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VIA E-MAIL: regcomments@ncua.gov
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June 11, 2008

Mary Rupp, Secretary of the Board
NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street
Alexandria, VA 22314-3428

Re: Styskal, Wiese & Melchione Comments on Proposed Rule 712, CUSO Amendments

Dear Ms. Rupp:

This letter is written on behalf of Styskal, Wiese & Melchione, L.L.P., a law firm located in Southern California which represents numerous credit unions, both state and federal. The firm began representing credit unions in all aspects of their operations on an almost exclusive basis in 1987. We offer the following discussion as a comment to the NCUA's Proposed Rule on Credit Union Service Organizations amending Parts 712 and 741 of the NCUA's Rules and Regulations.

We believe the NCUA's Proposed Rule does not go far enough in recognizing the full scope of the Financial Services Regulatory Relief Act of 2006 ("FSRRA"), which granted credit unions the express power to serve the underserved, nor the concept of incidental powers attendant with that grant. As discussed below, these express and incidental powers, together with the purpose of the FSRRA, suggest that the NCUA's CUSO Rule should permit federal credit unions to invest in CUSOs that primarily serve persons in their field of memberships with regard to the sale, servicing, and processing of money transfer instruments.

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Additionally, we have included our comments below on other aspects of the Proposed Rule related to the services permitted to be offered by CUSOs. Our comments related to other aspects of the Proposed Rule will follow separately.

I. Pre-Approved Activities for CUSOs and the Primarily Serves Test

In the Proposed Rule, the NCUA has proposed an expansion of the ability of CUSOs to perform certain services. This part of the Proposed Rule was meant to give effect to Section 503 of the FSRRA. The NCUA stated:

> "Legislative history of the Reg Relief Act indicates that Congress intended to allow FCUs "to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status." S. Rpt. 109-256, p. 5; H. Rpt. 109-356 Part 1, p. 63. The Board believes the enactment of that law warrants a parallel expansion in the CUSO rule, since an FCU may elect to provide some or all of these types of services through the vehicle of a CUSO."[1]

The specific terms of the FSRRA's Section 503[2] grant federal credit unions the power:

> "(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and
> (B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee."

The corresponding Regulation, permanently implemented in March of 2007, Section 701.30, contains language identical to that contained in the statute.[3]

The NCUA has proposed allowing federal credit unions to invest in CUSOs that provide certain services "primarily" to persons within the credit union's field of membership. The NCUA stated in the Proposed Rule that "Services covered in the Reg Relief Act correspond to the checking and currency services and the electronic transaction services categories in the CUSO rule,"[4] and as such have proposed expanding the "primarily serves" test to those categories of preapproved activities.

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[1] 73 Fed. Reg. 23982, 23982 (2008).
[2] 12 U.S.C. § 1757(12).
[3] 12 C.F.R. § 701.30.
[4] 73 Fed. Reg. 23982, 23982–23983.

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We agree that the enactment of the FSRRA warrants a parallel expansion in the CUSO rule. However, we believe that to truly be a parallel expansion, the Proposed Rule must be modified to include the language of the statute. As explained in detail below, we believe that the NCUA should reexamine the preapproved activities, specifically in light of the inclusion of sale of "money transfer instruments" in the express powers of federal credit unions. We believe that this expansion of the Proposed Rule is necessary to give effect to the language of the FSRRA and Congress's intent in enacting the FSRRA, to carry forward the NCUA's longstanding policies, and to allow federal credit unions to adapt to significant changes in the financial services industry and marketplace.

A. Background Information

The NCUA was established in 1970 to replace the Bureau of Federal Credit Unions as overseer of what can be called a grand experiment, the credit union movement. From the founding of the first American credit union in 1908, and the passage of the Federal Credit Union Act ("FCUA") in 1934, the credit union movement has had to adapt to significant changes in financial services, as well as the populations served by credit unions. Historically, the NCUA has taken the lead in providing credit unions the ability to change with the times. As seen with development Part 712 of the NCUA's Rules and Regulations, the NCUA's continued policy of granting broad authority to federal credit unions has helped the credit union movement thrive and provide needed services to consumers across the country.

B. History of Investments in Credit Union Service Organizations

As one of the express powers listed in the FCUA, federal credit unions may invest in Credit Union Service Organizations ("CUSOs"). The FCUA was amended in 1977 to authorize these investments. In 1979, the NCUA promulgated the first CUSO rule. This rule has been amended multiple times since, including amendments to the list of preapproved activities available to CUSOs in 1986, 1998, and 2003.[5] The CUSO rule further specifies what investments are permissible for federal credit unions. In 1998, in its final rule that amended the CUSO regulations, the NCUA described its policy for dealing with CUSO investment authority as follows:

> "In the past, NCUA has interpreted this statutory authority broadly to encompass most services and activities a credit union can provide to itself and its members through use of express authority, incidental authority, or goodwill authority. NCUA feels this interpretation is supported by the language of the FCU Act, which sets forth a clear boundary of CUSO

[5] We note that the 2003 revision to Section 712.5 only related to member business loan origination and accompanied an amendment to the member business loan rules. Thus, the last major revision of the CUSO rule occurred in 1998.

> services, namely, services fulfilling credit union and credit union member needs. Congress did not choose to limit CUSO activities by cross-reference to statutory FCU powers or by specifically listing CUSO powers in the statute."[6]

The NCUA has long followed this permissive policy, which has allowed federal credit unions to provide a wider range of services to their members and keeping the credit union movement adaptable and strong. We believe the NCUA should continue to follow this policy, and support the NCUA's efforts to modernize the CUSO rule.

Under the NCUA's current regulations, a federal credit union may invest in CUSOs so long as those CUSOs comply with certain activity and customer-base requirements. Under the FCUA, credit unions may invest in "any other organization, providing services which are associated with the routine operations of credit unions."[7] Under the NCUA's regulations, CUSOs are permitted to engage in preapproved activities that are "related to the routine daily activities of credit unions"[8] or other activities "associated with routine credit union operations."[9] The Regulation makes clear that the activities listed as examples of preapproved activities are not "exclusive or exhaustive." This category—those activities that bear a relation to the regular activities of credit unions—certainly includes those non-depository activities able to be performed by credit unions themselves.

While we believe the categories listed in the current CUSO rule (and with it the Proposed Rule) are broad and cover a significant range of activities, we also believe that the NCUA should update this list in light of activities which are now permissible for federal credit unions, and in particular in light of terminology introduced by the FSRRA. Updated language and scope in light of changes to the FCUA and the financial services industry will provide clear guidance to credit unions and examiners with regard to the services permissible for CUSOs. Clear and updated guidance will assist federal credit unions and the NCUA in avoiding the time and costs of disputes and petitions concerning the scope of the categories,[10] and will additionally provide a road-map for federal credit unions to adapt with the times and remain competitive with other financial institutions. In the same vein, and as we discuss in greater detail below, we believe that credit unions should be permitted to request inclusions to the list of preapproved categories without waiting for a full regulatory change—rather, the list of preapproved categories should be able to be

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[6] 63 Fed. Reg. 10743, 10751 (1998).
[7] 12 U.S.C. § 1757(7)(I).
[8] 12 C.F.R. § 712.5.
[9] 12 C.F.R. § 712.7.
[10] To which process we note that the NCUA is also proposing changes. We discuss those aspects of the Proposed Rule below in Section II.

expanded by the General Counsel's office as necessary to allow for changes in the financial services industry.

C. Changes in the Financial Services Industry

As seen in the discussion above, the NCUA has always been responsive to the changes in the financial services industry, and has always taken a broad view of the powers of federal credit unions and of CUSOs. As stated repeatedly over the last three decades by Congress and the NCUA, this "broad and ambulatory" view is necessary to the continued competitiveness and viability of the credit union movement. The need for the NCUA to continue this policy is drawn into focus by recent, rapid changes in the financial services industry. New products, new technology, and a changing customer demographic have created significant pressures on federal credit unions and their CUSOs to change with the times. We hope that the NCUA will recognize these pressures and expand the Proposed Rule accordingly.

The changing face of financial products can be seen upon entering any grocery or convenience store—where candy and gum once lined shelves, one can see rows of gift cards. The current trend toward use of gift cards has been noted in popular and trade press sources. The November 28, 2007 edition of the *Credit Union Times* featured several articles[11] that highlighted the growing popularity of gift cards and prepaid debit cards. A survey by the National Retail Federation indicated that from 2005 to 2006, holiday gift card sales increased from $18.48 billion to $24.81 billion. 2007's sales were estimated at $26.3 billion.[12] With the significant demand for gift cards, whether retailer issued or issued by VISA or MasterCard, credit unions would be remiss not to offer these products that have so clearly become a major financial product.

These cards are not just common stored value products. These cards are quickly becoming cash equivalents and common methods of transferring funds. Gift cards and prepaid debit cards give their users the ability to initiate debit card transactions without having a debit account, allowing people who would normally have to carry cash the ability to make use of modern technology. The ability to initiate debit card transactions enables types of consumer spending unavailable to those who participate in a cash-only sub-culture, from phone orders to internet shopping. Where once cashing a check or money order meant receiving cash, the modern trend is to either deposit checks into an account or purchase some variety of stored value product. With increasing regularity, these stored value products are gift cards.

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[11] *See, e.g.*, David Morrison, *Ramping Up: Credit Unions Pushing Forward into Gift Card Space; Relationship with Members Thought Key to Success*, CREDIT UNION TIMES, Nov. 28, 2007, at 22; *Holiday Gift Card Sales Continue to Rise*, CREDIT UNION TIMES, Nov. 28, 2007, at 23.

[12] *Holiday Gift Card Sales Continue to Rise*, *supra* note 11.

Beyond this, a recent article in *Forbes* magazine described several new products that show the dynamism of this industry.[13] The authors advocate a new, more technologically advanced way of thinking about cash: "Why not print money at home on your laser printer rather than go to the ATM? Today we can do this with stamps."[14] From single-purpose or single-use credit and debit cards to self-printed bar-code-based currency, commentators like those in *Forbes* are looking ahead to new ways to transfer money. Should these innovations come to pass, the NCUA's past policies of flexibility will be important to ensure that credit unions will be prepared to offer these products. Even if these new uses of technology do not develop, there are common methods of transferring money that require the attention of the NCUA. As seen from debit cards and gift cards, methods of transferring money that were once peripheral are now commonplace. This trend is not even limited to these more-traditional financial products. Parking meters in Los Angeles and parts of New York will soon be or are able to accept payment in the form of cash, credit cards, debit cards, and even cellular phones.[15] San Francisco recently ran a similar pilot program.[16] This use of cellular phones to pay for everyday services such as parking in city lots and on the street shows that cellular phones are becoming, and will continue to become a new medium of exchange. Use of radio frequency identification ("RFID") chips, whether in cards or other objects, has similarly been tested as a new way to transfer money.[17]

These trends, from expanding use of non-traditional products as cash-equivalents to development of new technologies, do not appear to be slowing.

Additionally, the demographic served by credit unions is changing. In addition to their traditional purpose of promoting thrift among members, federal credit unions are now charged also with promoting traditional banking relationships to the unbanked and underbanked. The changes made by the FSRRA to the FCUA are specifically addressed toward the underserved, giving credit unions the ability to facilitate service to the unbanked and under-banked.[18]

Underserved populations in particular use alternative financial products. Services for the unbanked and underserved cannot be considered in the same light as many traditional

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[13] Ian Ayres & Barry Nalebuff, *Why Not?: The New Green*, FORBES, Jan. 7, 2008, at 91.
[14] *Id.*
[15] *Credit Cards, Cell Phones Work On New LA Parking Meters*, KNBC.COM, Dec. 13, 2007, http://www.knbc.com/news/14848580/detail.html.
[16] *Pay Parking Meters By Cell Phone?*, GOVERNMENT TECHNOLOGY, Oct. 1, 2007, http://www.govtech.com/articles/150228.
[17] *See* Laurie Sullivan, *RFID Helps Feed Parking Meters*, INFORMATION WEEK, Dec. 5, 2005, http://www.informationweek.com/showArticle.jhtml?articleId=174900727.
[18] The language in the Financial Services Regulatory Relief Act of 2006 is identical to the language introduced in 2003 in the Money Wire Improvement and Remittance Enhancement Act of 2003. The Congressional discussion of this language since 2003 shows a strong interest in serving underserved and immigrant communities.

services. Today's unbanked live in a cash economy, choosing their financial services based on their day-to-day needs.[19] Many distrust financial institutions that offer them traditional products,[20] whether due to negative past experiences or a general distrust of the banking system. Many do not have the credit or saving habits necessary to establish traditional banking relationships.

They are thus driven to alternative financial services, such as check cashers and payday lenders. The mainstream populace might pay bills with a check drawn on their checking account and sent with an envelope they send from their home or office. The underserved often do not have checking accounts, debit cards, or similar products.

Alternative financial products, items that are missing from the traditional banking repertoire, are the products needed by the underserved. As stated in the results of a recent survey of the users of alternative financial services, "The products needed are not stripped-down versions of mass-market products but qualitatively different ones."[21] If these people are ever to be assimilated into mainstream, banked American culture, they must also be introduced to mainstream financial services by financial institutions that understand their needs, can offer the services they demand, and care about their well-being—federal credit unions.

The NCUA has frequently recognized the needs of the underserved, and the challenges involved in serving them.[22] The NCUA has recognized that federal credit unions have new powers, as granted in the Financial Services Regulatory Relief Act of 2006, which significantly change the scope of other rules. Changes to the CUSO Proposed Rule to include further consideration of these new powers will further these goals. The NCUA needs to embrace the FSRRA, and should take an expansive view of the Act in light of the trends described above and Congress's intent. Congress authorized federal credit unions to provide the services used by these unbanked consumers—check cashing, wire transfers, and sales of the media used to transfer money, in whatever form they appear. As the NCUA has traditionally allowed CUSOs to perform services permitted by federal credit unions (as the FCUA clearly contemplates), the NCUA should expand the CUSO rule to include all those activities and services contemplated and implicated by the FSRRA, including those that have not yet been developed.

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[19] Center for Financial Services Innovation, The Power of Experience in Understanding the Underbanked Market 5 (2007).
[20] *Id.*
[21] *Id.* at 18.
[22] *See, e.g.*, NCUA News Release (May 17, 2007), http://www.ncua.gov/news/press_releases/2007/MA07-0518.htm; NCUA News Release (June 22, 2006), http://www.ncua.gov/news/press_releases/2006/NR06-0622.htm; NCUA News Release (Mar. 29, 2006), http://www.ncua.gov/news/press_releases/2006/NR06-0329.htm; NCUA Letter to Credit Union No. 05-CU-05 (Mar. 2005).

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D. Express Powers Granted Under FSRRA Section 503

The exact language of Section 503 of the FSRRA, as stated above, allows federal credit unions to sell to persons within their fields of membership "negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers)." Accepting this, we note that this list includes negotiable checks and money orders (which are currently explicitly included in the category of "Checking and currency services" in Rule 712.5[23]), which both have clear definitions in the financial services industry. It also includes sale of electronic fund transfers (currently explicitly included in the category of "Electronic transaction services" in Rule 712.5[24]), which have been clearly defined over the years. However, we do not believe the interpretation of this statute to be so limiting.

The statute includes a list of three items: checks, money orders, and "other similar money transfer instruments." There remains the interpretive problem of defining a "money transfer instrument."[25]

"Money transfer instrument" is not used in any other place in the United States Code or the Code of Federal Regulations. Had Congress meant to refer to the activities engaged in by money transmitting businesses, it would have used the term "money transmitting instrument."[26] The Uniform Commercial Code ("UCC") similarly does not provide a definition. An "instrument," under UCC Section 3-104 is defined as a negotiable instrument, being limited to checks, demand drafts, and other notes. A "funds transfer," under UCC Section 4A-104 is also a defined term. Had Congress meant either of these terms, it could have easily used them.

"Money transfer instrument" explicitly includes electronic funds transfers ("EFT"), both foreign and domestic. In its Final Rule implementing Section 701.30, the NCUA Board did not define an EFT, referring instead to the definition in Regulation "E."[27] An EFT means "any transfer of funds that is initiated though an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a customer's account." EFTs include, but are not limited to:

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[23] 12 C.F.R. § 712.5.
[24] 12 C.F.R. § 712.5.
[25] We note also that the statute uses the term "money transfer instrument," rather than "money transfer services." We do not believe Congress's choice of language in this regard was accidental, as explained in further detail below.
[26] *See* 31 U.S.C. § 5330 (providing a definition of "money transmitting business" that does not include the term "money transfer instrument").
[27] 12 C.F.R. § 205.3(b).

> "(i) Point-of-sale transfers;
> (ii) Automated teller machine transfers;
> (iii) Direct deposits or withdrawals of funds;
> (iv) Transfers initiated by telephone; and
> (v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal."[28]

As stated in the Final Rule implementing the FSRRA, any transfer that falls under Regulation "E" must also follow Regulation "E" requirements.

The language of the statute, however, is not limiting or exhaustive—EFTs are included in but are not the only example of money transfer instruments. In its Final Rule implementing the FSRRA, the NCUA stated, "the types of money transfer instruments permissible under Section701.30 are not limited to electronic funds transfers."[29] We agree. This term was meant to be broader than the definition of electronic funds transfers. Thus, the category of "money transfer instruments" remains undefined, but is not limited to traditional negotiable instruments, funds transfers, or EFTs.

Looking at the standard definitions of the component terms in "money transfer instruments" gives some clue as to the plain meaning of the statute. Money is defined as "something generally accepted as a medium of exchange, a measure of value, or a means of payment."[30] To transfer is "to convey from one person, place, or situation to another."[31] An instrument is defined as "a means by which something is achieved, performed, or furthered."[32] A money transfer instrument would thus be "a means by which a medium of exchange or means of payment is conveyed from one person to another."

We note that a similar definition is found already in the NCUA's Rules and Regulations. A "stored value product" is defined in Section 721.3(k) as "alternate media to currency in which you transfer monetary value to the product and create a medium of exchange for your members' use."[33] This definition of a stored value product is nearly identical to the plain meaning of the term "money transfer instrument"—an item that serves as a means to convey value to another person. Clearly, stored value products are by definition a subset of money transfer instruments.

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[28] 12 CFR § 205.3(b).
[29] 72 Fed. Reg. 7927, 7928.
[30] *Merriam-Webster's Collegiate Dictionary* 801 (11th ed. 2003).
[31] *Id.* at 1328.
[32] *Id.* at 649.
[33] 12 C.F.R. § 721.3(k).

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This interpretation of the definition of a stored value product is not without precedent. The NCUA's Final Rule promulgating Section 721.3(k) noted that stored value products were no different from products already offered by credit unions, because "these products represent a member's prepayment for a merchant's goods or services and are, therefore, a form of bill payment."[34] Stored value products are essentially a method of money transfer for a merchant's goods or services. Stored value products are increasingly seen as cash equivalents and substitutes for checks, rather than specialized bill-payment methods. As stated in the *Forbes* article discussed above, "Telephone calling cards are essentially cash in the form of a PIN Code."[35] Prepaid gift and debit cards, which have become far more popular since the last amendment to the list of stored value products, are also clearly money transfer instruments. As times change, new stored value products will become common stored value products. The methods used in the marketplace for transferring money are not stagnant, and as technology changes faster and faster, the types of money transfer instruments that will be demanded by consumers will transform just as quickly.

In sum, it was the clear intent of Congress for "money transfer instrument" to include more than merely EFTs—they meant the term to include traditional stored value products, electronic funds transfers, as well as other, new methods of and technologies for transferring money. There is no limiting language in the statute to suggest any definitions other than the plain meaning of the terms. It follows that any instrument by which one transfers monetary value, meaning any alternate medium of monetary exchange, is a money transfer instrument.

In relation to the CUSO Rule, the NCUA has, in the past, permitted CUSOs to offer EFT payments, such as bill payment services, under "Electronic transaction services." However, the NCUA has not permitted CUSOs to sell "stored value products" as described in the NCUA's incidental powers rule—"methods to facilitate member payments to third parties." We believe that, as money transfer instruments, stored value products and the sale thereof now fall within the area of "routine operations of credit unions." As such, as suggested above, the NCUA should change its rule to include a category of preapproved activities using the words "money transfer instruments."

Section 712.5's current categories of Checking and Currency Services[36] and Electronic Transaction Services[37] include most, if not all, of the traditional methods of transferring funds: cash, checks, other instruments, wire transfers, EFTs, and debit card transactions. However, increasingly, stored value products are being used, particularly by underserved populations, as cash equivalents. To eliminate confusion, the NCUA's CUSO rule

[34] 66 Fed. Reg. 40845, 40853.
[35] Ian Ayres & Barry Nalebuff, *Why Not?: The New Green*, FORBES, Jan. 7, 2008, at 91.
[36] 12 C.F.R. § 712.5(a).
[37] 12 C.F.R. § 712.5(e).

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should use the words "stored value products" as a subset of "money transfer instruments."

Additionally, considering the change in the financial services industry and the provision of services to the unbanked, the sale of stored value items is directly related to any other transaction in currency or in any modern check cashing service, and thus clearly associated with the daily operations of credit unions. The line between currency services that include traveler's checks and money orders and dealing in stored value is negligible in terms of how they relate to the daily operations of credit unions. Consumers will often want to trade a check for the products they use for their daily exchanges, whether their medium of exchange is traveler's checks or bus tokens. A line between these different mediums of exchange based on the status of some as "stored value products" rather than negotiable instruments or EFTs is no longer meaningful.

Separate from the other issues raised above, certain stored value products, such as gift cards, have become such a large part of our economy and the daily operations of credit unions that gift card services should be their own category of preapproved activity with other "money transfer instruments." As seen from the statistics discussed above, gift cards, prepaid debit cards, and other similar products are growing in popularity and variety to the point that credit unions and CUSOs will have to be open to these products in order to remain viable and competitive in the modern market. To restrict the sale of these products would cripple the credit union movement in its ability to appeal to consumers.

Accordingly, we believe that CUSOs, in offering services related to the daily operations of credit unions, should be permitted to offer services of the same scope that credit unions can offer under the statute. Limiting the types of money transfer instruments a CUSO can offer does not give effect to Congress's intent in enacting the FSRRA and thus does not provide a parallel expansion of the CUSO Rule. We believe that using the current language of the Proposed Rule would so limit the types of money transfer instrument sales available to CUSOs. The NCUA should revisit its Proposed Rule in light of the analysis in this letter under the FCUA and in light of the changing marketplace. This will allow federal credit unions to use the tools they need to fulfill the goal of serving the underserved and promoting thrift and savings for the credit union's members and customers.

E. Other Benefits to Changing Preapproved Activities Definitions

Under the general analyses provided above, we believe that there are multiple types of money transfer instruments that would not be included in the expansion provided for by NCUA's Proposed Rule. At the same time, we believe that the language of the Proposed

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Rule may cause unintended effects which are not parallel to the expansion of powers contained in the FSRRA.

The NCUA's Proposed Rule would change the "primarily serves" test for all services listed under the "electronic transaction services" category.[38] We note that the FSRRA expanded the daily operations of credit unions to include the sale and cashing of certain instruments. It is not clear to us why expansion of data processing and cyber financial services, in particular, would be "parallel" with the FSRRA. We believe that within the limits of safety and soundness, the category of activities which is within "associated with the routine operations of credit unions"[39] is broader than the category of the activities permissible for credit unions. However, we also believe that it would be more effective to expand the CUSO rule in an actual parallel to the FSRRA and instead create a category of permissible activities (regarding which the "primarily serves" test applies to primarily serving persons within the field of membership) called "money transfer instrument sale, servicing, and processing."

If the NCUA wishes to include further categories of services or individual services that are incidental to or related to the sale of money transfer instruments, we support such an expansion of CUSO powers. However, we believe that for the sake of clarity, these additional permissible services should be noted separately or described in the category of "money transfer instrument sale, servicing, and processing." Other data processing and cyber financial services can be provided for in a separate category of activities to more clearly reflect that some of these activities may not be appropriate for a CUSO to offer primarily to persons within a credit union's field of membership.

II. Amendment Requests

The NCUA has proposed to eliminate the ability of federal credit unions or CUSOs to write the NCUA and request approval of CUSO activities that do not fall into the pre-approved categories of Section 712.5. While we understand that the NCUA feels that this process is redundant, considering the ability of private parties to petition for regulatory changes in general, we believe the more-specific petition process for CUSOs is important and should not be eliminated. Considering the significant and swift changes that can occur in the financial services industry, credit unions should be able to request additions to the pre-approved activities without being hamstrung by the process of full rulemaking. The Office of General Counsel should be able to interpret the language of the Act and Regulations and determine what activities are associated with the routine daily operations of credit unions without full rulemaking. We understand that this process has only been used once, according to the NCUA. However, we do not believe this avenue should be cut off.

[38] 73 Fed. Reg. 23983, 23987 (2008).
[39] 12 U.S.C. § 1757(7)(I).

III. Additional Issues

We support the NCUA's proposed changes involving Loan Participations, Credit Card Loan Origination, Additional Permissible Activities within existing Approved Categories, and Payroll Processing.

We note, in relation to Payroll Processing, that there are additional activities which we believe should be included in this change. We acknowledge that the NCUA's longstanding position has been that CUSOs may only provide Clerical, Professional and Management Services, permissible under § 712.5(b), to or on behalf of the federal credit union owner or other credit unions, but not to members of credit unions. We agree that, at the very least, payroll services should be permitted to be provided directly to members. However, we believe the entire category of services included in § 712.5(b) should be permitted to be offered to members.

Included in Section 712.5(b)'s Clerical, Professional and Management Services are Courier services[40] and Facsimile transmissions and copying services,[41] as well as various other support services. The regulation clearly states that CUSOs may engage in preapproved activities primarily for "credit unions, [the credit union's] membership, or the membership of credit unions contracting with the CUSO."[42] As CUSOs offer services to either credit unions or credit union members, the inclusion of such clerical services in the CUSO rule strongly suggests that a CUSO could, for example, carry a package or letter on behalf of a member for a fee or provide facsimile or copying services to members for a fee. It seems clear from the regulation itself that a CUSO would be permitted to offer all such clerical services of this variety to all those populations meant to be served by the CUSO for a fee so long as the CUSO continues to meet the primarily serves test, safety and soundness standards, and any specific regulatory restrictions placed on the credit union's investment. We believe the NCUA should change its policies with regard to this aspect of the regulations and allow CUSOs to offer such services directly to members.

In sum, we believe that the NCUA's Proposed Rule provides some needed changes to the CUSO Rule. However, we believe that a parallel expansion to that provided in the FSRRA will require different wording from that included in the current Proposed Rule. Additionally, we believe that the NCUA's proposed expansions to CUSO powers in other areas will be beneficial considering changes to the financial services industry and the needs of credit unions and their CUSOs.

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[40] 12 C.F.R. § 712.5(b)(2).
[41] 12 C.F.R. § 712.5(b)(4).
[42] 12 C.F.R. § 712.3(b).

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We hope you find these comments helpful in assessing the NCUA's course of action in this area. We thank you for the opportunity to comment on these important topics.

Sincerely,

STYSKAL, WIESE & MELCHIONE, LLP

Joseph S. Melchione

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JSM/ TIO/wr