DAY AIR CREDIT UNION
Service That Soars!

April 2, 2015

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

Re: NCUA risk based capital proposal

Dear Mr. Poliquin,

Thank you for the opportunity to object to the additional regulatory burden that would be imposed by NCUA's most recent risk based capital proposal.

This letter is written on behalf of the Board of Directors, management team and members of Day Air Credit Union, Inc. Day Air is a state chartered, federally insured credit union serving over 33,000 members in the Dayton, Ohio area. Day Air has equity investments in several Credit Union Service Organizations (CUSOs), including a wholly-owned subsidiary, Day Air Insurance, LLC.

Improvements in this version of the NCUA risk based capital proposal compared to last year's proposal are acknowledged. However, the proposal is still fatally flawed and unnecessary.

Rather than comment on the still far too many individual problems contained within the proposed regulation, I'd like the NCUA Board to reconsider its basic premise. Quite simply, a risk based capital requirement is unnecessary for credit unions.

NCUA, or at least Chair Debbie Matz, claims that a risk based system must be developed in order to be "comparable" with bank agencies and that a risk based capital requirement is required by law. This is not the case.

Long standing interpretation of the Federal Credit Union Act is that Congress authorized NCUA to require a net worth requirement. That net worth requirement, a simple leverage ratio, has served the credit union industry well. Not only is there no need for a two tier capital requirement, the ability of NCUA to create such a requirement is doubtful.

NCUA spent $150,000 for a legal opinion from Paul Hastings that stated a court "could" conclude that NCUA's statutory authority permitted it to establish a two tier risk based requirement. As Board member Mark McWatters, himself an attorney, stated, there's a big difference between a legal opinion stating that a court "will" conclude, "would" conclude, or "should" conclude. The word "could" indicates that NCUA is proceeding based on an extrenely modest degree of legal authority.

The bank regulatory agencies are backing away from a risk based capital requirement. FDIC Vice Chair Thomas Hoenig is now advocating against using risk weights. How can NCUA justify an intrusive, unnecessary regulation based on the premise of being "comparable" with banking agencies when those same banking agencies are retreating from such a system?

To adopt a risk based rule for credit unions based on Basel III for banks requires a belief that credit unions operate under similar risks and use similar business models as do banks. This is patently untrue. A credit union's Board and senior management team make numerous decisions regarding business direction, balance sheet composition, risk tolerance, pricing and capital adequacy based on the unique needs of their membership and local community. These decisions are driven by the diverse needs of each institution and community. The only thing all credit unions have in common is their member-owned, not-for-profit structure which is extremely different than the for-profit model of banks. To apply a bank-like risk based capital rule to credit unions defies logic.

The credit union industry weathered the storm of the recession six years ago far better than did the banking industry. Losses to the credit union insurance fund were a fraction of what was experienced by the bank fund. Far fewer credit unions failed than did banks. Banks essentially stopped making loans while credit unions made more loans than ever before during this period. The credit union model is different than banks by design, and those differences served this country well during a period of time when credit from banks to businesses and consumers slowed to a trickle. For credit unions to be subject to bank-like risk based rule is ludicrous.

Any serious conversation about the capital adequacy of credit unions should include supplemental capital. Since capital is the ultimate safety and soundness measure of any financial institution, it is inconceivable that opposition could exist for credit unions to have the ability to raise additional capital. If a capital rule is to be written at all, it should be limited to permitting supplemental capital and defining how supplemental capital could be obtained by credit unions. If NCUA believes that supplemental capital is a legislative issue requiring action by Congress, NCUA should advocate and propose such legislation.

This proposal, like its predecessor last year, is fatally flawed and should be withdrawn.

Thank you for the opportunity to comment.

Sincerely,

William J. Burke
President/CEO