January 24, 2011

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

RE: RIN 3133-AD74

Dear Ms. Rupp,

On behalf of the Credit Union Association of New York ("Association"), I would like to take this opportunity to comment on NCUA's proposal to further revise its recently enacted changes to the corporate credit union system. The proposal would greatly enhance the auditing and accounting responsibilities imposed on corporates, especially those with over $1 billion dollars in assets; prohibit natural person credit unions from obtaining the services of or investing in more than one corporate credit union at time; and impose "equitable" distribution requirements on non–federally insured entities, which hold shares in corporate credit union systems. Unfortunately, as currently drafted, many aspects of this proposal would actually harm rather than help the industry's effort to create a more efficient and stable corporate credit union system that is better able to withstand the inevitable economic downturns that will occur in the future.

Under this proposal, the NCUA would prohibit natural person credit unions from obtaining the services of or investing in more than one corporate credit union at time. This proposal would have a pernicious effect on the willingness of natural person credit unions to reconstitute the corporate credit union system. In addition, the NCUA should be looking for mechanisms to maximize the amount of money invested into the corporate credit union system. A proposal that, by definition, limits the amount of money that can be placed and spread through the system is counterproductive.

The proposal is predicated on the assumption that the value to the corporate credit union system of increased investment by credit unions selecting multiple corporate credit unions is outweighed by the negative consequences of increased competition brought about when corporates have to compete for the investments of natural person credit unions. However, the troubles to the corporate system were primarily the result of investments that the new regulations curtail. Coupled with a greater emphasis on internal controls, the legitimate safety and soundness concerns of NCUA will be addressed without limiting corporate membership. Furthermore, many natural person credit unions seek to invest in more than one corporate, not to obtain competitive leverage but to diversify their assets and in so doing strengthen the movement as a whole and the safety of their credit unions. Those credit unions seeking these protections should not be deterred from doing so, particularly since they will have no choice but to turn to providers outside the industry.

The proposed restrictions are also concerning because the new corporate provisions allowing for the transfer of perpetual capital to willing buyers will not sufficiently allay the fears of credit unions and their

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boards. Simply put, the market is not going to be vibrant enough. As a result, within months credit unions will be faced with the choice of what corporate, if any, in which to invest. The condensed time frame coupled with a multiple year notice provision heightens credit unions' concerns about investing in an institution that may not meet their needs and the prospect of having to write off more losses.

NCUA's proposal to provide for "the equitable sharing " of TCCUSF expenses among all members of the corporate credit union, including non-credit unions will mostly impact trade associations, CUSOS and insurance companies. All these entities will be forced to pass on the cost of these assessments to the very credit unions that they are designed to assist. As a result, this proposal will have the effect, unintended or not, of twice assessing natural person credit unions for the payment of premiums associated with the repayment fund. In addition, none of the non-credit unions currently investing in corporate credit unions are required to do so. Is this really the time for making them pay a premium for simply expressing support for the industry?

Aside from the policy considerations, however, it is the Association's opinion that NCUA does not have the authority to coerce entities that it does not regulate or have authority over into contributing towards assessments they are not responsible for paying. It is axiomatic that a federal agency does not have the power to act unless congress has, by statute, empowered it to do so. (Catholic Health Initiatives v. Sebelius, 617 F3rd 490,497 DC Circuit 2010). Pursuant to 12 U.S.C. §1766, the NCUA has power pursuant to federal statute tor promulgate rules for the entities it charters. NCUA does not charter trade associations or insurance companies and CUSO's are formed pursuant to state law.

NCUA implicitly recognizes its lack of direct authority, instead arguing that the rules do nothing more than encourage non-federally insured entities to contribute to the payment of the special premiums. It points out in the preamble that credit unions are empowered to accept gifts. However, according to the New Oxford American Dictionary a gift is "a thing given willingly to someone without payment." Nothing about NCUA's proposed framework fits into the definition of a gift. It is instead a form of regulatory extortion. The gift will be determined by NCUA formula, and entities will be informed of the need to contribute within 60 days of an assessment. Those entities choosing not to contribute toward the premium payment will be subject to a mandatory expulsion vote at a special meeting, and other corporates of which they are a member will be informed of the refusal to give a donation. .

While several aspects of this proposal should not be implemented, the Association strongly endorses the efforts of NCUA to increase the internal accounting and attestation requirements imposed on senior corporate credit union management. The reality is that requirements like these are justified in light of the responsibility that corporate credit union management poses to the industry as a whole. The emphasis that this regulation will place on greater internal auditing and compliance, as well as more sophisticated audits are burdensome, but justified. While supporting this proposal as it applies to corporates, it should be stressed that corporates are fundamentally different than natural person credit unions. NCUA has previously proposed imposing similar restrictions on natural person credit unions. As applied to natural person credit unions, any value to such a position would be outweighed by its burden. On the other hand, corporate credit unions are unique for the services they provide and for the potential systemic risk they pose for the entire industry.

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The issue of how to best to reshape and pay for the continuing corporate system will take several years before a fully functionally system can truly be put into place. Many of these aspects, such as accounting oversight within the corporate industry itself are positive; however, too many aspects of this proposal would actually be counterproductive to the ultimate goal of a strong and functional corporate system and should be tabled.

Sincerely,

William J. Mellin
President/CEO

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