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January 10, 2011

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

Re: Corporate Credit Unions

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) is a state-wide trade organization that represents a majority of the 545 credit unions located in the Commonwealth of Pennsylvania. On behalf of our member credit unions, we appreciate this opportunity to provide comments to the National Credit Union Administration (NCUA) regarding a second round of regulations aimed at corporate credit unions (CCUs).

The PCUA consulted with its Regulatory Review Committee and State Credit Union Advisory Committee (the Committees) in order to provide comments on the proposed disclosures. The Committees consists of twenty-two (22) credit union CEOs who lead the management teams of Pennsylvania's state and federally-chartered credit unions. Members of the Committees also represent credit unions of all asset sizes. The comments contained in this letter reflect the input of this Committee and PCUA staff.

701.5, Membership Limited to One CCU

The Committee opposes the proposal to limit natural person credit unions to membership in one CCU. Consumers have a choice in terms of joining multiple credit unions. Natural person credit unions should enjoy the same choice in terms of opting to be members of one or more CCUs. Further, NCUA has urged support of the CCU system through the various stabilization efforts. It appears counter-intuitive to force natural person credit unions to other entities by limiting membership to one CCU... In terms of diversifying risk, each natural person credit union must make those determinations when it selects service providers such as a CCU.

In the background and summary, NCUA declared that rate shopping and competition were bad things that could be cured by limiting membership to one CCU. Our Committees view competition as good and rate shopping as a healthy exercise. Those practices will continue as an inherent aspect of operating a credit union for the best interests of the members. Equally

important, through the first overhaul of Regulation 704, NCUA expunged significant risk from the CCU system. With the new regulatory structure about to go into operation, it is curious to determine whether the limits on membership are even necessary.

704. 11, 704.19, Credit Union Service Organizations (CUSOs)

The proposed revisions to sections 704.11 and 704.19 are designed to ensure auditors, a CCU Board and the NCUA complete access to books and records of a CUSO and provide for disclosure of compensation received by CCU employees from a corporate CUSO. We can appreciate NCUA's desire for access to the books and records of a corporate CUSO. Disclosure of compensation could unmask the potential for conflicts of interest. In practice, when NCUA seeks to enforce this regulation, the credit union community will expect that the NCUA will respect the business structures that CCUs and their CUSOs have built and the state law protections that correspond with such structures or combinations.

704.13, Board Responsibilities[1]

Citing transparency concerns and uncertainty as to the role of individual board members, NCUA proposes that all CCU board of director votes be conducted by recorded vote. Pursuant to the Pennsylvania Business Corporation Law, a director is presumed to have assented to any action taken by the Board unless her dissent is documented in the minutes or elsewhere. 17 Pa. C.S.A. §1714. Pennsylvania's corporation law is substantially similar to the Model Business Corporation Law. Accordingly, it appears strange that uncertainty could exist in regard to the role of individual board members in the transacting of business of a CCU or any other entity.

NCUA's enforcement practices in the wake of this rule could raise a significant state-law question: does the business judgment rule continue to protect directors of CCUs? For example, if a nine (9) member board votes five-to-four on an investment policy and those investments cause a CCU a loss, are the five (5) directors who voted in favor of the policy somehow more culpable? If so, such results will strain director retention and recruitment efforts among CCUs and neuter well-established, state law protections.

704.15 Audit and Reporting Requirements

Proposed section 704.15 imposes audit and annual reporting requirements that are similar to those imposed on publicly traded companies by the Sarbanes-Oxley Act. Our committees favor fair and effective reporting mechanisms and have no objection to section 704.15(a).

Section 704.15(b)(2) requires a CCU with assets in excess of $1 billion to engage the independent public accountant to examine, attest to, and report separately on the assertion of management concerning the effectiveness of the CCU's internal control. This is a substantial

[1] The Committees were neutral on this aspect of the rule. The comments articulated here are offered by PCUA's legal staff.

requirement and will dramatically increase the cost of a CCU's audit. Further, the first round of amendments to Regulation 704 exponentially purged risk from the balance sheet of CCUs through the investment and asset-liability management requirements as well as the new capital standards. The requirement for an opinion on internal control is not appropriate to the risk that remains on a CCU's balance sheet. In other words, NCUA is demanding audits and opinions on risk that simply will not be present. Therefore, we assert that NCUA should remove section 705.14(b)(2) from the rule.

704.15(d), Supervisory Committee

Proposed section 704.15(d) stresses that members of a CCU's supervisory committee must be independent, a major theme of the Sarbanes-Oxley Act and good governance in general. The rule states that a supervisory committee member is independent if she does not have any family relationships or any material business or professional relationships with the CCU. NCUA should attempt to define the "material business or professional relationships" and open those definitions for public comment. For example, if the chief financial officer of a natural person credit union desires to serve on a CCU's supervisory committee and that credit union holds several certificates with the CCU, does that constitute a material business relationship? What level of business rises to the level of material?

704.15(e), Internal Audit

NCUA seeks to require CCUs with average daily assets in excess of $400 million to employ or contract, on a full or part-time basis, an internal auditor. We submit that a more reasoned policy approach would be to articulate the internal auditor requirement as a best practice as opposed to a black-letter regulation. Overall, the CCU environment will be substantially less risky because of the other pending changes to Regulation 704. Secondly, the overhead costs of operating a CCU will increase because of this provision, the opinion on internal control addressed above and the enterprise risk expert addressed below. Our Committees have grave concerns about how CCUs will manage overhead costs once these additional burdens fall into place.

704.21, Equitable Distribution of CCU Stabilization Expense

Section 704.21 seeks to spread the costs of corporate stabilization to non-federally insured credit union members of CCUs which appears to include, CUSOs, trade organizations, privately insured credit unions and other non-natural person members of CCUs.

The policy of extracting stabilization expenses from CUSOs or trade organizations is very similar to the dilemma of the double-taxation of dividends. The member credit unions capitalize, pay fees or otherwise pay for admission to or services from the CCU. NCUA would further "tax" the dollars of natural- person credit union members by applying stabilization expenses to

CUSOs or trade groups because those same member credit unions capitalized the CUSOs or paid membership dues to the state or national trade association. The sources of the funds that NCUA

might ultimately collect have their origins at natural person credit unions. Therefore, NCUA should abandon this aspect of the proposal.

Privately insured credit unions that are members of CCUs benefit from their services. They too are cooperative organizations and should rightly assist in the stabilization efforts. However, the proposed enforcement mechanism is grossly inappropriate. NCUA proposes to induce the payment of stabilization assessments by forcing CCUs to hold membership meetings for the possible expulsion of non-federally insured credit union members who do not pay such assessments. NCUA is the regulator and operator of the share insurance fund. If NCUA needs jurisdiction over privately insured credit unions to assist with the stabilization effort, then NCUA should make its case to Congress for the appropriate powers to assess such institutions.

704.22 Enterprise Risk Management

Section 704.22 requires a CCU to develop and adhere to an enterprise risk management policy. The board of a CCU must create an enterprise risk management committee that will include a risk management expert who has post-graduate education and significant experience in identifying, assessing and managing risk exposures. Our Committee, generally, supports notions of appropriate risk management. We note that NCUA appears to be embarking on a new public policy platform, requiring a regulated entity to hire or retain an individual with very specific qualifications for specific functions. This proposal goes well beyond establishing minimum criteria for those who might perform an annual audit or a real estate appraisal. The precedent set by this proposal is, therefore, alarming. That is, should NCUA identify other problems, will the solution be to force CCUs or, ultimately, natural person credit unions to hire or retain specialists for other areas? We think this is a dangerous trend that should be abandoned immediately.

In an environment where CCUs are seeking to cut costs and deliver a package of goods and services that are a commodity, the risk management expert pumps significant costs into the operation of a CCU. If NCUA plans to impose the requirement of a risk management expert, in the alternative, we urge it to amend the regulation and clarify that the risk management expert can be outsourced. Similar to the proposals on the supervisory committee, further clarification is needed with regard to the term, “material business or professional relationships.”

704.23, Membership Fees

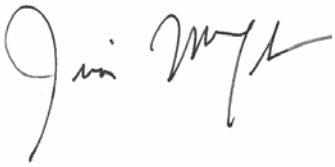
In an effort to boost the retained earnings of CCUs, the proposed rule will permit one-time or periodic membership fees. Such fees would be assessed pursuant to a specified formula and members of CCUs must receive advance notice of new fees, initial fees, or material changes to the terms and conditions of a fee. The fee power appears to be discretionary on the part of an

individual CCU as opposed to being mandatory. Therefore, our Committees have no objection to CCUs having discretion to charge membership fees.

Conclusion

NCUA achieved significant ground through its earlier overhaul of Regulation 704 in terms of stabilizing and ensuring the safety and soundness of CCUs. It is time to permit the CCU system to implement that set of rules and allow natural person credit unions to select the service providers of their choice. The framework outlined in this proposal takes away choices from natural person credit unions. It tends to add significant expense to the operation of a CCU, particularly the opinion on internal controls and the internal risk expert. We urge NCUA to re-examine whether the risk profile of a CCU operating in the new regulatory environment warrants the strictures contemplated in the current proposal. With that in mind, NCUA should delay finalizing this proposal for at least one year from the time CCUs begin to comply with the other aspects of Regulation 704. A year of operation and practice would be the best determinant of the prudence and necessity of the current proposal.

Sincerely,



James J. McCormack

cc: PCUA Board
Regulatory Review Committee
State Credit Union Advisory Committee
M. Dunn, CUNA