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AMERICA'S
CREDIT UNIONS

May 9, 2017

Mr. Gerald Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

RE: Advanced Notice of Proposed Rulemaking for Supplemental Capital

Dear Mr. Poliquin,

The Georgia Credit Union League (GCUL) appreciates the opportunity to respond to the request for comments on the Advanced Notice of Proposed Rulemaking for Supplemental Capital. The ANPR addresses issues concerning both low income credit union (LICU) issuance of secondary capital as well as the non-LICU natural person credit union potential use of supplemental capital to meet impending complex credit union risk-based capital requirements. As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL supports more than 114 Georgia credit unions that serve over 2 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed requests for comments such as this.

Georgia credit unions support the authority of credit unions to build additional capital, either from members or nonmembers, in a way that does not dilute the cooperative ownership and governance structure of credit unions. This additional capital should be subordinated to credit unions' share insurance funds, so that credit unions have the financial base to offer member services and adjust to fluctuating economic conditions. Credit unions are at a disadvantage in the financial market due to lack of access to additional capital outside retained earnings. We believe all credit unions should be allowed to incorporate supplemental capital to contribute toward a portion of a credit union's risk based capital ratio.

As NCUA implements a more complex net worth regulatory framework, we believe that the agency should also modernize credit union regulatory capital concepts to match. Including supplemental capital in credit union risk-based capital ratio calculations is well within NCUA's statutory authority. Furthermore, including supplemental capital in risk-based capital ratio calculations is consistent with the statutory purposes of both state and federal credit unions and we believe is sound public policy. We believe that this regulatory change can be done in such a way as to not impair credit union mutual ownership and governance, nor the credit union tax exemptions.

GCUA urges NCUA to choose a flexible approach when creating the risk-based supplemental capital framework to ensure safeguards for investors, credit union members and the National Credit Union Share Insurance Fund (NCUSIF). We would recommend that NCUA look to existing regulation that may be found in federal, state and international regulatory administrations for guidance and direction. We would like to see NCUA's regulations provide the ability for the marketplace to evolve and shape supplemental capital so that it is useful and cost effective for credit unions as well as appealing to investors. We recommend that at this stage the rule should not limit permissible supplemental capital instruments to one or two restrictively defined instruments. Rather, the rule should contain several requirements that any capital instrument would have to comply with, without specifying precisely how. Essential to that flexible approach will be NCUA allowing state chartered credit unions to raise supplemental capital from both entities or individuals (member and non-member) as permitted by state law or regulation.

While the statutory basis for low income credit union ("LICU") designated secondary capital and complex credit union supplemental capital are distinct, NCUA should consider consolidating rules regarding both. By the consolidation of the rules, we believe the potential for confusion among credit unions and the public regarding capital sources beyond retained earnings would be diminished. In addition, LICUs could benefit from instruments, processes, procedures and disclosures developed by risk-based net worth complex credit unions for supplemental capital.

Supplemental Capital for Non-LICU Credit Unions

For Supplemental Capital for non-LICU credit unions GCUA recommends the following approach:

- Any offering must preserve the cooperative, mutual nature of credit unions, and not alter the fundamental structure of the credit union.
- The specific instrument used whether an equity instrument, paid in capital or another form of subordinated debt should be flexible and not prescribed in rule such that a credit union can best take advantage of the market and have the flexibility to structure the offering in a cost-efficient manner;
- The instrument will be uninsured and subordinate to other claims and available to cover operating losses and only issued pursuant to regulatory approval;
- Proper Consumer Protection, Securities/Anti-Fraud Provisions, and Disclosure Requirements should be provided, with proper suitability standards followed. The list below includes some of the consumer protections we believe should be disclosed:
    - Material risks relating to the issuer and the industry in which the issuer operates;

    - Material risks relating to the security being offered;
    - The issuer's planned uses for the proceeds of the offering;
    - Regulatory matters impacting the issuer and its operations;
    - Tax issues associated with the security being offered; and
    - How the securities are being offered and sold, including any conditions necessary to complete the offering.
- The rule should establish appropriate limits (volume limits based on a proportion of assets or a proportion of total capital) on how much and to whom it can be issued with appropriate suitability standards followed (other than small issuances).

Any issuance should be subject to regulatory approval prior to issuance, similar to the initial approach taken by the NCUA with derivatives. The business plan submission requirements could contain provisions mandating certification that the credit union's plan complies with any applicable securities laws, director liability, disclosures and tax laws. Once the plan is submitted to NCUA or the state regulator, NCUA and the state should consult on the plan and application to issue the instruments. The regulation should provide that the credit union may deem its plan approved at a minimum 90 days after its plan is submitted to regulators unless informed that the plan has been rejected. Once a plan is approved, or the "90 day" period has run, the rule should give credit unions a set time frame within which to proceed with the issuance.

This approach, enhances the safety and soundness of credit unions, and can be accomplished without altering the cooperative, mutual structure of credit unions. It does not confer or allow any membership rights or governance rights thus preserving the true nature of a credit union.

NCUA has the Authority to Issue a Risk-Based Supplemental Capital Rule

When Congress passed the Credit Union Membership Access Act (CUMAA) in 1998, Congress instructed NCUA to implement a risk-based net worth rule for complex credit unions. Specifically, the CUMAA amended the Federal Credit Union Act to require the NCUA Board adopt, by regulation, a system of PCA that is ''comparable to'' section 38 of the Federal Deposit Insurance Act ("FDI Act"). In establishing a system of PCA for credit unions, the amended FCUA clearly defined "net worth" and "net worth ratio" for the leverage ratio (base or Tier I capital) for credit unions while leaving it to NCUA's discretion to develop a risk-based capital framework for complex credit unions. We believe that because the FCUA did not include a definition of "risk-based net worth" for complex credit unions, NCUA has discretion to include factors in addition to retained earnings for calculation of the complex credit union risk-based capital numerator requirements.

NCUA's approach with respect to risk-based capital calculations is consistent both with the statutory language of the FCUA and that of federal bank regulators. Extending that discretion to include supplemental capital for risk-based capital ratio calculations is well within NCUA's authority. In fact, failure to include supplemental capital in the complex credit union risk-based calculation could be construed as failing the requirement that NCUA's regulation be comparable to that of the FDI Act.

Conclusion

We recognize the comprehensive capital reform for credit unions requires Congressional action. This rulemaking is an important step in establishing a framework of reform that is sound policy and well within the bounds of NCUA.

From a supervisory perspective, and especially a deposit insurer supervisory perspective, more capital that is at risk and junior to the share insurance fund is better than less capital.

We are sure that some will oppose this effort, either because they are opposed to any pro-active regulatory changes to the credit union system or because they are concerned that any modernization of the prescriptive secondary capital rule will further congressional scrutiny… but that modernization is overdue. This change might not be appropriate, or useful to all credit unions, but for those complex credit unions with the expertise to manage it, supplemental capital can be a very important tool.

In closing, we commend NCUA for its hard work on this important issue. GCUL appreciates the opportunity to present comments on behalf of Georgia's credit unions. Thank you for your consideration. If you have questions about our comments, please contact Cindy Connelly or Selina Gambrell at (770) 476-9625.

Respectfully submitted,

Cynthia A. Connelly
Senior Vice President/ Government Influence