NACUSO[SM]

THE NATIONAL CENTER FOR COLLABORATION & INNOVATION

September 19, 2017

Honorable J. Mark McWatters, Chairman
Honorable Rick Metsger, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Review of NCUA Regulations

Dear Chairman McWatters and Board Member Metsger:

NACUSO, the national trade association representing credit union service organizations and their credit union owners, is pleased to support and certainly welcomes NCUA's recently announced review of its regulations in an effort to provide regulatory relief. We commend the agency leadership for voluntarily electing to develop a proposal for review of existing regulations in response to the President's request of federal agencies, although we acknowledge that as an independent federal financial regulatory agency NCUA is not required to do. We believe the credit union industry, its 109 million member-owners and the collaborative system among cooperatives that has created the dynamic CUSO network will all benefit from this timely review.

Within this letter, while NACUSO strongly supports many of the proposed actions outlined by NCUA leadership in its recent announcement, we will confine our comments to those issues that arise in situations where the CUSOs are directly or indirectly involved. These are areas that we believe are in need of inclusion in the regulatory review process at NCUA over the next four years.

The first and foremost request of NACUSO is to expand the permissible activities in Section 712.5 to include "loan origination of all types of loans that may be provided by a credit union." With this addition, the specific origination authority for business loans, consumer mortgage loans, student loans and credit card loans could be deleted.

As credit unions turn increasingly to collaborative solutions in lending to reduce costs and compete with non-credit union loan aggregators, CUSOs can play a pivotal role. If CUSOs cannot be loan aggregators, credit unions will be at the mercy of non-credit union loan aggregators who are not willing to deal with the membership issue. Credit unions are currently excluded from participation in loan aggregation networks which more and more consumers are turning to for loans, especially for auto loans. The fact that some types of loans are permitted to be originated by CUSOs and some loans are not is not based on any sound policy but rather on historical happenstance. In our view, it is past time to address and hopefully correct this situation. The regulatory review process that the agency is currently entering is the ideal time for addressing this matter. For your convenience, we attach our previous letter to further explain our position on this issue and to provide additional points of reference for your consideration.

Since CUSOs are intricately involved in many credit union lending operations, we also have comments on proposals relating to the lending process. The proposal to combine and simplify the lending rules would be helpful to the industry. Credit unions are often confused about their regulatory authority due to the piecemeal organization of the various lending rules. Likewise enhancing the federal preemption when possible to ensure that federal credit unions in multi-state situations have an easier and clearer regulatory framework is also a positive proposal.

The ability to package and sell loans to investment buyers is critical to the credit unions moving forward, particularly if Fannie Mae and Freddie Mac are eliminated or their presence in the marketplace is reduced. Secured loan investment packages require scale in order to make them affordable and attractive in the marketplace. Except for a limited few, credit unions do not have sufficient loan volume to create single issuer loan packages. NACUSO encourages NCUA to explore the ability of multiple credit unions to combine to sell their loans in multi-issuer packages with cross-indemnifications.

On another matter, since the enactment of its most recent CUSO regulation in 2013, NCUA exercises *de facto* examination powers over CUSOs, the power to compel CUSOs to report directly to NCUA and the power to compel the CUSO to comply with NCUA directives through the credit union owners. We have long maintained that this exercise of power is without specific congressional authority. This regulatory review process provides an opportunity for the Board to revisit the issue, re-analyze whether the regulation is truly consistent with existing statutory authority and revise its regulations accordingly in a manner that leaves no doubt that the agency is acting both within its authority and also consistently with the need for safety and soundness supervision of credit union CUSO investments – not the direct supervision of CUSOs themselves.

We hope that NCUA will use this regulatory review process to continue to compile necessary data on the investment of credit unions in CUSOs through its registry, but that the agency would elect to discontinue the conducting of CUSO *de facto* examinations in the form of CUSO reviews. This is an ideal opportunity to make this reasonable shift in approach that will be consistent, in our view, with the agency's statutory authority while still allowing it to gather the data necessary to monitor CUSO investment through the credit unions NCUA does indeed have the authority to supervise as regulator and/or insurer.

However, we would like to respectfully request that if NCUA elects to continue to exercise *de facto* supervision over CUSOs, the agency should formally advise the Consumer Finance Protection Bureau ("CFPB") of that fact. The CFPB administers the SAFE Act and the licensing and registration of mortgage loan originators ("MLOs").

Prior to the passage of the most recent CUSO Regulation Amendment, NCUA advised the CFPB that it did not have the power to regulate CUSOs. As a result, the MLOs in the CUSOs providing mortgage lending services have to be licensed and not registered. In multi-state situations, this means that MLOs and the CUSOs may have to be licensed in many states and incur greatly increased expenses and regulatory burden. We request NCUA's assistance, should it continue to conduct CUSO examinations in the form of CUSO reviews even after its regulatory review process is complete, in informing the CFPB that NCUA exercises sufficient supervision over CUSOs to justify that CUSOs be exempt from the licensing requirements and the MLOs in CUSOs qualify for registration.

NACUSO also would like to go on record that the organization strongly supports the proposal for consolidation and improvement of procedures regarding appeals of adverse determinations by NCUA. This is not only important for credit unions but with NCUA's exercise of *de facto* supervision over CUSOs, it is also important for the CUSOs to also have the ability to appeal adverse determinations by NCUA examiners through their utilization of the CUSO review process.

We thank you for the opportunity to comment and thank NCUA for being proactive in revising its regulations to provide regulatory relief.

Very truly yours,

Jack M Antonini

Jack M. Antonini
President and CEO

THE NATIONAL CENTER FOR
COLLABORATION & INNOVATION

March 23, 2017

The Honorable J. Mark McWatters
Acting Board Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

The Honorable Rick Metsger
Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Request to Amend the CUSO Regulation to Permit CUSOs to Originate All Types of Loans

Dear Messrs. McWatters and Metsger:

On behalf of NACUSO and its members, we are asking NCUA to amend and clarify NCUA Rules and Regulations Part 712.5. Part 712.5 lists the permissible services that a CUSO may provide. Originally, Part 712.5 was created as a categorical list of pre-approved activities a CUSO may provide. The list was not meant to be an exclusive laundry list of activities. In the preamble to the 2001 Amendment to Part 712.5, the Board clarified "[t]he specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list." [Fed Reg Vol 66, No. 36] The Regulation anticipates periodic redefining of the permissible CUSO services. We respectfully suggest that the time to expand and clarify the CUSO's loan origination powers is now.

Currently, Part 712.5 lists the following as "categories" of loan origination services CUSOs are permitted to provide: (1) business loan origination, (2) consumer mortgage loan origination, (3) student loan origination and (4) credit card loan origination. We believe these are not categories of services by themselves and create confusion in the industry. For instance, "business loan origination" has meant for years that CUSOs can originate and hold "business loans"; however, does this preclude a CUSO from originating commercial loans. Similarly, does "consumer mortgage loan origination" preclude the origination of home equity loans or lines of credit? This selective lending power can be awkward and confusing.

In the past, when auto loans and unsecured loans were the bread and butter of credit union lending, there were some smaller credit unions that thought CUSOs would pose competition to credit unions. It was a misguided reason to limit the ability of CUSO to make these loans and it is even more misguided in today's hyper competitive world. CUSOs act as intermediaries to source loans for credit unions that are critical in today's interconnected world. The inability of a CUSO to source a type of loan can weaken credit unions in that marketplace.

This weakness in the CUSO Regulation led NACUSO to advocate the addition of auto loans to those loans a CUSO can originate. Because the CUSO registry now better enables NCUA to know which CUSOs are offering which types of products, we were pleased that our request was met with acceptance in concept at the NCUA Board and Staff levels but we have been told that the implementation would be temporarily delayed pending the enactment of other priority regulations scheduled for 2016. With the passage of several major regulations that were enacted or placed into proposal status in 2016, we believe that the time to implement a reasonable expansion of CUSO lending powers is now.

However, despite the very positive response provided to our interest in adding auto loans to those loans a CUSO can originate, we would like to emphasize that our request is not limited to adding just auto lending powers. If a modernization and update of the CUSO authorities is to be considered, we believe an amendment to the lending powers of CUSOs should include all loan types to avoid the need for subsequent requests for additional lending powers. This change will also clarify the category of lending powers in Part 712.5. NACUSO proposes that CUSOs have the power to "originate and hold all types of loans credit unions can make." This change would create an unambiguous, rational and highly defensible lending services definition for CUSO powers. It would correct a policy that authorized certain lending powers for CUSOs and excluded others without a rational basis.

Therefore, we request that the Part 712.5 of the NCUA Rules and Regulations be revised by the deletion of the references to the origination of business loans, consumer mortgage loans, student loans and credit card loans (Sub-Sections 712.5(c), (d), (n), and (s)) and the following language added as a new Sub-Section (c): "originate and hold loans, including the authority to buy and sell participation interests in such loans."

Please feel free to call upon us for further information. We thank you for your consideration of this very important issue for credit unions.

Very truly yours,

Jack M Antonini

Jack M. Antonini
President and CEO