

# Cooperative Credit Union Association

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*Creating Cooperative Power*

March 25, 2021

Ms. Melane Conyers-Ausbrooks  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

**RIN 3133–AF21**

**Re: Cooperative Credit Union Association Inc.’s Comments on Proposed Rule: Risk-Based Net Worth, COVID-19 Regulatory Relief**

**BY ELECTRONIC MAIL: <http://www.regulations.gov>**

Dear Ms. Conyers-Ausbrooks:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to the request for comments issued by the National Credit Union Administration Board (“NCUA”) on its proposed rule relative to Risk-Based Net Worth, COVID-19 Regulatory Relief (“proposed rule”).<sup>1</sup> The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island which further serve over 3.6 million consumer members.

## **I. Overview**

The Association conducted a survey of its members on the provisions of the proposed rule and together with individual comments received, such views provide the basis for this comment letter. Member survey respondents unanimously support the proposed rule which seeks an early phase-in of NCUA’s updated definition of “complex” credit union to include federally-insured credit unions (“FICUs”) with more than \$500 million in total assets under its Risk-Based Net Worth (“RBNW”) rule.<sup>2</sup> The Association is not only in support of the proposed rule, but also applauds NCUA in stepping forward to propose such regulatory relief. Furthermore, the Association also invites the NCUA to further review its definition of “complex” to identify those credit unions who may possess more than \$500 million in total assets but do not maintain high risk balance sheets, evaluate the data, and make any adjustments accordingly in the spirit of RBNW.

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<sup>1</sup> Risk-Based Net Worth—COVID–19 Regulatory Relief, 86 Fed. Reg. 10872 (Feb. 23, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-02-23/pdf/2021-01400.pdf>.

<sup>2</sup> 12 C.F.R. §§ 702.103-702.108, *available at* <https://www.law.cornell.edu/cfr/text/12/702.108>.

NCUA is scheduled to replace the RBNW rule with the Basel-Framework-based<sup>3</sup> Risk-Based Capital Rule (“RBC”) rule<sup>4</sup> beginning on January 1, 2022. The Association strongly suggests that NCUA should postpone the implementation of any new RBC. Furthermore, NCUA’s prior determination as part of its RBC rulemakings that FICUs should not be defined as “complex” unless they have more than \$500 million in assets is equally valid under its RBNW rule both in terms of statutory interpretation and in terms of safe and sound prudential regulatory policy. The RBNW rule is not based on the Basel Framework international capital standard, such as Basel III, and it currently defines “complex” credit unions as FICUs with more than \$50 million in assets. Accordingly, the Association believes that NCUA has discretion under the Federal Credit Union Act (“Act”) to phase-in the RBC rule’s updated \$500 million asset definition of “complex” credit union early as proposed. It is also noted that FICUs that are not classified as “complex” are exempt from the Federal Credit Union Act’s risk-based regulatory capital requirements and related NCUA rules such as the RBNW rule and RBC rule.

Section 216(d) of the Act, which Congress added in 1998, requires the NCUA Board to establish a risk-based regulatory capital framework for FICUs that are “complex, as defined by the [NCUA] Board based on the portfolios of the assets and liabilities of credit unions.” The U.S. Supreme Court has held that when “Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.”<sup>5</sup> The Association believes that the judicial doctrine based on the precedent setting *Chevron* ruling is the controlling guidance that supports NCUA’s discretion to phase-in its updated interpretation of the term “complex” credit union earlier than scheduled. Section 216(d) of the Act provides a statutory gap that Congress intended for the NCUA to fill with legislative regulations that are accorded controlling weight.

## II. Proposed Phase-In is Common Sense Regulatory Policy

Phasing-in the updated definition of “complex” credit union early is also common-sense financial regulatory policy. NCUA has previously determined as part of the RBC rulemaking process that it is safe and sound for FICUs with \$500 million or less in assets to be exempt from regulatory capital requirements other than the Net Worth Ratio. The Association believes that the same determination should also apply to the RBNW rule. The proposed rule will limit potential transitory regulatory capital burdens on FICUs with between \$50 million and \$500 million in total assets while having those FICUs maintain at least the same level of regulatory capital that they will be required to maintain beginning January 1, 2022. Phasing-in the RBC’s definition of “complex” credit union early therefore does not create prudential regulatory variances in relation to the future status quo for these FICUs with between \$50 million and \$500 million in assets.

Much has changed in the financial system as well as in the credit union system over the past 20 years and what may have been considered a “complex” credit union in July 2000, when NCUA first issued

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<sup>3</sup> Basel Committee on Banking Supervision, “The Basel Framework;” [https://www.bis.org/basel\\_framework/](https://www.bis.org/basel_framework/) (last visited Mar. 12, 2021).

<sup>4</sup> See, e.g., Risk-Based Capital, 83 Fed. Reg. 55467 (Nov. 6, 2018), available at <https://www.govinfo.gov/content/pkg/FR-2018-11-06/pdf/2018-24171.pdf>.

<sup>5</sup> *Chevron U.S.A., Inc. v NRDC*, 467 U.S. 837, 843-44 (1984).

its RBNW rule, is radically different from a “complex” depository institution today. NCUA historical data indicates that there were 10,479 FICUs with approximately \$427 billion in total assets for an average FICU asset size of approximately \$40.7 million in total assets in June 2000 at the time the RBNW’s existing “complex credit union” definition was finalized.<sup>6</sup>

December 2020 NCUA data indicates that there are 5,099 FICUs with total assets of over \$1.8 trillion, for an average FICU asset size of approximately \$362 million in total assets.<sup>7</sup> The Association observes that such change is equally consistent across the depository institution horizon as banks and other FDIC-insured institutions have grown even more significantly in size and complexity during the same period time.<sup>8</sup> As times change, what constitutes a “complex” credit union or bank based on its assets and liabilities today in 2021 is significantly different from the operational realities in the year 2000, a period when there were roughly twice as many FICUs and FDIC-insured banks with significantly lower average asset sizes.

### III. Risk Based Capital

Survey respondents also unanimously support NCUA’s efforts to establish a simplified alternative to the RBC rule. More specifically, it is generally recommended that NCUA pursue a Complex Credit Union Leverage Ratio (CCULR) approach to meet all capital requirements while providing an optional alternative to the RBC rule that complex FICUs, meeting certain criteria, could opt-into. Association members agree that this method would ensure that complex credit unions continue to hold capital commensurate with risks while minimizing the regulatory compliance burden associated with the RBC requirement.

Association members also further believe that the current economic cycle that resulted mainly from an unprecedented global pandemic provides the impetus for NCUA to again postpone the implementation of any new RBC rule. Finally, in a recent related action, the Association joined its colleagues across the country and endorsed a letter to the NCUA urging adoption of an interim final rule to provide Prompt Corrective Action (“PCA”) relief as the 2020 interim final rule on PCA expired December 31, 2020.<sup>9</sup> This action will address the continued increase in share growth experienced by credit unions resulting from government stimulus payments and changes in consumer spending and savings habits. In addition to the requested PCA relief, the Association also respectfully requests that NCUA temporarily exclude certain assets from the net worth ratio by considering an amendment to the definition of “total assets” to exclude certain zero- and low-risk assets as savings growth, once again, is rooted in the current marketplace environment in comparison to direct credit union actions.

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<sup>6</sup> NCUA, “Industry At a Glance,” <https://www.ncua.gov/analysis/credit-union-corporate-call-report-data/aggregate-financial-performance-reports> (last visited Mar. 12, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> In 2000, there were 9,904 FDIC-insured institutions with \$7.5 trillion in assets (for an average asset size of \$753 million in assets) and in 2020 there were 5,001 FDIC-insured institutions with approximately \$21.9 trillion in assets, for an average assets size for today’s banks of \$4.3 billion in assets. FDIC, *Statistics at a Glance: Historical* (Dec. 2020), available at <https://www.fdic.gov/bank/statistical/stats/2020dec/fdic.pdf>.

<sup>9</sup> Letter to NCUA Board, March 19, 2021, Rulemaking Aimed at PCA Relief.

#### IV. Conclusion

The Association urges the NCUA to finalize this regulation as proposed. The application of the updated definition of “complex” credit union to the currently applicable RBNW rule is a prudent reflection of credit union growth and incorporates it into a rule specifically designed to address safe and sound growth. It is also appropriate as a regulatory relief measure at this time in light of the planned transition to the RBC rule in just a few months when only FICUs with more than \$500 million in assets will be subject to risk-based regulatory capital requirements. FICUs’ high Net Worth Ratio requirement of a 7 percent leverage ratio<sup>10</sup> to be classified as “well capitalized,” combined with FICUs’ stringent portfolio shaping rules, business activity limitations under the Act, and NCUA regulations and/or state law, more than adequately control the risks associated with the assets and liabilities of FICUs below \$500 million in total assets without either the RBNW rule or the RBC rule. Finally, the Association believes that the current state of emergency in our member states resulting from the pandemic contributes to the need for capital relief for certain credit unions and that the proposed rule helps to achieve this goal without any material decrease in the safety and soundness of credit unions or the National Credit Union Share Insurance Fund.

The Association appreciates the opportunity to comment on NCUA’s proposed regulation on NCUA Risk-Based Net Worth – COVID-19 Regulatory Relief. If you have any questions about the recommendations set forth in this comment letter or require further information, then please do not hesitate to contact the Association at [govaff-reg@ccua.org](mailto:govaff-reg@ccua.org).

Sincerely,



Ronald McLean  
President/CEO  
Cooperative Credit Union Association, Inc.

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<sup>10</sup> Survey respondents with a RBNW capital requirement that is higher than the 7 percent Net Worth Ratio requirement to be “well capitalized” unanimously indicated that member business loan exposure resulted in the higher RBNW requirement. Furthermore, the credit quality of these exposures has not generally deteriorated since the beginning of the COVID-19 pandemic.