



237 Roosevelt Avenue, Carteret, New Jersey 07008  
732-541-4151 • FAX 732-541-4449  
msfcu@worldnet.att.net  
www.midstatefcu.org

February 12, 2010

Mary Rupp  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Dear Ms. Rupp,

Thank you for the opportunity to provide perspective and comment on the NCUA's proposed Regulation Part 704 concerning the role of the Corporate Credit Union Network and its structure. While I appreciate NCUA's need to take action to address areas within Part 704 dealing with corporate capital levels and investment authorities, I feel that there are sections of the proposed rule that are too restrictive, and will inhibit the ability of corporates to perform the functions for which they were created. Over-limiting corporates does not protect credit unions or the share insurance fund. Instead, it shifts more risk to them, particularly my small credit union which needs the corporate network. Restricting corporates to the point that they are uncompetitive in the market will drive credit unions to non-movement providers, or, worse yet, back to the big banks. Mid-State FCU realizes and agrees with the goal of NCUA to incorporate a retained earnings component of the capital calculation, so as to create a buffer between any possible future loss and the impact those losses would have on natural person credit unions.

**Section 704.3(a) (iii) (3) Retained Earnings Ratio**

Mid-State FCU has strong concerns that the ability of any corporate to obtain 45 basis points in retained earnings in three years is not a realistic expectation if the current interest rate environment were to persist.

**Section 704.3 (d) 3 Standards for determination of appropriate minimum capital requirements**

We are highly concerned with the statement that "levels for an individual corporate cannot be determined solely through mathematical formula, but must be based in part on subjective judgment grounded in agency experience." This section allows for a subjective judgment to be used in determining a corporate's capital status regardless of whether the corporate meets the capital standards for designation at a certain capital level as defined in the regulation. Under such a subjective standard, there are no measurable benchmarks to which a corporate could manage their activities in order to ensure compliance. NCUA has noted that they are moving toward the adoption of a capital framework similar to that used by the FDIC in the banking industry, with clearly defined supervisory actions indexed to the capital level of the individual institution. It is unclear why this framework as defined is insufficient. We are concerned that the regulation as written does not identify the methods by which NCUA will ensure consistency in its approach to a subjective measurement. Capital standards and levels could then be based on a whim of an individual director/examiner of OCCU at any time, rather than on the FDIC model NCUA is purporting to follow.

**Section 704.11 Corporate Credit Union Service Organizations**

**Section 704.11 (e) Permissible Activities**

Under the proposed rule, there is no phase in period for obtaining permission for existing corporate CUSOs to continue operations. The NCUA could have difficulty thoroughly reviewing all requests between the publishing date of the final rule and its effective date. As the rule reads

today, a corporate may be required to suspend the activities of their CUSOs until NCUA permission is received. NCUA should create parity between Parts 704 and 712 by including the same list of permissible CUSOs in both regulations. This will greatly reduce the number of corporate CUSOs that need to request permission to continue operations. There should also be a 180-day phase in period for this part of the rule to allow the NCUA time to consider all requests for corporate CUSO approvals.

#### **Section 704.14 Board Representation**

##### *Section 704.14 (a) (2) Qualifications of a Director*

MidState FCU feels that limiting potential Board candidates to those holding the titles of CEO, CFO, and COO is not an effective measure for identifying the suitability of the candidate. Today there are some corporates that require all Board members to be the CEO of a credit union in order to be eligible to serve. This requirement did not help those corporates avoid the financial problems that they are currently facing. Additionally, the regulation makes no provision for credit unions that use titles such as Manager or Treasurer for their most senior officers.

Limiting eligible candidates to a "check list" of titles could allow a CEO of one or two years experience to be deemed more acceptable than a Manager or Treasurer with 20 plus years of financial experience. This seems counter to the intent of the regulation, which is to ensure qualified Board candidates. Instead we recommend that the corporate's nominating committee should establish qualifications for corporate credit union board members. Candidates should be required to have a relationship with the corporate based on a minimum usage of the services offered and a personal résumé that displays experience in related areas. If there is a volunteer of a member credit union who has the background and experience to provide value to a corporate credit union, they should not be excluded from sitting on the Board just because they don't have a specific title.

##### *Section 704.14 (a) (3) Term Limits*

MidState recommends a 12-year term limit instead of just 6 years. A long tenured and stable Board is important as Boards are built around the corporate's culture, values, and principles. It takes time for Board members to thoroughly understand a corporate's operations. Having too short of a term-limit weakens the Board members' ability to effectively govern. High turn around and insufficient time to become acclimated with the corporate's operations can lead to less stable governance, and greater pressure on corporate management to be constantly shifting priorities based on a Board member's desire to accomplish things quickly during their term.

##### *Section 704.14 (a) (9) Representation by Natural Person Credit Unions*

MidState FCU strongly agrees that all Board members should be representatives from the natural person credit union owners of that institution.

#### **Final Comments**

It is very clear to me that you have put an incalculable amount of time, thought and consideration into a proposal that you intend to strengthen the corporate network and be of lasting value to all credit unions. Corporate credit unions are a critical component of the credit union movement. They play a unique supportive role in helping many credit unions to survive, compete, and thrive in a highly competitive marketplace. I want to see the corporate network work the right way, and I hope that my comments, along with those of my fellow credit union leaders, will assist you in making that happen.

Sincerely



Tracy Sussmann, CCUE  
President/CEO