Credit Union Association of the Dakotas
Mid-America

January 12, 2011

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

RE: Notice of Proposed Rulemaking for Part 701 and 704 – Corporate Credit Unions

Dear Ms. Rupp,

The Credit Union Association of the Dakotas – Mid-America appreciates the opportunity to provide comment to the National Credit Union Administration regarding the proposed rulemaking for Part 701 and 704 – Corporate Credit Unions, specifically concerning those proposed rules that relate to membership limited to one corporate credit union and the equitable distribution of corporate credit union stabilization expenses.

The Credit Union Association of the Dakotas represents seventy-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over $4.5 billion and who have more than 450,000 members.

This Association is opposed to §701.5, Membership Limited to One Corporate Credit Union, of the proposed rules as this will negatively affect both federally and state chartered federally-insured credit unions in North Dakota and South Dakota and their members. The section-by-section analysis of this proposed rule indicates its intent is to prevent unhealthy competition among corporates. However, this rule coupled with the current requirements on corporate credit unions will undoubtly lead to little or no competition, putting the natural person credit union in a precarious position that will force them to either increase their concentration risk or lead them to look for solutions in non corporate credit union entities.

Competition is good, it leads to better customer service, innovation, more cost-effective options in products and services and serves a crucial function in today's market place. It is a misplaced notion to believe that removing what is deemed "unhealthy competition" between corporate credit unions will resolve and/or prevent the problems that were recently experienced by corporate credit unions.

Limiting "competition" is not the answer to prevent a future crisis in the corporate credit union system. If it is the NCUA's position, that "rate shopping resulted in increased competition and, in some cases, led to unsafe investment activities as corporates sought higher investment yields to subsidize share dividends and services costs," *Federal Register, Vol. 75, No. 288, page 73001*, it does not seem that main issue was the competition, as competition exists in everything on some level and has an important place in today's marketplace. One of the problems was unsafe investment activities. The new corporate rules that have already been adopted by the NCUA limit corporate credit unions in what risks they may take.

This proposed rule is misdirected, competition is not and was not the problem that led to the current state of the corporate credit union system. There has not been any evidence to show that membership in multiple corporate credit unions increased competition to an "unhealthy" level as is claimed by the analysis to the proposed rule. Adopting this proposal will only go further to harm corporate credit unions.

The Credit Union Association of the Dakotas is also opposed to rule §704.21, Equitable Distribution of Corporate Credit Union Stabilization Expenses as it is outside the scope of the NCUA's authority provided by the Federal Credit Union Act. §704.21 relates to NCUA board action for premiums associated with the Temporary Corporate Credit Union Stabilization Fund (TCCUSF). This premium is limited to assessments on Federally-insured credit unions per the ''Helping Families Save Their Homes Act of 2009''. Sec. 204 of Public Law 111–22, subsection (f) provides that Title II of the Federal Credit Union Act is amended by adding "Sec. 217, Temporary Corporate Credit Union Stabilization Fund." Sec. 217(d) of the amendment to the Federal Credit Union Act provides,

> "ASSESSMENT TO REPAY ADVANCES.—At least 90 days prior to each repayment described in subsection (c)(3), the Board shall set the amount of the upcoming repayment and determine if the Stabilization Fund will have sufficient funds to make the repayment. If the Stabilization Fund might not have sufficient funds to make the repayment<u>, the Board shall assess each federally insured credit union a special premium due and payable within 60 days in an aggregate amount calculated to ensure the Stabilization Fund is able to make the repayment</u>. The premium charge for each credit union shall be stated as a percentage of its insured shares as represented on the credit union's previous call report. The percentage shall be identical for each credit union. Any credit union that fails to make timely payment of the special premium is subject to the procedures and penalties described under subsections (d), (e), and (f) of section 202." [Emphasis added.]

The Helping Families Save Their Homes Act of 2009, does not provide an exception or note any occasion where this fund is to be repaid by any entity other than a federally insured credit union. Therefore, an assessment against non-federally insured credit unions (non FICU) is outside the scope of the Federal Credit Union Act and the powers of the NCUA, even if the NCUA attempts to disguise this assessment as voluntary.

Furthermore, notwithstanding the fact that NCUA does have the authority to assess non FICU a premium for the TCCUSF, such action would be inequitable. Several of the credit unions that this Association represents have wholly owned credit union service organizations (CUSOs) while a number of other affiliated credit unions have jointly owned CUSOs. If this proposed rule were to be implemented, federally insured credit unions with investments in CUSOs would essentially be assessed twice.

The proposed rule states that payment of the assessment is voluntary by the non FICU, however, if the member declines to pay the assessment "voluntarily" they face expulsion from the corporate credit union. The section-by-section analysis attempts to lead one to believe that "NCUA does not ultimately make the determination of whether a non FICU should make a payment to the TCCUSF or the amount of the payment," nor does the NCUA claim to "make the determination of the adequacy of any payment." *Federal Register, Vol.75, No.228; page 73007.* However, under the proposed rule, the NCUA's role does not seem to be limited to that of a mere bystander, especially when the NCUA is requiring the corporate to provide a list of all its non FICU members; including name, assets, address and contact information, and forcing the corporate credit union's hand by requiring a special meeting to vote the fate of a non FICU member that did not pay the assessment or did not pay the whole assessment. Claiming this assessment to be voluntary is misleading. Requiring non FICU members of a corporate credit union to pay a premium which is specifically required to be paid by federally insured credit unions is illegal and unethical.

Once again these proposed rules do little more than to drive business away from corporate credit unions. Instead of strengthening the credit union movement and strengthening corporate credit unions to prevent future crisis, these proposed rules will force natural person credit unions and non FICU members of corporate credit unions to seek services and products elsewhere to bring economic and beneficial services and products to their members. These proposed rules should be scrapped and lesser restrictive measures, within the scope of NCUA's actual authority, should be sought by the NCUA to protect the safety and soundness of corporate credit unions and the credit union culture as a whole.

Thank you for this opportunity to share our comments.

Respectfully,

Robbie Thompson
CEO/President

Amy Kleinschmit
Director of Compliance

2005 North Kavaney Dr. • Bismarck, ND 58501 • 800.279.6328 • www.midamericacua.coop