



## **NCUA's Proposed Changes to Its Corporate Credit Union Rule, 12 C.F.R. Part 704**

**December 4, 2009**

As anticipated, at its November 19, 2009 meeting, the National Credit Union Administration Board issued for a ninety-day comment period the long-awaited proposed changes to its corporate credit union regulation, 12 C.F.R. Part 704, and related provisions of NCUA rules. Click [here](#) to access the proposal:

The proposal is complex and will result in major changes to the corporate credit union system. Due to the need to get a summary of the proposal out fairly quickly, this CUNA Regulatory Comment Call focuses on and summarizes the key changes from the current corporate credit union regulation. In addition, we are providing a chart prepared by CUNA Attorneys Michael Edwards and Luke Martone to help facilitate comparisons between the proposal and NCUA's current regulation; click [here](#) for the chart.

In terms of developing CUNA's comment letter on this proposal, CUNA is reactivating its Corporate Credit union Task Force, chaired by Terry West, CEO of VyStar Credit Union, Jacksonville, FL. The Task Force—which is comprised of credit unions that are state and federal, large and small— will invite input from a range of stakeholders, including natural person credit unions, leagues, and corporate credit unions.

For more information about this summary, CUNA's Task Force, the development of our comment letter, or related issues, or to share your comments, contact CUNA's Deputy General Counsel and SVP, Mary Dunn, at [mdunn@cuna.com](mailto:mdunn@cuna.com).

We plan to file CUNA's letter by early February so please provide your input on the proposal by January 20, 2010 if possible. The official deadline for comments submitted directly to NCUA is March 9, 2010.

**DESCRIPTION OF THE PROPOSED REVISIONS TO PART 704,**

## CORPORATE CREDIT UNIONS

(Please note: there are a number of new definitions in the proposal, many of which are very significant for understanding the proposal. While key words are explained in this summary, reviewing the definitions section of the proposal may be useful. Also, not all the provisions of the current rule have been changed under the new proposal, so the regulation citations skip any unchanged sections.)

### 1. **Capital Requirements, § 704.3** (generally effective 12 months after the final rule is published in the Federal Register).

- Corporate credit unions would continue to be required to develop and ensure implementation of written short- and long-term capital goals.
- Currently, corporate credit unions have a single, 4% capital requirement. Under the proposal, all corporate credit unions would be required to maintain three capital ratios in order to be adequately capitalized:
  - 4% leverage ratio;
  - Tier 1 risk-based capital ratio of 4% and a
  - Total risk-based capital ratio of 8%.
- The proposed capital requirements follow closely the capital requirements for banks under Basel I standards. The Board said it chose these standards because it feels they are not overly complex and afforded sufficient protection against risk. The Board said it has adapted the standards to the capital needs of corporates.
- The leverage ratio would protect against losses that are other than credit losses. It is comprised of adjusted core capital in relation to the corporate's net assets. "Core capital" (or "Tier 1 Capital") is the corporate's retained earnings and perpetual contributed capital (PCC, which currently is labeled "paid-in capital" (PIC) under the present part 704.) "Adjusted core capital" is core capital that has been modified as directed by the proposal, such as by deducting an amount equal to a portion of the corporate's intangible assets, investments in CUSOs, and new capital the corporate has contributed to another corporate.
  - Effective six years after the rule is final, core capital would have to be comprised of at least 100 basis points of retained earnings in order for the corporate to be adequately capitalized.
  - Effective 10 years after the rule is made final, a corporate would have to have 200 basis points of retained earnings to be adequately capitalized.
- Corporates would also have "supplementary capital" composed of NCAs, a portion of the allowance for loan and lease losses, and 45% of certain net unrealized gains on some equity securities. Supplementary capital would be count in "total capital" for risk-based capital ratio purposes and is also designated as "Tier 2 capital."

- The two risk-based capital ratios are designed to address credit risk in corporates' investments and other activities.
- The “Tier 1 risk-based capital ratio” is adjusted core capital in relation to the corporate’s net risk-weighted assets.
- The “total risk-based capital ratio” is total capital (which is adjusted core capital and supplementary capital, minus equity investments not already included when computing the adjusted core capital) divided by moving daily net risk-weighted assets.
- As mentioned above, core capital would include retained earnings and PCC. Total capital for risk based capital ratio purposes would also include NCAs (currently member capital accounts) and other types of supplementary capital.
- PCC and NCAs are constructed capital that could come from members or nonmembers.
- The terms and conditions for PCC and NCA would be disclosed to members at account opening or the creation of the instrument, and in the case of NCAs, at least annually thereafter.
- NCUA would also be empowered to set individual capital requirements for a corporate that is receiving supervisory attention, has or is expected to have losses resulting in capital adequacy; the corporate has a high degree of exposure to risk; has poor liquidity, is growing rapidly, has a record of losses that exceeds those of similarly situated corporates, and for other reasons.
- Among the definitions the proposal provides is “available to cover losses.” NCUA Letter 09-CU-10 indicates there is a regulatory mandate in Part 704 that precludes capital investors from sharing in any recoveries on legacy assets at corporates. However, Part 704 does not include specific language to that effect. The proposed definition of this phrase would spell out that contributed capital must be available to cover losses at a corporate that exceed its retained earnings. “To the extent that any contributed capital funds are used to cover losses, the corporate credit union may not restore or replenish the affected capital accounts....” This language would clearly preclude capital investors from sharing in the recovery of capital if losses valued at the time a capital account is depleted turn out to be lower in the future than estimated.
- Impact of the proposed capital requirements: NCUA states that under the proposed capital requirements, “only two of the 28 corporates would be considered well capitalized or adequately capitalized today, while 16 of 28...would be considered critically undercapitalized (the lowest net worth category). Only two of the corporates would meet the proposed minimum 4% leverage ratio requirements.
- As NCUA states, “the 18 retail corporates that have zero retained earnings will face a significant challenge in meeting the 4% lever ratio requirement” and at the end of year six, they would have to have retained earnings of 1% of their net assets. “This will require earnings in the range of 0.15 --0.2% of net assets, depending on asset growth. This will require adjustments to business plans and will limit the ability of these corporates to grow.”

- NCUA's explanation provides four scenarios on how the capital requirements will impact corporates, using different assumptions (see page 103 of the proposal). These scenarios could be useful for credit unions to assess the application of NCUA's capital requirements. The explanation also discussed the effect that these proposed rules would have hypothetically had on the recent losses at WesCorp and U.S. Central had these proposed rules been in place in July 2007, starting on page 105.

## **2. Prompt Corrective Action, § 704.4** (generally effective 12 months after the final rule is published)

- The current Part 704 does not impose broad-based prompt corrective action (PCA) requirements on corporate credit unions, unlike natural person credit unions.
- The proposal would add specific PCA provisions that would apply to corporate credit unions that are not adequately capitalized.
- Like PCA for natural person credit unions, the proposal would establish capital categories and corresponding actions that would apply to credits in each category.
- The categories are as follows:
  - Well capitalized – at least: 10% total risk based capital, 6% Tier 1 and 5% leverage ratios.
  - Adequately capitalized – as indicated on page 2 of this summary.
  - Undercapitalized – less than: 8% total risk based capital ratio, less than 4% Tier 1 and leverage ratios.
  - Significantly undercapitalized – less than: 6% total risk based capital ratio, 3% Tier 1 or leverage ratios.
  - Critically undercapitalized: less than: 4% total risk-based capital, 2% Tier 1 risk-based capital and leverage ratios.
- NCUA may reclassify a corporate's PCA category for an unsafe or unsound condition or practice.
- The proposal would allow NCUA to modify any of the percentages in the categories above "for good cause."
- Corporate credit unions that are less than adequately capitalized must file a written capital restoration plan with NCUA within 45 days that outlines how it will rebuild its capital.
- Such corporate CUs would also be subject to mandatory supervisory actions such as restrictions on capital distributions and growth of assets; and prior approval for expansions. Significantly and critically undercapitalized corporates would be subject to other, additional sanctions such as restrictions on compensation to senior executives. Critically undercapitalized corporate credit unions are subject to further restrictions such as limits on business activities and on payments on subordinated debt.
- Undercapitalized corporate CUs would also be subject to discretionary sanctions. These include monitoring from NCUA, asset growth restrictions, and prior NCUA approval for acquisitions, branching, or new lines of

business. NCUA could also require recapitalization; additional contributed capital; a higher rate of earnings retention; restrict transactions with affiliates; restrict interest rates; order a new election; dismiss directors or senior executive officers, require qualified senior officers to be hired, subject to NCUA's approval; order divestiture; and/or conserve or liquidate the corporate if there is no reasonable prospect the CU will become adequately capitalized.

- The PCA requirements will be phased in over three years: years one to three after the final rule corporates must comply with the current 4% capital level, the risk-based capital ratios, and an "interim" leverage ratio; after three years the new leverage ratio takes effect.

### **3. Investments, § 704.5** (effective upon publication of the final rule)

- Currently, corporate CUs must follow their investment policies, and these policies must address appropriate tests for evaluating investments and reasonable concentration limits for limited liquidity investments in relation to capital.
- The proposal also retains current investment authority for securities, deposits, and obligations permitted under the Federal Credit Union Act; deposits in, the sale of federal funds to, and debt obligations of corporate credit unions, national and state banks, trust companies, and mutual savings banks; corporate credit union service organizations; marketable debt obligations of U.S. corporations; and domestically-issued asset backed securities.
- Authority for corporates to engage in securities lending and invest in investment companies registered with the SEC would also be retained. A corporate credit union could invest in a collective investment fund maintained by a national bank or mutual savings bank if the fund only makes investments that are permissible for the corporate.
- The proposal would limit CCU investments in "subordinated securities" (i.e. ABS tranches other than senior or super-senior) to the lower of 400% of capital or 20% of assets in the aggregate, and the lower of 100% of capital or 5% of assets in any single investment sector.
- The proposal further retains authority for corporates to enter into repurchase agreements.
- Corporates would continue to be prohibited from:
  - Generally purchasing or selling derivatives;
  - Engaging in adjusted trading or short sales;
  - Purchasing mortgage serving rights, small business related securities, residual interests in collateralized mortgage obligations; residual interests in real estate mortgage investment conduits or residual interests in asset-backed securities; and
  - Purchasing stripped mortgage-backed securities, although investment in exchangeable collateralized mortgage obligations would be permitted under conditions stated in the proposal;

- Two new prohibitions, the purchase of net interest margin securities (NIMs) and collateralized debt obligations (CDOs) other than senior tranches of Re-REMICs, would be added.
- Current investments would be grandfathered, meaning corporate credit unions would generally not be required to divest investments, unless other provisions of the proposal required this action.
- Part 704 currently allows corporates that meet certain requirements to qualify for expanded investment authority. The proposal would eliminate the authority for corporates to invest in securities rated BBB or equivalent and would add additional NEV modeling requirements and capital requirements of 6% to qualify for long-term investments rated A- or higher and short term-investments rated A-2 or higher.

**4. Credit Risk Management, § 704.6** (effective upon publication of the final rule)

- A corporate would have to follow its credit risk management policy, which must address the approval process associated with credit limits; due diligence; maximum credit limits with each obligor and transaction counterparty; and concentrations of credit risk.
- In general, the aggregate of all investments in a single obligor would be 25% of capital or \$5 million, whichever is greater.
- A corporate must establish sector limits that do not exceed the following:
  - Residential mortgage-backed securities (MBS): the lower of 500% of capital or 25% of assets
  - Commercial MBS: the lower of 500% of capital or 25% of assets
  - FFELP student loan asset-backed securities (ABS): the lower of 1000% of capital or 25% of assets
  - Private student loan ABS: the lower of 500% of capital or 25% of assets
  - Credit card ABS: the lower of 500% of capital or 25% of assets
  - All other ABS: the lower of 500% of capital or 25% of assets
  - Debt obligations of commercial corporations: the lower of 1000% of capital or 50% of assets
  - Registered investment companies: the lower of 1000% of capital or 50% of assets (but the company's investments are aggregated with the CCU's investments for purposes of the other sector concentration limits)
  - Holdings of all other investments limited to 100% of capital or 5% of assets
- Exemptions for Both Concentration Limits: Fixed assets, loans and loan participation interests, investments in CUSOs, investments guaranteed or issued by the U.S. Government or insured or guaranteed by the NCUSIF or the FDIC are exempt from both the individual obligor and sectoral concentration limits.

- Exclusions from Sectoral Concentration Limits: Investments in other federally insured credit unions, deposit in other depository institutions and investment repurchase agreements are exempt from the sectoral concentration limits.
- All investments, other than in another depository institution, must have an applicable credit rating from at least one nationally recognized statistical rating organization (NRSRO). At least 90% of all investments by book value must have a rating by at least two NRSROs.
- At the time of purchase, long-term investments must be rated at least AA-.
- At least annually, a written evaluation of each credit limit with each obligor or counterparty must be prepared and approved by the corporate's board or appropriate corporate CU committee. At least monthly, the board or committee must receive an investment watch list.

**5. Asset and Liability Management, § 704.8** (effective upon publication of the final rule)

- The corporate must have a written asset and liability management policy which addresses the maximum allowable percentage decline in net economic value (NEV); the minimum allowable NEV ratio; policy limits and specific test parameters for required NEV analysis; modeling of indexes used as references in financial instrument coupon formulas; tests that will be used to estimate the impact of investments on the percentage in NEV compared to the base case NEV analysis.
- The corporate would be required to have an asset and liability management committee to review ALM reports at least monthly.
- The proposal would establish a maximum limit of two years on the weighted average life of a corporate's aggregate assets and would require monthly testing for compliance.
- The proposal would require a cash flow mismatch sensitivity analysis to evaluate the risk a corporate's balance sheet. The test will require measuring at least quarterly the impact of spread widening of assets and liabilities by 300 basis points on the corporate's NEV and NEV ratio; the corporate will need to limit risk exposures to avoid excessive decline.
- The proposal would also require a cash flow mismatch sensitivity analysis that assumes a 50% slowdown in prepayment speeds and would direct the corporate to take steps to limit its risk exposures so that its NEV and NEV ratio do not fall below certain levels.
- A corporate would also be required to perform net interest income modeling at least quarterly to project earnings in multiple interest rate environments extended over at least 2 years.
- The proposal retains current provisions that address regulatory violations when there is a decline in NEV and the corporate cannot adjust its balance sheet within 10 calendar days to come into compliance. It includes a new provision that a corporate's net worth category may be downgraded for an extended decline in its NEV.

- Thirty months after publication of the final rule, a corporate would be prohibited from accepting from a member or other entity any investment, including shares, loans, PCC, or NCAs, if as a result of the investment, the aggregate of investments from that member or entity in the corporate exceeds 10% of the corporate's net assets.

**6. Liquidity Management, § 704.9** (effective upon publication of the final rule)

- The proposal retains provisions about general liquidity management, such as regular monitoring and demonstrating accessibility to sources of internal and external liquidity and keeping a sufficient amount of cash and cash equivalents, but adds the requirement that corporate's consider payment system obligations when determining a sufficient amount.
- It provides that a corporate credit union may borrow up to the *lower* of 10 times capital or 50% of capital and shares, minus shares created by the use of member reserve repurchase agreements. The current rule allows borrowing up to the *greater* of those two numbers.
- All corporates may continue to borrow on a secured basis for liquidity purposes. Only a corporate with core capital of more than 5% may borrow on a secured basis for nonliquidity purposes.
- The outstanding amount of secured borrowing for nonliquidity purposes may not exceed an amount equal to the difference between core capital and 5% of net assets. CLF borrowers and borrowed funds created by the use of member reserve repurchase agreements are excluded from this limit.

**7. Corporate Credit Union Service Organizations (CUSOs), § 704.11**  
(effective upon publication of the final rule)

- The proposed rule would retain current provisions on Corporate CU CUSOs.
- It would replace the current list of prohibited activities with a section on Permissible Activities and a corporate CUSO would have to agree to limit its activities to only those included in this section.
- Such permissible activities are: brokerage services, investment advisory services and other categories of services approved in writing by NCUA and published on NCUA's website.

**8. Corporate Governance, §§ 704.14, 704.19, 704.20** (provisions are generally effective upon publication, except as noted below)

- At least a majority of directors of every corporate credit union, including the chair, must serve on the board as representatives of natural person credit unions. (This would be effective 36 months after publication of the final rule.)
- The proposal would require that corporate directors be comprised only of individuals who currently hold the position at their credit union of Chief Executive Officer, Chief Financial Officer, or Chief Operating Officer (effective four months after publication of the final rule).

- It also adds that no individual may be elected to the board if at the end of his or her term he or she would have served on the board for more than six consecutive years.
- The proposal would retain current provisions regarding service on a corporate board. These include:
  - No member may have more than one representative on the corporate's board at one time;
  - No individual may serve on the corporate's board if any member would have more than one representative on the board;
  - The chair of the board may not serve at the same time as an officer, director or employee of a credit union trade association;
- Section 12 C.F.R. § 704.19 that currently addresses wholesale corporates would be revised to instead cover disclosure of executive and director compensation. (See below under 'Miscellaneous' regarding the treatment of wholesale corporates.)
- This section would require corporates to annually prepare and maintain a disclosure of the compensation in dollar terms of each senior executive officer and director.
- Any member would be authorized to obtain the most current disclosure and all disclosures of the prior three years upon request. The request must be honored within 5 business days. The corporate would be able to include additional information for context, such as salary surveys.
- In a merger, corporates would have to disclose material increases in compensation, i.e., any increase of more than 15% or \$10,000 whichever is greater, related to the merger for any senior executive officer or director of the merging corporate. Also, merger plans submitted to NCUA must describe the compensation arrangement, and federal corporate credit unions must describe the compensation arrangement in material provided to the members of the merging corporate before they vote for the merger.
- The proposal would prohibit golden parachute payments at troubled corporates.
- More specifically, the proposal would preclude any payment or agreement by the corporate to make such payments in the nature of compensation for the benefit of current or former officials at the corporate ("institution-affiliated parties" under 12 U.S.C. § 1786(r) of the Federal Credit Union Act) when the corporate is undercapitalized, insolvent, under conservatorship or liquidation, or is terminating its National Credit Union Share Insurance Fund coverage.
- The proposal would prohibit certain indemnification provisions, regardless of the financial condition of the corporate.

**9. Miscellaneous** (effective upon publication of the final rule)

- Section 704.12, Permissible Services, would not be changed and corporate credit unions would continue to be authorized to engage in correspondent services, credit and investment services, electronic financial services, liquidity services, asset and liability management services, payment services, trustee or custodial services, and may sell or lease excess capacity. The procedure for adding services that are not preapproved has also been retained.
- Section 704.19, the provision regarding a wholesale corporate, i.e., U.S. Central, would be deleted, thereby removing the legal authority for wholesale corporate credit unions as well as their ability to have lower retained earnings than any other corporates.

**QUESTIONS TO CONSIDER REGARDING THE PROPOSED RULE**

**Capital**

1. What is your opinion of the proposal's Basel I risk-based capital and prompt corrective action (PCA) regime found in proposed section 704.3 and part 704 appendix C, including treatment of off-balance sheet items? (Federal Register pgs. 65221-227, 65264-270)
- 
- 

2. Are the proposed leverage and risk-based capital ratios appropriate? (pgs. 65221-227, 65264-270)
- 
- 

3. What is your opinion of the new CCU capital account definitions (perpetual contributed capital (PCC) and non perpetual capital (NCA)) in section 704.2? (pgs. 65260-264)
- 
-

4. What about the proposed definition of when PCC and NCA are “available to cover losses” found in section 704.2? (pgs. 65260-264)

---

---

5. Are NCUA’s proposed components of “core capital” and “supplementary capital” in section 704.2 reasonable? (pgs. 65260-264)

---

---

6. With respect to the “supplementary capital” definition, should CCUs be permitted to count more than the proposed 45% of net unrealized gains on available-for-sale equity securities (e.g., in CUSOs) as supplementary capital since they are not subject to income taxation (unlike banks)? If so, what percentage? (pgs. 65221, 65260-266)

---

---

7. Is the proposed section 704.3 deduction from capital for capital accounts that a CCU holds in another CCU reasonable, and should there be an exception for de minimis member capital contributions between corporates (if so, how should that exception be defined)? (pgs. 65222, 65260-255)

---

---

8. Is the proposed rule’s phase-in for CCU retained earnings minimum levels found in the section 704.2 definition of “adjusted core capital” (which effectively requires a CCU to have at least 100 bp of retained earnings after 6 years, and at least 200 bp after 10 years, in order to be adequately capitalized) reasonable and likely to encourage corporates to improve their capital base without encouraging overly aggressive strategies to accumulate retained earnings or solicit high cost capital? (pgs. 65222-223, 65260)

---

---

9. Are the proposed retained earnings requirements (at least 100 bp after 6 years, and at least 200 bp after 10 years, to be adequately capitalized) appropriate? (pgs. 65222-223, 65260)

---

---

10. Should a CCU that has not achieved 45 bp of retained earnings after 3 years be required to submit a Retained Earnings Accumulation Plan (REAP) to NCUA, as proposed by section 704.3 (even though the requirement that a CCU have at least 100 bp of retained earnings does not take effect until 6 years after final rule publication)? (pgs. 65223, 65265)

---

---

11. The proposed rule preamble states that if a corporate is subject to a REAP and fails to meet any of the established retained earnings milestones, NCUA would take “decisive action” under PCA and would have discretion to, among other things, replace the CCU’s board and senior management, or conserve the CCU, liquidate the CCU, or require a supervisory merger. Would such a policy be appropriate? If so, should any of these types of supervisory measures be mandatory for a corporate that fails to meet its REAP requirements? (pgs. 65223, 65264)

---

---

12. Are the NCUA analyses of CCU’s current capital positions, CCU earning potential under the new investment and ALM rules, and projected CCU capital positions, found on pages 98 through 105 of the proposed rule’s preamble, reasonable and appropriate? (pgs. 65245-248)

---

---

13. “In addition to general comments on the proposed capital phase-in, NCUA invites individual corporates to provide additional modeling information related to the effect of the proposed phase-in period on that corporate.” (p. 65248)

---

---

14. What is your opinion of NCUA’s analysis, found on pages 105 through 107, of the proposed rule’s hypothetical effect on WesCorp and U.S. Central (had the proposed rule been in place since at least June 2007)? (pgs. 65248-249)

---

---

**Investments**

1. What is your opinion of the likely combined effects of the proposed CCU investment (in section 704.5) and asset-liability management authorities (in section 704.8)? (pgs. 65237, 65270-271, 65272-273)

---

---

2. Is the proposed rule’s prohibition in section 704.5 on CCUs investing in CDOs (other than senior tranches of Re-REMICs) and NIMs reasonable? (pgs. 65237, 65258, 65271)

---

---

3. Are the proposed rule’s limits in section 704.6 on CCU investments in “subordinated securities” (i.e. ABS tranches other than senior or super-senior, which would be limited to the lower of 400% of capital or 20% of assets in the aggregate, and the lower of 100 percent of capital or 5 percent of assets in any single investment sector) reasonable? (pgs. 65240, 65272)

---

---

4. Is the provision of the proposed rule, section 704.5, permitting CCUs to invest in national bank and mutual thrift collective investment funds (that make CCU-permissible investments) as well as SEC-registered investment companies appropriate? Should other types of investment funds be permitted? (pgs. 65238, 65270)

---

---

5. Is the proposed section 704.6 requirement that at least 90% of a CCU's investment portfolio be rated by at least two nationally-recognized statistical ratings organizations (such as Moody's, Fitch, and S&P) reasonable? (pgs. 65240, 65271-272)

---

---

6. Is it reasonable to require CCUs to use the lowest available ratings? (pgs. 65240, 65272)

---

---

7. Section 704.6 of the proposed rule would establish aggregate CCU investment limits by sector of the economy (e.g., residential MBS; commercial MBS; FFELP student loan ABS; private student loan ABS; credit card ABS; debt obligations of commercial corporations; registered investment companies). Is it reasonable to establish sectoral limits? Should there be additional concentration sublimits in any of these sectors (such as further limits on corporate debt obligations by industry of the obligor)? (pgs. 65239, 65271-272)

---

---

8. Are the below proposed revisions to the CCU Expanded Investment Authorities in section 704 appendix B appropriate? (pgs. 65237-238, 65282-283)
- a. Adds additional net-economic value (NEV) modeling requirements for CCUs to qualify for “Base-Plus” investment authority
  - b. Adds the requirement that a CCU have an at least 6% leverage ratio to qualify for Part I expanded authority and limit a CCU’s aggregate Part I investments to the lower of 500% of capital or 25% of assets (and reduces the maximum dollar value of a Part I CCU’s outstanding repo and securities lending agreements to 200% of capital);
  - c. Repeals the Part II expanded authorities (authorizing investments in debt instruments with credit ratings as low as BBB); and
  - d. Modifies the existing Part IV expanded authorities “to ensure that corporates do not use derivatives to take on additional risk . . .”
- 
- 

9. The proposed rule amends 12 C.F.R. § 704.11 to specify that permissible corporate CUSO activities include: brokerage services, investment advisory services, and other categories of services approved by NCUA in writing and published on [www.ncua.gov](http://www.ncua.gov). Should the rule specify any additional categories of pre-approved corporate CUSO activities? (pgs. 65249-250, 65274)
- 
- 

10. Section 704.11 of the proposed rule does not change a CCU’s aggregate limitation on investments in corporate CUSOs (generally limited to 15% of capital) or aggregate corporate CUSO loans and investments combined (generally limited to 30% of capital). According to the preamble of the proposed rule: “data available to NCUA indicates that the level of corporate investment in CUSOs is significantly less than these . . . limits would allow, based on November 2008 corporate capital levels.” Should the existing corporate CUSO investment and loan limits be reduced? (pgs. 65250, 65274)
- 
-

11. Proposed section 704.11 would also require corporate CUSO to permits auditors, CCU directors, and NCUA to have access to the CUSO's "personnel, facilities, equipment . . . and any other documentation that the auditor, directors, or NCUA deem pertinent," as well as the CUSOs books and records. Is it necessary and appropriate to require corporate CUSOs to agree to these conditions? (pgs. 65250, 65274)

---

---

**Asset & Liability Management** NPR § 704.8

1. In addition to current required testing, the NPR will require CCUs to at least quarterly assess cash flow mismatch sensitivity by conducting two different average-life (AL) net economic value (NEV) tests. These tests will measure the effect of credit spread widening to a CCU's NEV; whereas, the current NEV tests address changes in interest rates. Will these new tests be enough to reduce the level of risk in CCU balance sheets, or are additional measurement tools necessary? (pgs. 65272-273)

---

---

2. The proposed rule establishes AL NEV limits that corporates must comply with. Are these proposed limits appropriate? Is the use of limits in this area most appropriate? (pgs. 65272-273)

---

---

3. The NPR will limit the weighted average life of a CCU's assets to two years, and require monthly testing for compliance. In the NPR, the NCUA Board states that the two year limit "should give corporate credit unions adequate flexibility to manage their business while maintaining a risk profile consistent with the corporate mission." Do you agree that a two year limit will provide sufficient flexibility? Would three years be more appropriate? Or do you oppose defining a fixed limit? (p. 65273)

---

---

**Liquidity Management** NPR § 704.9

1. The NPR adds the requirement that CCUs “keep a sufficient amount of cash and cash equivalents on hand to support their payment system obligations.” Should the Board include guidelines for determining what constitutes a “sufficient amount”? Are there any reasons to keep this requirement out of the regulations? (p. 65273)
- 
- 

2. The current rule permits CCU borrowing up to the *greater* of ten times capital or 50% of capital and shares. The NPR amends the rule to instead permit borrowing up to the *lesser* of 10 times capital or 50% of capital and shares. Is this change likely to have a material impact on CCU borrowing? Is there a need to change this provision? (p. 65273)
- 
- 

3. Under the NPR, CCU may borrow on a secured basis for liquidity purposes, but the maturity of the borrowing is limited to 30 days. Is 30 days an appropriate length of time? (p. 65273-274)
- 
- 

4. The NPR allows only well capitalized CCUs to use secured borrowing for nonliquidity purposes, and limits the amount of such borrowing to the difference between the CCU’s core capital and 5% of its moving DANA. Are there any reasons why even well capitalized CCUs should be prohibited from using secured borrowing for nonliquidity purposes? Conversely, should such authority be expanded to adequately capitalized CCUs? (pgs. 65273-274)
- 
-

**Corporate Governance** NPR §§ 704.14, 704.19, 704.20

1. The standard FCU bylaws state that FCUs will establish “a policy to address training for newly elected and incumbent directors and volunteer officials in areas such as ethics and fiduciary responsibility, regulatory compliance, and accounting . . . .” Since CCUs generally are more sophisticated than natural person credit unions, should the standard CCU bylaws be amended to mandate a similar policy? (p. 65251)
- 
- 

2. The NPR limits potential CCU directors to individuals who currently hold the position of CEO, CFO, or COO at a member institution. Will this restriction achieve its objective of ensuring that all future directors possess the requisite knowledge to serve on the board? Or might it unduly exclude individuals who do not hold such positions but have expertise in areas relevant to managing a CCU? Are there any alternative means of ensuring minimum knowledge/experience? (p. 65274)
- 
- 

3. The NPR will require within 36 months of a final rule that a majority of directors—including the chair—be representatives of member natural person credit unions. Are there any unintended consequences that might result from such a requirement? Is 36 months an appropriate length of time for CCUs to comply? (pgs. 65274-275)
- 
-

4. Under the NPR, CCUs must disclose annually, or upon request, the compensation of each senior executive officer and director. The NPR notes the NCUA Board's reasoning for requiring such disclosure:

The basic question presented is whether an increased level of transparency would strengthen cooperative principles and accountability, and if so, whether those benefits outweigh the damage to individual privacy interests of the affected executives. In the corporate context particularly, the Board believes this balance can and should be struck in favor of increased transparency and disclosure to members.

Do you agree with the Board's conclusion that such disclosure is necessary?  
(p. 65275)

---

---

5. The NPR will require CCUs to prepare and maintain the annual disclosure of executive and director compensation. CCUs will be permitted to choose the disclosure format they consider most appropriate, for example, through the use of a narrative, table, or chart. Should the rule specify the format of the disclosure, such as, the identification of specific categories that must be used (e.g., direct salary, bonus, and deferred compensation)? (p. 65275)

---

---

6. The NPR will require disclosure of material increases in compensation related to mergers. Should this provision be expanded to include "reverse mergers," where a larger credit union merges in a smaller credit union and the officers and directors of the merging entity assume control? (p. 65275)

---

---

**Any other concerns or questions?**

---

---