



January 5, 2015

Mr. Gerard Poliquin
Secretary to the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: NASCUS Comments on Proposed Rule – Corporate Credit Unions

Dear Mr. Poliquin:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the National Credit Union Administration's (NCUA's) proposed amendments to NCUA Rules and Regulations Part 704, Corporate Credit Unions. NCUA's proposed rulemaking, the fourth for corporate credit unions since 2010, is intended by NCUA to streamline and clarify certain provisions, enact certain technical amendments, enhance readability and provide a measure of regulatory relief to corporate credit unions.² NASCUS agrees the proposed changes improve the corporate credit union regulations of NCUA Part 704. Below, we offer suggestions for further enhancements to the proposal that align with NCUA's above stated goals while maintaining a safe, sound, and robust supervisory framework for the corporate system.

While reviewing our recommendations, we urge NCUA to consider the need to provide the corporate system the flexibility to continue to fulfill its critical role within the credit union movement. Corporate credit unions provide a myriad of essential products and services to natural person credit unions. While a crisis was precipitated by the failure of several corporate credit unions, a majority of corporate credit unions operated prudently under the more expansive authorities in existence at the time. NASCUS is confident that the remaining corporate credit unions, and the management teams that endured the crisis, could operate prudently within a more flexible framework accompanied by a robust supervisory program. In addition, state and federal examiners are better positioned today to administer the supervision of the corporate system, mitigating the need for such prescriptive regulation.

Section 704.2 Definitions

NCUA proposes several changes to the definitions of corporate credit union capital, including consolidating the definitions of "adjusted core capital" and "core capital" into the definition of "Tier 1 capital." NASCUS agrees that the changes as proposed represent an improvement to the regulatory framework. However, NASCUS recommends NCUA reconsider the "structure" of the rule's capital requirements.

¹ NASCUS is the professional association of the nation's state credit union regulatory agencies and the state credit union system.

² 79 FR 65353 (November 4, 2014).

As currently proposed, corporate credit unions would deduct from their calculation of Tier I capital certain amounts of Perpetuated Contributed Capital (PCC).³ If the regulatory goal is to reduce corporate credit union reliance on PCC, mitigating possible cascading effects of a failure, then establishing an explicit retained earnings requirement might be a more streamlined and effective approach.

Section 704.9 Liquidity management

Proposed revisions to existing Part 704.9 would allow corporate credit unions to extend secured borrowing for liquidity purposes from 30 days to 120 days. NCUA also stated it intended to change the borrowing limit to 10% of total capital.⁴

NASCUS agrees that extending the permissible borrowing term from 30 days to 120 days provides needed flexibility for corporate credit unions managing seasonal trends. We encourage NCUA to consider providing even greater flexibility by allowing well managed corporate credit unions to engage in longer borrowing, and non-liquidity borrowing, consistent with prudent business practices and strategies. Pursuant to a more flexible approach, the limitations as proposed might be retained as thresholds above which enhanced written policies and heightened due diligence would be required. This regulatory approach is consistent with NCUA's approach for its proposed fixed asset rule and we support its use in this context as well.⁵

With respect to the proposed amended borrowing limit, we note that there appears to be an inconsistency between the preamble of the proposal and the draft text of the amended rule. On page 65354 of the *Federal Register* notice, the preamble indicates the new limit would be 10% of total capital. However, on page 65358 of the *Federal Register* notice, the draft of Part 704.9(b) reads "10 times its total capital."

Section 704.11 Corporate Credit Union Service Organizations (CUSOs)

NCUA proposes amending the corporate credit union CUSO regulations to incorporate, by reference, the new CUSO reporting requirements of Part 712(d)(4) and (5). NASCUS continues to believe that incorporation by reference often represents an unnecessary regulatory burden that is easily mitigated by inclusion of the specific regulatory requirements in the primary provision. In this case, NCUA should include the incorporated CUSO provisions in their entirety within Part 704.11. By so doing, NCUA could eliminate the need for corporate credit unions to reference a separate section of NCUA's rules for compliance, consistent with the Agency's Regulatory Modernization Initiative.

Section 704.21 Enterprise risk management

Current corporate credit union regulation regarding enterprise risk management contains very specific qualifications for the mandated independent risk management expert, including that the expert have a post-graduate education, an actuarial, economic, accounting, financial, or legal background, and at least five years' experience identifying and mitigating risk. See Part 704.21(c). NCUA proposes eliminating all but the 5 years' experience requirement, stating that the current requirements may be overly prescriptive and acknowledging that the critical

³ 79 FR 65357 (November 4, 2014).

⁴ Id. 65354.

⁵ 79 FR 46727 (August 11, 2014).

qualifications are independence and experience.⁶ NASCUS agrees. Furthermore, we urge NCUA to reconsider the similarly prescriptive requirements of Part 704.14(a)(2) regarding Board qualifications. As we wrote at the time of this provision's enactment, the critical characteristics of an effective and engaged board member derive not from her title, but rather from her experience, her knowledge of critical issues, and her fidelity to her fiduciary duty. NCUA could provide greater flexibility to corporate credit unions, and their natural person credit union members, by eliminating the narrow constraints of the current board qualifications.

Role of the State Regulator

NCUA shares supervisory responsibility for state chartered corporate credit unions with state regulators. Although NCUA has preempted most state regulation with respect to corporate credit unions, state regulators remain the prudential primary regulator of a state chartered corporate. Wherever Part 704 requires submission of a report or request for waiver, the regulation should require submission to both NCUA and the state regulator where applicable.

As noted at the start of this letter, NASCUS supports the proposed changes to Part 704. We commend NCUA and the Office of National Examinations and Supervision (ONES) for its ongoing efforts to refine corporate credit union rules to strike a proper balance between mitigating systemic risk and business flexibility. Even with these proposed improvements, greater flexibility is needed within the corporate system. NASCUS remains willing to work with NCUA and its ONES office to identify additional improvements.

We would be pleased to discuss these comments at NCUA's convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
General Counsel

⁶ 79 FR 65355 (November 4, 2014).