E-mail: Address to
regcomments@ncua.gov. Include ''[Your name]
Comments on 'Notice of Proposed Rulemaking for Part 704—Corporate Credit Unions' '' in the e-mail subject line.

January 27, 2011

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

Re: Corporate Credit Unions Proposed Rule published November 29, 2010
12 CFR Parts 701, 704, 741.

Dear Ms. Rupp:

On behalf of the Board and management of Corporate One Federal Credit Union, I would like to take this opportunity to comment on the proposed amendments to its rule governing corporate credit unions released on the Federal Register on November 29, 2010.

NCUA issued proposed amendments to its rule governing corporate credit unions (corporates) contained in part 704. The following comments are being submitted in response to the proposed amendments.

Sincerely,

Lee C. Butke
President and CEO

c: Chairman Matz
Vice Chairman Hyland
Board Member Fryzel

**Area: Federal Register/Vol. 75, No. 228/ November 29, 2010; Pages 73013.
Section 704.11(g)(6) -- Corporate Credit Union Service Organizations; Disclosure of Executive and Director Compensation**

Brief Description:
The recently adopted revisions in the September Rulemaking require that each corporate annually prepare, and provide to its members, a document that discloses the compensation of certain employees. 12 CFR 704.19(a). An employee of a corporate may also be an employee of a corporate CUSO and receive additional compensation from the CUSO. The dual employee's compensation disclosure under § 704.19(a) would be incomplete without a disclosure of both sources of compensation, particularly where the employee's corporate has made a loan to, or other investment in, that corporate CUSO and so has some control over the CUSO. Section 704.11(g)(6) requires the disclosure to the corporate, at least quarterly, all the compensation of dual employees of the corporate and the CUSO.

Comments:
The rule as proposed requires the corporate to disclose compensation of dual employees of the corporate and a CUSO. The discussion of the rule suggests that the corporate "has some control" over the CUSO. The rule also does not make clear if the intent is to require that the corporate combine compensation of the corporate and the CUSO in determining the "top" earners for disclosure purposes under 704.19. Specifically, we feel the proposed rule:

1. potentially has or creates the impression that the corporate veil is not present and it implies that the corporate "has some control" over the CUSO;
2. can be voluntarily addressed through adoption by a corporate of "transparency practices," thereby allowing the credit union marketplace to be better informed of compensation in wholly-owned CUSOs of a corporate.

Recommendations:
If the Agency feels that the current compensation disclosure provision already established in the "new" 704.19 is being compromised or circumvented by the use of a dual employee arrangement to hide or avoid complying with the intent of the current rule, then appropriate regulatory action should be taken by the Agency to correct the situation. We see no reason to violate the corporate veil with a reporting requirement.

Area: Federal Register/Vol. 75, No. 228/ November 29, 2010; Pages 73010-73011. Section 704.13 -- Board Responsibilities

Brief Description:
The proposal adds a new subparagraph (c)(8) to § 704.13, *Board Responsibilities,* to require that all board of directors votes be conducted by recorded votes.

Discussion:
The proposed rule noted the following as the reasoning supporting this provision. The minutes reporting the vote must identify the board members, by name, who voted for or against the proposal, as well as, if applicable, the board members who were absent or otherwise failed to vote, and any board members who abstained from voting. The board believes this provision is necessary so as to increase the transparency of corporate board actions.

Also, requiring recorded votes will help to ensure that corporate directors comply with their obligation to recuse themselves from deliberating and voting on items which may involve a conflict of interest. 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. *Id.* Under the bylaw, the director has the obligation to identify issues that may pose a conflict of interest and withdraw from deliberation and determination of these issues.

Comments:
We have reviewed the governance process within our own organization in regard to our use of Roberts Rules of Order and the current standards used in our minute taking. We have also considered our current practices, which require use of a “recusal” action taken formally at the beginning of each board and committee meeting, and its effectiveness at identifying conflicts prior to vote and discussion. Based on our review, we believe the rule simply captures a specific vote outcome and as such is not an effective deterrence to poor governance; and, thus we feel the rule:

1. only helps to identify recusal conflicts after the fact;
2. records voting specifics, but does little to ensure good governance practices, which dictate capturing the discussion and debate around critical decisions and actions;
3. does not correspond to a basic Roberts Rule tenant regarding the voting position of the Chairman, and requires the Chair’s vote to be recorded;
4. does not recognize the need for sound governance best processes to be in place at a corporate, regarding the proper recording of the discussion and or recording formal dissent, it simply requires the recording of a vote.

Conclusion:

We believe recording votes is not as effective as practicing good corporate governance best practices in minute taking; as it is the discussion, debate, and vetting of the issues that is the most important element to a reader of the minutes.

**Area: Federal Register/Vol. 75, No. 228/ November 29, 2010; Pages 73011.
Section 704.15 Audit and Reporting Requirements**

Brief Description:
Both NCUA and natural person credit unions rely upon financial information to evaluate the condition of insured corporate credit unions and to determine the adequacy of regulatory capital. Accurate and reliable measurement of a corporate credit union's assets and earnings has a direct bearing on the determination of the safety and soundness of corporate credit unions.

NCUA currently requires that a corporate credit union's board of directors ensure the preparation of timely and accurate balance sheets, income statements, and internal risk assessments and that systems are audited periodically in accordance with industry standards. 12 CFR 704.4(c). In addition, a corporate credit union's supervisory committee must ensure that: (1) an external audit is performed annually in accordance with generally accepted auditing standards; and (2) the audit report is submitted to the board of directors, to NCUA, and in a summary version, to the members. 12 CFR 704.15(a).

To facilitate early identification of problems in financial management at corporate credit unions, the NCUA Board is proposing to amend § 704.15 to add certain additional auditing, reporting, and supervisory committee requirements. The most significant proposed revisions would require a corporate credit union to:

A. Ensure that its financial reports reflect all material correcting adjustments necessary to conform with generally accepted accounting principles (GAAP) that were identified by the corporate credit union's independent public accountant (IPA).

B. Prepare an annual management report, signed by the chief executive officer and the chief accounting officer or chief financial officer, that contains: (1) A statement of management's responsibility for preparing financial statements, responsibility for establishing and maintaining an adequate internal control structure, responsibility for procedures for financial reporting, and responsibility for complying with laws and regulations relating to safety and soundness designated by NCUA; (2) an assessment of the corporate credit union's compliance with such laws and regulations; and (3) for a corporate with assets of at least $1 billion, an assessment of the effectiveness of the internal control structure and procedures over financial reporting, including identifying the internal control framework used to evaluate such internal control.

C. Ensure that its IPA: (1) reports on a timely basis to the supervisory committee all critical accounting policies, alternative accounting practices discussed with management, and written communications provided to management; (2) retains the working papers related to an audit and, if applicable, the evaluation of the corporate credit union's internal control over financial reporting, for seven years from the report release date; (3) complies with the independence standards and interpretations of the American Institute of Certified Public Accountants (AICPA); (4) has, prior to beginning any services for a corporate, a peer review that meets acceptable audit industry guidelines; (5) notifies NCUA if the IPA ceases being a corporate credit union's independent accountant; and (6) for a corporate with assets of at least $1 billion, reports separately to the supervisory committee on management's assertions concerning the effectiveness of the corporate credit union's internal control structure and procedures for financial reporting.

D. Ensure that its supervisory committee: (1) consists of members who are not employees of the corporate credit union; (2) supervises the IPA; and (3) ensures that audit engagement letters do not contain unsafe and unsound limitation of liability provisions.

Comments:
The extent of the proposed changes, while well intentioned and designed to enhance reporting to members, must also be reviewed with an eye towards risk and to cost benefit. As an example, attestation on internal controls reporting requires significant cost increases related to external auditors and is simply a duplicate of efforts by management, external auditors, and NCUA. An attestation on internal controls is normally focused on financial reporting risks, as we understand the crisis was regarded as a credit and liquidity risk event and not a financial reporting event.

Discussion:
As we reviewed the many components of this proposed rule, we would specifically comment as follows:

1. The corporates accounting and reporting process is already reviewed by the Agency, and many of the practices suggested are a requirement already present today, and areas that are already being reviewed during exams by the NCUA;
2. Requirements presently exist that require a corporate credit union's board of directors to ensure the accurate and timely presentation of the balance sheet and income statement, and that systems to support such reports are adequate;
3. The proposal suggests that corporates adopt standards that typically apply to public companies, while corporates are non-public companies and are already examined.

Recommendations:
We recommend the components of this section be reviewed for duplication and overlap, The attestation of controls requirements has a significant cost and adds little value in terms of the overall risk management of the corporate in terms of the benefit to the members or to the NCUA, and should therefore not be included.

Area: Federal Register/Vol. 75, No. 228/Monday November 29, 2010; Page 73013. Section 704.21, Equitable Distribution of Corporate Credit Union Stabilization Expenses

Brief Description:
Provides for the equitable sharing of TCCUSF expenses among all members of corporate credit unions by establishing procedures for requesting members not insured by the NCUSIF to make voluntary premium payments to the TCCUSF, and establishes a process requiring the corporate conduct a member vote at a special meeting of the membership on whether to expel that non-FICU.

Discussion:
A non-FICU for this proposed rule is defined as and includes a broad universe of affected members of a corporate such as; credit union leagues, chapters, trade associations, CUSOs, certain banks, credit union political action committees, credit union charitable and educational foundations, law firms, insurance agencies, mortgage companies connect to the credit union industry, and non-federally insured state-chartered credit unions.

Comments:
This proposed rule has direct and negative consequences on a corporate credit union, as the unintended outcome is the expulsion from membership (albeit by a required vote) results in a weaker corporate for all members. The expulsion of a member, their capital, and their business relationship is counterproductive to the safety and soundness of the corporate. Corporates serve non-FICUs routinely, and this rule dampens at best their desire to be or remain members, thereby actually hurting a corporate's financial safety and soundness in the short and in the long run. Also, we do not see how the expulsion of a member in good standing, which have existing contacts and contributed capital, can be "expelled" as the contributed capital and contracts are inseparable from membership. Specifically we believe the rule:

1. has the unintended consequence of weakening the corporate system as non-FICUs will not embrace membership;
2. hurts efforts to collaborate and cooperate for the mutual benefit of all the members of a corporate;
3. as written, does not adequately address how "expulsion" affects contributed capital, and existing service contracts;
4. does not adequately address bylaw issues related to the "calling" of the meeting, which action is currently vested with the Board, Supervisory Committee, and with the members;
5. Seems to go against the time-honored principle of "once a member always a member.

Recommendation:
We request this rule not be adopted as we believe the rule creates unintended risks to the corporate system and will be a detriment for non-FICUs from using corporates, thereby actually hurting efforts to collaborate and cooperate for their mutual common good.

**Area: Federal Register/Vol. 75, No. 228/Monday, November 29, 2010; Page 73009.
Section 701.5 Membership Limited to One Corporate Credit Union**

Brief Description:
Prohibitions on joining or belonging to multiple corporate credit unions

Discussion:
As stated in the Section-by-Section Analysis of Proposed Amendments, proposed 701.5 seeks to prevent unhealthy competition among corporates, as NPCUs "rate shopped" and "this rate shopping resulted in increased competition and, in some cases, led to unsafe investment activities." The rule is designed to prevent "unhealthy competition by requiring Federal credit unions to make a decision to commit to membership in one corporate at a time."

Comment(s):
We believe the rule as proposed to be unnecessary as to stopping "unsafe investment activities," and potentially to be a barrier for a healthier credit union system. Specifically, we feel that the proposed rule:

1. is unnecessary as the new investment restrictions in the new rule are more than sufficient to control "unsafe investment activities," and this rule simply limits choice;
2. could possibly have the unintended consequence of driving many credit unions to a single corporate; thereby concentrating systemic risk;
3. would be inappropriate at this time as most all corporates are in the process of "reinventing" themselves, and this rule seems to require that a credit union "commit to membership in one corporate at a time." Requiring that credit unions make a permanent decision at a time when the newly-created corporate is simply a "business plan" and/or a "white paper" at best is not appropriate;
4. needs clarity with regard to the question of membership status with regard to a bridge corporate. For purposes of this rule, is a credit union that was previously a member of a corporate that is now in a bridge status, a member of that bridge? If this rule is passed prior to the Bridge being reconstituted, the answer to this question is critical, and needs to be addressed;
5. does not resolve other critical issues such as how to handle existing contracts and capital accounts. The discussion of the rule simply suggests that a "transfer of their share and deposit accounts," along with a "resignation of their membership is all that is needed. Clarity is needed regarding the wording of this rule to address contracts as well as how to handle the issues surrounding existing capital accounts to make operational this proposed rule.

Recommendations:
We recommend the Agency continue to permit "choice" by credit unions in selecting their business relationships, and we do not support this rule's passage.

**Area: Federal Register/Vol. 75, No. 228/Monday, November 29, 2010; Page 73013.
Section 704.22 Enterprise Risk Management**

Brief Description:
This provision would require corporates to develop and follow an enterprise risk management policy, and a corporate's board of directors would be required to establish an enterprise risk management committee to oversee the corporate's enterprise-wide risk management practices. The committee would be required to include at least one "independent" risk management expert hired from outside the corporate with sufficient experience in identifying, assessing, and managing risk exposures. "Independent" would mean that the expert does not have any family relationships or material business or professional relationships with the corporate that would affect his or her independence as a committee member. In addition, the expert would be required to have post-graduate education, an actuarial, accounting, economics, financial, or legal background; and at least five years' experience in identifying, assessing, and managing risk exposures. Management of a corporate with at least $1 billion in assets would have the additional requirement of assessing and signing off on the effectiveness of the corporate's internal control structure and procedures for financial reporting.

Discussion:
We do agree whole heartily that the development of a risk management culture and the need to secure appropriate risk management expertise is a best practice that should be adopted. We have already adopted and integrated the EWRM practices into our culture and have a working EWRM committee comprised of board, supervisory, and executive management that meets regularly to review our operational and overall risk posture. The board, however is the only authority for the ultimate acceptance of risk. The ALCO, remains focused on credit, interest rate, liquidity, etc. as is presently prescribed in the regulation and in practice. We have a Chief Risk Officer who is the liaison to the EWRM and reports to the Committee. However, we do use many experts (both internal and external) to review and analyze all forms of risk, and take great care to insure all business owners are capable of understanding it is also their responsibility to identify and mange risk.

Comments:
As we feel that EWRM is a best practice, we feel it is important to express our favorable view of the concept that a corporate has a unique responsibility to their members to provide a safe and sound operation. We do feel, however, certain areas of the proposed rule may be improved as follows:

1. An "independent risk management expert" may also be effectively vested in an internal Chief Risk Officer that reports independently to the EWRM, Board, or to the Supervisory Committee. Risk is created in many day-to-day decisions and activities. It is created in strategies chosen, and in new activities and directions. Risk includes many forms, and an outsider is not

capable of seeing risk develop, or grow, whereas an internal risk expert can better serve the organization by being proactive in assessing and managing risk;

2. The designation of the qualifications suggests the Agency envisions a singular person that is capable of meeting the needs of an effective EWRM program; and, our experience tells us that best practices require the use of a combination of experts in many fields. The EWRM Officer needs to manage the coordination of risk assessments, reviews, and establish risk priorities for review. The rule should not seek a singular expert, but encourage that staff assigned to the risk function have the requisite skills and capabilities to be effective in managing and understanding the scope and types of risk evidenced at that corporate;
3. We feel asset size is not a clear indicator of the risks present at the corporate. Rather, the complexities and the exposures should drive the requirement for the implementation of EWRM;
4. The Supervisory Committee and ALCO are currently required by by-law and by regulation at a corporate, and the rule if adopted should clarify the responsibility and accountability that is being suggested that the EWRM is to assume. As the rule is structured, conflict of responsibility is possible. Our EWRM has a charter that establishes the purpose and scope of their duties and their delegated responsibility. The rule is silent on this governance issue.

Recommendations:
Specifically, we feel that the proposed rule, needs to establish complexity and risk as the test and not asset size as the requirement for EWRM, establish that the independent expert may be a staff member with independence of reporting of findings and conclusions, establish less restrictive qualifications and encourage the use of internal and external expertise, recognize that EWRM is a process and a culture to be built and not simply a policy.

**Area: Federal Register/Vol. 75, No. 228/ November 29, 2010; Pages 73014.
Section 704.23- Membership Fees**

Brief Description:
Under the proposal, and as a way to build retained earnings, a corporate credit union would be permitted to charge its members a mandatory one-time or periodic membership fee; the fee would need to be proportional to the member's asset size. The corporate would have the ability to reduce the fee for members that have contributed capital to the corporate, and any reduction would be proportional to the amount of the member's non-depleted contributed capital. The corporate may also terminate the membership of any credit union that fails to pay the fee in full within 60 days of the invoice date. Further, a corporate would be required to give its members at least six months' notice of any new fee, or material change to any existing fee

Comments:
The rule as proposed suggests that the fee may be very significant in nature, such that the member may even suffer expulsion if it is not paid. Membership fees of a de minimis amount are certainly appropriate. As written, the current regulation would not prohibit other types of fees from being charged such as ongoing account fees or other routine fees for services offered. We can only conclude the membership fee being contemplated as permissible in the proposed rule is similar to an assessment by the corporate and may be a significant charge. The notice provisions are adequate for routine fees; however, for more significant charges the proposal may not allow time for forward planning by the credit union member. Also, not all members of a corporate are credit unions and the calculation of assets of such accounts as helped by chapters and foundations do not lend themselves to this methodology. We also see that the issue of expulsion is being contemplated, and the only action needed to be expelled is failure to pay a fee. The proposed rule does not seem to have the same expulsion methodology as required by the FCU Act. Also, as credit unions will potentially have PCC, the act of expulsion brings into issue the ownership and obligations in regard to the return of capital. The proposed rule does not address how to effectively handle contract cancellations of expelled members.

Recommendations:
We support concept of allowing de minimis membership fees on a one time or recurring basis with the following disclosure requirements:

1. We oppose the ability to level significant assessments on credit unions simply disguised as membership fees. We feel if capital is critically needed, then require the corporate to seek what is needed in a formal capital call and to explain why the Board and management feels it is needed.
2. Expulsion is a very serious matter in a credit union as member rights are being impinged upon. This proposal seems to circumvent those same long-standing processes of expulsion as established in the original act. Expulsion issues with corporates are also unique and therefore, we request the Agency provide clear guidance as to the process of expulsion in the areas of capital and contracts. Failure to establish rule can only lend itself to legal disputes.

3. Can be voluntarily addressed through adoption by a corporate of a “transparency promise;” thereby allowing the credit union marketplace to be better informed of compensation in wholly owned CUSOs of a corporate..