

Cooperative Credit Union Association

Creating Cooperative Power

September 7, 2018

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314

**Cooperative Credit Union Association, Inc. Comments on Proposed Rule: Risk-Based Capital–
Supplemental Rule
RIN 3133-AE90**

BY EMAIL ONLY

Dear Mr. Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to the National Credit Union Administration’s (“NCUA”) Proposed Rule on Risk-Based Capital–Supplemental Rule. The Association is the state trade association representing credit unions located in the states of Delaware, Massachusetts, New Hampshire, New Jersey and Rhode Island, serving approximately 180 credit unions which further serve approximately 3.9 million consumer members.

The Association commends the NCUA for honoring its commitment to the industry in reviewing the original 2015 Risk-Based Capital (“RBC”) proposal; the agency’s commitment to revisiting key provisions of the proposal for beneficial change for stakeholders is not only appropriate given the impact of the proposed rule on credit unions, their growth strategies, and ultimately on service to members, but also necessary. It is a threshold the Association encourages the NCUA to continue as part of future rulemakings.

The proposed rule at issue comes as a favorable response to the Association’s, in coordination with the Maryland & DC Credit Union Association, letter urging the NCUA to delay implementation of the risk-based capital rule and raise the threshold for complex credit unions,¹ and is acknowledged and generally supported.

The Association acknowledges the reasonableness of this proposal and the significant period of time since the Board’s approval of the original proposed rule in January of 2014 that credit unions have had to become familiar with its provisions. Association members have used this time wisely, working diligently to reposition their balance sheets to the new regulatory framework, and spending countless hours analyzing every aspect of the rule.

¹ Risk-Based Capital Rule Delay and Threshold Request letter to the Honorable J. Mark McWatters, June 27, 2018.

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Cooperative Credit Union Association, Inc.

The Association is continually reminded by members, however, of their concerns about the considerable effect a final RBC rule will have on credit unions, their business portfolios, plans for growth, and strategic vision. Credit unions often make loans that other financial institutions either have no interest in, or of particular note, decline to make. Credit unions continue, especially in gateway communities, to fill the void left by others. The Association’s members continue to make it clear that a final RBC rule has the potential to constrain their ability to make these loans in their communities, thereby further diminishing the options members of the community have. These effects, coupled with the solid performance of the National Credit Union Share Insurance Fund (“NCUSIF”) and individual credit unions during and after the recent financial crisis, support the position maintained by the Association that a final RBC rule is not needed at this time.

Absent a rescinding of the RBC rule in whole, and if the agency intends to move forward with finalizing a rule on risk-based capital, the Association offers that the proposed raising of the coverage threshold for credit unions, and a delayed implementation date, are a step in the right direction for providing meaningful change. In preparation for the development of the present comment letter, to foster a consensus, and to assist in providing detailed comments, the Association conducted a survey of all credit union members in order to assess the impact that this proposal would have on our member credit unions. This letter incorporates those views.

Complex Credit Union Threshold Should Be Raised

The top concern amongst respondents was the threshold level which defines a complex credit union. All respondents agreed that the definition of a complex credit union, as defined under § 701.103 of the 2015 Final Rule, should be increased from \$100 million. As such, the Association and its members overwhelmingly support the raising of the threshold level which defines a complex credit union.

The Association suggests that the asset threshold for compliance with a final RBC rule should be increased to at least \$500 million. Increasing the threshold level would reduce regulatory burden on member credit unions by more closely tailoring the applicability of RBC requirements to cover only those credit unions that, should a failure occur, individually could present an undue risk of loss to the NCUSIF. As noted in the proposal, this amendment would exempt an additional 1,026 credit unions from the original RBC requirements.

30% of survey respondents represent credit unions that would have been subject to the final RBC rule, but would now be exempt from coverage based on the proposed changes. As such, the Association acknowledges the positive impact the proposal will have on its local member credit unions.

The \$500 million threshold was raised by the industry and previously rejected by NCUA in 2012 as part of the emergency liquidity regulation. This level appears as an appropriate threshold in audit requirements, and also closely mirrors the approach utilized by other federal regulators in adopting the Small Business Administration’s asset threshold of \$550 million for determining “small entity” status. The Association therefore would support a \$500 million threshold.

The Association suggests, however, that the agency consider a higher threshold of \$10 billion. This higher threshold would provide several additional safe and sound credit unions with regulatory relief, while still protecting the NCUSIF from larger, more impactful losses. The effects of the agency’s RBC rule are not to

be underestimated. Member credit unions have spent years and countless hours realigning balance sheets in order to comply with new capital requirements. Another disruption of this sort, which could occur should the agency in a few years determine the \$500 million threshold to be outdated and need to revisit the asset threshold, should be avoided. As such, a broader outlook of a \$10 billion threshold, which aligns with the eligibility for supervision under the NCUA’s Office of National Examinations and Supervision, as well as the threshold for supervision under the Bureau of Consumer Financial Protection, would avoid another disruption of the magnitude borne by credit unions currently. Setting an appropriate threshold now and taking the long view, rather than a large-scale reexamination and realignment of the capital threshold, is a more appropriate approach by the industry’s prudential regulator and insurer on an issue as impactful as capital risk.

When Congress implemented the prompt corrective action standards found in §1790 of the Federal Credit Union Act, it directed NCUA in implementing risk-based capital standards to limit its application to those risks for which the standard leverage ratio was insufficient. Flat asset thresholds, while useful to the agency in administration and to the industry for ease of compliance, oversimplify the complexities of a balance sheet and may cover more credit unions than Congress intended. The Association encourages the NCUA work to more precisely define “complex.” In addition, the Association suggests that other indices and standards of measurement could include portfolio composition, quality, and levels of capital.

Implementation Date Should Be Delayed

The Association supports the extension of the implementation date of the RBC rule, and the vast majority of survey respondents agreed that the implementation date should be extended. Extending the effective date will provide covered credit unions and the NCUA with additional time to make necessary adjustments to systems, processes, and procedures, will reduce the burden on affected credit unions in meeting the new requirements, and will smooth the transition for complex credit unions affected by the new RBC requirements.

However, the majority of respondents did not feel that an extension of one year is sufficient. As such, the Association urges the agency to consider a longer extension period.

Recent legislative action is reflective of the sentiment that implementation delay is necessary. H.R. 5288, the *Common Sense Credit Union Capital Relief Act of 2018*, contains provisions delaying the rule from taking effect for two years, moving the implementation date from January 1, 2019 to January 1, 2021, one year beyond the extension proposed by the agency. Additionally, in June the House Appropriations Committee, led by Chairman Rodney Frelinghuysen (R-NJ), voted to approve the 2019 Financial Services and General Government Appropriations bill. Title IX, Section 938 of the bills includes the provisions of H.R. 5288, and would delay implementation of the RBC rule to 2021. Lastly, RBC delay provisions were also raised during the recent June hearing on Legislative Proposals to Increase Access to Capital before the Senate Committee on Banking, Housing, and Urban Affairs. The agency should be encouraged by such legislative efforts to consider a longer delay period.

The extended implementation timeframe must be significant enough for each credit union affected by the rule to have an opportunity to adopt a plan for the NCUA’s review and approval. In addition, in light of the health of the credit union system, the NCUA can afford to provide more time, on a reasonable basis, that

will facilitate the development of its own examination resources and training for its examiners as well as provide additional time for covered credit unions to make any strategic and operational changes they need to prepare for RBC implementation.

The Association also strongly urges the NCUA to consider the impact of the final current expected credit loss accounting standard promulgated by the Financial Accounting Standards Board (“FASB”) on the RBC rule. At a minimum, RBC implementation must be delayed so that credit unions can understand and coordinate compliance with the FASB rule. Moreover, the Association further urges increased dialogue and coordination between the NCUA and FASB with respect to credit union forecasting models to minimize differing examination guidance. The results of such collaboration should be available to the industry by means of advance Q&As or other guidance.

Additionally, NCUA has ensured that a supplemental capital rulemaking would be completed prior to the effective date of RBC. A delayed effective date would provide NCUA an opportunity to address supplemental capital.

The Association also suggests that the agency provide credit unions flexibility to implement the new rule prior to any extended implementation date. One credit union survey respondent indicated that staff has worked diligently to reposition the balance sheet so that the credit union would be in a position to benefit from the advantages provided by the new rule. Many credit unions have spent the past two years preparing to manage their balance sheets to the new regulatory framework. Starting with the original implementation date institutions should be able to choose whether they want to implement the new rule sooner than what is determined to be the extended implementation date. This would provide fair and consistent treatment to all.

Complexity Index Should Be Adjusted

The threshold for determining whether a credit union is complex is based on a complexity index. The original complexity index (“OCI”) counted the number of complex products and services provided by credit unions based on 15 indicators, which were determined to be good indicators of complexity. As the OCI did not take into account the volume of the complex activity engaged in by credit unions, NCUA is now proposing to revise the OCI to a revised complexity index (“RCI”) and to apply a new complexity ratio (“CR”). The Association supports the proposed amendment of six (6) indicators in the OCI so the index will more accurately reflect complexity.

Members strongly believe that asset size should not be the sole factor dictating a complex credit union. Consideration must be given to the composition of portfolios and products and services offered to better identify complex credit union profiles. In this determination, the Association also urges the NCUA to annually index any threshold for growth and adopt exemptions from such classification wherever possible, such as for credit unions with more traditional products and services.

In particular, the Association supports the replacement of the indicator for “member business loans” with an indicator for “commercial loans.” Such an amendment reflects the changes to NCUA’s member business lending rule and Call Report data collection requirements.

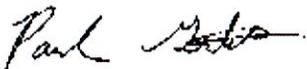
The Association also supports replacing the indicator for “participation loans,” which included both participation loans sold and held, with an indicator for participation loans sold.

The Association supports removing the indicator for “internet banking” as it has become a relied-upon and regular mechanism for members to transact business with most credit unions. As Association member credit unions continue to modernize, adapt and respond to the needs of their members, their federal regulator and insurer should assist in creating an effective operating environment, and RBC requirements should not constrain these continued efforts.

A credit union survey respondent did take note and highlight that the complex indicators are not risky in and of themselves, and rather that the management of the balance sheet is of primary importance, including the expertise and operational demands necessary to manage and administer such activities effectively.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at pgentile@ccua.org that you or your staff may have at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul C. Gentile".

Paul C. Gentile
President/CEO

PCG/kb/mabc