CAP COM
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September 19, 2011

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

RE: Notice of Proposed Rulemaking - CUSOs

Dear Secretary Rupp;

Thank you for providing Capital Communications Federal Credit Union ("Cap Com FCU" or "Credit Union") with this opportunity to comment on the Notice of Proposed Rulemaking in regard to expanded CUSO review authority.

History and Background:

Cap Com FCU is headquartered in Albany, New York and has been in existence since 1953. Its consolidated balance sheet has grown to over $900 million. It serves over 83,000 members and over 47,000 households predominantly in Upstate New York. The membership benefits from a full range of products and services provided by not only Cap Com FCU but also its CUSO's. The following CUSO's are either wholly-owned by Cap Com FCU or the Credit Union holds a majority interest:

- CCFCU Funding, LLC – provides mortgage banking operations (origination and servicing) to Cap Com FCU and other credit unions throughout New York State.
- Cap Com Financial Services, LLC – provides investment and insurance services to over 2,000 active members specializing in retirement planning.
- The Negotiators, LLC dba Car Buyers Helpline – provide consultation and purchasing services for members negotiating to purchase a used or new automobile.
- Old Heritage Realty Services, LLC dba Old Heritage Title Agency – provides real estate title policies for members purchasing or refinancing a home.

All CUSO's of Cap Com FCU are operating in good standing and are considered an integral part of the long term success of Cap Com FCU.

The Limited Risk of a CUSO:

Under Part 712 of the NCUA Regulations regarding the formation of Credit Union Service Organizations (CUSOs), a credit union is limited to the amount it can invest in and loan to a CUSO. Specifically, under §712.2 a credit union's investment in a CUSO must not exceed 1% of its paid-in and unimpaired capital and surplus. In addition, the amount a credit union can lend to a CUSO is also subject to this same 1% limitation.

Furthermore, Part 712 of the NCUA Regulations sets forth the proper formation of a CUSO which mitigates the potential of a credit union being financially liable or legally culpable for the acts of a CUSO which it has invested in and loaned to (referred to as "piercing the corporate veil").

Lastly, §712.3(d)(3)(i) of the NCUA Rules and Regulations appears to currently afford NCUA with similar authority that it is looking to achieve by way of the proposed regulations without the need for additional financial reporting and recordkeeping. Specifically, §712.3(d)(3)(i) states:

> *"...the CUSO will...provide NCUA ... with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by the NCUA ... in carrying out their respective responsibilities under the ACT...".*

It is the opinion of Cap Com FCU that the current regulations in place offer ample and sufficient governance for the NCUA to monitor and control the activities in CUSO's without providing further regulatory burden and restrictions to credit unions. This opinion is based on the following factors:

- If a CUSO is properly established and operated in accordance with a comprehensive business strategy, there is negligible risk to that credit union.
- Credit unions, by regulation, are limited to the amount invested in and loaned to its CUSO(s) (merely 2% of the credit union's unimpaired capital and surplus) providing an even greater constraint limiting the risk exposure to a credit union acting as a parent company.
- In addition, as NCUA currently possesses the regulatory authority to access to the books and records of a CUSO if additional review is warranted it doesn't appear necessary to subject a credit union to additional financial reporting requirements when NCUA currently has access to this information.

Additional Regulatory Burden of the Proposal:

Over the next few years credit unions will be barraged with nearly 200 mandates as directed by the Dodd-Frank Wall Street Regulatory Reform Act as well as a myriad of new and amended regulations as prescribed by the Consumer Financial Protection Bureau (the CFPB).

While the CFPB has been repeatedly touting that it will only propose regulations that are necessary and prudent, this benevolent approach does not seem to be the case in relation to this proposed regulation as it is expected to significantly increase regulatory burden to Cap Com FCU and credit unions of similar organizational structure. In fact, this proposed regulation appears to be contrary to NCUA Chairman Matz's *"Tips on Writing Comment Letters"* as found on NCUA's website. In Chairman Matz's video presentation she states the following:

"In crafting new rules ... NCUA recognizes the need to adopt sensible regulations. Our goal is to impose the least possible burden on credit unions."

Cap Com FCU is of the opinion that in this time when efforts are being made by regulators, including NCUA, to reduce regulatory burdens on financial institutions this proposal is contrary to such efforts and unnecessary in light of the limited financial risk CUSOs pose to Credit Unions.

Additional Cost Associated with the Proposal:

In the view of this Credit Union, the compliance cost associated with the proposed regulation are forecasted to be substantial and is not commensurate with the limited and minimal financial risk that the proposal sets out to mitigate. With added regulatory burden always comes additional cost in the form of increased record-keeping, increased human-effort and reallocation of staff from other projects for which they are responsible.

In addition, credit unions are already faced with added pressures as they try to do "more with less" in these challenging economic times. Successful credit unions, like Cap Com FCU, are currently faced with the challenges of maintaining profitability and capital in light of staffing limitations, an unprecedented mortgage lending slump, reduced investment income and increased operating costs in the form of such expenses as the annual NCUA Share Insurance Assessment and the NCUA Corporate Credit Union Stabilization Assessment.

While the prospect for increased overhead attributable to additional regulatory compliance is never welcomed, the timing of the NCUA's effort to gain additional regulatory governance results in a substantial drag on profits and strain on capital when other economic factors are already providing an abundance of adverse pressures on both capital and profits.

Potential of Multiple Regulators:

Many CUSOs are already regulated by other regulators. Whether it be the oversight of the SEC for investment CUSOs, the home-state insurance commissioner for insurance CUSOs or, as in our case in regard to our mortgage CUSO, the New York State Banking Department, CUSOs are regulated. It would appear that if approved, this proposal would add yet another layer of regulation on top of the current oversight already in place. Unlike many other banking institutions, credit unions would be placed in the unfair position of potentially having multiple agencies regulating their CUSOs.

In addition, while we are not questioning an NCUA's examiners abilities, the products and services offered by CUSOs generally aren't within the purview of an examiner's current expertise or experience. As most CUSOs are already regulated by other regulators who have such experience, it would seem unnecessary and costly to require NCUA examiners to become fluent in the operations of many CUSOs.

It would appear to be far more efficient to see that the NCUA establish collaborative approaches to examination of CUSOs with, for example, the aforementioned agencies and thus eliminate the duplication of examination effort and added credit union cost.

Impact on Future Creation and Innovation of CUSOs:

While most businesses tend to flourish and increase in profitability when allowed to operate in a marketplace that's not wrought with regulations, over-regulated business often fail. Moreover, many times entrepreneurs will not even attempt to start a new business venture when faced with a daunting regulatory environment.

The same can be said for Credit Unions and the formation of new and innovative CUSOs. If the regulatory environment and compliance cost to form and operate a CUSO is exorbitant, it is doubtful that the CUSO will ever be created. Without the creation of new CUSOs the evolution of credit unions offering new and innovative products and services through CUSOs will be stifled. We feel that this proposal may add such a level of cost and regulatory burden that the future of CUSOs may be endangered.

CUSO Benefits to Members and to the Parent:

The purpose of a CUSO is to enable a credit union to offer alternative products and services primarily to its membership but to offer such products and services to non-members as well. CUSOs provide a beneficial service to members and the community as consumers don't need to seek out other, and oftentimes more costly, providers of such services.

A CUSO benefits its parent company as well as the profits generated by the CUSO flow to the credit union in the form of non-interest income and are consolidated into the credit union's financial statements.

To that end, it is imperative that the future of CUSOs not be endangered by superfluous over-regulation which would not only be a disservice to credit unions but to the members served by those credit unions as well.

In conclusion, I would like to thank you on behalf of Cap Com FCU for providing us with this opportunity to submit our comments on the proposed CUSO regulation and we stand ready to further discuss the comments stated within this letter. Should you have any questions please feel free to contact me by telephone at (518) 458-2195 or (800) 468-5500 (ext. 3204) or by email at pstopera@capcomfcu.org.

Sincerely,

Paula A. Stopera, President / CEO
Capital Communications Federal Credit Union