July 21, 2020

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

Re: Corporate Credit Unions; RIN 3133–AF13

Dear Mr. Poliquin:

On behalf of America’s credit unions, I am writing in response to the National Credit Union Administration’s (NCUA) proposed rulemaking regarding corporate credit unions. The Credit Union National Association (CUNA) represents America’s credit unions and their 115 million members.

The proposed rule is intended to update, clarify, and simplify several provisions of part 704, including by:

- 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 and subject to heightened NCUA oversight;
- Expanding the categories of senior staff positions at member credit unions eligible to serve on a corporate credit union’s board;
- Removing the experience and independence requirement for a corporate credit union’s enterprise risk management expert;
- Clarifying the treatment of an investment in a subordinated debt instrument of a natural person (NP) credit union; and
- Codifying the current list of permissible activities for a corporate CUSO.

We are generally supportive of the proposed rule, as we believe it will clarify and simplify several provisions of part 704. However, as discussed below, we have concern with some of the proposed changes.

**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; and is structured as a corporation, limited liability company, or limited partnership.

The NCUA has historically imposed more restrictive standards for corporate CUSOs as they may serve hundreds or even thousands of NP credit unions and pose unique systemic risk. The NCUA 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 NCUA wants to ensure it has a degree of oversight and control of these activities.

The definition of a corporate CUSO is broad and includes no exception for de minimus, noncontrolling equity investments. Accordingly, any corporate credit union equity interest in a CUSO, regardless of how small, is sufficient to designate the CUSO as a corporate CUSO and subject it to additional requirements under part 704.

The NCUA has reconsidered its position that any corporate credit union investment in a CUSO must be subject to enhanced standards under part 704. The NCUA believes that a corporate credit union’s non-controlling investment would not pose the same systemic risks to the credit union system as a controlling investment. Therefore, the NCUA has proposed amending 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 being deemed a corporate CUSO.

We support the proposed change to permit corporate credit unions to make de minimus, noncontrolling investments in NP CUSOs. We agree with the NCUA’s assessment that, 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 credit unions that may result in the origination of new products and services. To compete effectively in today’s technology-based financial service market, credit unions 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 credit unions. CUSOs may provide the means for credit unions to collectively address these challenges and may enable credit unions to collaboratively develop technologies that better serve their members.

Further, we support the NCUA’s determination that by expanding corporate credit union investment authorities, while still maintaining necessary safeguards, corporate credit unions will be in a better position to participate in the development of new products and services. NP CUSOs would also benefit from a larger pool of potential investors, which may enable further research and development during this period of rapid technological growth.
(A) Definitions (§ 704.2)

Corporate CUSO: As discussed above, the proposed rule would amend the definition of corporate CUSO. Under the proposed rule, a CUSO would be designated as a corporate CUSO only if one or more corporate credit unions have a controlling interest. A corporate credit union would be 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% or more of the CUSO’s contributed equity, stock, or membership interests.

We support this proposed change. We believe the proposed threshold of 25% is appropriate.

Further, under the proposal a CUSO would be designated as a corporate CUSO if the aggregate corporate credit union ownership of all corporates investing in the CUSO meets or exceeds 50% of the CUSO’s contributed equity, stock, or membership interests.

We also support this aspect of the proposed definition. We agree with the NCUA 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. Thus, the 50% threshold is reasonable.

(B) Credit Union Service Organizations (§ 704.11)

Under the proposed rule, § 704.11 would be reorganized for clarity, however, the substantive requirements for corporate CUSOs would not be 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 sets forth the requirements for all corporate credit union investments in or lending to CUSOs. The proposed rule, in § 704.11(a), states 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. According to the NCUA, the proposed rule does not amend the current aggregate limitations on investments and lending.

We are concerned that this proposed change may in fact be material with regard to the existing requirements for corporate credit unions in determining compliance with aggregate concentration limits. Specifically, we are concerned that this provision of the proposal could result in reducing access to funding for NP CUSOs as combining loan and investment balances in determining compliance with aggregate limits reduces the ability for corporate credit unions to continue to provide existing levels of funding to NP CUSOs. Therefore, we ask the NCUA to reconsider this proposed change to avoid such a result.
(C) Disclosure of Executive Compensation Section (§ 704.19)

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. The proposal would amend this section to require that employee compensation from either a NP CUSO or a corporate CUSO be reported.

This proposed requirement makes sense and we do not anticipate compliance challenges.

Corporate Credit Union Board Representation

Section 704.14 currently requires that at least a majority of a corporate credit union’s board members serve on the corporate credit union’s board as a representative of a member credit union. In addition, any candidate for a position on the board of a corporate credit union must hold a senior management position (chief executive officer, chief financial officer, chief operating officer, or treasurer/manager) at a member credit union.

The proposed rule would no longer expressly limit the corporate credit union board to the above stated positions and instead would include any person in a senior staff position at a member credit union. The proposed rule would then list the current positions as examples of senior staff positions that are eligible to serve on a corporate credit union board. The proposed rule also would include two new positions, chief information officer and chief risk officer.

We support this proposed change. We agree with the NCUA 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 would the 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, would widen the range of expertise on corporate credit union boards.

Enterprise Risk Management

Section 704.21 requires corporate credit unions to develop and follow an enterprise risk management policy. A corporate credit union must also establish an enterprise risk management committee and include an independent risk management expert on the committee. 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.

The NCUA, however, no longer believes it is necessary for prescriptive experience requirements and for the risk management expert to be independent of the corporate credit union. Therefore, the proposed rule would remove these aspects of the regulation.
We support these proposed changes to the corporate credit union rule. We agree with the NCUA that corporate credit unions should have more discretion in choosing an adequate risk management expert. The proposed changes would provide corporate credit unions flexibility to choose an internal risk management expert instead of engaging an outside consultant. In addition, we agree that a prescriptive five-year experience requirement is unnecessary, as such a timeframe is arbitrary and not necessarily indicative of an individual’s ability to effectively understand how to manage risk.

**Natural Person Credit Union Subordinated Debt Instruments**

The proposed rule would create a new definition for the term NP credit union subordinated debt instrument. It would be defined as any debt instrument issued by a NP credit union that is subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and either the NCUSIF or the insurer of a privately insured credit union. The NCUA intends for this definition to include all instruments issued under the agency’s pending subordinated debt proposal.

The proposal would clarify that corporate credit unions may purchase subordinated debt instruments of NP credit unions under a corporate credit union’s lending authority.

The proposed rule, however, would require 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 NP credit unions.

We support these proposed changes to the corporate credit union rule. We agree with the NCUA that investments in NP credit union subordinated debt instruments should be treated similarly as such instruments may qualify as regulatory capital for the NP credit union. In addition, we support the proposed changes to address possible concern about systemic risk if corporate credit unions own a significant amount of NP credit union-issued subordinated debt.

**Approved Corporate CUSO Activities**

Part 704 does not list the permissible activities for corporate CUSOs, unlike part 712, which does so for NP CUSOs. Instead, § 704.11 generally requires that a corporate CUSO must agree to limit its services to brokerage services, investment advisory services, and other categories of services preapproved by the NCUA and published on the NCUA’s website.

According to the NCUA, to increase transparency and to make it easier for corporate credit unions to determine if an activity is deemed permissible, the proposed rule would replace the permissible activities list from the NCUA website with a new Appendix D to part 704, which would reprint the current list of permissible activities and conditions for corporate CUSO activities. The NCUA is not proposing any amendments to the list at this time. In the future, the NCUA would make any additions or changes to the list by amending Appendix D through a rulemaking.
We question the need to adopt this proposed change. While we appreciate the concept of uniformity within NCUA’s rules and regulations, we are concerned that this proposed change could have the unintended consequence of decreasing flexibility and hampering the ability of the NCUA to quickly consider new activities for corporate CUSOs to engage in. Therefore, we ask the NCUA to refrain from moving the list of permissible activities from the NCUA’s website to an appendix to part 704.

**Additional Regulatory Relief**

As noted above, we appreciate the NCUA pursuing this rulemaking. We are generally supportive of the proposed rule, as we believe it will clarify and simplify several provisions of part 704.

Corporate credit unions are a vital component of the credit union system, providing critical services and functions necessary to the effective and efficient operation of NP credit unions. Therefore, outside of the proposed changes, we encourage the agency to pursue changes aimed at reducing unnecessary regulatory burden on corporate credit unions.

One such possible change relates to corporate credit unions’ ability to invest in non-CUSOs. Since much innovation in the financial services space is outside the credit union system it is important to consider the appropriateness of permitting corporate credit unions to participate in some of these innovate initiatives that could benefit NP credit unions without impacting capital strength. Therefore, we ask the NCUA to examine whether corporate credit unions should be permitted to pursue non-CUSO investments, examining the clear benefits to such authority as well as any potential risks.

**Conclusion**

On behalf of America’s credit unions and their 115 million members, thank you for considering our comments regarding the proposal on corporate credit unions. If you have questions about our comments, please do not hesitate to contact me.

Sincerely,

Luke Martone  
Senior Director of Advocacy & Counsel