California CREDIT UNION LEAGUE NEVADA CREDIT UNION LEAGUE

VIA E-MAIL: regcomments@ncua.gov

January 20, 2011

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

Re: Notice of Proposed Rulemaking for Part 704–Corporate Credit Unions

Dear Ms. Rupp:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on NCUA's proposal to amend its corporate credit union rule, contained in Part 704 of NCUA's Rules and Regulations. These amendments are being made as a follow-up to the Agency's major, far-ranging corporate credit union rule finalized in September of 2010. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million members.

The proposal contains amendments that would affect seven areas regarding the structure and operations of corporates. In the balance of this letter we provide our comments and recommendations on those provisions which cause us the greatest concern.

Prohibition on natural person credit unions (NPCUs) from maintaining membership in more than one corporate at any one time (§701.5)

This restriction is prospective (i.e., credit unions that are members of two or more corporates upon finalization of the rule do not have to relinquish memberships in any of those corporates). The proposal would also prohibit a natural person credit union from making any new investment—including a share or deposit account, loan, or capital investment—in a corporate of which the natural person credit union is not a member. According to NCUA, the proposed membership limitation is intended to prevent the unhealthy competition between corporates (which led to excessive risk-taking) that resulted from natural person credit union "rate shopping" among corporates.

> **Comment:** The Leagues do not support this proposed provision. Risk-taking has already been sufficiently addressed by investment, capital, and other rules already added to Part 704. There is benefit from allowing credit unions to belong to multiple corporates. When credit unions are allowed to shop for the best value for the products and services they need, corporates are incentivized to be keep costs down, keep service levels up, and to remain innovative. Limiting competition in

this fashion would turn all of these positive aspects upside down, resulting in more costly, inconvenient, and stagnant or limited products and services for credit unions. Further, a corporate that is "protected" from competition is unlikely to thrive, or even survive, against non-corporate competitors. We believe this change—which NCUA believes will strengthen the corporate system—will serve to weaken it, as credit unions constrained in their choices will seek products and services from outside the corporate system.

In addition, there are operational aspects that NCUA does not address in the proposal. For example, must a member formally declare which corporate they belong to, or which corporate they are transferring to? Is there a requirement that members provide notice, or file notice, with the NCUA or their corporate on this designation? These oversights further strengthen our belief that this provision has not been carefully evaluated from all angles—the micro and the macro—in order to determine the full effect it would have on natural person credit unions.

Recommendation: The Leagues are unconvinced that NCUA's assessment of the perceived problem (i.e., "unhealthy competition") is accurate and, therefore, do not support the Agency's proposed solution to it. The proposal provides no information regarding the alternatives NCUA considered before deciding on this approach (e.g., limiting the purchase of capital in only one corporate, or corporate fields of membership). We believe NCUA should withdraw this amendment, and seek an open dialogue with stakeholders to discuss the Agency's concerns in this area.

<u>Permitting corporates the option of charging their members, as a mandatory requirement of membership, reasonable one-time or periodic membership fees(§704.23)</u>
These fees, intended to provide corporates with more options to grow retained earnings, would have to be proportional to the member's asset size. Members must be given at least six months' notice of any new fees, or any material change to an existing fee. Corporates would have the discretion to reduce the amount of the fee for members that have contributed capital to the corporate. If the member fails to pay the fee within 60 days of being invoiced, the corporate would have the option to terminate the membership.

Comment: The Leagues agree with this proposed amendment, with the suggested changes provided below. With the restrictions imposed in the finalized 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.

Recommendation: We are unclear why these fees must be based on assets, and recommend that NCUA grant corporates the option to use risk-based factors in determining them. In addition, we believe the six-month notice for new fees should be shortened to a time frame that permits corporates to more accurately estimate actual results and needs for the implementation of a new fee. We suggest 45-60 days.

<u>Putting pressure on all users of corporate credit unions (e.g., non-Federally insured credit unions, FICUs, and system affiliates) to share in the expenses associated with the NCUA's stabilization actions (§704.21)</u>

The proposal would establish procedures that when NCUA assesses a Stabilization Fund premium on FICUs, NCUA will request existing non-FICU members and others such as leagues and system affiliates to make voluntary payments to the Stabilization Fund within 60 days. If a non-FICU fails to pay the full amount requested, the corporate must conduct a special meeting of its members to determine whether each member that failed to make the full payment should be expelled from the corporate. The amount requested would be the non-FICU's assets times 0.815 times the percentage of insured shares that NCUA assessed each FICU.

Comment: The Leagues do understand and appreciate the issues of fairness that prompted this amendment. NCUA's corporate credit union stabilization actions aided all members, including non-FICUs. It is understandable that NCUA would perceive an ethical obligation and responsibility that those non-FICUs assist in paying back the stabilization costs (although we must point out they do not have a statutory obligation to do so). However, the heavy-handed approach of the proposal is actually inequitable and more costly for federally-insured credit unions, serves to weaken the dual-charter system, and will contribute to driving away business from corporates; overall, it is an ill-conceived approach to public policy.

CUSOs and system affiliates are owned and operated by and for natural person credit unions. If this proposed rule is implemented, federally insured credit unions with investments in CUSOs and system affiliates would, in essence, be assessed twice for corporate stabilization costs. Further, requiring that a corporate hold a special annual meeting until the full premium for the share insurance fund cost is fully paid is an additional, costly, and unnecessary effort for corporates and their credit union members. Since the NCUA's billing of the premium and the deadlines established by the proposed regulation are fixed, a corporate would have to hold a special members' meeting outside of the regular annual meeting cycle every year until the stabilization fund is disbanded.

Regarding the amount of the assessment, we must point out that the proposed calculation—based on assets—is unrealistic and unworkable for the large number of trade associations, chapters, and CUSOs that currently utilize the services of a corporate, as their balance sheets are not asset based.

Finally, the Leagues believe there is value in having alternative insurance and alternative charter options. The two competing charters provide innovation and progress in credit union operations, product offerings, and regulation. The Agency's approach would unfairly weaken, or even eliminate, the benefits of this system—and for what purpose? NCUA does not provide any data or analysis in the proposal regarding how much in corporate costs is projected to be recouped via this method, and that such amount is worth the negative trade-offs (i.e., increased costs, reduced business at corporates, etc.).

Recommendation: The Leagues are unable to support this amendment as proposed and recommend that NCUA withdraw it.

In closing, the Leagues thank the NCUA for the opportunity to share our views on this proposal. We appreciate your consideration of our comments, and urge the Board to withdraw the proposed changes under §701.5 and §704.21, and to make the reasonable changes recommended under §704.23.

Sincerely,

Diana R. Dykstra
President/CEO
California and Nevada Credit Union Leagues