ICBA
Independent Community Bankers of America®

July 26, 2019

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

Re: Delay of Effective Date of the Risk-Based Capital Rules

Dear Mr. Poliquin:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed rule *Delay of Effective Date of the Risk-Based Capital Rules*. This proposed rule is being issued to delay the effective date of the National Credit Union Administration's (NCUA) final rule regarding risk-based capital and the supplemental final rule regarding risk-based capital issued in October 2015 and November 2015, respectively. Under the proposal, which was adopted on a 2-1 vote with board member Todd Harper dissenting, the effective date of both rules would be January 1, 2022. The delay would give the NCUA additional time to evaluate regulatory capital standards for federally insured credit unions and allow credit unions additional time to comply with the provisions of risk-based capital. **ICBA believes that the NCUA should proceed with implementing its risk-based capital framework as originally scheduled without delay. Additionally, NCUA should immediately institute regulatory capital standards that are no less stringent than the regulatory capital standards that community banks must adhere to under Basel III.**

Credit unions should not be permitted to expose taxpayers in the United States to elevated lending risks associated with financial institutions that are tax-exempt and whose capital levels are not based on the level of risks that an institution is engaged in. NCUA's original final rule regarding risk-based capital was to be the first step in requiring credit unions to follow regulation that attempts to replicate what community banks have been subject to for many years. As credit unions balloon in size, expand their operations into commercial lending, and attract customers

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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well beyond their intended mission, their lack of attention to prudent regulatory capital standards that properly weigh the risks being taken introduces new financial risks to the taxpayer. All while community banks maintain healthy levels of risk-based regulatory capital and sensible leverage. Without the institution of a capital framework that mimics the regulatory capital standards imposed on all community banks, credit unions continue to maintain a competitive advantage while being permitted to engage in risky behaviors that harm depositors, members, and employees. This is especially true for the largest credit unions that have rapidly expanded in size to reach an unmanageable level of assets, some with risk profiles that warrant the need for additional regulatory capital to ensure the ability of the institution to survive an economic downturn. By requiring these risky credit unions to maintain strong levels of risk-based capital, the NCUA is ensuring that some level of protection is put in place. Compound these concerns with the current credit union net worth rule, where goodwill is treated as regulatory capital giving credit unions an advantage over community banks, which are required to deduct goodwill in regulatory capital calculations as an intangible asset. This differing treatment promotes the acquisition of other credit unions and community banks, making it clear that the NCUA needs to take immediate action.

The NCUA's inability to effectively implement risk-based capital rules in a timely fashion demonstrates that the agency does not have the ability to properly identify potential concentration risks present in federally insured credit unions. Once a credit union engages in asset concentrations that expose the entity to elevated risk, that credit union must be forced to hold higher capital levels to ensure that the credit union members and the taxpayers are not bearing the cost of any improper risk management activities undertaken at the credit union. Look no further than recent failures of credit unions that carried significant concentrations of taxi medallion loans on their balance sheets, which exposed the Share Insurance Fund to significant losses. Had these credit unions been subject to risk-based capital rules that called for elevated levels of capital, the disastrous outcomes that resulted could have been avoided. As Board Member Todd Harper explained in his dissent to the proposed delay in implementation:

> "*In my view, the agency's supervisory efforts should focus on the institutions and activities posing the greatest risk to the National Credit Union Share Insurance Fund, such as concentration risk. As such, I believe that all financial institutions backed by federal share or deposit insurance should hold capital commensurate with the risks held on their balance sheets. In the case of federally insured credit unions, such capital will protect taxpayers and credit union members by helping to either prevent credit union failures or mitigate losses to the Share Insurance Fund when a credit union fails. Additionally, putting safeguards like the revised final Risk-Based Capital Rule in place before the next recession or financial crisis occurs is good public policy. After all, it's better to repair a roof before it rains than it is to patch it while it rains.*"

Contrast the current oversight of credit unions with the oversight of community banks, where all community banks are subject to risk-based capital standards unless eligible institutions meet

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elevated minimum capital leverage requirements. These stringent capital requirements provide the safeguards necessary to protect the Federal Deposit Insurance Corporation's Deposit Insurance Fund and the taxpayer. Additionally, as prudential regulators proposed, approved, and implemented elevated capital standards for community banks under Basel III, there were little to no delays in implementation. These institutions were never given the opportunity to experience long delays in implementation in order to acquire and upgrade the compliance and risk management systems needed to comply with the new capital framework. As community banks have strengthened capital standards under Basel III and the NCUA has continued to delay and exempt credit unions from a sensible risk-based capital framework, credit unions have now become risky enterprises in the consumer and commercial lending landscape.

ICBA notes that the NCUA is delaying the implementation of risk-based capital rules in part due to the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, which introduced the community bank leverage ratio. Credit unions should not be exempt from applying the most basic risk-based capital rules simply because Congress is amending regulatory capital standards for community banks, especially when community banks are already to subject to more stringent risk-based capital requirements. In addition, the NCUA's unfortunate focus on supplemental capital for credit unions, and the associated elevated risks based on excessive leverage, highlight the sense of urgency needed for immediate action to implement risk-based capital.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 821-4364 or james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting and Capital Policy