CREDIT UNION
ASSOCIATION
COLORADO

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March 2, 2010

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Dear Ms. Rupp:

The Credit Union Association of Colorado ("the Association") appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed Regulation 704. The Association represents more than 100 state and federally chartered credit unions in Colorado. The Association's comment was directed by our Regulatory Subcommittee ("the Subcommittee") who has studied the proposal and is gravely concerned about its implication to Natural Person Credit Unions ("NPCU").

The Subcommittee's concern is so serious that we **ask that you withdraw the proposal in its entirety and start fresh, carefully considering our comments and those of our sister leagues and associations, and credit unions across the country**. We believe that the proposed regulation is so complex and overreaching that it will put our corporate, SunCorp Credit Union ("SunCorp") and nearly every other corporate credit union ("Corporates") out of business, or at the very least restrict their activity so severely that they will be unable to sustain a business model that our credit unions would support through additional capital. We believe that Corporates must be permitted to operate to meet product and service needs of all credit unions. This regulation will not allow that to happen.

The Subcommittee has identified and will discuss eight critical areas that if not changed will have dire consequences for NPCUs. There are numerous other areas of concern that if not changed will contribute to an unworkable business model for Corporates.

1. Legacy assets, OTTI calculations and extinguishment of capital.

The proposed regulation does nothing to address the investments that have been at the center of the extinguishment of credit union capital. It is unfathomable that the NCUA would prepare such a comprehensive change to the regulation without openly and transparently providing their expected plans in dealing with the subject assets that has caused the NCUA to change the regulation. The NCUA continues to create suspicion with their lack of transparency in dealing with this entire crisis, and by hiding the plan related to the subject assets, as was discussed at the Orlando Town Hall Meeting as already prepared, leads to further distrust of the entire regulatory oversight. **Recommendation: Withdraw the proposed regulation until the NCUA has announced its strategy for dealing with this global financial crisis along with all the**

details including disclosures about the actual losses and provide open disclosure from multiple sources regarding the projected losses.

The NCUA continues to require that NPCU capital be extinguished based on estimates of future losses and prohibits the return of capital if the estimate of losses do not materialize. The Subcommittee has serious concerns with the assumptions used to estimate losses and the directives from the NCUA. First, accounting requires the estimation of losses and that they be recorded in the current period. However, accounting requirements (GAAP) permit that judgment determines the range of losses and does not require that one source be used. Corporates use multiple vendors including their internal analysis to determine possible future losses, however, it appears that they are being "influenced" by the NCUA to use the vendor that provides the greatest loss to members. **Recommendation: Permit, support and require that all Corporates, including U.S. Central, obtain multiple sources of information and disclose those results publically.** This recommendation comes as owners of these institutions, and, as sound public practice.

Even though accounting practice requires the recognition of these estimates as current period losses (the credit portion), the regulations do not REQUIRE the extinguishment of capital. The NCUA consistently references 704.2, the definition of capital as the basis for taking capital. The Subcommittee strongly believes this is inappropriate and is inadequate support for such a proposition. The NCUA is not required to take the capital as an offset, and, as has previously been proven, can permit Corporates to operate with negative Retained Earnings. **Recommendation: Immediately stop the practice of extinguishing capital until actual cash flow losses exceed retained earnings.**

The proposed regulation includes specific wording that requires Corporates to take capital as the NCUA is currently directing. We are not aware of any other financial institution regulator that is making this same requirement. Other regulators, including those who have oversight of the Federal Home Loan Banks, have permitted their constituents to use a Regulatory Capital instead of a GAAP capital requirement. In fact, the NCUA is permitting Corporates to use Regulatory Capital standards as of November 30, 2008 to determine capital. **Recommendation: Use existing authority to permit Regulatory Capital to be used to allow Corporates not to extinguish NPCU capital until actual cash flow losses occur and remove the extinguishment requirements from the proposed regulation.** This position has publically been supported by the Chairman of the Financial Accounting Standards Board.

The proposed regulation is very prescriptive. Its details and required actions are severely limiting, and will eventually restrict sound business practices and choke Corporates' ability to compete. **Recommendation: Withdraw the current proposal and prepare a principle-based regulation that will not have to be amended because of future unintended consequences.**

2. Capital standards and timing.

The Subcommittee agrees that additional capital is required. Credit unions utilized their Corporates as a CUSO, not returning sufficient capital as they wanted the maximum return through higher rates and lower fees. This 100-year credit and liquidity event has taught us a valuable lesson – more capital is required.

The Subcommitee also supports the suggestion that Corporates should follow Basel standards of capital. However, we think it is critical that the NCUA recognize that the 4% standard did nothing to protect all the financial institutions that were previously covered by Basel, except that they may have had more capital to cover losses, but did nothing to prevent the losses.

The proposed rule places severe restrictions on the investment authorities of Corporates in addition to the Basel capital standards, and the timelines for accomplishing these standards with the additional restrictions is unworkable and will cause great harm to those credit unions who choose to re capitalize their corporate. **Recommendation: Remove the severe investment restrictions if the NCUA is going to require additional capital and the retention of earnings in a short period. Recommendation: Extend the requirements for corporates to meet the capital standards. Recommendation: If you require that retained earnings be a large portion of capital, lengthen the time requirements to obtain the new standards.**

The requirements for new capital may be reasonable, but the timelines for accomplishment are not. This capital will come from our bottom lines at a critical time. It took 30 years for most corporates to build this level of capital, the time requirements must be changed.

3. Inappropriate governance changes.

The Subcommittee strongly disagrees with the NCUA's assertion that corporate boards did not act in the best interests of members. We elected these directors and we pressured them for the higher rates and lower fees, and NPCUs accepted the capital levels. **Recommendation: The criticism of Corporates' volunteer boards is inappropriate and unfounded and, therefore, is not appropriately addressed by the proposed rule.**

The NCUA describes Corporates as complex entities and the new proposed regulation is ultra-complex. However, the proposed rule suggests that a title is more important than experience and knowledge. The Subcommittee believes this is inappropriate for many reasons. Most corporate boards are comprised of CEOs and CFOs. By requiring these titles is to suggest no material change. However, it excludes many individuals that have extensive experience and wisdom that Corporates have benefited from including, and especially, volunteers who continue to make this cooperative system work well. **Recommendation: Eliminate the need for titles to be a requirement to be a corporate board member and instead direct Corporate boards to meet skill and experience standards as part of the nomination process**.

The Subcommittee is strongly opposed to the proposed rule's requirement of disclosure of executive compensation. Such disclosure did not cause, nor would it have prevented, the current crisis, will not help solve the crisis and will not prevent such a crisis in the future. Furthermore, the NCUA offers absolutely no support for such proposition. The disclosure requirement serves no apparent relevant purpose. The NCUA should not pursue social agenda considerations in regulation. **Recommendation: Remove the compensation disclosure requirements.** Instead, it may be appropriate to disclose, in aggregate, the compensation and benefits of the CEO and only the direct reports of the CEO, however, not by title and not individually.

4. Restricted investment authority, risk weightings for investments, 2 year weighted average life restrictions.

The sections of the proposed regulation related to investments and asset, liability management are too complex and interwoven and potentially flawed.

The proposed rule places specific limits on investments that will cause Corporates to earn insufficient positive income to grow capital, despite the potential to grow the capital ratio by shrinking, and forcing NPCUs to find alternatives that may not be as effective. It appears that the model that the NCUA touts as proof that a Corporate can earn a positive ROA to meet the new standards is flawed. The model does not consider the cost of capital nor reasonable rates of return. We cannot comprehend how the NCUA could permit this example to be published. First, how can it be assumed that any remaining capital that would be converted or any new capital raised, would be at any less rate than what the NCUA is requiring from U.S. Central with their capital note infusion? Let alone, using a "market rate" that can be found from numerous sources and studies. Also, using the overweighting in student loans, and the inappropriate rate of Libor +200 is unsupportable, and would serve only to choke Corporates' ability to compete not help to solve these problems. **Recommendation: The NCUA MUST provide independent and credible proof that the proposed regulations will work, not only form a mathematical and business model standpoint, but that all assumptions related to the modeling be disclosed and tested individually by all corporates.**

The NCUA has placed many complex requirements and standards into these sections. Specifically, the two-year weighted average life is too restrictive. The inclusion of loans in this standard will limit options for NPCUs and, restrict the options for corporates further. **Recommendation: Permit an average weighted life of four years and model with stated assumptions.**

5. CUSO limitations.

The Subcommittee believes the requirements related to CUSOs to be egregious and overly expansive. The expansion of the NCUA's oversight into these operations will remove the value that Corporates have provided in the past, not only through financial and human resources, but also from a talent perspective. **Recommendation: Eliminate the provision that the NCUA can examine a CUSO that a Corporate has less than a majority interest in**.

The proposed rule includes restrictions on the types of CUSOs a Corporate can start. This is too restrictive as the NCUA already knows what ownership that a corporate has, but will presumably require that they rejustify and document what is already in existence. **Recommendation: Grandfather all existing CUSOs.**

6. PCA restrictions and Office of Corporate Credit Union's authority.
It is our understanding that the NCUA has all the existing authority to prohibit any action of any Corporate, including conservatorship based on estimated future losses. The Subcommittee believes that the NCUA did not understand the risks that were being taken any more than the managers or boards of Corporates, that was the core problem, not that the NCUA was smarter than everyone else and didn't act within your authorities.

However, we also believe that the authorities vested in a single person's office, the Director of the Office of Corporate Credit Unions, is unjustified. **Recommendation: remove all the unilateral authority of the Director and require that actions be approved by the NCUA Board for clear accountability and public disclosure.**

Corporates should have similar PCA requirements despite the fact that there isn't anything today that the regulator cannot justify under safety and soundness. However, as currently written, the requirements are too proscriptive and do not give enough latitude for sound business judgment. **Recommendation: change the PCA requirements to permit more flexibility to correct actions and put principle-based requirements in its place.**

7. Regulation doesn't support the raising of capital.
We applaud the NCUA's efforts to strengthen the regulations. However, it appears that the NCUA has taken too much authority, has restricted the operations of corporates too much, and puts NPCUs into a position of not having confidence in the regulator, more than in the Corporates. The Corporates are our Corporates. They were created by NPCUs, to increase our capital and serve our members better. The regulator is out of our control and the NCUA's capricious decision making puts uncertainty and suspicion into our business model. Most NPCUs agree that they are willing to work with their Corporate to emerge from this crisis but the regulatory decision making related to extinguishment, conservatorship, and ultra-restrictive regulations in Corporates, makes NPCUs hesitant to provide any new capital. It's not that NPCUs are not concerned about risking the capital, they are, it's that NPCUs risk the capital to NCUA's decisions and regulations to protect the fund, versus what may make long-term, sound business sense. **Recommendation: Withdraw this proposed regulation and start again with a principle-based approach with the cooperation of credit union and corporate professionals.**

8. Impact on individual credit unions.
The NCUA's actions, both good and bad, give rise to concern that the NCUA will force private share insurance and state charter changes that make the NCUA sole judge and jury. The Subcommittee urges the NCUA to open its planning and communications to warmly impress credit union concerns over the Treasury's concerns. Congress created credit unions as a necessary alternative to for-profit banks, and the NCUA needs to respect and protect this difference, not be lead by capital market standards over cooperative standards. **Recommendation: Work with Corporates and natural person**

credit unions to craft new regulations that will support the cooperative business model as well as meet appropriate safety and soundness concerns.

In summary, the Subcommittee strongly urges the NCUA to consider our comments, and those of other highly qualified and experienced individuals across the nation, and to start over with this regulation, focusing on the fact that Corporates and NPCUs did not create the credit and liquidity crisis we suffer in, but are equally impacted by it, and that it cannot be avoided. We have learned through this global financial crisis, that financial institutions throughout the world are connected despite our desire to be isolated from it. We believe our system is best for the consumer, not that the for profit banking world should be abolished, but that we must be allowed to work under cooperative principles, not their for-profit principles. Having only about 6% of the market share in the United States, we need a regulator and regulations that support our ability to compete, not destroy our cooperative model. The Subcommittee firmly believes the proposed regulation will destroy Corporates and potentially many smaller NPCUs who rely on them.

As we stated in our comment to the Advanced Notice of Proposed Rulemaking last year, though additional regulation of Corporates will not solve the present crisis, nor would it likely have prevented it, the Subcommittee understands that some regulatory changes are necessary in the face of some of the issues brought to light by this crisis. However, it cannot be stressed enough that the Corporates play an important role in the day-to-day operations of NPCUs, and the continued availability of all of the products and services provided by Corporates under a not-for-profit cooperative business model is critical to the future success of NPCUs. Additional regulation that goes too far in limiting the risks to Corporates can adversely impact the competitive competencies of Corporates leaving NPCUs to rely on their banking competitors for necessary services.

Respectfully,

/s/ Brad Johnson

Brad Johnson, Chair
Regulatory Subcommitte
Credit Union Association of Colorado