



December 14, 2010

Mary Rupp, Secretary of the Board  
VIA E-mail to: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Proposed Regulation 12 CFR Part 701, 704, 741

Dear Ms. Rupp:

SunCorp appreciates the opportunity to provide comment on proposed regulatory changes related to Part 701,704, and 741. We can only agree with three of the provisions in the proposed rule changes because so many of the proposals are duplicative of other controls and safeguards already in place.

The proposed set of changes take on the appearance of regulatory excessiveness, and with all respect, because there is so little we can responsibly agree with, believe this set of extended corporate rulemaking should be retracted in its entirety or withheld indefinitely.

Previous rulemaking needs to be implemented first, and evaluated in the new environment of enhanced Corporate supervision and oversight by the NCUA.

A compilation of specific comments is attached. Each illustrates the problematic nature of sections of the proposal. However, it is our recommendation that this entire set of rules be retracted, or as an alternative, be given at least a 360-day comment period, so we might collectively and reasonably determine the need for such action in light of merits and burdens of Corporate regulatory changes already issued.

SunCorp asks that the NCUA give serious reconsideration to these proposals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom', written in a cursive style.

Thomas R. Graham  
President and CEO

Attachment

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## **Section-by-Section Response**

### **701.5 Membership limited to one Corporate Credit Union**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

NCUA opened the Field of Membership for all Corporates in the 1990s, essentially granting national charters to all federally chartered Corporates. Credit Unions gained a significant advantage, as noted in the proposal, by bidding one Corporate's rates against another if they joined (but not necessarily capitalized) more than one Corporate. There was no regulatory requirement to capitalize and Corporates did not want to restrict participation in hopes of expanding product and service offerings and increasing operational efficiencies. However, as we know today, these actions led most Corporates to pay above market rates on deposits and retain less capital for turbulent times.

The proposed regulation attempts to "prevent unhealthy competition among corporates" without defining unhealthy versus healthy competition. The strict and prescriptive regulatory changes in 704 no longer permit Corporates to provide the best value to members until they reach and maintain compliance with the numerous provisions in 704, instead focuses Corporates on the NCUA's requirements for safety and soundness. With the new requirements built into 704 for minimum capital, minimum ROA, (including additional ALM restrictions), the additional restriction to limit ownership and membership is unnecessary.

There was no transparency provided as to the other alternatives that the NCUA Board may have considered, for example using a Federal Reserve Districting concept (using a Corporates core Field of Membership (FOM) as the district) that could accomplish a similar result – no competition amongst Corporates. There must be many other reasonable alternatives. The proposed regulation clearly limits competition by restricting choice, but does so by requiring a Credit Union to select the "best deal today", which may not be the best value proposition long term and which does not necessarily allow for the optimization of Corporate expenses.

While the proposed requirement may make rate shopping much more difficult for Credit Unions, it will be much harder on Credit Unions who must invest permanently in capital (Perpetual Contributed Capital) and then

cannot transfer their business to another Corporate or alternative vendor easily, and after doing so would possibly lose their initial investment.

A point of confusion related to the proposal is that the NCUA has determined that membership is based on deposits and not on capital. Yet, the NCUA has already provided in 704 that a Corporate may make membership contingent on providing capital. It is confusing that the NCUA declares this new regulation will have a "...prospective impact only. That is, credit unions that are currently members of two or more corporates do not have to relinquish membership in any of those corporates".

If a Corporate uses the newly permitted provision that a Board can require capital as a condition of membership, and a Credit Union decides not to recapitalize, then that member must be removed from membership and therefore must withdraw all their funds and their business (within 6 months). They would not be a member.

Must a member formally declare which Corporate they belong to, or which Corporate they are transferring to? Is there any requirement that a Credit Union provide notice or file notice with the NCUA or their Corporate on this designation?

#### **704.11 Corporate Credit Union Service Organizations: 701.19 Disclosure of executive and director compensation**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

SunCorp believes it is unnecessary and inappropriate to disclose compensation as required in the approved regulations. This requirement has been in the banking industry for many years and did nothing to prevent the risk taking at banks or the global financial crisis itself. In other words, it did nothing to limit the exposure of the institutions or the impact to those institutions already required to comply with a similar disclosure requirement. Therefore, this disclosure is useless and unnecessary.

If the prior regulatory change isn't removed, then this disclosure requirement that all income derived from all sources related to the Corporate and its wholly-owned, and partially owned subsidiaries, consolidated or non-consolidated entities, should be required.

#### **704.13 Board responsibilities**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

This change, "to require that all votes be conducted by recorded votes" is unnecessary and potentially hazardous to sound decision-making. This requirement can create liability, exposure, and second-guessing which may affect the decision-making process of an individual. If a Board member feels strongly about a vote, under Roberts Rules of Order (the most used standard for parliamentary procedures), or any other acceptable standard of parliamentary procedure, they can ask that their vote be recorded. There are standards for minute taking in Robert's Rules of Order as well as from numerous publications including the publication titled: Corporate Minutes: A Monograph for the Corporate Secretary produced by the Society of Corporate Secretaries and Governance Professionals; neither suggest this requirement. In fact, most protocols for minute taking suggest that only the decisions be recorded, with very little details.

The purpose of a Board vote, under parliamentary rules is to execute the will of the body, not the will of the individual after a review of the facts and dialog between the directors. This proposed requirement erodes the historically accepted practice related to the "Business Judgment Rule" which protects directors from personal liability if they act in good faith and in the organizations best interests - instead inserting a government vote-taking process over a business process not required in any other typical business environment.

To record each individual's vote will cause a director to consider if they can be segregated in a lawsuit or regulatory finding as an individual, versus the strength of a majority vote and the will of the governing body. This creates unnecessary liability for the volunteer, who, is now very concerned about the levels and amount of insurance coverage, due primarily to the NCUA's lawsuits.

As for ensuring "that corporate directors comply with their obligation to recuse themselves from deliberating and voting on items which may involve a conflict of interest", that is absurd. Recording votes does nothing to insure that a director fulfills their obligation; it only makes it easier to produce documentation after the fact to prosecute or accuse a director if they do not fulfill their fiduciary responsibility. As noted in the text of the proposed regulation, "under the bylaws, the director has the obligation to identify issues that may pose a conflict of interest and withdraw from deliberation and determination of these issues." Similarly worded statements can also be found in Robert's Rules of Order. In addition, the purported "self-policing" comment in the proposed regulation does little good after the fact, that is, after an issue is decided or resolved, as the impropriety has to be

determined in advance or immediately recognized and disposed of properly for good business purposes.

### **701.15 Audit and reporting requirements**

#### **SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA's attempt to "facilitate early identification of problems in financial management at corporate credit unions" is ill-advised with this requirement. The NCUA currently executes monthly contacts with Corporates in addition to daily information feeds on cash inflows and outflows, a monthly review of all the Board, ALCO and Supervisory reports, and often additional phone calls and physical visits. This level of contact already seems excessive.

Sarbanes Oxley regulation neither prevented the recent financial crisis, nor reduced any of the impact that the financial crisis had on those institutions that were already required to report under these requirements. Implementing requirements that mimic Sarbanes Oxley regulation seems pointless, and will be very costly to Corporates and therefore their members.

The proposed requirements will substantially increase the cost of compliance, far beyond what the NCUA reports in the Summary of Collection Burden section of the regulation. The cost could be substantially higher if a CEO and CFO are required to sign an attestation as to an "assessment of the effectiveness of the internal control structure and procedures over financial reporting, including identifying the internal controls framework used to evaluate such internal control." The CEO and CFO would likely need to hire a separate or additional internal audit firm or public accounting firm exclusively to assure that what the CEO and CFO attest to was actually taking place. This is because the Corporate's internal audit firm would not be representing the CEO and CFOs interests independently but the institution instead. This additional potential exposure and liability on the CEO and CFO as individuals would require significant attestation work before they would sign.

It also seems meaningless that the volunteer Supervisory Committee would now have to attest to the NCUA that the Independent Public Accounting firm is doing what they are required to do by law, public policy, and engagement letters or contracts.

If the NCUA is effective in making these changes, then there should be no differentiation on application by Corporate asset size as all Corporates

regardless of size represent the same systemic risk and therefore should all have to bear the same burden of proof and cost.

#### **704.15(a)(1) Audited financial statements**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

Generally Accepted Accounting Principles (GAAP) require that “all material correcting adjustments identified by the IPA” be made or the financial statements would not be considered GAAP and the external auditor would therefore not be able to attach an opinion letter. We do not understand why this proposal is necessary by regulation.

#### **704.15(a)(2) Management report**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA’s stated purpose for this provision is that the “Board is concerned that management in some corporate credit unions may have insufficient oversight over certain reporting, control and compliance functions.” If this were in fact the case, the NCUA already has numerous tools including Other Examiner Findings, Documents of Resolution, Letters of Understanding, as well as Cease and Desist Orders to alleviate their concerns. In addition, Corporates are required to have Certified Public Accountants and Internal Audit reports on an annual basis that review all the areas of stated concern. Again, as noted in previous sections, it appears that the NCUA is more concerned with placing blame after the fact, than working to use the existing tools to alleviate their concerns. This additional attestation by management will require additional independent internal audits, which will add additional expense to the Corporate, which has to be absorbed by the members.

Suggesting “management should perform its own investigation and review of compliance with the rules and maintain records of its assessments, until the next NCUA examination or such later date as specified by NCUA” implies that management needs to stop managing the institution and become the audit and compliance function experts because of the requirement to make the open-ended attestations to the NCUA. Because there has never been an NCUA examination that hasn’t had a finding, after

the fact, it is doubtful that anyone would seriously sign an attestation without additional external audits and additional expense support.

The prescriptive requirements for management to identify an internal control framework, make an evaluation of controls over preparation of financial statements and regulatory reports and make a statement regarding the effectiveness of the controls and disclose all material weaknesses identified is an internal and external audit function already required for an audit opinion. Why is a separate management attestation function necessary?

If this change is approved, then there should be no Corporate asset size differentiation for application as it would create a competitive advantage for smaller Corporates and yet represent the same systemic risk to the Credit Unions and the NCUSIF.

#### **704.15 (a)(3) Management report signatures**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

Again, this separate reporting and attestation will significantly add more cost than the NCUA describes under "Estimated PRA burden" which will have to be absorbed by members. The intimidation factors prescribed will require additional audits and liability protection. This change is unnecessary.

#### **704.15(b)(1) Annual audit of financial statements**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

We believe that a Certified Public Accountant, not a "public accountant", should perform all annual external audits.

#### **704.15(b)(2) Internal control over financial reporting**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA is adding unnecessary costs to the operations of Corporates by requiring yet another attestation of controls. Not only does an audit by a qualified Certified Public Accountant require a test and opinion on the controls of a client, if this proposal is adopted, management must also sign

their own statement as to the controls of the Corporate. This additional requirement makes the external audit firm opine not only on their review but also now on management's statements in their attestation.

#### **704.15(b)(3) Notice by accountant of termination of services**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA will be engaging in day-to-day management by requiring equal communication on a governance responsibility and management matter. The engagement and termination of audit firms is a Board and Supervisory Committee matter not requiring regulatory oversight, permission, or explanation. The proposal suggests that there has to be a stated reason for changing audit firms and seems asinine to seek the audit firm's agreement as to the termination reasons. What if the audit firm disagrees with the Board and Supervisory Committee's reasons for termination of services--what will the NCUA do then? What if an audit firm terminates their services with a Corporate client? Why then wouldn't the NCUA also require the audit firm to state their reasons and seek the Board and Supervisory Committee's agreement or disagreement with the audit firm's reasons?

#### **704.15(b)(5) Retention of working papers.**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA quotes "best industry practices" but provides no reference or support as to why seven years for retention of working papers is the "best practice", versus four years, ten years or for an indefinite period of time. The professional audit firms, governed by professional audit standards and practices along with their own assessments of liability exposure should set the time period for retention of their work papers, not the NCUA.

#### **701.15(b)(6) Independence**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

This change is unnecessary as all Certified Public Accountants must adhere to the standards of the AICPA, including independence. We do agree that external auditors must be licensed and adhere to the standards of the auditing industry including the AICPA. If the NCUA requires that all auditors be Certified Public Accountants, versus “Public Accountants”, and requires compliance with the AICPA’s standards, this change is unnecessary. The exclusive use of Certified Public Accounting Firms seems appropriate.

#### **704.15(b)(7) Peer reviews**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

This change is putting into regulation the audit industry’s compliance standards. This is unnecessary. We agree that a Certified Public Accounting firm must comply with their industry’s compliance standards and that a Supervisory Committee should obtain that public portion of their third party review, as limited as that information is, but do not find any reason that the audit firm should have to file that report with the NCUA. Will the NCUA pay for this report, or does the Corporate have to pay to have that report filed with the NCUA?

#### **704.15(c)(1) Annual reporting**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

We do not believe that a specific time horizon is appropriate. Corporates want to have their audited statements to members in a timely fashion, but as the NCUA found out by not providing an audit of the NCUA Board’s controlled entities, including the NCUSIF, for over a year and a half, it is often difficult to get an audit firm to provide their opinions. During periods of substantial change in the FASB or AICPA standards, audit firms may not be able to comply in a timely fashion with a credible product. The standard today of within the following year, should be sufficient. Therefore, this regulation is not necessary.

#### **704.15(c)(2) Public availability**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

A Corporate is a member owned and governed institution. The annual report does not need to be made public by the NCUA as all the NCUA financial reporting is public information already available to anyone from its website. This proposal may affect the previously required compensation disclosure that a Corporate may choose to place in its annual report to members, which should be private to members and not public information as the NCUA stated in 704.

### **704.15(c)(3) IPA's reports**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA states its proposal is "Consistent with good corporate governance..." but does not quote the source or reasons. This provision is not necessary as the NCUA has access to all the reports and records in a Corporate already, including full and unrestricted access to the Board reports and minutes, which would include the types of reports covered in this proposal.

### **704.15(c)(5) Notice of engagement of change of accountants**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

As noted in the response to 704.15(b)(3), this is not necessary and enters the realm of interfering with day-to-day management and the decisions of the governing Board of Directors and Supervisory Committee. There seems to be a theme developing in this set of proposed regulations that places the NCUA at the Corporates' governance table, reducing the Board's governance flexibility while increasing the Board of Director's liability and exposure.

### **704.15(c)(5) Notice of late filing**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

As noted in the response to 704.15(c)(1), Annual reporting, we do not believe a fixed due date for filing an annual report with the NCUA is necessary, therefore providing a notice is not necessary. In addition, the

NCUA accesses the Corporate's Board reports and minutes on a monthly basis and any situation related to a late audit report would certainly be reported to a Board of Directors and therefore identified by the supervising examiner.

#### **704.15(c)(6) Report to members**

**SunCorp agrees with the proposed change.**

However, we find it unnecessary that this provision be written into prescriptive regulation.

#### **704.15(d)(1) Composition**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA is prescribing unnecessary changes in the regulations. The Federal Bylaws, which a Corporate is required to comply with and must seek advanced approval from NCUA for any changes, already stipulates that the Supervisory Committee must be independent. Therefore, it is unnecessary to add this provision into the regulation.

The NCUA is adding confusion in its definition of independence in this section. It states "...a committee member is independent if he or she does not have any family relationships or material business or professional relationships with the corporate credit unions..." If the committee member is a member of the Corporate, does that render a conflict? What is the standard for determining "material business"? If a Supervisory Committee member has all of their settlement, payment processing and excess liquidity invested in the Corporate, are they independent and able to serve on the Supervisory Committee?

#### **704.15(d)(2) Duties**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

It is already stated in the federally mandated and approved bylaws that the Supervisory Committee is responsible for appointing and managing the external audit firm. While we agree that this is a key responsibility of the Supervisory Committee, we disagree that it needs to be included in the

regulation, unless the NCUA needs this to support their standing bylaw requirements.

#### **704.15(d)(3) IPA engagement letters**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

We support the concept that external audit firms need to be liable for their work, including the accuracy of their work on which they state an opinion. However, we believe this regulatory restriction, which exceeds the audit profession standards, is unnecessary and may limit the firms who will be willing to accept this regulatory restriction; it may also substantially increase the cost of an audit for a Corporate. We find it curious that the NCUA is attempting to regulate the auditing profession through restrictions in regulations.

We also believe that this restriction will require that a Supervisory Committee unofficially gain the NCUA’s advanced approval before they sign an engagement letter, or be subject to personal liability if the NCUA does not agree to the audit firm’s standard language or liability restrictions.

#### **704.15(d)(4) Outside counsel**

**SunCorp supports this proposed change.**

We do not take exception to this proposed change.

#### **704.15(e) Internal audit**

**SunCorp’s Board, Supervisory Committee and Management do not support this proposed change.**

SunCorp agrees that there should be an employed or contracted internal audit function, which reports to the Supervisory Committee. However, there should be no Corporate asset size limitation for compliance in that all Corporates represent the same systemic risk to members and the NCUSIF regardless of asset size and therefore a smaller Corporate should not have a competitive advantage by not having this function as part of their operations.

#### **704.21 Equitable distribution of corporate credit union stabilization expenses**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

The NCUA's actions to stabilize the Corporate outflows by insuring non-capital shares was an appropriate use of the insurance fund. However, this egregious attempt to get funds from non-federally insured members through regulatory strong-arm tactics is embarrassing and costly to Corporates and Credit Unions.

If it is the NCUA's attempt to get funding from privately insured Credit Unions, that should be the clear target of this proposal and not the collateral organizational impact. SunCorp does not have any non-federally insured Credit Unions in our core membership, but has numerous Association, Chapter, and CUSO members, all of which are not federally insured or regulated entities. The sweeping change proposed here is effectively making many Credit Unions pay twice, once on the NCUA's direct bill and again in the tactics prescribed against Credit Union Trade Associations, Trade Association Chapters, and Credit Union CUSOs as these organizations are owned and operated by and for the Natural Person Credit Unions.

The concept of using a fixed percentage of an Association, Chapter, or CUSO balance sheet is fundamentally flawed. Those organizations are not balance sheet-based. Associations are dues based and provide services as expense offsets. CUSOs are typically transactional and fee based, therefore a transaction or risk-based formula would be more appropriate methodology for assessment.

Requiring that a Corporate hold a special annual meeting until the full premium for the share insurance fund cost is fully paid is an unnecessary and costly effort for Corporates and Credit Unions. Since the NCUA's billing of the premium and the deadlines established by the proposed regulation are fixed, then a Corporate will have to hold a special members' meeting outside of the regular annual meeting cycle every year until the stabilization fund is disbanded. This causes additional cost not described in the Summary of Collection Burden section of the proposed regulation.

#### **704.22 Enterprise risk management**

**SunCorp's Board, Supervisory Committee and Management do not support this proposed change.**

Enterprise-wide risk management is a worthy endeavor. However, it often results in a bottomless pit of negative impact exploration, especially when the regulatory body is predisposed that business will always be worse than planned.

We support the concept that a risk management committee should be established by the Board of Directors, but disagree that “at least one independent risk management expert” must be hired. This will cause a significant increase in expense as a qualified “expert” with the credentials defined will not volunteer their services. It is very unlikely that an expert will agree to an engagement without some kind of extended liability coverage as being a single expert with a minority (committee) voting responsibility and not able to directly influence or talk with a Board of Directors, and not being on the Board itself creates personal and possibly professional liability for an individual. An individual expert’s contribution to a special risk management committee, in the litigious environment that the NCUA has created let alone the very restrictive regulations adopted could cost well over \$100,000 on an annual basis. That is in addition to having a staffed risk management function that is directly and annually examined by the NCUA.

With the stated definition of “independent”, Corporates apparently cannot use our existing internal audit firm, who currently performs an annual enterprise-wide risk assessment as part of their recommendation to the Supervisory Committee for annual internal audits recommendations and plans. This proposal will duplicate work and expense and is therefore unnecessary.

If the NCUA is successful in implementing this proposal, we believe that there should be no exemption based on Corporate asset size as it would create a competitive advantage to smaller Corporates who represent similar systemic risk to the fund and Credit Unions.

### **704.23 Membership fees**

#### **SunCorp agrees with this proposed change.**

With the restrictions imposed in the approved 704 regulation, it is clear that Corporates could have a difficult time reaching the restrictive income goals. This additional provision in the regulation gives Corporates the flexibility to add this fee either on a one-time or periodic basis, to supplement operational income.

However, the NCUA should not set limits on the basis that the fee is assessed or the length of time for the notice period. Limiting the fee to a capital-based formula and not permitting formula variations like asset size or

caps is micro-managing Corporate operations. Providing that a fee will have to have a 6-month notice is an unreasonably long notice period and would often exceed the time frame for estimating actual results and needs for a fee periodic.