



SENT VIA EMAIL: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

December 20, 2010

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

RE: 12 CFR Parts 701, 704, and 741, Proposed Rule

Dear Ms. Rupp:

It is with great pleasure that Corporate Central Credit Union comments on the proposed changes to 12 CFR Parts 701, 704, and 741, Proposed Rule. The ability for us to make comments is a privilege that is very much appreciated.

NOTE: Italicized text represents content from NCUA 12 CFR Part 701, 704 and 741.

### **701.5 Membership Limited to One Corporate Credit Union**

*This section seeks to prevent unhealthy competition among corporates by requiring credit unions to make a decision to commit to membership in only one corporate at a time.*

Corporate credit unions who have survived the recent crisis are articulating diverse business plans for their future success. Natural person credit unions are being asked by corporate credit unions, and by regulators, to identify their business needs and to join and capitalize the corporate or corporates that best meet their needs. Also, credit unions with a broad geographic branch network may also find it necessary to use multiple vendors and or corporates for certain correspondent services. A limitation on joining multiple corporates fails to recognize that natural person credit unions may be best served by selecting different services from multiple providers (both corporates and other vendors) to meet their future needs. The behavior that put some corporates at risk was not that of natural person credit unions seeking the best deal for their members, but rather the behavior of some corporates' managements and boards regarding efficiencies, capital levels, and risk management. Other corporates chose to find ways to compete effectively without making decisions that helped to cause the industry's woes.

The action of natural person credit unions to "shop" vendors benefits the credit union system by encouraging innovation and efficiencies while constraining unwarranted prices. Natural person credit unions and their members are best served when they have freedom to develop their provider options to best meet their needs both within and outside the system. In addition, the recently approved changes to Regulation 704 tightly constrain the ability of corporates to significantly compete and take on excessive risk in the investment area. Credit unions should be allowed to be members of multiple corporates if they determine it is in the best interest of their members.

By curtailing natural person credit unions from having multiple corporate relationships – may have unintended consequences. Natural person credit unions are currently in a state of flux as to which corporate to join. Since all corporates will require PCC as a condition of membership – a natural person credit union must perform proper due diligence to best determine where to place that PCC. While we are in this state of flux – a natural person credit union may want to “test drive” several corporates in order to make an informed decision.

### **704.11 Corporate Credit Union Service Organizations (CUSOs); 704.19 Disclosure of Executive and Director Compensation**

*The proposal seeks to clarify that for CUSOs in which a corporate has invested, the corporate must include compensation received from the CUSO in disclosures of compensation paid to the corporate’s most highly compensated employees. The proposal would also amend certain items with which a CUSO must agree in writing before a corporate will be allowed to make a loan to or invest in the CUSO.*

The heightened transparency of CUSO actions is a reasonable goal. However, it is unclear whether the exercise of the suggested provisions will breach the “corporate veil”. If such a breach were to occur the risks and the liabilities of the CUSO could become those of the corporate. If that were to occur, the safety and soundness of the corporate would be decreased and the potential liability to the NCUSIF would be increased. The NCUA needs to explicitly address the risk that the additional regulatory provisions could inadvertently result in greater risk to the credit union system.

### **704.13 Board Responsibilities**

*The proposal requires that minutes of board meetings must identify the board members, by name, who voted for or against a proposal, as well as, any board members who were absent or otherwise failed to vote, and any board members who abstained from voting.*

The requirement of the board to evaluate the financial performance of the organization is implicit in the very existence of a Board of Directors of a financial organization. To explicitly require such an evaluation in the regulation suggests the possibility of incompetence of the Board. Such a problem can only be rectified by removal of the Board—not the promulgation of a regulation.

Similar reasoning applies to the issue of the Board using outside consultants for various tasks. A competent Board understands that it must use consultants as needed. An incompetent Board will not be fixed by a regulation requiring it to consider the use of consultants.

The primary role of a Board of Directors is to ensure the success and growth of the organization. The success or failure of the Board in achieving that goal is measured collectively in results of the organization. A requirement to record in the minutes the vote of every member on every issue (even when to adjourn the meeting) can create an atmosphere of individual score keeping and pursuit of personal agendas. The requirement promotes fault finding after failure, not the effective decision making needed to achieve success. Actions of the Board are supported by every Board Member; regardless of their position on an issue. One Board – One Voice!

### **704.15 Audit and Reporting Requirements**

*This section proposes extensive, explicit, reporting requirements for corporates and for external auditors.*

The changes that are being suggested are consistent with those that have been required for publicly traded companies for much of the last decade. A review of general public comments is that the requirements have certainly increased the costs to companies and, in addition, they have made U. S. capital markets less attractive to

issuing companies. There is no evidence that the requirements have reduced investor risk as witnessed by the greatest financial collapse since the Great Depression!

A review of the NCUA Inspector General reports on the losses at U.S. Central and WesCorp finds no suggestion that the proposed audit and reporting requirements would have had any impact in mitigating the loss.

The imposition of the expanded audit and reporting requirements will significantly increase corporate credit unions costs thereby reducing capital building efforts, member income, and / or benefits. No gain from these requirements has been visible in the general economy nor has benefit been suggested in the case of specific corporate credit union losses.

#### **704.21 Equitable Distribution of Corporate Credit Union Stabilization Expenses**

*The NCUA is proposing a mechanism to spread the cost of the corporate stabilization program to non-Federally insured members of corporates.*

The proposed regulation is a means by which the NCUA will attempt to implement a policy of “equitable distributions”. The policy attempts to impose costs on non-Federally insured credit unions and other organizations who are members of a corporate. NCUA is proposing to use corporates to implement a policy it clearly lacks legal authority to impose on its own. The proposed regulation would require a corporate to hold a membership meeting for the purpose of voting on the expulsion of a member who has not made a requested (volunteer) payment to the NCUA. It is inappropriate to require a corporate to take an action, at a significant cost, that the NCUA clearly lacks authority to do on its own. In addition, if a non-Federally insured member is expelled from membership by vote of the members of the corporate the member clearly will suffer an economic loss.

The member will lose the benefits of higher interest rates, lower fees, and better terms of trade that led the member to join the corporate in the first place. Also, the member will now have the value of NCA and PCC impaired. Not the least of which they cannot get their PCC returned and must now place their NCA on notice. Therefore, the member will be caused a loss by action of the corporate to implement a policy without legal basis and without the member having had any legal due process. This is a prescription for a law suit directed at a corporate. This proposed regulation imposes significant cost and risk on corporates to implement a policy that lacks legal standing. If the NCUA believes that the proposed policy has merit it should petition Congress for legal authority to implement it.

#### **704.22 Enterprise Risk Management**

*The NCUA is proposing a requirement of corporates to establish an enterprise risk management committee, which must include at least one independent risk management expert.*

Managing the risk of the firm is a fundamental responsibility of the Board and Management of any organization much less that of a corporate credit union. The existing regulation makes this responsibility clear in detailing the duties of the Board and the responsibilities of the audit committee and the asset-liability committee (ALCO). Existing regulation also clearly details the risks that must be measured, how often they must be measured, and the limits within which a corporate can operate. Additionally, the recent changes to the regulation add many new risk measurement and reporting requirements and significantly tighten the limits on the risk that is allowed to be taken.

The addition of this proposed regulation will entail substantial additional cost. It will also dilute and confuse the responsibilities of the Board, Audit Committee, and ALCO without providing material new information. This added level of bureaucracy and risk avoidance would likely stifle innovation, growth, capital building, and the benefit to members. An examination of the NCUA’s Inspector General’s reports regarding the failures at US Central and WesCorp give no suggestion that this proposed regulation would have prevented the losses.

Requiring the hiring of an outside “expert” and creation of another committee when there is already a requirement to have an ALCO that is responsible for identifying, measuring, monitoring, and approving risk exposures as well as state and federal regulatory examinations, internal audits, external audits, a supervisory committee, an audit committee, and a Board of Directors in place is excessive, costly, and unnecessary. The impact of this proposed regulation would be increased cost, increased management and governance complexity, an unnecessary burden on resources and a stifling level of risk avoidance; all with very little if any additional benefit.

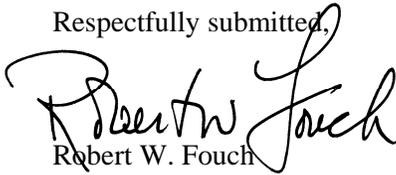
### **704.23 Membership Fees**

*The NCUA is proposing to allow corporates the option of charging their members reasonable one-time or periodic membership fees.*

As a financial cooperative credit unions – inclusive of corporate credit unions – should be allowed to assess fees for membership. This assessment of fees was an option that credit unions had all along. To memorialize it in the form of revised or new regulations is not a bad thing. Membership fees allow credit unions to build retained earnings. Retained earnings that up to this point were collectively garnered by the full membership since the inception of the credit union. By allowing fees to be assessed – gives credence to what the members built up to that point.

If you have any questions or need further clarification on any items contained in this letter – please feel free to contact me.

Respectfully submitted,

  
Robert W. Fouch  
President and CEO