

From: [John McKenzie](#)
To: [Regulatory Comments](#)
Subject: Indiana Credit Union League's Comments on Proposed Rulemaking for Part 704 - Corporate Credit Unions
Date: Friday, January 28, 2011 9:24:26 AM

January 28, 2011

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

Via email: regcomments@ncua.gov

Re: Comments on Notice of proposed Rulemaking for Part 704—Corporate Credit Unions

Dear Ms. Rupp:

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment on the NCUA Proposed Rule modifying the corporate credit union regulations. The ICUL represents over 90% of Indiana credit unions with those credit unions' memberships totaling more than two million members.

While we understand the objective of a regulatory framework to strengthen the foundation of the corporate system for serving credit unions, we do not feel that all of the proposed changes in this rule accomplish that objective. There are several provisions that we contend will work against the goals of strengthening the corporate system and enhancing its role in serving credit unions. This letter addresses various aspects of the proposed rule, and provides more details on the ICUL position.

Extension of 30 day comment period

We would like to thank the NCUA Board for extending the comment period from 30 to 60 days. This extension has allowed the credit union system to more fully digest the implications and potential consequences of the proposed changes.

Membership limited to one corporate credit union

The proposed rule would limit credit unions to membership in one corporate at a time. The purpose given for this proposal is to "avoid unhealthy competition among corporates driven by rate shopping among nonmembers." It is our belief that the significant changes made to the corporate business model as a result of the corporate rule modifications adopted on September 24, 2010, significantly reduce the primary motivator for rate shopping, which was investments. Limiting membership to only one corporate at a time will reduce the amount of capital invested in the corporate system and will significantly reduce a credit union's opportunity to manage its expenses on a variety of services. The inflexibility of transferring "perpetual capital" between corporates would make changing corporates difficult. The proposal needs to eliminate this restriction completely and to also facilitate the transfer of capital from one corporate to another in a reasonable and efficient manner. Most corporates have indicated that they are focusing primarily on perpetual capital. It is to the benefit of the corporate system if credit unions invest capital in more than one corporate, increasing the overall capital position of the system. Credit unions need to have the ability to manage their operations, liquidity, and expenses through utilization of multiple corporates if needed. We

believe that this proposed limitation will negatively impact credit unions and corporates, and will not result in a stronger corporate system; therefore we oppose membership being limited to one corporate.

Require corporates to record all board votes

It is our position that this is unnecessary, and holds corporate credit union boards to a higher threshold than other entities with boards of directors. We are not aware of any other entity, especially in the financial services industry, that is required to record all board votes down to the level of indicating by name how each director voted. It is our belief that the record showing which directors participated in the meeting, and the ability for a director to request that the minutes of any meeting reflect his/her dissent from any majority vote are sufficient to provide NCUA with the information this proposal appears to be intended to provide.

As NCUA indicated in the supporting materials: *Article XI, §2 of the Standard Corporate Federal Credit Union Bylaws prohibits corporate insiders, including directors, from participating “in any manner, directly, or indirectly in the deliberation upon or the determination of any question affecting his/her pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the corporate credit union) in which he/she is directly or indirectly interested.” If a director is disqualified because of a conflict, the director must withdraw from deliberation and determination of the issue.* If NCUA believes that individuals serving on corporate boards are not recusing themselves as required, this should be handled on a case-by-case basis rather than adding additional requirements to the regulation.

From our perspective, this proposal, along with the changes previously adopted by NCUA on September 24, 2010 regarding the fiduciary duties of board members and the limits on indemnification of corporate board members, will result in fewer individuals being willing to serve on corporate boards. We also are concerned that as has occurred recently with the Golden Parachutes and Indemnification proposed regulations, this requirement could subsequently be placed on natural person credit unions once it is a requirement for corporate credit unions.

Corporate stabilization expenses and membership for non-federally insured entities

In general, we support the concept of sharing the cost of stabilizing the corporate credit union system with those who use the services. However, the legality of this proposed approach is being questioned by CUNA, NASCUS, and ASI. We have very serious concerns about the proposed process associated with this concept. From the standpoint of corporate system capital and service volume, the withdrawal of non-federally insured credit unions and other impacted organizations would be a negative and would contradict other stated NCUA objectives. If NCUA proceeds with this concept, the process—which is not voluntary as proposed—should be drastically altered as follows:

- The corporate’s membership should vote once to determine its policy regarding membership of non-federally insured entities that will not be paying corporate assessments.
- The corporate membership vote should take place as soon as possible this year prior to required decisions on additional corporate capital investments.
- After the vote, any non-federally insured entity that no longer qualifies for membership without paying future corporate assessments should have up to six months to convert to an alternative service provider and its capital investment—in any form of capital—

should be refunded as soon as it no longer has deposits at the corporate.

Require corporate credit unions to establish an enterprise-wide risk management program

While we understand NCUA's desire to limit the potential for some problems that have occurred in the past from occurring again, we do not feel that it is necessary to add the requirement of an enterprise-wide risk management program that establishes an Enterprise Risk Committee with at least one outside, independent expert hired as a member of the committee. Enterprise risk management is an evolving tool that many corporates already have adopted to a certain degree. It is our belief that this could be incorporated as a "best practice" for corporate credit unions rather than a regulatory requirement. We also are concerned with the increased cost of compliance that results from hiring an outside, independent person for this process, as well as whether or not NCUA will look to impose similar requirements on natural person credit unions which would increase the already burdensome regulatory compliance requirements and expense.

Membership fees

The proposed rule would allow corporate credit unions to charge "reasonable one-time or periodic membership fees." The membership fees would be mandatory, based on asset size, and any member failing to pay the fee could be expelled from membership by the corporate credit union (no reference to a membership vote). The reason given for this is to "provide corporates with additional options for building up their retained earnings" to meet the new corporate capital requirements.

Why is this necessary? In the business model presented by NCUA when the initial final corporate rule was established on September 24, 2010, it was stated that corporates would not have a problem reaching the retained earnings requirements of the capital provisions. Why is it necessary to put in the regulation an arbitrary "membership fee" provision to facilitate this? Credit unions will be at the mercy of corporates in absorbing this additional expense on the credit union's financial statement, further increasing the costs to the credit unions. Combine this with an inability for credit unions to change corporates because of the likely "perpetual" capital requirements corporates will have and the threat of expulsion from the corporate for not paying the fee, and NCUA is creating an environment that will encourage credit unions to look outside of the corporate system for services, further reducing the amount of capital in the system. A credit union needs to know the predictable cost for services based on the service agreement they enter into, without fear of an additional arbitrary membership fee.

There is a reference to the ability to reduce the membership fee if a credit union has contributed capital to the corporate. The business models currently being discussed by corporates will require capital to utilize services, not make it an option. Therefore, all members will have contributed capital to the corporate. Also, the proposed rule would only allow a credit union to invest capital in one corporate at a time. As a result, the ability to reduce the fee based on capital investment doesn't have much value.

In summary, we do not believe that the proposed rule, as presented in some areas, accomplishes the stated objective that it will "further strengthen individual corporates and the corporate system as a whole."

Sincerely,



John McKenzie
President
Indiana Credit Union League

