

July 27, 2020

Mr. Gerald Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Proposed Rule – 12 CFR Part 704 Corporate Credit Unions; RIN 3133-AF13

Dear Mr. Poliquin:

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the proposed changes to 12 CFR Part 704 Rules and Regulations (Regulation 704) for corporate credit unions.

### **Permitting Corporate Credit Unions to Make Minimal Investments 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 under state law. The requirements for corporate CUSOs are more restrictive than the requirements for natural person (NP) CUSOs as the Board has been concerned that the corporate CUSO may be able to pose unique systemic risk to the credit union system.

The proposed rule would permit a corporate credit union to make a de minimis non-controlling investment in a NP CUSO without the CUSO being deemed a corporate CUSO. 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 percent or more of the CUSO's contributed equity, stock or membership interests. A CUSO would also be designated 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.

*HCUA fully supports this proposed change. This creates an opportunity to attract additional capital to NP CUSOs while not subjecting a NP CUSO to regulations under both the NP and Corporate CUSO rules. 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.*

### **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.

*Again, HCUA supports this proposed change. We believe that it is important to enable corporate credit union boards to effectively govern the corporates they serve. Broadening the list of senior credit union executives who may serve on a corporate credit union board will enhance the board's leadership and enable the corporate's board to acquire the expertise necessary to more effectively govern the corporate credit union.*

### **Remove the experience and independence requirement for a corporate credit union's enterprise risk management expert.**

Section 704.21 currently requires corporate credit unions to include an independent risk management expert (IRME) as a part of the enterprise risk management committee (ERMC). The existing rule includes prescriptive requirements regarding both experience and independence for the IRME. The proposed rule removes the prescriptive experience and independence requirements for the risk management expert and replaces it with a more subjective requirement that the risk management expert must have a level of experience commensurate with the size and complexity of its operations.

*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 the currently tenure experience requirement is unnecessary.*

### **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.*

### **Codification of the List of Permissible Activities for a Corporate CUSO.**

Part 704 does not list the permissible activities for corporate CUSOs in the regulatory text part of 704 of the Code of Federal Regulations and instead requires that 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. The proposed rule would replace the permissible activities list from the NCUA Website with a new appendix to Part 704. The proposed rule would include a new Appendix D, which would reprint the current list of permissible activities for corporate CUSO activities. In the future, the Board would make any additions or changes to the list by amending Appendix D through a rulemaking.

*HCUA asks the NCUA to refrain from moving the list of permissible activities from the NCUA's website to an appendix to part 704. CUSOs are faced with threats from rapid innovation and the entry of increasing numbers of fintech firms into the marketplace. The existing rule provides the flexibility needed for both corporate CUSOs and the NCUA to ensure activities may be given consideration for inclusion in the list of permissible activities. Moving the permissible activities from the NCUA's Website to an appendix to Part 704 and making future changes subject to rulemaking would increase regulatory burden and make it more difficult for corporate CUSOs to obtain timely approval for requests for additions to the list of permissible activities.*

#### **Clarify the definition of a collateralized debt obligation.**

Corporate credit unions are prohibited from purchasing overly complex or leveraged investments, including collateralized debt obligations (commonly referred to as CDOs). The NCUA is aware of confusion among industry participants concerning whether collateralized loans meet the definition and are therefore prohibited. The proposed rule would change the defined term to "collateralized loan or debt obligation".

*We do not oppose the proposed changes; however, we suggest clarification of terminology used.*

#### **Simplify the requirement for net interest income modeling.**

Under current rules, 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. NII modeling must, at a minimum, be performed quarterly, including once on the last day of the calendar quarter. The proposed rule would reduce the required time frame for NII modeling from two years to one year.

*We do not oppose the proposed change. We believe a more meaningful approach to reducing the regulatory burden would be to instead increase the weighted average life limit beyond the current two-year limit. This would allow corporate credit unions to better meet members' needs for longer-term loans and effectively manage NII through varying economic and interest rate scenarios.*

#### **Responses to specific questions:**

**Would a one-year window for NII modeling provide credit unions with a more accurate window to project earnings? Should the Board consider other timeframes to balance the accuracy of projections with the need for corporate credit unions to understand its interest rate risk?**

*Reducing the required NII modeling from two years to one year will not increase the accuracy of the NII forecast. The same inputs and assumptions will still have to be incorporated into the NII model. In addition, there will be no cost savings from the reduction in timeframe. We believe that the two-year timeframe was appropriate and note that a change to a one-year timeframe offers no regulatory and/or expense relief.*

#### **Conclusion.**

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. As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive style with a large, stylized initial 'B'.

Brad Douglas  
President/CEO