



June 30, 2008

Mary F. Rupp  
Secretary of the Board  
National Credit Union Administration  
Alexandria, VA 22314

RE: Credit Union Service Organizations

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to National Credit Union Administration's (NCUA) request for comment regarding the proposed rule to amend NCUA's credit union service organization (CUSO) rule. NAFCU commends the NCUA for proposing a rule that generally would enhance credit unions' ability to offer services through their CUSOs. We submit the following comments that highlight our support to most aspects of the proposed rule and also make specific objections and suggestions to other components.

#### **Addition of Permissible CUSO Activities**

The proposed rule would add two activities – credit card loan origination and payroll processing services – as permissible CUSO activities. Further, the restriction on FCUs that only allows them to invest in or lend to CUSOs that “primarily” provide checking and currency services and electronic transaction services to credit union members would be changed so that these services can be offered to persons with the FCU's field of membership.

NAFCU strongly supports this aspect of the proposed rule. We believe it is important to strengthen CUSOs because they provide a credit union the opportunity to offer its members services at lower cost than if the credit union performs the services itself. It is possible, and even likely, that a CUSO can perform credit card loan origination and payroll process services at lower cost to the credit union than if the credit union carries out these services itself or if it pays a third party to do so. Thus, we strongly support the proposed rule's expansion of the activities that CUSOs may engage in.

However, we believe NCUA should further expand the list of permissible CUSO activities to include all types of lending that FCUs are currently authorized to engage in. We are not convinced that the restrictions on the types of lending activities that CUSOs engage in are based on strong grounds. While we acknowledge that NCUA may limit any CUSO activities or services based upon supervisory, legal, or safety and soundness grounds, we believe that the NCUA should not use this discretionary authority where these grounds do not exist.

NAFCU would like to highlight one particular lending activity that raises little or no safety and soundness concerns - vehicle lending. We believe that adding vehicle lending as a permissible CUSO lending activity will enhance small credit unions' ability to serve their members at lower cost to both the member and the credit union without significantly increasing the risk to the credit union or the CUSO. Accordingly, we strongly urge the NCUA to expand the list of permissible CUSO activities to including secure vehicle lending as well as other lending activities that credit unions themselves can participate in.

### **Petitioning NCUA to Add Activities**

Currently, under § 712.7 of the NCUA Rules & Regulations, a credit union may petition the NCUA to add activities that are not on the pre-approved list. NCUA either will request public comments on the petition or act on the petition within 60 days after receipt. The proposed rule would eliminate § 712.7, effectively eliminating a credit union's ability to petition to add to the activities that its CUSO may engage in.

NAFCU opposes this aspect of the proposed rule. We believe that the petition process affords credit unions the ability to make their case to the NCUA that they should be allowed to offer financial services. The ability to petition is important especially because credit unions and their CUSOs must be able to offer new financial services that come into the financial services marketplace in a timely manner. We believe that with the introduction of new services into the marketplace, it is crucial for credit unions to offer these services to their members, who would otherwise turn to other financial institutions.

The elimination of the petition process would make it more difficult for credit unions to compete if their ability to offer new products and services through CUSOs is further hindered. Thus, we urge the NCUA to withdraw the proposed elimination of § 712.7.

### **Examples of Permissible CUSO Activities**

NCUA also seeks comments on proposed new examples of permissible CUSO activities to existing categories of CUSO activities. In particular, real estate settlement services, employees leasing services and support, purchase and servicing of non-performing loans, business counseling and referral and processing of loan applications for members that have been turned down would be added as new examples to various categories.

NAFCU welcomes these additions. We believe that adding these examples would provide clarity. Accordingly, we fully support this component of the proposed rule.

## **Expansion of the Scope of Two Categories of Services**

Next, NCUA proposes to expand the scope of two categories of services – selling checks and money orders and electronic transfer of funds – to include persons eligible for credit union membership. Presently, FCUs can offer these services to persons within their field of membership, but may not do so through CUSOs because the CUSO rule requires that FCUs only invest in or lend to CUSOs that primarily provide these services to credit union members. Thus, the proposed changes will allow FCUs to choose to either directly offer these services to persons within their field of membership or do so through CUSOs.

NAFCU believes that the purpose and spirit of the provisions in the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act) that allow FCUs to offer these services to persons within their field of membership merit the proposed change to the CUSO rule. The Reg Relief Act does not limit the expansion of services only when the FCU directly offers the services. By not making this limitation, it is apparent that Congress sought to expand the availability of these services to nonmembers within the credit union's field of membership regardless of whether the FCU directly offers these services or does so through a CUSO. Accordingly, we fully support the proposed change to expand the scope of the services.

## **Additional Comments**

The proposed rule would also make two particular changes to the CUSO rule that NAFCU believes are beneficial measures to protect the National Credit Union Share Insurance Fund (NCUSIF). First, NCUA proposes that a credit union that is not adequately capitalized, or one which the capitalization of CUSO will render it undercapitalized, must first obtain approval from its NCUA Regional Director before it can capitalize the CUSO. Second, the proposed rule would require federally insured state chartered credit unions to include in their CUSO agreement provisions that would allow NCUA access to the CUSO's records.

We consider these proposed changes to be sound measures. A requirement that a credit union obtain approval from its Regional Director before capitalizing a CUSO does not per se prohibit it from recapitalizing a CUSO. It is possible that a FCU's capital standing can improve from investing in or lending to its CUSO. Thus, while we agree with the proposed requirement to seek approval from the Regional Director, we urge the NCUA to ensure that Regional Directors and examiners do not interpret the requirement to obtain approval as a de facto prohibition against capitalizing CUSOs where capital is an issue for the credit union itself.

Lastly, NAFCU would like to take this opportunity to urge the NCUA to amend the auditing requirements provisions of its CUSO rule. Under the current regime, a CUSO must obtain an annual financial statement audit by a licensed certified public accountant in accordance with "generally accepted accounting principles" (GAAP). 12 C.F.R. § 712.3(d)(2). However, a wholly owned CUSO is not required to obtain a separate audit if it is included in the annual consolidated financial statement of the owner credit union.

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In an official comment letter to the NCUA in 2005, NAFCU urged the NCUA to consider expanding the rule to permit consolidated audits in cases where a credit union that holds the majority of shares of the CUSO. *See* NAFCU's Comment Letter to the NCUA Re: Comments on Proposed Rule 712, CUSO Audit Requirements (May 23, 2005). Today, we repeat this recommendation. While NAFCU believes that it is important to ensure that the interest of the minority is protected, we note that a credit union with a minority interest may choose to require an independent audit as a condition of participation. Thus, NAFCU believes that the decision to obtain an independent audit is best left as a business decision and not one requiring regulatory oversight.

NAFCU appreciates this opportunity to share its comments on the proposed rule. Should you have any questions or require additional information please call me or Tessema Tefferi, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger". The signature is stylized and somewhat cursive.

B. Dan Berger  
Senior Vice President of Government Affairs  
BDB/tt