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Filed via regcomments@ncua.gov

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

Dear Ms. Rupp:

Thank you for the opportunity to express our views on the National Credit Union Administration Board's proposal to amend the agency's Credit Union Service Organization rule. 12 C.F.R. 712. By way of background, CUNA is the largest credit union trade association in the country, representing approximately 90% of the nation's 8,300 state and federal credit unions, which serve more than 90 million members. This letter was developed under the auspices of CUNA's Federal Credit Union Subcommittee and Examination and Supervision Subcommittee.

Summary of CUNA's Views

- CUNA commends NCUA for its efforts, as represented by provisions of this proposal, to expand CUSO activities by adding new categories of approved services and more examples of services for categories already approved.
- CUNA urges NCUA to further enhance CUSO operations and their ability to meet credit unions' needs by allowing CUSOs to choose from the range of activities permissible for federal credit unions.
- In particular, we encourage NCUA to allow CUSOs to engage in indirect automobile lending services and to sell loan participations interests in a credit card portfolio to credit unions.
- CUNA does not support the agency's efforts to apply certain provisions of the CUSO rule to state chartered credit unions that would give NCUA authority to examine the books and records of a state credit union CUSO and to regulate separateness between the participating state credit unions and the CUSO.

- CUNA does not agree that all FCUs with net worth of below 5% should have to seek prior approval from NCUA to recapitalize an insolvent CUSO. Rather, credit unions with 4-5% net worth should only be required to provide prior notice to the agency, which NCUA could pursue if there are concerns.
- NCUA is proposing to eliminate provisions in the proposal that allow FCUs to request approval of new activities. While we acknowledge that under other provisions of the agency's regulations, credit unions are permitted to seek changes to any of its rules, we do not support the removal of these provisions form the CUSO rule.

Discussion of CUNA's Position

New Activities

Because the financial marketplace continues to evolve, credit unions and CUSOs need to be able to respond by expanding their product and service offerings, consistent with the Federal Credit Union Act (Act), or their ability to serve their members successfully will erode. In that connection, we urge the agency to consider permitting a broader range of additional activities for CUSOs.

As currently permitted, credit unions may lend to and invest in CUSOs and may also contract with CUSOs for certain services. While the Act governs the amount of lending and investments that FCUs may engage in regarding CUSOs, it does not delineate or limit the range of activities a CUSO may provide. The Act describes a CUSO as:

> [A]ny organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve. 12 U.S.C. § 1757(5)(D).

Because this description does not set specific parameters on the kinds of lending or other activities in which CUSOs may engage, we urge NCUA to allow a CUSO to choose from the entire range of activities permissible for an FCU. While activities that would render the CUSO a credit union or other financial institution could not be engaged, we do think CUSOs should be able to have the widest possible options from which to select permissible services in order to serve credit unions to the fullest.

Regarding the specific provisions of the proposal, CUNA wholeheartedly supports the expanded activities the proposal would permit for CUSOs by including new categories of services and several additional examples of services under existing categories of permissible activities.

NCUA would permit a federal credit union (FCU) to participate in a CUSO that sells negotiable checks, money orders and other transfer instruments, including international and domestic electronic fund transfers, to anyone in the FCU's field of membership. This authority is consistent with the provision in the Financial Services Regulatory Relief Act of 2006 (Pub. L. No. 109-351), allowing such activities for FCUs, but should also permit stored value cards, as others have recommended. Such additional activities will facilitate the ability of an FCU to benefit from the regulatory relief provisions, even if the FCU does not provide the services directly itself.

We also support authority for a CUSO to originate and hold credit card loans in its loan portfolio. FCUs may already participate in CUSOs that provide card processing and similar services. This expansion would be consistent with such existing activities. Moreover, the amendments would allow credit unions to offer credit card services to their members, while minimizing the risk and costs of providing them that would otherwise be incurred if the credit union administered its own program. Further, the amendments would allow FCUs that operate their own credit card programs to sell them to their CUSOs. This will provide FCUs will important alternative vehicles to which they can sell their portfolios, without having to rely on banking entities.

The proposal notes that a CUSO originating or holding credit card loans could not fund its operations by receiving deposits. We understand the agency's concerns, as the Act prohibits a CUSO from acquiring control of a "financial institution," which longstanding NCUA policy has defined as a "depository institution." See, e,g,, NCUA OGC Letter No. 02-1071 (Oct. 28, 2002); Investments in and Loans to Credit Union Service Organizations, 51 Fed. Reg. 10353, 10354 (Mar. 26, 1986). Considering that the Act gives FCUs explicit authority to lend to CUSOs, 12 U.S.C. § 1757(5)(D), 7(I), we believe that a CUSO can only reasonably be considered a "financial institution" within the meaning of the Act if the CUSO also offers products denominated as "deposits" or "deposit accounts." In that connection, we encourage NCUA to consider whether a CUSO could issue instruments such as certificates of indebtedness.

The Supplementary Information to the proposal notes that the agency is planning to amend the CUSO rule to make it consistent with its rule on loan participations. This will mean that the authority to originate a loan will include the legally consistent authority to buy or sell an interest in such loans. CUNA agrees this is appropriate and supports this positive change, which will facilitate lending. The proposal also notes that the agency's loan participation rule would not permit the sale to FCUs of participation interests in a credit card portfolio. As a rule change to permit such activity would be useful—and considering that the Federal Credit Union Act gives FCUs broad authority to sell or purchase loan participations as well as other obligations and assets in whole or part, see 12 U.S.C. § 1757(5)(E), (13), (14)—we support further review of this issue. Such a review should include consideration by the Board of whether the loan participation and CUSO

regulations can be changed to authorize the sale of such interests or establish a waiver process that will allow individual CUSOs to work with NCUA for approval to establish loan participation programs.

NCUA is also proposing to permit CUSOs to provide payroll processing services directly to credit union members. CUNA strongly supports this change as it will permit CUSOs to provide a key missing component of a range of important services for business members of credit unions. We do not think that the FCU Act requires that such a service from a CUSO must be strictly limited to credit unions themselves and believe this expansion is fully consistent with statutory parameters for CUSOs and with other services the agency has already approved, such as data processing activities.

The proposal would also permit CUSOs to provide several other services which would be added to the rule as examples of services that are already approved. These include real estate settlement services, employee leasing services and support; purchase and servicing of non-performing loans; business counseling and related services; and referral and processing of loan applications for members who were denied credit by the credit unions.

Applicability of the Rule to State CUs

NCUA's proposal would apply provisions of the CUSO rule for FCUs to state chartered credit unions regarding corporate separateness and access to books and records of the CUSO. The agency states that its "experience with several FISCUs that own CUSOs presenting significant exposure to potential loss supports this amendment."

CUNA does not support these revisions, which we believe encroach on the authority of state regulators to oversee their credit unions' activities. Rather than NCUA assuming direct authority to review the books and records of a state CUSO or to set the standards for corporate separateness, which we are not convinced the FCU Act authorizes, we believe these issues should remain within the purview of the state regulators.

NCUA has raised concerns that some state regulators do not have authority to access the books and records of their state credit unions' CUSOs. Consistent with the principles of dual chartering that have supported the credit union system throughout its history, we believe such state regulators, not NCUA, should address this matter with the credit unions in their respective states. One approach state regulators could consider, with comments from their institutions, is whether state credit unions should be required to include provisions in their contracts with CUSOs that provide the state regulator with access to the CUSO's books and records. However, while we do not think NCUA should assume authority for itself that more properly belongs to state regulators, we encourage

state regulators to coordinate closely with NCUA as they address any problems in this area aggressively.

Further, we question the basis for this provision considering that NCUA's former statutory authority to examine FISCUs' CUSOs, the former section 206A of the Act (formerly codified at 12 U.S.C. § 1786a), expired in 2001. It seems inconsistent with congressional intent for the Board to recreate by regulation the same authority Congress has not continued in the statute. See, e.g., Indep. Ins. Agents v. Hawke, 211 F.3d 638, 644-46 (D.C. Cir. 2000).

NCUA is proposing that the provisions regarding state CUSOs would not take effect for six months after the rule is made final. While CUNA does not support these provisions, if the agency determines to proceed we request that the provisions not take effect for at least 12 months to give all parties sufficient time to comply.

Recapitalization of Insolvent CUSOs

NCUA is proposing that any federal credit union with net worth below 5% must seek prior agency approval before recapitalizing an insolvent CUSO. We can understand NCUA's concern about seriously undercapitalized credit unions undertaking new investments but there are already tools under prompt corrective action for NCUA to deal with this for such credit unions.

Under 12 C.F.R. § 702.202 the NCUA Board has the authority to "[r]estrict the credit union's transactions with a CUSO, or require the credit union to reduce or divest its ownership interest in a CUSO" for credit unions with less than 5% net worth. In light of this, the proposed rule could create parallel and potentially inconsistent regulatory requirements.

If NCUA determines that safety and soundness require this action, we think credit unions that are not significantly undercapitalized, for example have net worth of at least 4%, should not have to seek the agency's prior approval. The decision to invest in a CUSO is a business judgment and should be within the discretion of the credit union's management. For these credit unions, we believe a prior notice would be sufficient, with NCUA fully authorized, as it is without any rule change, to follow up on concerns.

Amendment Requests

NCUA is proposing to eliminate the provisions in the CUSO rule that require the agency to solicit comments within sixty days on requests for approvals of new CUSO activities to be added to the rule. NCUA stated it has only received one formal request to amend the rule, which it rejected, and that its rules in another section authorize a process for individuals to petition for the issuance, amendment or repeal of any rule.

Nonetheless, CUNA thinks credit unions benefit from having a specific process in the regulation under which they can seek revisions, that includes a timeframe for NCUA to act, and we urge the agency not to delete these provisions.

Conclusion

In closing, thank you for the opportunity to comment on the proposed changes. We urge NCUA to drop the provisions regarding state credit union CUSOs and to work cooperatively with state regulators to address concerns without upsetting the balance of power between state and federal regulators. We commend NCUA for moving forward to propose certain additional services which we support, and request the agency consider other activities as discussed above in our letter. If you have any questions or comments about our comments, please do not hesitate to call me at 202-508-6736.

Sincerely,

Mary Mitchell Dunn
CUNA SVP and Deputy General Counsel