

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133-AF13

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule that amends the NCUA's corporate credit union regulation. The final rule updates, clarifies, and simplifies several provisions of the NCUA's corporate credit union regulation, including: permitting a corporate credit union to make a minimal investment in a credit union service organization (CUSO) without the CUSO being classified as a corporate CUSO under the NCUA's rules; expanding the categories of senior staff positions at member credit unions eligible to serve on a corporate credit union's board; and amending the minimum experience and independence requirement for a corporate credit union's enterprise risk management expert.

DATES: The final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Robert Dean, National Supervision Analyst, Office of National Examinations and Supervision, (703) 518-6652; *Legal:*

Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, (703) 548-2601; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

a. Legal Authority and Background

The Board is issuing this rule pursuant to its authority under the Federal Credit Union Act (FCU Act).¹ Under the FCU Act, the NCUA is the chartering and supervisory authority for Federal credit unions (FCUs) and the federal supervisory authority for federally insured credit unions (FICUs). The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.² Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.³ The FCU Act also includes an express grant of authority for the Board to subject federally chartered central, or corporate, credit unions to such rules, regulations, and orders as the Board deems appropriate.⁴

Part 704 of the NCUA's regulations implements the requirements of the FCU Act regarding corporate credit unions.⁵ In 2010, the Board comprehensively revised the regulations

¹ 12 U.S.C. 1751 *et seq.*

² 12 U.S.C. 1766(a).

³ 12 U.S.C. 1789.

⁴ 12 U.S.C. 1766(a).

⁵ 12 CFR part 704.

governing corporate credit unions to provide longer-term structural enhancements to the corporate system in response to the financial crisis of 2007-2009.⁶ The provisions of the 2010 rule successfully stabilized the corporate system and improved corporate credit unions' ability to function and provide services to natural person credit unions. Since 2010, and as part of the Board's continuous reevaluation of its regulation of corporate credit unions, the Board has amended part 704 on several occasions.⁷ Part 704 was last amended in 2017, when the Board amended corporate credit union capital standards to change the calculation of capital after a consolidation and to set a retained earnings ratio target in meeting prompt corrective action (commonly referred to as PCA) standards.⁸

b. Regulatory Review

Generally, the NCUA reviews all of its existing regulations every three years. The NCUA's Office of General Counsel maintains a rolling review schedule that identifies one-third of its existing regulations for review each year and provides notice to the public of those regulations under review so the public may have an opportunity to comment. Part 704 was part of the Office of General Counsel's 2019 annual regulatory review.⁹ The Board received several comments on updating part 704 as part of the 2019 annual regulatory review.

II. Proposed Rule

⁶ 75 FR 64786 (Oct. 20, 2010).

⁷ *See e.g.*, 80 FR 25932 (May 6, 2015), 80 FR 57283 (Sept. 23, 2015), and 82 FR 55497 (Nov. 22, 2017).

⁸ 82 FR 55497 (Nov. 22, 2017).

⁹ *See*, <https://www.ncua.gov/regulation-supervision/rules-regulations/regulatory-review>.

On February 20, 2020, the Board approved a notice of proposed rulemaking to update, clarify, and simplify several provisions of part 704 (proposed rule).¹⁰ The proposal provided for a 60-day comment period, which was later extended by 60 days due to COVID-19.¹¹ The comment period ended on July 27, 2020.

III. Final Rule and Discussion of Comments

The NCUA received 35 comment letters on the proposed rule. Comments were received from credit unions, both corporate and natural persons, credit union leagues and trade associations, individuals, corporate CUSOs, and an association of state credit union supervisors. Many of the commenters supported the stated goal, to update, clarify, and simplify several provisions of the NCUA's corporate credit union regulation, however, almost all of the commenters expressed concerns about specific aspects of the proposal. Most commenters believed that the proposed rule did not provide sufficient relief and requested additional areas of burden reduction that were beyond the scope of the proposed rule. In response to the comments received, the Board has made several changes to the final rule. The final rule: (1) Permits a corporate credit union to make a minimal investment in a CUSO without the CUSO being classified as a corporate CUSO and subject to heightened NCUA oversight; (2) expands the categories of senior staff positions at member credit unions eligible to serve on a corporate credit union's board; (3) removes the experience and independence requirement for a corporate credit

¹⁰ 85 FR 17288 (Mar. 27, 2020).

¹¹ 85 FR 20431 (Apr. 13, 2020).

union's enterprise risk management expert; (4) clarifies the definition of a collateralized debt obligation; and (5) simplifies the requirement for net interest income modeling. The specific details of the final rule, including changes as a result of the comments received, are discussed below.

A. Minimal Investment in Natural Person CUSOs

Part 704 includes specific regulations for a corporate credit union's investment and lending activity and permits a corporate credit union to invest in and lend to a corporate CUSO. A corporate CUSO is defined as an entity that is at least partly owned by a corporate credit union; primarily serves credit unions; restricts its services to those related to the normal course of business of credit unions;¹² and is structured as a corporation, limited liability company, or limited partnership under state law.¹³

Similar to natural person credit union service organizations (NP CUSOs), the Board cannot regulate corporate CUSOs directly, but it can, for safety and soundness reasons, regulate the types of investments that corporate credit unions make and whether a corporate credit union may invest in a CUSO. Part 704 includes several prudential requirements to ensure corporate credit union investment in and lending to corporate CUSOs is safe and sound. For example, part 704 regulates aggregate corporate credit union investment in and lending to corporate CUSOs. Part 704 also includes customer base requirements, permissible activities, accounting and audit standards, and requires NCUA access to corporate CUSO facilities, books, and records. In general, many of the prudential standards for corporate CUSOs are more restrictive than the

¹² See, 12 CFR 704.11(e).

¹³ 12 CFR 704.11(a).

standards for NP CUSOs.¹⁴ The Board has historically imposed more restrictive standards for corporate CUSOs as they may serve hundreds or even thousands of natural person credit unions and pose unique systemic risk.¹⁵ Additionally, core functions of corporate credit unions that pose systemic risk could be moved to corporate CUSOs. The Board has expressed concern that the movement of these core functions to entities that are not directly regulated by the NCUA could increase the systemic risk associated with corporate CUSOs, and the Board wants to ensure it has a degree of oversight and control of these activities.¹⁶

As stated above, a corporate CUSO is defined as an entity that is at least partly owned by a corporate credit union; primarily serves credit unions; restricts its services to those related to the normal course of business of credit unions; and is structured as a corporation, limited liability company, or limited partnership under state law.¹⁷ The definition is broad and includes no exception for de minimus, non-controlling equity investments. Accordingly, any corporate credit union equity interest in a CUSO, regardless of how small a share of the CUSO the corporate credit union owns, is sufficient to designate the CUSO as a corporate CUSO and subject it to additional requirements under part 704.

The proposed rule amended the definition of corporate CUSO so that a corporate credit union could make a de minimus, non-controlling investment in a NP CUSO without the CUSO

¹⁴ For example, the permissible activities for a corporate CUSO are more limited than the permissible activities for a NP CUSO. A corporate CUSO may seek Board permission to engage in additional activities, but the process can be burdensome. In addition, corporate CUSOs are also subject to more rigorous NCUA oversight. A corporate CUSO must agree to give the NCUA complete access to its personnel, facilities, equipment, books, records, and other documentation that the NCUA deems pertinent. In contrast, NP CUSOs must provide the NCUA with complete access to its books and records and the ability to review its internal controls, as deemed necessary by the NCUA. Finally, corporate CUSOs must provide quarterly financial statements to the corporate credit union. In contrast, NP CUSOs must prepare quarterly financial statements, but do not have to provide the statements to FCUs.

¹⁵ 74 FR 65210 (Dec. 9, 2009).

¹⁶ *Id.*

¹⁷ 12 CFR 704.11(a).

being deemed a corporate CUSO. Almost all commenters explicitly approved of this proposed change, and no commenters objected to it. The Board is finalizing it as proposed.

As stated in the proposed rule, the Board has reconsidered its position that any corporate credit union investment in a CUSO must be subject to enhanced standards under part 704 because the Board believes that a corporate credit union's non-controlling investment does not pose the same systemic risks to the credit union system as a controlling investment. In particular, it is unlikely that a corporate credit union would move its essential functions into a non-controlled CUSO.

The Board has also considered the benefits of permitting corporate credit unions to make de minimus, non-controlling investments in NP CUSOs. Compared to corporate CUSOs, NP CUSOs are permitted to engage in a broader range of permissible activities and services. Consequently, NP CUSOs are often a source of collaboration and innovation among FICUs that may result in the origination of new products and services. To compete effectively in today's technology-based financial service market, FICUs may need to rely increasingly on pooling their resources to fund CUSOs and to build the necessary infrastructure. The costs for research and development, acquisition, implementation, and specialized staff capable of managing these new technologies may be prohibitive for all but a very few of the largest FICUs. CUSOs may provide the means for FICUs to collectively address these challenges and may enable FICUs to collaboratively develop technologies that better serve their members.

Without the opportunity to invest in NP CUSOs, a corporate credit union may be restricted in its ability to participate in this process. The Board believes that by expanding corporate credit union investment authorities, while still maintaining necessary safeguards, it can

place corporate credit unions in a better position to participate in the development of new products and services. NP CUSOs will also benefit from a larger pool of potential investors, which may enable further research and development during this period of rapid technological growth.

In addition to amending the definition of corporate CUSO to permit de minimus, non-controlling investments in NP CUSOs, the final rule also makes several conforming amendments to part 704. The specific details of the amendments are discussed below.

§ 704.2 Definitions.

Consolidated credit union service organization. Generally, consolidated CUSOs are those majority-owned by a corporate credit union. The proposed rule amended the definition of consolidated CUSO to use the newly defined term “CUSO” for clarity. Under the proposed rule, a consolidated CUSO was defined as any CUSO the assets of which are consolidated with those of the corporate credit union for purposes of reporting under Generally Accepted Accounting Principles (GAAP). The Board received no comment on the definition of consolidated CUSO and is finalizing the definition as proposed.

Corporate CUSO. As discussed above, the proposed rule amended the definition of a corporate CUSO. Under the proposed rule, a CUSO is designated as a corporate CUSO only if one or more corporate credit unions have a controlling interest. A corporate credit union is considered to have a controlling interest if: (1) The CUSO is consolidated on a corporate credit union’s balance sheet; (2) a corporate credit union has the power, directly or indirectly, to direct the CUSO’s management or policies; or (3) a corporate credit union owns 25 percent or more of

the CUSO's contributed equity, stock, or membership interests.¹⁸ A CUSO also is designated as a corporate CUSO if the aggregate corporate credit union ownership of all corporates investing in the CUSO meets or exceeds 50 percent of the CUSO's contributed equity, stock, or membership interests. The Board is concerned that if several corporate credit unions have a majority ownership interest in a CUSO, the CUSO could present the same risk to the credit union system as a CUSO that is controlled by one corporate credit union. If any of these four conditions are met, then the CUSO meets the definition of a corporate CUSO and is subject to additional requirements under part 704.¹⁹ No commenters suggested any changes to the definition of a corporate CUSO and the Board is finalizing the definition as proposed.

Credit Union Service Organization (CUSO). The proposed rule defined the term CUSO for purposes of part 704. Under the proposed rule, a CUSO is both a NP CUSO under part 712 and a corporate CUSO under part 704.11. The definition makes it clear that the term CUSO applies to both NP CUSOs and corporate CUSOs unless otherwise stated. For example, when calculating tier 1 capital under part 704, a corporate credit union must deduct, in part, investments in any "unconsolidated CUSO." By using the term "CUSO," instead of the defined terms "corporate CUSO" and "consolidated CUSO," the proposed rule made clear that a corporate credit union must deduct unconsolidated investments in both a NP CUSO and a corporate CUSO. The Board received no comments on this definition and is finalizing it as proposed.²⁰

¹⁸ The definition is related to the definition of control in the Federal Deposit Insurance Act for notices filed under the Change in Bank Control Act. 12 U.S.C. 1817(j).

¹⁹ The definition of corporate CUSO also is moved to § 704.2 for consistency with the location of other definitions in part 704.

²⁰ The Board received a substantial number of comments on the aggregation of loans to NP CUSOs and corporate CUSOs. Those comments will be discussed below.

§§ 704.5 Investments, 704.6 Credit Risk Management, and 704.7 Lending.

The proposed rule removed references to corporate CUSOs and instead referred to the general term CUSO because those provisions continue to apply to a corporate credit union investing in and lending to both NP CUSOs and corporate CUSOs, as explained in detail below in the discussion of the proposed changes to § 704.11. The Board received no comments on these changes and is finalizing it as proposed.²¹

§ 704.11 Credit Union Service Organizations (CUSOs).

Under the proposed rule, § 704.11 was reorganized for clarity, however, the substantive requirements for corporate CUSOs were not amended. The intent of the reorganization is to be clear that certain requirements apply to a corporate credit union's investment in or lending to both NP CUSOs and corporate CUSOs, certain requirements apply only to NP CUSOs, and other requirements apply only to corporate CUSOs.

The proposed rule set forth the requirements for all corporate credit union investments in or lending to CUSOs. The proposed rule, in § 704.11(a), stated that the aggregate investment and lending limits apply regardless of whether a corporate credit union's investment or loan is to a NP CUSO or a corporate CUSO. The proposed rule did not intend to amend the current aggregate limitations on investments and lending.²² Under the current rule, however, the

²¹ As noted above, the Board received a substantial number of comments on the aggregation of loans to NP CUSOs and corporate CUSOs and addresses these below.

²² 12 CFR 704.11(b). In general, the aggregate of all investments in corporate CUSOs that a corporate credit union may make must not exceed 15 percent of a corporate credit union's total capital. The aggregate of all investments in and loans to corporate CUSOs that a corporate credit union may make must not exceed 30 percent of a corporate

aggregate investment and lending limits applied only to corporate CUSOs. A majority of commenters were concerned that including loans made to NP CUSOs in the aggregate limits would unintentionally limit corporate credit union lending to NP CUSOs. Commenters generally requested that the final rule exclude loans to NP CUSOs from the aggregate lending limits. A few commenters stated that they are supportive of aggregate limitations for investments in NP and corporate CUSOs, as well as combined limits for loans to and investments to an individual CUSO set as a percentage of total capital, but not aggregating lending to NP and corporate CUSOs. The Board disagrees that the proposed rule would substantially limit lending to NP CUSOs. First, the Board does not believe that corporate credit unions are currently engaging in substantial lending activities to NP CUSOs. In addition, under the current rule, corporate credit unions are not generally permitted to make loans to NP CUSOs.²³ Additionally, for safety and soundness reasons, the Board believes it is prudent for lending and investments to both natural person and corporate CUSOs to be subject to the aggregate limitations. The Board would have safety and soundness concerns if corporate credit unions lending to NP CUSOs were not subject to the limitations otherwise applicable to corporate CUSOs. The Board, however, notes that if a particular corporate credit union has a material volume of loans to a natural person CUSO, it may request that the Board issue a waiver from the aggregate lending and investment limits in the final rule under 12 CFR 704.1(b). The Board would consider such a waiver on a case-by-case basis. Therefore, the Board has not made any changes to the aggregate investment and lending limits and is adopting the limitations without change in the final rule. Therefore, a

credit union's total capital. A corporate credit union may lend to corporate CUSOs an additional 15 percent of total capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.
²³ 12 CFR 704.11(h) ("A corporate credit union is not authorized to . . . loan to a CUSO under part 712 of this chapter.").

corporate credit union that has already invested in or loaned the maximum permitted under the current rule is not authorized to invest or lend any additional money. Instead, such a corporate credit union must reallocate its investments or loans if it seeks to make any new investments that are prohibited.

In § 704.11(b), the proposed rule stated that all corporate credit union loans to CUSOs are subject to due diligence requirements.²⁴ The proposed rule, as does the current rule, required corporate credit unions to comply with certain due diligence requirements from the NCUA's member business loans rule before making a loan to a CUSO. Under the proposed rule, corporate credit unions are subject to the commercial loan policy and due diligence requirements in the NCUA's member business loans rule²⁵ for lending to both NP CUSOs and corporate CUSOs. Several commenters objected to subjecting corporate credit union loans to the commercial loan policy and due diligence requirements in the revised MBL rule. Commenters generally stated that the requirements in the MBL rule are written for the lending activities and capital structure of natural person credit unions. Commenters also stated that corporate credit union lending activities are adequately regulated by the requirements of § 704.7 and, if there is a need for additional rulemaking regarding lending to CUSOs, that it is better to make changes to § 704.7 directly. One commenter also noted that an issue with referencing the MBL rule is that its lending limits are based upon net worth, which is a term that is undefined for corporate credit unions. The Board notes that part 723 adopted principles-based standards for commercial loan

²⁴ 12 CFR 704.11(c). The current rule includes a cross-reference to due diligence requirements in the member business loan rule. The member business loan rule, however, was updated in 2015 and the cross-referenced requirements have been removed. Accordingly, the proposed rule updated the cross references to reflect the revised member business loan rule.

²⁵ 12 CFR 723.4.

policies and due diligence standards. In general, part 723 does not require prescriptive standards. Accordingly, the Board believes that the principles outlined in part 723 are appropriate for most loans to corporate and NP CUSOs, which the Board considers general commercial loans. The Board notes that to the extent part 723 refers to credit unions establishing limitations based on net worth, such limitations established by a corporate credit union would be based on tier 1 capital. As discussed by the commenters, corporate credit unions do not use the terminology net worth.

Therefore, under the final rule, a corporate credit union making loans to NP or corporate CUSOs must have a board-approved policy that ensures corporate credit union lending activities are performed in a safe and sound manner by providing for ongoing control, measurement, and management of CUSO lending. The policy should also include qualifications and experience requirements for personnel involved in underwriting, processing, approving, administering, and collecting loans to CUSOs. The corporate credit union must also have a loan approval process, underwriting standards, and risk management processes commensurate with the size, scope and complexity of its CUSO lending. The Board believes these due diligence requirements are the minimum requirements necessary to ensure that corporate credit unions are engaging in safe and sound lending practices.

The Board has made one change to this section in light of commenters concerns about burden. The Board has added an exception for loans and lines of credit to NP and corporate CUSOs that are fully secured by U.S. Treasury or agency securities. Loans that are fully secured by U.S. Treasury or agency securities present less risk and do not require the same due diligence requirements as standard commercial loans. With this limited modification, the Board does not believe these requirements should place a new burden on corporate credit unions because any

corporate credit union that is currently making a loan to a corporate CUSO should be following these basic safety and soundness principles.

In § 704.11(c), the proposed rule set forth the regulations governing corporate credit union investment in and lending to NP CUSOs. The proposed rule stated that corporate credit union investment in and lending to NP CUSOs are subject to part 712 of this chapter. The intent of this section is to be clear that a CUSO is either governed under part 704 as a corporate CUSO, as discussed below, or subject to part 712 as a NP CUSO. A corporate credit union investment in a CUSO of a state-chartered natural person credit union is also subject to the requirements in part 712. The Board has made one clarifying change to this section. Under the final rule, the Board is clarifying that the CUSO of a state-chartered natural person credit union is subject to the requirements in part 712 as if the CUSO is a CUSO of an FCU. The Board wants to clarify that all of the requirements in part 712, such as the activity limitations in § 712.5, are necessary for any corporate credit union to invest in or loan to a NP CUSO, regardless of the charter type of the natural person credit union. If a CUSO does not meet the standards in part 712, then a corporate credit union cannot make the investment or loan.

In § 704.11(d), the proposed rule, like the current rule, included safety and soundness requirements for corporate credit union investments in and loans to corporate CUSOs. In general, the proposed rule did not make any substantive changes to the existing prudential requirements. The requirements were reorganized for clarity and as part of the general

restructuring of § 704.11, but were not otherwise substantively amended.²⁶ No commenters objected to these proposed provisions, and the Board is finalizing them as proposed.

Finally, in § 704.11(e), the proposed rule included one new prudential requirement for corporate credit union investments in and loans to corporate CUSOs. The proposed rule stated that any subsidiary of a corporate CUSO is automatically designated a corporate CUSO. The proposed rule also provided that all tiers or levels of a corporate CUSO's structure are subject to the requirements for corporate CUSOs. No commenters objected to this proposed provision, and the Board is finalizing it as proposed. The Board believes this level of oversight is necessary for all tiers of a corporate CUSO because corporate CUSOs affect not only the health of the investing corporate credit union, but also the health of the credit union system as a whole. Many corporate CUSOs serve natural person credit unions directly. As stated previously, the Board has historically been concerned that some activities might migrate from corporate credit unions to CUSOs and their subsidiaries, and the Board needs to ensure each layer in the corporate structure is subject to certain minimal prudential requirements.

§ 704.19 Disclosure of Executive Compensation.

Section 704.19 currently requires that each corporate credit union annually prepare and maintain a document that discloses the compensation of certain employees, including compensation received from a corporate CUSO.²⁷ The proposal amended § 704.19 to require that employee compensation from either a NP CUSO or a corporate CUSO must be reported.

²⁶ The proposed rule included a few non-substantive language changes that are only intended to streamline the provision and enhance clarity.

²⁷ 12 CFR 704.19(a).

The Board notes that under the current rule to facilitate this disclosure, § 704.11(g) requires a corporate CUSO to disclose compensation paid to any employees that are also employees of a corporate credit union lending to, or investing in, the CUSO. This provision places the burden of disclosure on the corporate CUSO. The proposed rule, however, did not include a similar requirement for NP CUSOs.²⁸ No commenters objected to this proposed provision, and the Board is finalizing it as proposed. Accordingly, under the final rule, the dual employee is required to disclose his or her compensation from the NP CUSO for the corporate credit union to make the required disclosure.

B. Corporate Credit Union Board Representation

Section 704.14 currently requires that at least a majority of a corporate credit union's board members must serve on the corporate credit union's board as a representative of a member credit union.²⁹ In addition, any candidate for a position on the board of a corporate credit union must hold a senior management position at a member credit union and hold that position at the time he or she is seated on the board of a corporate credit union. Currently, only an individual who holds the position of chief executive officer, chief financial officer, chief operating officer, or treasurer/manager at a member credit union, and will hold that position at the time he or she is seated on the corporate credit union board if elected, may seek election or re-election to the corporate credit union board.

²⁸ The Board notes, however, that part 712 prohibits officials and senior management employees, and their immediate family members of an FCU with an outstanding loan or investment from receiving any salary, commission, investment income, or other income or compensation from the CUSO, either directly or indirectly. 12 CFR 712.8.

²⁹ 12 CFR 704.14.

The proposed rule expanded the credit union officials eligible to serve on a corporate credit union board. The proposed rule no longer expressly limited the corporate credit union board to the above stated positions and instead included any person in a senior staff position at a member credit union. The proposed rule then listed the current positions as examples of senior staff positions that are eligible to serve on a corporate credit union board. The proposed rule also included two new positions, chief information officer and chief risk officer, in the list of examples of senior staff positions eligible to serve on a corporate credit union board. No commenters objected to this proposed provision and the Board is finalizing it as proposed. One commenter, however, urged the Board to defer to state rules with respect to governance matters such as board qualifications. The commenter further stated that it believes that the homogenization of the corporate credit union governance system presents risks by stifling innovation. The commenter, however, offered no specific suggestions. The Board believes that certain minimum standards are necessary to ensure adequate corporate governance.

The Board believes that officials who hold a senior management position at a member credit union are qualified individuals who could offer expertise as a corporate credit union board member. Not only do corporate credit union members have more flexibility in choosing board members, but expanding eligible senior staff positions, such as chief information officer and chief risk officer, widens the range of expertise on corporate credit union boards.

C. Enterprise Risk Management

Section 704.21 requires corporate credit unions to develop and follow an enterprise risk management policy.³⁰ A corporate credit union must also establish an enterprise risk management committee (ERMC) and include an independent risk management expert on the committee. The Board adopted these requirements in 2011 due to concerns that corporate credit unions were not adequately focused on the aggregation of exposures across entire institutions, even though the Board believed that corporate credit unions were adequately focused on individual risk exposures.³¹

The current rule includes several specific requirements regarding the independent risk management expert on the committee. The risk management expert must have at least five years of experience in identifying, assessing, and managing risk exposures.³² This experience must be commensurate with the size of the corporate credit union and the complexity of its operations. In addition, the current rule provides what constitutes independence. A risk management expert qualifies as independent if: (1) the expert reports to the ERMC and to the corporate credit union's board of directors; (2) neither the expert, nor any immediate family member of the expert, is supervised by or has any material business or professional relationship with the chief executive officer (CEO) of the corporate credit union, or anyone directly or indirectly supervised by the CEO; and (3) neither the expert, nor any immediate family member of the expert, has had any of the previously described relationships for at least the past three years.³³ The Board specifically included experience and independence requirements to ensure the enterprise risk

³⁰ 12 CFR 704.21.

³¹ 76 FR 23861 (Apr. 29, 2011) and 80 FR 25932 (May 6, 2015).

³² 12 CFR 704.21(c).

³³ 12 CFR 704.21(d).

management expert is adequately qualified and not influenced by the operational side of the corporate credit union.³⁴ The proposed rule removed the prescriptive independence and experience requirements. No commenters objected to this proposed provision, and the Board is finalizing with one technical amendment. The final rule clarifies that the risk management expert may report either to the corporate credit union's board of directors or to the ERMC. Several commenters also requested that the prescriptive independence requirements be removed from the final rule. The Board clarifies that the prescriptive independence provisions are also removed under the final rule.

The Board no longer believes that it is necessary for prescriptive experience and independence requirements. The Board believes the corporate credit union should have more discretion in choosing a qualified risk management expert. The Board does not believe that a prescriptive five-year experience requirement is necessary. The Board believes that corporate credit unions are in the best position to determine the appropriate level of experience necessary for the position. The final rule also permits the risk management expert to report directly to the ERMC or the corporate credit union's board.

Additionally, the Board believes that the effectiveness of risk management practices is driven by a multitude of factors, to include policies, processes, and qualified knowledge. Many corporate credit unions have integrated their enterprise risk management function into their business decision making, and at many corporate credit unions, internal corporate staff possess the skills and experience to capably manage the enterprise risk management program. By and large, corporate credit unions have improved their ability to assess risk and

³⁴ 76 FR 23861 (Apr. 29, 2011).

effectively challenge evaluations of risk since the current rule was first adopted. The final rule provides the corporate credit unions flexibility to choose an internal risk management expert instead of engaging an outside consultant.

The Board, however, notes that even though independence is no longer an explicit requirement, for best enterprise risk management practices, the expert should have appropriate stature and authority to effectively manage and lead an enterprise risk management program. The expert must be competent to analyze risks across the institution and have the capability to communicate those risks to the board or ERMC despite potential influence from the operational side of the corporate credit union. The NCUA will evaluate the adequacy of a corporate credit union's enterprise risk management practices through the supervisory process. Sound risk management is a cornerstone responsibility of a credit union's leadership; therefore, CAMEL and risk ratings will incorporate the supervisory team's assessment of this area. Weaknesses in risk management may result in supervisory actions.

D. Natural Person Credit Union Subordinated Debt Instruments

The Board recently issued a proposed rule to permit low-income designated credit unions, complex credit unions, and new credit unions to issue subordinated debt instruments for purposes of regulatory capital treatment (subordinated debt NPR).³⁵ If the Board adopts the proposed rule as final, it expects additional credit unions to begin issuing subordinated debt instruments. Therefore, the Board believes it is necessary to clarify whether corporate

³⁵ 85 FR 13982 (Mar. 10, 2020).

credit unions may purchase such instruments and, if so, the treatment of the investments under part 704.

The proposed rule created a new definition for the term natural person credit union subordinated debt instrument. The proposed rule defined a natural person credit union subordinated debt instrument as any debt instrument issued by a natural person credit union that is subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and either the National Credit Union Share Insurance Fund (NCUSIF) or the insurer of a privately insured credit union. The Board intends for this definition to include all instruments issued under the subordinated debt NPR. No commenters objected to this proposed definition. The Board, however, is not finalizing the definition as part of this final rule. The Board believes it is prudent to include any changes related to the subordinated debt NPR with the associated subordinated debt final rule. At this time, the Board does not envision any changes to the proposed definition.

The proposed rule also clarified that corporate credit unions may purchase the natural person subordinated debt instruments. This authority is derived from their lending authority because subordinated debt instruments are issued under a natural person credit union's borrowing authority. Additionally, natural person credit unions are also permitted, subject to various restrictions and limits, to purchase such subordinated debt instruments from other natural person credit unions under their lending authority. Treating the purchase of such subordinated debt instruments as lending ensures consistent treatment between natural person credit unions and corporate credit unions. The final rule does not explicitly state that a corporate credit union may purchase a natural person credit union subordinate debt

instrument because the Board believes corporate credit unions' current lending authority is sufficiently broad to include purchasing subordinated debt instruments.

The proposed rule, however, required that a corporate credit union fully deduct the amount of the subordinated debt instrument from its tier 1 capital to ensure consistent treatment between investments in the capital of other corporate credit unions and natural person credit unions. Corporate credit unions are currently required to deduct from tier 1 capital any investments in perpetual contributed capital and nonperpetual capital accounts that are maintained at other corporate credit unions.³⁶ The proposed rule also asked a question on whether it would be more appropriate to prohibit corporate credit unions from purchasing subordinated debt instruments. No commenter recommended restricting corporate credit union authority to purchase subordinated debt instruments.

The Board believes that investments in natural person credit union subordinated debt instruments should be treated similar to investments in perpetual contributed capital and nonperpetual capital accounts that are maintained at other corporate credit unions as such instruments may qualify as regulatory capital for the natural person credit union. The Board is also concerned about systemic risk if corporate credit unions own a significant amount of natural person credit union issued subordinated debt. Finally, a natural person credit union subordinated debt instrument would be in a first loss position, even before the NCUSIF and any private insurance fund or entity. Therefore, an involuntary liquidation of the issuing credit union would potentially mean large, and likely total, losses for the holders of those subordinated obligations. The Board believes that fully deducting such instruments from tier

³⁶ See the definition of tier 1 capital in 12 CFR 704.2.

1 capital ensures any potential losses do not affect the capital position of the investing corporate credit union. This measured approach strikes the right balance between providing corporate credit unions the flexibility to purchase natural person credit union subordinated debt instruments and avoiding undue systemic risk to the credit union system. For the same reasons as the definition of natural person subordinated debt instrument, the final rule is not including this amendment. The amendment will be included with any final rule on subordinated debt.

E. Approved Corporate CUSO Activities.

Part 704 does not list the permissible activities for corporate CUSOs in the regulatory text of part 704 of the Code of Federal Regulations, unlike part 712, which does so for NP CUSOs.³⁷ Instead, § 704.11 requires that, generally, a corporate CUSO must agree that it will limit its services to brokerage services, investment advisory services, and other categories of services as preapproved by NCUA and published on NCUA's Website.³⁸ A CUSO that desires to engage in an activity not preapproved by NCUA can apply to NCUA for that approval. To increase transparency and make it easier for corporate credit unions to determine if an activity has previously been determined by the Board to be permissible, the proposed rule contained a provision to replace the permissible activities list from the NCUA Website with a new appendix to part 704. No commenter supported this change, and almost all commenters specifically objected to it. Commenters generally stated that the change

³⁷ 12 CFR 712.5(b).

³⁸ <https://www.ncua.gov/regulation-supervision/corporate-credit-unions/corporate-cuso-activities/approved-corporate-cuso-activities>.

would increase regulatory burden and make it more difficult for corporate CUSOs to obtain timely approval to add permissible activities to the list. Commenters were primarily concerned about the added burden of formally adding activities through notice-and-comment rulemaking. Other commenters also discussed the need to make rapid changes to the list of preapproved activities in response to the pace of development from fintech companies. Commenters also suggested moving the list of preapproved activities for NP CUSOs to the NCUA's website. The Board notes that moving the list of preapproved activities for NP CUSOs would be outside the scope of the proposed rule. Finally, one commenter recommended codifying the practice of consulting with state regulators before making a determination on "other activities" for state chartered corporate credit union CUSOs.

In light of commenters' feedback, the Board will not adopt this proposed change regarding approval of corporate CUSO activities. The proposed change was intended to increase transparency. The Board is mindful of any unintended procedural burden the change might entail and therefore declines to adopt it. Instead, the agency's website will continue to list approved corporate CUSO activities. The current process to request approval of new corporate CUSO activities remains unchanged and is described on the web page that includes the list of approved activities.³⁹

F. Definition of Collateralized Debt Obligation.

Corporate credit unions are prohibited from purchasing certain overly complex or leveraged investments, including collateralized debt obligations (commonly referred to as

³⁹ Corporate CUSO Activities, <https://www.ncua.gov/regulation-supervision/corporate-credit-unions/corporate-cuso-activities>.

CDOs).⁴⁰ Under the current rule, the term CDO means a debt security collateralized by mortgage-backed securities, other asset-backed securities, or corporate obligations in the form of nonmortgage loans or debt. The term does not include: (1) Senior tranches of Re-REMICs consisting of senior mortgage- and asset-backed securities; (2) Any security that is fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises; or (3) Any security collateralized by other securities where all the underlying securities are fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises.⁴¹ The proposed rule amended the definition of CDO to clarify that the definition includes both loans and debt securities. The proposed rule changed the defined term to “collateralized loan or debt obligation,” but did not otherwise amend the definition. No commenter objected to the substance of the change, however, several commenters requested a revision to the proposed language. Commenters generally wanted to use language that is consistent with industry terminology and recommended having separate definitions for CDOs and Collateralized Loan Obligations (referred to as “CLOs”). In response to commenter concerns about clarity, the final rule uses the term “collateralized debt obligation or collateralized loan obligation.” The Board intends no substantive changes as a result of the amended terminology and has made no change to the definition. This amendment is only intended to resolve any confusion among industry participants concerning whether collateralized loans meet the definition and are therefore

⁴⁰ The prohibition on purchasing CDOs was intended to protect corporate credit unions from the potential for excessive investment losses. 75 FR 64786, 64793 (Oct. 20, 2010).

⁴¹ 12 CFR 704.2.

prohibited. The Board believes amending the name of the defined term clarifies the Board's intent that collateralized loans meeting the definition are also prohibited.

G. Net Interest Income Modeling

Under the current rule, a corporate credit union must perform net interest income (NII) modeling to project earnings in multiple interest rate environments for a period of no less than two years.⁴² NII modeling must, at minimum, be performed quarterly, including once on the last day of the calendar quarter. The proposed rule made a change to the timeframe for NII. Under the proposed rule, a corporate credit union is not required to perform NII modeling for two years and instead only is required to perform modeling for a period of no less than one year. In general, commenters were either indifferent to or not supportive of the proposed change. Some commenters noted that ALM models already are built for the two-year NII projections, so this change will not provide any real regulatory relief. Some commenters stated that reducing the required NII modeling from two years to one year will not increase the accuracy of the NII forecast (however another commenter stated that the one-year forecasts are more accurate as there are more unknowns impacting a balance sheet using the two-year timeframe). Several commenters stated that the same inputs and assumptions will still have to be incorporated into the NII model and that the two-year timeframe was appropriate. Other commenters recommended that the NCUA instead increase the “weighted-average life” (WAL) limit beyond the current two-year limit. These commenters stated that a longer-term WAL would allow corporate credit unions to more effectively manage NII through varying economic and interest

⁴² 12 CFR 704.8(e).

rate scenarios. The Board has not adopted any amendments to the WAL at this time. The Board continues to believe that the two-year WAL limit reflects the fact that corporate credit unions are, first and foremost, providers of payment systems, which, in turn, requires some matching of the investment portfolio to the short term payment liabilities to ensure liquidity for the payments system. The Board believes that a longer-term WAL is unnecessary given the primary purpose of corporate credit unions as providers of payment systems.

Therefore, the Board is only amending the requirements for NII given that corporate credit unions are also subject to a two-year WAL limit.⁴³ Under the current rule, a corporate credit union must test its financial assets at least quarterly, including once on the last day of the calendar quarter, for compliance with this limitation. If the WAL of a corporate credit union's assets exceeds two years on the testing date, this test must be calculated at least monthly, including once on the last day of the month, until the WAL is below two years.

The Board believes that NII modeling performed over a longer period than the WAL limits for asset maturities is less useful because the corporate credit union also has to estimate what reinvestments occur over the two-year period beyond simply estimating interest cash flows on assets. In addition, corporate credit unions already conduct net economic value analyses which capture a long-term view of interest rate risk. Allowing corporate credit unions to model NII over a one year period provides increased flexibility for corporate credit unions to measure NII over a shorter, and more appropriate, time period, such as when financial assets and liabilities are predominately short term (such as less than one year). The Board believes that NII modeling over a one-year period sufficiently captures a corporate credit union's short-term

⁴³ 12 CFR 704.8(f).

interest rate risk. To the extent commenters stated their models are already based on two-year projections, the final rule does not require corporate credit unions to change their models. The final rule only requires that a corporate credit union must perform NII modeling for a period of *no less than* 1 year. Therefore, a model projecting a period of two years still complies with the final rule.

H. Technical Amendment

A few commenters requested that the Board clarify which type of loans would need to comply with the MBL rule. The current rule states that loans, lines of credit, and letters of credit to other members not excluded under § 723.1(b) must comply with part 723 unless the loan or line of credit is fully guaranteed by a credit union or fully secured by U.S. Treasury or agency securities. The current regulation also states that those guaranteed and secured loans must comply with the aggregate limits of § 723.16 but are exempt from the other requirements of part 723. Commenters suggested a technical correction to update the cross-reference, which cites to an outdated provision of the MBL rule. The Board has made the requested technical amendment. Under the final rule, the section of the MBL rule cross-referenced is § 723.8.

I. Comments Outside the Scope of the Proposed Rule

Many commenters recommended that the Board consider additional burden reduction for corporate credit unions. In general, these recommendations are not a logical outgrowth of the

proposed rule and, thus, are outside the scope of this rulemaking. A general discussion of the recommendations is included below.

1. A few commenters requested that the Board clarify that the existing 15 percent limit on commercial mortgage-backed securities applies to “private” commercial mortgage-backed securities and not agency commercial mortgage-backed securities (ACMBS). These commenters stated that ACMBS carry the same credit risk as agency residential MBS.
2. Several commenters requested additional flexibility to allow corporate credit unions with higher capital ratios to extend their WAL limitations. These commenters also recommended that a liquidity management policy and procedures be established that incorporate the following: liquidity strategy for various economic conditions; defined liquidity risk profiles under various economic conditions; and liquidity buffer consisting of highly liquid assets. Some commenters also suggested including permission for longer WAL limitations in Appendix B, Expanded Authorities.
3. Several commenters also recommended that the Board extend the maturity limit on secured borrowing from 180 days to 1 year to cover a full cycle of seasonal cash outflows (one commenter recommended two years). Commenters also requested a change in the limit for secured non-liquidity borrowings from the tier 1 capital in excess of five percent of moving daily average net assets to 100 percent of total capital (one commenter recommended using tier 1 capital).
4. Several commenters requested that the Board permit non-CUSO investments for the purpose of allowing corporate credit unions reasonable ability to invest a small percentage of their capital in entities outside the credit union system (such as fintechs).

5. Two commenters requested that the Board permit a modest increase in the individual borrower limit.
6. A few commenters recommended that Appendix B Expanded Authorities clarify that any investment that deteriorates below investment grade, as defined in § 704.2, would require an investment action plan in compliance with § 704.10.
7. One commenter recommended establishing a task force with state regulators to review future adjustments to the corporate credit union rules. The commenter also recommended reintroducing meaningful dual chartering by eliminating unnecessary preemption of state rules, particularly with respect to corporate credit union governance; and enhancing the joint supervision of corporates. The commenter also recommended increased information sharing between the NCUA and the state regulators supervising the corporate credit union's natural person credit union members.
8. One trade organization commenter recommended that the agency should consider ways in which it can wind down the NCUA guaranteed notes program (known as the NGN Program) so that credit unions that paid into the Temporary Corporate Credit Union Stabilization Fund and invested in certain corporates are made whole. The commenter stated that the NCUA's determination that the asset management estates of the various failed corporates must remain distinct means that recoveries from one estate cannot be comingled to pay obligations of other estates; however, the commenter stated that the agency still has time to reconsider this position and invite comments from credit unions who might bear a greater loss if the NCUA proceeds along its present course.

9. One trade organization commenter also recommended that the Board explore a framework to engage with fintech companies so credit unions can more easily sustain continued innovation in the credit union industry.

VII. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million).⁴⁴ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule.

This final rule does not have a significant economic impact on a substantial number of small entities. There are no corporate credit unions under \$100 million in assets. Therefore, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

⁴⁴ See 80 FR 57512 (Sept. 24, 2015).

The Paperwork Reduction Act of 1995 (PRA) applies to information collection requirements in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or third-party disclosure requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final rule amends 12 CFR part 704, in part, to address minimal investments by a corporate credit union in a CUSO without the CUSO being classified as a corporate CUSO. The information collection requirements associated with this provision are cleared under OMB control number 3133-0129 and there are no other new information collection requirements associated with this final rule.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule does not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) generally provides for congressional review of agency rules.⁴⁵ A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the APA.⁴⁶ An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.”⁴⁷ The NCUA does not believe this rule is a “major rule” within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine if the final rule is a “major rule” for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

⁴⁵ 5 U.S.C. 801-804.

⁴⁶ 5 U.S.C. 551.

⁴⁷ 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements

By the National Credit Union Administration Board on _____, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed above, the Board amends 12 CFR part 704, as follows:

PART 704—CORPORATE CREDIT UNIONS

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, and 1789.

2. In § 704.2:

a. Revise the definition of *Collateralized Debt Obligation*, and *Consolidated Credit Union Service Organization*; and

b. Add definitions for *Corporate CUSO*, and *Credit Union Service Organization (CUSO)*, in alphabetical order, to read as follows:

704.2 Definitions.

* * * * *

Collateralized Debt Obligation or Collateralized Loan Obligation means a debt security collateralized by mortgage-backed securities, other asset-backed securities, or corporate obligations in the form of nonmortgage loans or debt. For purposes of Part 704, the term collateralized debt obligation or collateralized loan obligation does not include:

- (1) Senior tranches of Re-REMIC's consisting of senior mortgage-and asset-backed securities;
- (2) Any security that is fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises; or
- (3) Any security collateralized by other securities where all the underlying securities are fully guaranteed as to principal and interest by the U.S. Government or its agencies or its sponsored enterprises.

* * * * *

Consolidated Credit Union Service Organization (Consolidated CUSO) means any CUSO the assets of which are consolidated with those of the corporate credit union for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, consolidated CUSOs are majority-owned CUSOs.

* * * * *

Corporate CUSO means a CUSO, as defined in part 712, that:

- (1) Is a consolidated CUSO;
- (2) A corporate credit union has the power, directly or indirectly, to direct the CUSO's management or policies;
- (3) A corporate credit union owns 25 percent or more of the CUSO's contributed equity, stock, or membership interests; or

(4) The aggregate corporate credit union ownership meets or exceeds 50 percent of the CUSO's contributed equity, stock, or membership interests.

Credit union service organization (CUSO) means both a CUSO under part 712 and a corporate CUSO under part 704.

* * * * *

3. Revise § 704.5(c)(3) and (h)(6) to read as follows:

§ 704.5 Investments.

* * * * *

(c) * * *

(1) * * *

(2) * * *

(3) CUSOs, subject to the limitations of § 704.11;

* * * * *

(h) * * *

(6) Purchasing collateralized debt obligations or collateralized loan obligations;

* * * * *

4. In § 704.6(c)(2)(vi), remove the word “corporate” before the word “CUSO.”

5. In § 704.7 remove the word “corporate” before the word “CUSO” each place the word appears and replace “§ 723.16” with “§ 723.8.”

6. In § 704.8(e) replace the phrase “no less than 2 years” with “no less than 1 year.”

7. Amend § 704.11 to read as follows:

§704.11 Credit Union Service Organizations (CUSOs).

(a) *Investment and loan limitations.* (1) The aggregate of all investments in member and non-member CUSOs that a corporate credit union may make must not exceed 15 percent of a corporate credit union's total capital.

(2) The aggregate of all investments in and loans to member and nonmember CUSOs a corporate credit union may make must not exceed 30 percent of a corporate credit union's total capital. A corporate credit union may lend to member and nonmember CUSOs an additional 15 percent of total capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.

(3) If the limitations in paragraphs (a)(1) and (a)(2) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method without an additional cash outlay by the corporate, divestiture is not required. A corporate credit union may continue to invest up to the regulatory limit without regard to the increase in the GAAP valuation resulting from the CUSO's profitability.

(b) *Due diligence.* A corporate credit union must comply with the commercial loan policy and due diligence requirements of § 723.4 of this chapter for all loans to CUSOs unless the loan or line of credit is fully secured by U.S. Treasury or agency securities.

(c) *Requirements for CUSOs that are not corporate CUSOs.* Corporate credit union investments in and lending to CUSOs that are not corporate CUSOs are subject to part 712 of this chapter, except that investment and loan limitations and due diligence requirements are governed by this section. CUSOs of state-chartered natural person credit unions are subject to part 712 of this chapter to the same extent as a CUSO of a federal credit union.

(d) *Requirements for Corporate CUSOs.* Corporate credit union authority to invest in or loan to a corporate CUSO is limited to that provided in this section.

(1) *Structure.* A corporate CUSO must be structured as a corporation, limited liability company, or limited partnership under state law.

(2) *Separate entity.* (i) A corporate CUSO must be operated as an entity separate from a corporate credit union.

(ii) A corporate credit union investing in or lending to a corporate CUSO must obtain a written legal opinion that concludes the corporate CUSO is organized and operated in a manner that the corporate credit union will not reasonably be held liable for the obligations of the corporate CUSO. This opinion must address factors that have led courts to “pierce the corporate veil,” such as inadequate capitalization, lack of corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records.

(3) *Permissible activities.* (i) A corporate CUSO must agree to limit its activities to:

(1) Brokerage services,

(2) Investment advisory services, and

(3) Other categories of activities as approved in writing by the NCUA and published on the NCUA’s Web site.

(ii) Once the NCUA has approved an activity and published that activity on its Web site, the NCUA will not remove that particular activity from the approved list, or make substantial changes to the content or description of that approved activity, except through the formal rulemaking process.

(4) *Compensation Restrictions.* An official of a corporate credit union which has invested in or loaned to a corporate CUSO may not receive, either directly or indirectly, any salary, commission, investment income, or other income, compensation, or consideration from the corporate CUSO. This prohibition also extends to immediate family members of officials.

(5) *Written Agreement between the Corporate Credit Union and Corporate CUSO.* Prior to making an investment in or loan to a corporate CUSO, a corporate credit union must obtain a written agreement that the corporate CUSO:

- (i) Will follow GAAP;
- (ii) Will provide financial statements to the corporate credit union at least quarterly;
- (iii) Will obtain an annual CPA opinion audit and provide a copy to the corporate credit union. A consolidated CUSO is not required to obtain a separate annual audit if it is included in the corporate credit union's annual audit;
- (iv) Will provide the reports as required by §712.3(d)(4) and (5) of this chapter;
- (v) Will not acquire control, directly or indirectly, of another depository financial institution or to invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization;
- (vi) Will allow the auditor, board of directors, and NCUA complete access to the CUSO's personnel, facilities, equipment, books, records, and any other documentation that the auditor, directors, or NCUA deem pertinent;
- (vii) Will inform the corporate, at least quarterly, of all the compensation paid by the CUSO to its employees who are also employees of the corporate credit union; and
- (viii) Will comply with all the requirements of this section.

(e) *Subsidiary Restrictions.* Any subsidiary of a corporate CUSO is automatically designated a corporate CUSO and subject to all the requirements of this section. The requirements of this section apply to all tiers or levels of a corporate CUSO's structure.

* * * * *

8. Revise § 704.14(a)(2) to read as follows:

§704.14 Representation.

* * * * *

(a) * * *

(1) * * *

(2) Only an individual who currently holds a senior staff position (e.g., position of chief executive officer, chief financial officer, chief operating officer, chief information officer, chief risk officer, treasurer/manager, etc.) at a member credit union, and will hold that position at the time he or she is seated on the corporate credit union board if elected, may seek election or re-election to the corporate credit union board;

* * * * *

9. In § 704.19, remove the word “corporate” before the word “CUSO”.

10. In § 704.21, revise paragraph (c) and remove paragraphs (d) and (e) to read as follows:

§704.21 Enterprise risk management.

* * * * *

(a) * * *

(b) * * *

(c) The ERMC must include at least one risk management expert who may report either directly to the board of directors or to the ERMC. The risk management expert's

experience must be commensurate with the size of the corporate credit union and the complexity of its operations.