmly believe that the RBC rule will increase cost to members while expanding the authority of the NCUA to interfere in the governance of credit unions through the use of *Prompt Corrective Actions* (PCA) and thus threaten and suppress our efforts to grow in an ever changing economy.

According to the agency …. "I am saying each credit union needs to have enough capital to offset its own risks" (Chairman Matz.) Based on this notion, it is counterproductive that we may be forced to endure the severe ramifications that will inevitably result from the implementation of this rule

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