



June 30, 2008

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

Re: Proposed Rule: Credit Union Service Organizations Parts 712 and 741

Dear Ms. Rupp:

The National Association of State Credit Union Supervisors (NASCUS) is the professional association of the state credit union regulatory agencies that charter, regulate and examine the nation's 3,400 state-chartered credit unions. NASCUS is pleased to have this opportunity to comment on proposed rules regarding credit union service organizations (CUSOs) and federally insured state-chartered credit unions (FISCUs).

As the representative of public officials charged with the responsibility of regulating state-chartered credit unions, NASCUS endorses sound and reasonable regulation. At NASCUS, our objective is to ensure the safety and soundness of the state credit union system and to pursue every reasonable efficiency to minimize regulatory burden. However, NASCUS has a growing concern that despite the well-intentioned purposes of some regulations, their cumulative impact can have a negative effect on the credit union industry.

NASCUS understands that the proposed changes to Part 712 include provisions applicable to federal credit unions as well as provisions applicable to FISCUs. NASCUS confines its comments to those provisions of the proposal that apply to FISCUs.

After reviewing the proposal, NASCUS submits the following comments:

- As a matter of principal, it is consistent with safe and sound business practices for regulators to ensure that credit unions maintain corporate separateness from their CUSOs.
- NCUA has a valid interest in understanding the potential risks that a CUSO may pose to a FISCU; however, NCUA should minimize regulatory burdens by deferring to state regulatory authority to the greatest extent practicable in order to achieve effective and efficient regulatory oversight and minimize duplicative requirements.
- Although any investment in a CUSO poses some risk, the materiality of that risk should be the determining factor. NASCUS suggests that some differentiating

thresholds would be appropriate to reduce the burdens imposed by this potential regulation.

Regulations should be as clear and as understandable as possible for those persons who are affected by them. Accordingly, CUSO provisions that are applicable to FISCUs should be codified in Part 741 in their entirety.

Federally Insured, State-Chartered Credit Unions and Credit Union Service Organizations

NASCUS has long been on record as being concerned that NCUA's extension of share insurance regulation to FISCUs unnecessarily blurs the legal distinction between state and federal credit unions to the detriment of the dual chartering system.

Corporate Separateness

NCUA proposes to extend Part 712 requirements that a credit union maintain corporate separateness from its CUSO to FISCUs. NASCUS acknowledges this is a sound practice and an appropriate issue for NCUA to address via share insurance regulation. However, NASCUS recommends that NCUA, if it ultimately promulgates a separateness rule for FISCUs, incorporate the requirements in Part 741 in their entirety rather than by reference to Part 712.4. The use of cross-references in Part 741 is a confusing and problematic format, creating inefficiencies for state-chartered credit unions and state and federal regulators.

Access to CUSO Books and Records

Many state regulators have extensive authority to examine and regulate CUSOs. NASCUS urges NCUA to consider working within the parameters of state authority before unilaterally applying the proposed rule to FISCUs. At a minimum, in cases where NCUA's concerns regarding the true condition of a credit union's investment in a CUSO may be satisfied by working with the state regulator, NCUA should exempt that state's FISCUs from the proposed requirement. Should NCUA choose to apply the rule to all FISCUs without considering state authority, the agency would be adding a redundant regulatory layer upon FISCUs without any demonstrable corresponding improvement in oversight.

Any rulemaking should be specifically targeted where needed, by CUSO activity or state, without creating the burdensome redundancy where state authority can achieve the common regulatory goal of evaluating the quality of a credit union CUSO investment.

Differentiating Between Investments and Loans

It is our understanding that the proposal would require access to the books and records of any CUSO "in which a credit union has an ownership interest or to which the credit union has extended a loan." In the context of investments and ownership interests, NCUA's concern regarding the true nature of the risk and the liability of the credit union is understandable. However, NASCUS objects to the substance of the proposal regarding loans extended to the CUSO. If the loan is somehow coupled with an ownership interest, NCUA's jurisdiction seems

to already be covered. If there is no ownership or investment characteristic to the loan, however, it is unclear why the mere lending transaction should give rise to a need for NCUA to assess the CUSO's books and records. Credit unions nationwide lend varying amounts to commercial entities without regulators needing to assess the books and records of the borrower. In a pure loan scenario, the credit union's risk would be limited to the outstanding balance and any unfunded commitments. In such cases, NCUA should be able to evaluate the risk to the credit union in the manner in which all loan portfolios are analyzed, through the loan files of the credit union. NASCUS urges NCUA to change the proposal to refer only to CUSO investments and ownership interests.

Full Incorporation in Part 741

NASCUS suggests that any provisions of the proposal that apply to FISCUs should be fully incorporated within Part 741, rather than incorporated by reference. By a full incorporation of any CUSO provisions, NCUA can reduce confusion and mitigate, to a certain extent, the regulatory burden for FISCUs. Given that Part 712 contains numerous CUSO regulations applying to only federal credit unions, incorporation by reference burdens FISCUs by requiring their review of the entire Part 712 to discern which provisions apply to them. This may cause some confusion for credit unions mistakenly viewing federal credit union provisions, such as permissible activities, as being applicable to state credit union CUSOs.

Thresholds

The proposal also specifically requested comment on whether the rule should be restricted to certain business lines and/or threshold investment amounts. NASCUS believes that any future regulation should consider both options. Given the historic deference to state law for FISCO CUSO activity, NCUA should regulate as minimally as possible to achieve its end. In this case, it is certainly plausible that both certain lines of business, and de minimis investments, pose no material risk to the share insurance fund. Without a material risk to the share insurance fund, there is no prevailing justification for extending parts of the federal CUSO rule to FISCUs.

NASCUS appreciates the opportunity to comment on the proposed CUSO rule. Furthermore, state regulators thank the agency for the opportunities to discuss NCUA's and state regulators' concerns and many of these issues regarding CUSO and proposed rulemaking in regulator-to-regulator dialogue. Those discussions contributed to state regulator understanding of NCUA's desire to address what the agency perceives as a gap in its ability to access risks to the insurance fund. NASCUS believes that understanding is reflected in the generally supportive nature of this letter. To further discuss our comments, or direct any questions, please contact me.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Senior Vice President, Regulatory Affairs