



THE ASSOCIATION of
CORPORATE CREDIT UNIONS

www.theaccu.org

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

Via e-mail: regcomments@ncua.gov

Dear Ms. Rupp:

The Association of Corporate Credit Unions (“ACCU”) appreciates the opportunity to respond to the National Credit Union Administration’s (“NCUA”) Advanced Notice of Proposed Rulemaking (“ANPR”). The ANPR requests input on whether it should modify its Supervisory Committee Audit Rules to require credit unions and corporate credit unions (corporates) to obtain an “attestation on internal controls” to accompany annual audits; to identify and impose assessment and attestation standards; to impose minimum qualifications for Supervisory Committee members; and to identify a standard for State-licensed compensated auditors.

By way of background, ACCU is the primary trade association for 29 of the country’s corporate credit unions located around the country. Corporates provide liquidity, investment products, payments settlement and other financial services to the nation’s federal and state-chartered credit unions.

The ACCU is firmly against the requirement of an “attestation on internal controls.” The requirement to obtain an attestation on internal controls is a requirement designed to “watch over” publicly held companies and to protect the investing public. Corporates are not publicly-held financial institutions and do not have an investing public. The harms to investors and the public’s confidence in the markets do not exist in the credit union movement. We fail to see a compelling rationale for this requirement.

The ACCU sets forth its answers to the specific questions asked in the ANPR below. Our focus is how the proposed attestation requirements would impact corporate credit unions.

Responses to Questions:

1. Should part 715 require, in addition to a financial statement audit, an “attestation on internal controls” over financial reporting above a certain minimum asset size threshold? Explain. Why or why not.

No. An attestation on internal controls is a requirement applicable to publicly held companies and created in response to the greed, corruption, and waste that marred a number of corporations—publicly held corporations. Credit Unions and corporate credit unions alike are not publicly held companies and there is no rational basis for requiring either type of institution to comply with requirements that are not specifically tailored to addressing an identifiable harm.

Obtaining an attestation on internal controls would be redundant as credit unions are already heavily regulated by the NCUA- perhaps even more so than publicly held companies. The cost of this redundancy is high. Currently, the NCUA’s examination process includes annual examinations of internal controls as well as financial statement audits. Volunteer oversight by members also provide a layer of protection. Further, credit unions (and corporates alike) have not experienced the types of failures experienced by other industries that necessitated Sarbanes-Oxley legislation. Instances of greed, fraud, corruption and waste have not been widely documented within the credit union system.

2. What minimum asset size threshold would be appropriate for requiring, in addition to a financial statement audit, an “attestation on internal controls” over financial reporting, given the additional burden on management and its external auditor? Explain the reasons for the threshold you favor.

Given the ten-year history that banks have had with attestations, one billion dollars should be the threshold—which is in parity with banks. However, not only should credit unions be exempt from this requirement, it certainly should not be subjected to more stringent thresholds than that of banks and publicly companies.

3. Should the minimum asset size threshold for requiring an “attestation on internal controls” over financial reporting be the same for natural person credit unions and corporate credit unions? Explain why.

ACCU does not support the imposition of this requirement, however, in the event that this requirement becomes effective, natural person credit unions and corporates should have the same thresholds—a position supported by GAO.

4) Should management’s assessments of the effectiveness of internal controls and the attestation by its external auditor cover all financial reporting, (i.e., financial statements prepared in accordance with GAAP and those prepared for regulatory reporting purposes), or should it be more narrowly framed to cover only certain types of financial reporting? If so, which types?

The NCUA’s Office of Corporate Credit Unions (“OCCU”) revised its regulatory reporting requirements to conform with GAAP. As such, the ACCU recommends that requirements should only include financial statements prepared under GAAP.

5. Should the same auditor be permitted to perform both the financial statement audit and the “attestation on internal controls” over financial reporting, or should a credit union be allowed to engage one auditor to perform the financial statement audit and another to perform the “attestation on internal controls?” Explain the reasons for your answer.

Corporates would benefit the most if they had the ability to choose one of the two options described in this question. Many factors would lead to their decision including cost, convenience and the availability of appropriate auditing firms. Both positions should be options. Corporates should be permitted to decide which fits best into their operational particulars.

6. If an “attestation on internal controls” were required of credit unions, should it be required annually or less frequently? Why?

Due to the limited number of firms conducting credit union audits, the ever changing internal controls structure and the significant number of other regulatory annual requirements, the attestation on internal controls should be required no less than every 3 years.

7. If an “attestation on internal controls” were required of credit unions, when should the requirement become effective (i.e., in the fiscal period beginning after December 15 of what year)?

Should this become a requirement, the ACCU recommends an effective date of two years. Giving credit unions two years to implement this requirement would be consistent with the effective dates proscribed in Sarbanes-Oxley. Further, this timeline would provide sufficient time to understand the requirements, draft policies/procedures, implement needed changes, review, update, document and test current controls, and provide necessary training to assist in the implementation process.

8. If credit unions were required to obtain an “attestation on internal controls,” should part 715 require that those attestations, whether for a natural person or corporate credit union, adhere to the PCAOB’s AS 2 standard that applies to public companies, or to the AICPA’s revised AT 501 standard that applies to non-public companies? Please explain your preference.

Since Credit Unions and Corporates are **not public companies** there is no rational basis for subjecting the industry to PCAOB’s AS 2 standard.

9. Should NCUA mandate COSO’s Internal Control—Integrated Framework as the standard all credit union management must follow when establishing, maintaining and assessing the effectiveness of the internal control structure and procedures, or should each credit union have the option to choose its own standard?

Credit unions should be allowed to choose which standards to follow.

10. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be required to have a minimum level of experience or expertise in credit union, banking or other financial matters? If so, what criteria should they be required to meet and what should the minimum asset size threshold be?

This question provides an opportunity to point out a significant difference between members of a credit union’s Supervisory Committee and similarly situated members of banks and public companies-- compensation. Supervisory Committee members are not compensated which leaves the industry without the bargaining power to attract members with a particular level of experience or expertise.

The industry has not experienced the failures that some public companies (with compensated board and audit committee members who may have particular experience and expertise) have experienced which in my opinion can be attributed to the remarkable job of Supervisory Committees members (who may not have certain educational levels or expertise). Asset size should not be a determining factor.

11. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be required to have access to their own outside counsel? If so, at what minimum asset size threshold?

Yes. Given the gravity of this requirement and the cost it will place on corporates, Supervisory Committees should be allowed to retain their own outside counsel should the need arise. Asset size should not be a determining factor.

12. Should Supervisory Committee members of credit unions above a certain minimum asset size threshold be prohibited from being associated with any large customer of the credit union other than its sponsor? If so, at what minimum asset size threshold?

The ACCU believes that a code of ethics and full disclosure will help alleviate the appearances of conflicts of interest. This code should establish rules as to when a committee member should recuse him/herself from particular matters.

All Supervisory Committee's, regardless of asset size, should adhere to the code of ethics.

13. If any of the qualifications addressed in questions 10, 11 and 12 above were required of Supervisory Committee members, would credit unions have difficulty in recruiting and retaining competent individuals to serve in sufficient numbers? If so, describe the obstacles associated with each qualification.

In addition to the reasons set forth in question number 10, Supervisory Committee members may feel overwhelmed by 1) imposing unnecessary regulation and 2) the requirement of a certain experience level or expertise. Regarding question 11, committee members may actually be encouraged by having access to outside counsel. Regarding question 12, I doubt that a code of ethics would discourage committee members from serving—after all because code of ethics have become the norm in both private and public companies.

14. Should a State-licensed, compensated auditor who performs a financial statement audit and/or 'internal control attestation' be required to meet just the AICPA's 'independence' standards, or should they be required to also meet SEC's 'independence' requirements and interpretations? If not both, why not?

Since Credit Unions and Corporates are **not public companies** there is no rational basis for subjecting the industry to SEC standards.

17. Should part 715 require credit unions that obtain a financial statement audit and/or an 'attestation on internal controls' (whether as required or voluntarily) to forward a copy of the auditor's report to NCUA? If so, how soon after the audit period-end? If not, why not?

Corporates should have the option to forward copies of auditor's reports, but would of course comply with NCUA's requests or directions. The NCUA already has full access to all credit union records which can be examined at any time.

18. Should part 715 require credit unions to provide NCUA with a copy of any management letter, qualification, or other report issued by its external auditor in connection with services provided to the credit union? If so, how soon after the credit union receives it? If not, why not?

No, this information can be produced during exams, however, the corporate should have an opportunity to resolve any outstanding issues or disputes with the auditor before transmittal to the NCUA.

19. If credit unions were required to forward external auditors' reports to NCUA, should part 715 require the auditor to review those reports with the Supervisory Committee before forwarding them to NCUA?

Yes—the auditor should review reports with the Supervisory Committee before forwarding to the NCUA. The auditors are hired at the behest of the organization and should first honor the nature of that relationship—through a complete review with the Committee.

20. Existing part 715 requires a credit union's engagement letter to prescribe a target date of 120 days after the audit period-end for delivery of the audit report. Should this period be extended or shortened? What sanctions should be imposed against a credit union that fails to include the target delivery date within its engagement letter?

As stated, an attestation on internal controls for non-publicly held organizations would be a significant burden with little to no benefits. The required work in implementing this requirement, coupled with there being only a few auditors performing these services for crediting unions, the target date should be extended to 180 days. In general, sanctions should be imposed on a case by case basis. However, in cases of gross negligence or intentional acts of dishonesty, a sanction should be imposed.

21. Should part 715 require credit unions to notify NCUA in writing when they enter into an engagement with an auditor, and/or when an engagement ceases by reason of the auditor's dismissal or resignation? If so in cases of dismissal or resignation, should the credit union be required to include reasons for the dismissal or resignation?

No. It is the role of the Supervisory Committee to hire and monitor these relationships. The credit union's obligation should rest with the committee. In either instance, the extent of the NCUA's involvement should only be limited to reviewing the decision process.

22. Should credit union Supervisory Committees be prohibited by regulation from executing engagement letters that contain language limiting various forms of auditor liability to the credit union? Should Supervisory Committees be prohibited from waiving the auditor's punitive damages liability?

It is the ACCU's position that it would be redundant to document this requirement as it is already established that credit unions and other financial institutions should not execute engagement letters containing waiver of auditor liability provisions.

Thank you for allowing us to comment on this Advanced Notice of Proposed Rulemaking. Please feel free to call me if you have any questions concerning this issue.

Very truly yours,

Michael F. Canning, Esq., CAE
Executive Director