DFI
State of North Dakota
DEPARTMENT of FINANCIAL INSTITUTIONS

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CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

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National Credit Union Administration
Attn: Gerald Poliquin
1775 Duke St.
Alexandra, VA 22314-3428

Dear Mr. Poliquin:

Thank you for the opportunity to comment on the proposed Risk Based Capital regulation. The North Dakota Department of Financial Institutions has long been concerned about the lack of a meaningful Risk Based Capital regulation for credit unions. Also of concern has been the confusion created by having a risk based capital calculation for credit unions that differs from those used by other federal regulators. Your efforts to resolve these concerns are greatly appreciated.

On a whole, we believe the proposed rule is sound. It attempts to adopt a method of calculating capital similar to the method outlined within Basel III. While we believe some adjustments are still necessary, the framework is substantially better than the current rule.

While we agree with the premise of using a Basel III style capital model, we remain concerned that notable differences continue to exist between your model and the one employed by the FDIC and Federal bank regulators. The risk weightings for a number of asset categories are substantially different than those utilized by the FDIC and the Federal bank regulators. We believe these differences represent a missed opportunity to reduce public confusion, and may actually increase these misunderstandings.

While the new model uses different risk weights for assets, it uses the same "Risk Weighted Assets" and "Risk Based Capital Ratio" terminology employed by the FDIC and the Federal bank regulators. Public users of government provided call report data will assume that the Risk Based Capital Ratio is comparable to other institutions' measurements of capital using the same terminology. However, as proposed, the ratios could be materially different depending upon charter type. The inconsistency between the risk weights in the proposed regulation and those in the FDIC and Federal bank regulators' regulations is of concern.

We noted that among the mandatory supervisory actions for credit unions classified as significantly undercapitalized or worse is a requirement that the credit union must restrict member business loans. While it may be prudent to limit member business lending, there are instances in which rational loan workout agreements require additional loans be granted to protect the cash flow or collateral position on loans already granted. Forcing a restriction

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without some element of discretion on the part of the state examiner or federal examiner and corresponding state regulatory official and regional office may have the unintended consequence of artificially creating a liquidity problem for a borrower, and potentially jeopardizing the collection of existing credits. The decision to limit any type of lending needs to be done on a case by case basis rather than a sweeping decision to be applied to all regardless of the circumstances.

We also noted that authority to approve most actions (e.g. net worth restoration plans, earnings retention waivers, etc.) must come from the NCUA Board, after consulting with the state regulator. The authority to approve actions may be better placed with Regional Directors, after consulting with the state regulator. Most states have a long and well established working relationship with regional offices, and Regional Directors should be in a better position to evaluate the reasonableness of this type of request.

Also, I would like to specifically ask for clarification on the risk weighting treatment of credit union deposits in the Bank of North Dakota. The Bank is a state owned bank, and its deposits are neither federally nor privately insured. Deposits are backed by a guarantee from the State of North Dakota. It is a unique institution, thus we are not sure which risk weighting would apply to the deposits. We believe the deposits are low risk due to the guarantee by the state, and should be afforded a 20% or lower weighting.

We would also like clarification on the definition of a Commercial Loan. The definition lists a number of asset types which fall into this category, but conspicuously absent from this category is agricultural loans. It is assumed they fall into this definition, but we believe clarifying that an agricultural loan is a commercial loan is important to avoid confusion.

Finally, we would like clarity on the definition of Government Guarantee. US Government guarantees are included, as is a guarantee from a public sector entity. What is not clear is if this includes any type of guarantee from a state government or state government agency.

Once again, we would like to thank you for the ability of offer comment and for your efforts to improve the Risk Based Capital regulation. While minor revisions may still be warranted, we believe this is a substantial improvement over the current capital framework.

Sincerely,

Robert J. Entringer

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Commissioner
North Dakota Department of Financial Institutions

RJE: cjk
ecc: NASCUS