

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: September 15, 2011

FROM: Director, Office of
Corporate Credit Unions

SUBJ: Delegations and
Addition of Delegations
of Authority for
Director, OCCU

ACTION ITEM: Board authorization of the following:

- (1) Adopt proposed COR 23, COR 24, COR 25, COR 26, COR 27, COR 28, and COR 29 to provide the Director of the Office of Corporate Credit Union's delegated authority to approve/disapprove the actions established for approval by "NCUA" pursuant to the referenced regulations in Sections 704.3 and 704.4 of NCUA's Rules and Regulations.

ACTION DATE: September 22, 2011

OTHER OFFICES CONSULTED: Office of General Counsel and the Office of Examination and Insurance.

VIEWS OF OTHER OFFICES CONSULTED: Concur

BUDGET IMPACT, IF ANY: None.

RESPONSIBLE STAFF MEMBERS: Deputy Director David Shetler

SUMMARY:

Background

In 2009 and 2010, the Office of Corporate Credit Unions, the Office of General Counsel, and the Office of Capital Markets drafted revisions to NCUA Rules and Regulations Part 704 governing corporate credit unions. The NCUA Board (NCUAB) adopted the final rule in September 2010. The final rule implemented major revisions to corporate credit union capital, investments, asset-liability management, governance, and credit union service organization (CUSO) activities. The rule established a new capital scheme (which is being phased in over time), including risk based capital requirements; imposed new prompt corrective action requirements; placed various new limits on corporate investments; imposed new asset-liability management controls; amended some corporate governance provisions; and limited a corporate CUSO to categories of services preapproved by NCUA. These amendments will strengthen individual corporates and the corporate credit union system as a whole.

As part of the revisions to Part 704, authorities that had been explicitly granted by regulation to the OCCU Director were amended to indicate “NCUA.” Additionally, deletions of some regulatory provisions and additions of new sections resulted in the renumbering of Part 704. On March 17, 2011, the NCUAB adopted a number of delegations of authorities to address some of the regulatory changes. Specific delegations of authority relating to capital and prompt corrective action (PCA) were not adopted at that time as these requirements do not go into effect until October 20, 2011. As the effective date is approaching, OCCU is requesting a number of the existing delegated authorities for the OCCU Director and several new delegated authorities to replace an authority previously delegated by regulation to the OCCU Director. Upon recommendation of the Office of Examination and Insurance, OCCU concurs that delegations having a potential impact on the NCUSIF require prior concurrence of E&I.

Proposed New Delegated Authority:

COR 23 – Director of OCCU

Authority to approve/disapprove corporate credit union retained earnings accumulation plans pursuant to §704.3(a)(3).

Explanation for COR 23: Under the previous §704.3, the OCCU Director had authority to approve retained earnings action plans which are similar to the retained earnings accumulation plans under the new rule. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, eliminated this authority when the words “OCCU Director” were replaced with “NCUA.” The proposed delegated authority COR 23 re-establishes this authority.

COR 24 – Director of OCCU

Authority to approve/disapprove a corporate credit union releasing nonperpetual capital accounts (NCAs) to facilitate the payout of shares in a liquidation pursuant to §704.3(b)(4), with prior concurrence of the Office of Examination and Insurance.

Explanation for COR 24: Under the previous §704.3, the OCCU Director had authority to approve the distribution of membership capital accounts (MCAs) to facilitate the liquidation of a natural person credit union. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, adopted NCAs and eliminated MCAs. The revised rule eliminated the OCCU Director’s authority when the words “OCCU Director” were replaced with “NCUA” in the language relating to the release of NCAs. The proposed delegated authority COR 24 establishes this authority with the OCCU Director consistent with the authority that existed for the distribution of MCAs.

COR 25 – Director of OCCU

Authority to approve/disapprove a corporate credit union redeeming NCAs prior to maturity or prior to the end of the notice period pursuant to §704.3(b)(5), with prior concurrence of the Office of Examination and Insurance if after redemption of the NCA the corporate credit union would not meet its capital and/or NEV requirements or is otherwise subject to Prompt Corrective Action.

Explanation for COR 25: Under the previous §704.3, there was no provision for the early release of membership capital accounts other than to facilitate the liquidation of a natural person credit union and with the prior approval of the OCCU Director. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, provides for the redemption of NCAs prior to maturity or prior to the end of the notice period with the prior approval of NCUA. The proposed delegated authority COR 25 establishes this authority with the OCCU Director.

COR 26 – Director of OCCU

Authority to approve/disapprove a corporate credit union releasing perpetual contributed capital (PCC) instruments to facilitate the payout of shares in a liquidation pursuant to §704.3(c)(2), with prior concurrence of the Office of Examination and Insurance.

Explanation for COR 26: Under the previous §704.3, the OCCU Director had authority to approve the distribution of paid-in capital (PIC) accounts to facilitate the liquidation of a natural person credit union. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, adopted PCC accounts which are similar to PIC. The revised rule eliminated the OCCU Director's authority when the words "OCCU Director" were replaced with "NCUA" in the language relating to the release of PCC. The proposed delegated authority COR 26 establishes this authority with the OCCU Director consistent with the authority that existed for the distribution of PIC.

COR 27 – Director of OCCU

Authority to approve/disapprove a corporate credit union calling PCC instruments pursuant to §704.3(c)(3), with prior concurrence of the Office of Examination and Insurance if after redemption of the PCC the corporate credit union would not meet its capital and/or NEV requirements or is otherwise subject to Prompt Corrective Action.

Explanation for COR 27: Under the previous §704.3, a corporate credit union was permitted to call PIC accounts as long as it was done on a pro-rata basis and only if the corporate credit union continued to meet its minimum capital and NEV requirements after the PIC was called. NCUA approval was not required. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, permits corporate credit unions to call PCC under the same provisions, but also requires the prior approval of NCUA. The proposed delegated authority COR 27 establishes this authority with the OCCU Director.

COR 28 – Director of OCCU

Authority to establish individual minimum capital requirements pursuant to §704.3(d).

Explanation for COR 28: Under the previous §704.3, the OCCU Director had authority to establish individual capital ratio requirements. The revised §704.3 adopted by the NCUAB in September 2010, effective October 20, 2011, adopted the authority to establish individual minimum capital requirements which are similar to individual capital ratios. The revised rule eliminated the OCCU Director's authority when the words "OCCU Director" were replaced with "NCUA" in the language relating to the authority to establish individual minimum capital requirements. The proposed delegated authority COR 28 establishes this authority with the OCCU Director consistent with the authority that existed for the establishment of individual capital ratio requirements.

COR 29 – Director of OCCU

Authority to take all actions required or authorized with respect to capital restoration plans pursuant to §704.4(e).

Explanation for COR 29: Under the previous Part 704, there was no provision for PCA. The revised §704.4 adopted by the NCUAB in September 2010, effective October 20, 2011, provides for PCA requirements. A corporate credit union is required to file a written capital restoration plan with the NCUA within 45 days of the date the corporate credit union receives notice or is deemed to have notice that the corporate is undercapitalized, significantly undercapitalized, or critically undercapitalized. NCUA must review and take action on a capital restoration plan within 60 days of receipt. The proposed delegated authority COR 29 establishes this authority with the OCCU Director. This delegation is consistent with SUP 35 which delegates authority to take all actions required or authorized under § 702.206 with respect to net worth restoration plans for natural person credit unions to the regional directors.

RECOMMENDED ACTION: The NCUA Board:

- (1) Adopt proposed COR 23, COR 24, COR 25, COR 26, COR 27, COR 28, and COR 29 to provide the Director of the Office of Corporate Credit Union's delegated authority to approve/disapprove all actions established for approval to "NCUA" pursuant to the referenced regulations above.

Scott Hunt
Director
Office of Corporate Credit Unions