June 15, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: National Credit Union Administration: Risk-Based Capital

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the National Credit Union Administration (NCUA) entitled “Risk-Based Capital” (RIN: 3133-AD77). We received the rule on May 31, 2016. It was published in the Federal Register as a final rule on October 29, 2015, with an effective date of January 1, 2019. 80 Fed. Reg. 66,626.

The final rule restructures NCUA’s prompt corrective action (PCA) regulations and makes various revisions, including amending the agency’s current risk-based net worth requirement by replacing it with a new risk-based capital ratio for federally insured, natural-person credit unions. NCUA observed that the risk-based capital requirement set forth in this final rule is more consistent with NCUA’s risk-based capital measure for corporate credit unions and more comparable to the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and Office of the Comptroller of Currency. The risk-based capital provisions of this final rule apply only to federally insured, natural-person credit unions with assets over $100 million. The final rule also eliminates several provisions in NCUA’s current PCA regulations, including provisions relating to the regular reserve account, risk-mitigation credits, and alternative risk weights.

Enclosed is our assessment of the NCUA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our
review of the procedural steps taken indicates that NCUA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Michael J. McKenna
   General Counsel
   National Credit Union Administration
(i) Cost-benefit analysis

In its submission to us, the National Credit Union Administration (NCUA) noted that preparing a cost-benefit analysis was not applicable. The NCUA did, however, discuss costs and benefits in a general way in the final rule. NCUA stated that a higher level of capital is beneficial because it insulates certain financial institutions from the effects of unexpected adverse developments in assets and liabilities. Specifically, higher levels of capital can reduce the probability of a systemic crisis, allow credit unions to continue to serve as credit providers during times of stress without government intervention, and produce benefits that outweigh the associated costs.

According to NCUA, by reducing the probability of a systemic financial crisis and insulating individual institutions from failure, higher capital requirements confer very large benefits to the overall economy. NCUA stated further that while higher levels of capital can insulate depository institutions from adverse shocks, holding higher levels of capital does have costs, both to individual institutions and to the economy as a whole. For the most part, the largest cost associated with holding higher levels of capital, in the long term, is foregone opportunities; that is, from the loss of potential earnings from making loans, from the cost to bank customers and credit union members of higher loan rates and lower deposit rates, and the downstream costs from the customers’ and members’ reduced spending. NCUA stated that estimating the size of these effects is difficult. However, despite limitations on the ability to quantify these effects, NCUA determined that the annual costs appear to be significantly smaller than the losses avoided by reducing the probability of a systemic crisis.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

NCUA certified that this final rule will not have a significant economic impact on a substantial number of small credit unions.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, NCUA is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On February 27, 2014, NCUA published a proposed rule. 79 Fed. Reg. 11,183. NCUA received over 2,000 comments on that proposal. After reviewing the comments, NCUA published a second proposal. 80 Fed. Reg. 4339 (Jan. 27, 2015). NCUA received over 2,100 comment letters on the second proposal. NCUA addressed comments in the final rule.
Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

NCUA determined that this final rule imposes new information collection requirements under the Act. NCUA’s burden estimate for complex credit unions is a one-time cost of 59,560 hours or $1,898,174 and for non-complex credit unions, 4,784 hours or $152,256. The information collection requirement has been submitted to the Office of Management and Budget (OMB) for review under OMB Control Number 3133-0154.

Statutory authorization for the rule

NCUA promulgated this final rule under the authority of sections 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789, 1790d of title 12, United States Code; sections 1601–1611 and 3717 of title 15, United States Code; and sections 1981, 3601–3610, and 4311–4312 of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, NCUA is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, NCUA is not subject to the Order. However, NCUA stated that it voluntarily complies with the Order to adhere to fundamental federalism principles. NCUA determined that this final rule may have, to some degree, a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA believes this impact is minor, and it is an unavoidable consequence of carrying out its statutory mandate. NCUA stated that it consulted with representatives of state regulators during the rulemaking process.