OnPoint℠
COMMUNITY CREDIT UNION

Robert A. Stuart
President/CEO

September 20, 2011

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

Re: *Notice of Proposed Rulemaking*
*(Part 712 and 741, Credit Union Service Organizations)*

Dear Ms. Rupp:

We appreciate the opportunity to comment on NCUA's proposed rules related to Part 712 and 741, Credit Union Service Organizations.

OnPoint Community Credit Union (Credit Union) is a state-chartered Credit Union headquartered in Portland, Oregon and serves more than 222,000 members. The Credit Union has investments in three CUSOs that provide the following services: credit card processing, indirect lending, and ATM network access.

We respectfully submit the following comments to NCUA to assist NCUA in modifying the proposed rule in a manner that reduces unnecessary regulatory burdens.

1. **Inadequate Support for Proposed Rule Expansion**.

In the proposed rule, NCUA states that it is imperative to have complete and accurate financial information about CUSOs and the nature of their services to ensure protection of the NCUSIF and to identify emerging systemic risk posed by CUSOs within the credit union industry.

a. Unsupported Risk to NCUSIF. NCUA has provided no substantive support, facts or information regarding any losses by CUSOs or liability in CUSOs that have caused direct losses to the NCUSIF. As of July 11, 2011, it was reported that credit union failures have cost the NCUSIF $40.1 million. What portion of these losses were directly related to CUSO operations? If NCUA believes CUSOs pose a significant threat to the NCUSIF to warrant the proposed regulatory expansion, NCUA needs to provide the data on which the proposal is based. As proposed, NCUA has provided nothing.

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b. Why Have Current Protections Failed? In Sec. 712.4(b), NCUA requires credit unions to obtain a legal opinion, prior to any investment in or loan to a CUSO, in order to limit losses to the credit union and ultimately the NCUSIF. This requirement has applied to FCUs for many years and to state-chartered credit unions for the last two years. If CUSOs have caused losses to the NCUSIF, how have NCUA's current regulatory requirements to limit liability failed to limit these losses? Before adding more regulatory requirements, including a broad government reporting requirement, NCUA should determine why the legal opinion requirement has failed or is inadequate and strengthen that existing requirement.

c. Risk Targeted Rule. If NCUA's primary purpose for the expanded regulation is to address risk and NCUSIF losses and the only area of CUSO losses that NCUA has generally identified is business lending, then any additional requirements proposed should be targeted to those risk activities. Our Credit Union's CUSO operations and activities do not present such risks and should not be subject to such burdensome and unnecessary requirements.

If NCUA adopts the proposed CUSO changes without providing substantive support for NCUSIF losses or risk, without exploring ways to strengthen the current CUSO requirements to limit liability or limiting the regulatory reach to the area of indentified risk, then the NCUA should be more transparent in its quest of directly regulating CUSOs.

**2. Regulatory Expansion over State-Chartered Credit Unions - §712.1.and 741**

NCUA proposes to expand the application of the CUSO rule for state-chartered credit unions and their CUSOs to cover 6 additional requirements. These added regulatory requirements include:

a. Obtain prior approval of CUSO investments by less-than-adequately capitalized state-chartered credit unions - §712.2(d)(3).
b. GAAP accounting for all transactions - §712.3(d)(1)
c. Prepare quarterly financial statements - §712.3(d)(2)
d. Obtain an annual financial statement audit by license CPA under GAAS - §712.3(d)(2).
e. Submit a financial report directly to NCUA, annually, and in first 30 days of formation.
f. Application of all these CUSO requirements upon subsidiaries of CUSOs owned by a state-chartered credit union - §712.11.

NCUA has not provided any evidence of how the regulation of CUSOs of state-charted credit unions by state credit union regulators has been inadequate in any manner. In the absence of any clear or compelling support for this further regulatory expansion over state-chartered credit unions, NCUA's proposed rule should not preempt existing state

law requirements applicable to state-chartered credit unions even where state regulators have chosen to impose less intrusive requirements.

**3. Ineffective Calculation of Cumulative CUSO Investments/Loans - § 712.2(d)(3)(i).**

We do not object to NCUA taking greater scrutiny of, and requiring greater protections for, less-than-adequately capitalized FCUs' CUSO investments and loans. However the calculation of their CUSO investment on a cumulative basis is ineffective and unreasonable as proposed. An FCU can separately loan to and invest in a CUSO up to 1% of its paid-in and unimpaired capital. The proposal attempts to prevent FCUs from making further loans or investments over these limits based on the total aggregate cash outlay of such loans or investments. This aggregate calculation is flawed in that it ignores whether such loans have been repaid or the invested capital returned to the FCU. The calculation should not reflect only the historical total cash outlay made, but should reflect the cash outlay that remains outstanding.

**4. Excessive Government Reporting of CUSO Business Information - §712.3(d)(4).**

We have numerous objections to NCUA's proposal for comprehensive government reporting of CUSO business information.

a. No Public Comment on Comprehensive Business Reporting Requirements. NCUA has proposed a significant new reporting requirement for all CUSOs but has only disclosed "examples" of required information in 5 broad categories. NCUA has not permitted the affected CUSOs and credit unions the opportunity to comment on any elements of this "required" report. We object that the actual proposed form and reporting requirements will be dictated by NCUA through "guidance" without open rulemaking and public comment. This new government reporting requirement will add a significant regulatory burden for our CUSOs and we should be afforded the opportunity to review and comment on these requirements.

   This proposed rulemaking on these critical, substantive reporting requirements is fundamentally unfair and does not meet the standards of Section 553 of the Administrative Procedures Act, which requires NCUA to afford us an opportunity to comment. Furthermore, NCUA's proposal ignores President Obama's Executive Order 13579 encouraging federal agencies to allow the public a meaningful opportunity to participate in rulemaking. NCUA should not attempt to bind the CUSOs to reporting requirements under a non-binding, guidance policy statement. NCUA should formulate the actual reporting requirements and issue the proposed requirements under an open rulemaking process.

b. Existing NCUA Access to Information. NCUA's current CUSO rule §712.3(d)(3)(i) affords NCUA "complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA." NCUA has not shown that this complete access authority is inadequate

to address safety and soundness concerns or to protect the NCUSIF. If NCUA believes CUSO activities will impose systemic risk to credit unions, then NCUA should focus on the permissible CUSO activities and services under §712.5 that generate such increased risks rather than blanketing all CUSOs with burdensome data reporting requirements regardless of risk.

Clearly the information NCUA has been able to compile on CUSOs is incomplete. NCUA has long recognized it does not have statutory authority to regulate CUSOs. If NCUA seeks expanded authority to regulate CUSOs, it should be transparent and ask Congress for such authority.

c. Reporting Frequency Unclear and Open-Ended. In §712.3(d)(4), NCUA proposes that the financial report be submitted "at least" annually. This leaves open the possibility such reporting may be far more frequent, even quarterly like NCUA 5300 reporting requirements. NCUA should clearly establish the frequency as "annual," and not leave the reporting frequency requirement open-ended, to be determined without rulemaking and public comment.

d. Reporting at CUSO Formation Ineffective. In addition to the CUSO business reporting at least annually, the CUSO is required to submit reports within 30 days of a CUSO's formation. This requirement is burdensome and unnecessary by the simple fact that a new CUSO will have virtually no business information to even report in 4 of the 5 categories (e.g., services, customers, and balance sheet and income information.)

e. Confidentiality of Proprietary CUSO Information. The proposed rule's lack of protections over reported CUSO business information creates an unfair business disadvantage to CUSOs. NCUA needs to provide specific protections in the rule that the proprietary business information reported on CUSO services, customers and financial information remains strictly confidential and will not be subject to public access through Freedom of Information Act requests.

5. **CUSO Subsidiaries.** NCUA's proposal contains a new requirement that extends all requirements of the CUSO Rule Part 712 to any entity in which a CUSO invests. The problem with this provision is not the lack of definition of the term "subsidiary" but the far reaching scope of its application.

a. Extended CUSO Requirements. Any entity in which a CUSO invests is considered a subsidiary CUSO. The size of the investment is not relevant. Any dollar amount invested turns the investment into a CUSO. Consequently all of the CUSO limitations and formation requirements in Part 712 will apply to the subsidiary CUSO, regardless of investment size. The following requirements will apply to a CUSO's subsidiary investment:

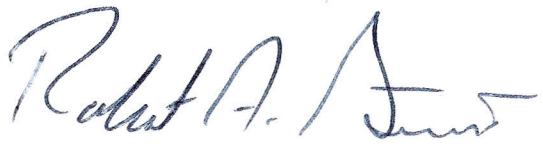
- Limited activities and services
- Corporate separateness in operation
- Legal opinion letter
- Entity structure limited to corporations and LLCs
- Customer base limited to primarily serving credit unions
- GAAP accounting
- Agreement for quarterly financials, annual opinion financial statement audit and NCUA and state regulatory access to books and records, and
- Comprehensive government reporting of CUSO business information (as proposed)

To the extent a CUSO investment or subsidiary does not satisfy these requirements, how soon must the CUSO divest its investment? How soon after the effective date of the final CUSO rule must CUSO subsidiaries come into compliance? We believe that many companies that have allowed CUSO investments either cannot operate under such limitations or will not want to operate under such government intrusion. Subsidiaries that cannot or will not be able to comply with these requirements will require divestiture for the investing CUSOs adding more compliance costs and possible losses upon divestiture.

b. Clarification on Compliance. Currently, an FCU or FISCU investing in a CUSO must retain evidence of compliance with these formation requirements. However, many CUSOs have multiple owners, many exceeding 25 credit unions or more. For multiple credit union owned CUSOs who also have CUSO subsidiaries, will each credit union owner need to retain evidence of that CUSO subsidiary complying with the requirements of §712.3 and §712.4? For example, must each owner obtain a legal opinion letter regarding the CUSO subsidiary? Similarly, must each Credit Union have an agreement directly with the CUSO subsidiary? NCUA needs to clarify in proposed §712.11, the specific requirements an FCU or FISCU must satisfy for a CUSO subsidiary and the compliance documents they must retain.

c. De Minimis Exception/ Delayed Effective Date. The burdens of these additional requirements will be far reaching and extremely disruptive. An alternative to minimize noncompliance or forced divestitures would be a de minimis investment amount of $250,0000 a CUSO could make before the investment is considered a subsidiary subject to all of the CUSO requirements. Alternatively, a delayed effective date of at least one (1) year would afford credit unions and CUSOs

adequate time to address these additional compliance requirements without being faced with immediate noncompliance and divestiture.

Thank you for the opportunity to comment on this proposal. We appreciate the importance of these issues in maintaining safe and sound operations while limiting regulatory burdens on credit unions, and appreciate the chance to contribute during this rule making process.

Best regards,