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October 15, 2021

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

Re: Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital

Dear Ladies and Gentlemen:

The Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to provide comments on the National Credit Union Administration's (NCUA) notice of proposed rulemaking titled *Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital* (the "NPR"). As an organization that has fought for capital simplicity for community banks subject to the complex provisions of risk-based capital under the Basel III regulatory capital standards, ICBA can appreciate the need for a common sense, straightforward leverage ratio that quickly and simplistically determines regulatory capital levels for a community financial institution. ICBA believes that such a capital measurement technique is especially valuable for a financial institution like a community bank that does not manage complex financial assets with excessive forms of leverage.

However, applying such a measure to a credit union that is not required to follow the rigorous regulatory capital provisions faced by community banks is a dangerous proposition without first determining if the key components of the assets used to generate yield, the funding sources present used to apply leverage, and the quality of capital

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[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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designed to absorb unexpected losses have been effectively scrutinized. The NCUA should first subject credit unions to the Basel III capital standards for several years before determining if the institution of a simplified leverage ratio is prudent. Basel III is the best indicator that complex financial institutions currently have to measure their ability to weather an economic downturn. Borne out of the last financial crisis, the Basel III capital framework assesses the quality of regulatory capital and assigns its highest grade to capital instruments that are designed to be available to absorb losses when all other forms of capital either exit the entity or are depleted. Until full adoption of Basel III for all credit unions regardless of size is implemented, the long-term viability of any credit union will remain in doubt.

The Proposal

NCUA has implemented a risk-based capital rule for complex credit unions, generally those with total assets exceeding $500 million. The final rule being originally passed in 2015, has yet to be implemented and is not expected to take effect until 2022 unless it is again delayed. Before that final rule is even allowed to take effect, the NCUA with this proposal seeks to implement a complex credit union leverage ratio (CCULR) to exempt complex credit unions from the provisions of risk-based capital indefinitely. Under the proposal, a complex credit union with a net worth ratio of ten percent or more can avoid risk-based capital by opting into the CCULR framework as soon as January 1, 2022, which is the same date that risk-based capital is scheduled to take effect for complex credit unions. Qualifying complex credit unions must have off-balance sheet exposures of 25 percent or less, total trading assets and liabilities that do not exceed five percent of total assets, and total goodwill and other intangible assets that do not exceed two percent of total assets. The CCULR would contain a transition provision phasing in the CCULR over two years. Effective January 1, 2022, the CCULR minimum ratio would be 9 percent. Effective January 1, 2023, the CCULR minimum ratio would rise to 9.5 percent with a full 10 percent requirement starting on January 1, 2024.

Unlike the similarly fashioned but congressionally authorized community bank leverage ratio that provides capital relief exclusively for small community banks, the CCULR is available for all complex credit unions regardless of size. The numerator of available capital under the calculation would include a low-income credit union’s subordinated debt and secondary capital. Loans to other credit unions and accounts at other insured credit unions would also be included in the numerator. Credit unions that no longer meet the criteria for the CCULR would have a two-calendar quarter grace period to regain compliance or be subject to risk-based capital.

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ICBA's Comments

ICBA has continually expressed concerns with the NCUA's rapid movement towards unopposed expansion of credit unions of all sizes and business activities including the acquisition of well capitalized, tax-paying community banks. ICBA has repeatedly raised alarm at the unprecedented growth of credit unions with members of Congress, government officials, and the NCUA. The proposed CCULR is just the latest example of NCUA's attempt to avoid any serious capital adequacy measurement for large and complex credit unions. ICBA continues to object to the rapid expansion of credit unions that have abused their status as tax-exempt entities that serve people of modest means. If credit unions desire to conduct business activities that deviate from what their tax exempt-status allows, they should apply to become federally-insured banks.

The NCUA points to the introduction of the community bank leverage ratio (CBLR) as providing the authority for NCUA to enact such a capital measure. What is missing from the entire discussion with this mention is the fact that community banks were subject to the full provisions of the international Basel III capital accords long before the CBLR ever became effective. Community banks faced the rigors of the Basel III capital measurement provisions before even considering the prospect of a simplified capital measure.

Moreover, the Basel III capital standard for community banks, as well as the CBLR, requires a full deduction of goodwill from regulatory capital. Because goodwill is an intangible asset, its value could become uncertain or even depleted rapidly in an economic downturn. Therefore, NCUA should fully deduct goodwill in the CCULR calculation. Additionally, because the CCULR does not accurately measure capital requirements for those complex credit unions that engage in riskier activities, the CCULR should only be made available to those credit unions that do not originate or hold a significant amount of member business loans.

In order for the capital relief provided through the CBLR to become effective, Congress passed a law allowing its use by community banks with a cap on bank asset size. Only through the diligent study of the potential impact of the CBLR on local communities did Congress allow it to become law. Without action by Congress through the legislative process, it is possible that banking regulators would not have provided community banks with regulatory capital relief including the CBLR accommodation. Congress never contemplated the impact of a CBLR-like

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capital relief measure for credit unions including the largest credit unions and the additional risks it could pose to the NCUA share insurance fund.

It is important to consider that all notable changes to credit union capital regulation including quality of capital, additional capital instruments, acceptable leverage, and risk-based capital measures have come after the financial crisis of 2008-10. Since the end of the financial crisis of 2008-10, which absent a minimal COVID-19 interruption is extending well over a decade for the first time in recorded history, the nation has experienced an expanding national gross domestic product, increasing asset values, "easy money" government policies, low inflation, high consumer confidence, considerable corporate profits, and muted capital markets. Even during the federal, state, and local government-imposed cessation of economic activity during the COVID-19 pandemic, consumer spending remained high, asset values increased, and economic stimulus drove corporate valuations to record levels. Any period of economic prosperity is always followed by an economic downturn that places stresses on all financial markets, corporations, consumers, governments, and most notably asset-based lenders. This economic cycle will be no different and could be prolonged in comparison because the country has seen economic prosperity without meaningful interruption for so long. For credit unions, especially those that have increased their asset base rapidly during this time and expanded their market footprint by following a "race to the bottom" on interest rates, economic stress is guaranteed. Without sufficient capital requirements, many credit unions, particularly those that are concentrated in member business lending, will find themselves unable to weather the loan losses.

In summary, ICBA believes that complex credit unions should first be subject to the full provisions of the Basel III regulatory capital standards before any capital relief measures are considered. Once the NCUA concludes that complex credit unions can maintain the rigorous capital standards under Basel III, the agency should only consider capital relief provisions that fully deduct goodwill from regulatory capital and should only be applied to credit unions that do not originate or hold a significant number of member business loans.

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ICBA appreciates the opportunity to comment on this proposed rule and request for comment. 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