

September 21, 2011

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

Subject: NWCUA Comments on NCUA CUSO Regulation and Reporting Proposal

Ms. Rupp:

The Northwest Credit Union Association is grateful for the opportunity to weigh in on this proposed rule and would ask that the proposal, in its current form, be withdrawn.

The Association is a regional trade association representing the interests of more than 200 credit unions and their six million consumer-members; institutions that employ and engage more than 10,000 people and hold more than \$50 billion in aggregate assets. Credit unions affiliated with the Association are principally domiciled in the Northwest quadrant of the United States, but the Association also has members from the states of Alaska, Idaho, California and Hawaii.

General Comments

Credit union service organizations (CUSOs) help credit unions form strategic partnerships to provide products and services they may not otherwise be able to provide. Because credit unions are member-owned cooperatives the mission of a credit union is to best serve its member-owners. CUSOs provide credit unions the tools to serve their members by identifying needs in the marketplace and meeting those needs in often innovative ways in which a traditional credit union may not.

As with any sector of the financial industry, a few bad actors can taint perception and cause undue panic and regulatory overreaction. While a limited number of CUSOs have generated concerns, the Association does not believe this is reason enough to propose such sweeping changes and new regulation—allowing NCUA unprecedented ongoing access to CUSOs beyond what we believe to be the sufficient review and enforcement powers already given.

As a point of reference, the aggregate amount of loans and investments to CUSOs is 22 basis points of industry assets.

Legislated Review Powers

While we understand NCUA has previously been granted expanded direct access to all CUSO books, this was temporary and centered on Y2K preparations. After preparedness was ensured, Congress let those powers sunset and did not renew them. Conversely, Congress has given bank and other federal financial regulators the ongoing authority to directly examine service organizations. Having made this distinction it stands to reason that Congress

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intentionally has denied NCUA these regulatory powers not out of ignorance or non action but out of deliberate consideration.

Therefore, NCUA should not try to gain these powers through regulation, citing general safety and soundness principles, when that authority has been so clearly denied legislatively.

Sufficient Current Powers

We support the ability and practice of NCUA thoroughly examining credit unions and ensuring their due diligence in selecting service providers and CUSO partners. Credit unions are required to perform these checks both in selecting partners and in maintaining relationships.

In order to protect the National Credit Union Share Insurance Fund (NCUSIF), NCUA has the ability to take action to resolve any safety and soundness concerns that might be brought on by a CUSO relationship as well as the ability to require divestment and prohibit vendor relationships in those situations. Rather than reaching further and regulating beyond its legislative authority, NCUA should consider consistently implementing current regulations and utilizing such abilities to accomplish the oversight sought with this new proposal.

The Association would support requiring CUSOs to provide information necessary to perform thorough due diligence as well as additional information to participating credit unions including an annual audit and quarterly reports prepared under GAAS and GAAP respectively.

NCUA Resource Allocation

Developing a new arena of regulation and adding the oversight of thousands of organizations with services ranging from lending, to providing insurance, to payroll processing and more, credit union regulators—while experts in their field—would be out of their depth in these new fields. To thoroughly examine all CUSOs, NCUA staff would have to quickly get up to speed on myriad new service areas. This process would take hundreds of hours and be a significant budget drain in a time of an annual exam cycle and an already steady stream of new examiners.

The Association supports the current review powers and focus of the NCUA and believes it has done, and continues to do, an exemplary job in recruiting and training talented examiners. While their expertise is unquestionable, adding services and industries never before overseen by NCUA would be an unnecessary strain on this group and could potentially require higher assessments from already resource-conscious credit unions.

NCUSIF Coverage

It is rare that NCUA uses NCUSIF coverage in a carrot and stick proposition. Protection of member funds is not something to be taken lightly and hanging this over the head of credit unions forming business service partnerships is far too punitive. While credit unions do, and will continue to, form beneficial and sound partnerships they also cannot guarantee the actions of a CUSO. Should a partner CUSO fail to meet NCUA reporting requirements a credit union could lose its share insurance coverage, putting the funds of its members at risk.

Again, while all credit unions are, and should be, required to perform ongoing due diligence in relationships with CUSOs, putting NCUSIF coverage on the line based on the actions of business partners is stepping far beyond what is reasonable and frankly, should not be used in this manner. NCUA has multiple enforcement tools and powers that do not require putting member-owners at risk.

CUSOs as Innovators

While we understand the purpose of this proposal is not to regulate CUSOs out of the marketplace, the unintended consequences could very well do that.

CUSOs are a part of the marketplace. They compete against other CUSOs as well as private and publicly traded companies not under the same restrictive banking regulators. Requiring CUSOs to provide regulators with confidential business plans and customer lists puts that information at the risk of being disseminated via the Freedom of Information Act.

Further, compliance costs on behalf of CUSOs would not be borne by competitors, again putting CUSOs at a competitive disadvantage.

Because CUSOs are often able to provide services to credit unions at lower rates and with an implicit understanding of the cooperative operating principles of a credit union, their services are valuable. Should CUSOs begin to be regulated out of business, credit unions would be forced to seek necessary services from companies that are far less transparent and regulated. Also, credit unions could begin to bring services back under their own roof that may be better serviced outside, or risk the ability to offer those services at all.

Exemption for State Regulators

While we oppose the proposal, should it move forward, the Association supports the ability of state regulators to seek exemption from the proposed requirements and would ask that the ability be expanded to allow federally-chartered credit unions that do not pose a safety and soundness risk an avenue for seeking exemption as well. This would allow well-run state oversight agencies and solid financial institutions some freedom from the proposed regulation.

However, it is difficult to tell how much freedom the exemption would actually provide credit unions as state regulators would be required to extend co-extensive authority allowing direct access to books and records by NCUA at any time. The Association would support NCUA demonstrating cause for concern based on examination reports prior to exercising that authority as well as developing a clearly-defined appeals process and timeline.

Subsidiary CUSOs

The Association does not support the inclusion of subsidiary CUSOs under this rule and would ask that, should NCUA proceed with this rulemaking, this provision be removed from consideration.

Regulatory Burden

As with any new proposal impacting credit unions it is essential to look at the potential effect of that new or changing requirement on the day-to-day operations of a credit union. Credit unions are already overregulated and overburdened with compliance. Knowing that those regulations still in the pipeline from the Dodd-Frank Act will continue to add to that crushing burden, credit unions are unable to accurately forecast and anticipate that mounting burden.

The Association urges NCUA not to generate new and, particularly in this case, unnecessary regulation at a time of unprecedented uncertainty. Many smaller credit unions do not have the ability to monitor and stay on top of the ever-changing disclosures, forms, and training requirements already on the books. The continued onslaught of regulation could essentially

regulate smaller credit unions out of business - not only hurting credit union members but reducing competition in the marketplace and allowing big banks an even larger hold on the financial services market.

Conclusion

We understand the goal of NCUA is to advance the credit union charter and strengthen industry ability to compete in the ever-tightening marketplace. After reviewing this proposal the Association finds it would do nothing in advancing the charter or securing safety and soundness. We believe this proposal steps far beyond the intended powers of Congress and moves to capture powers which should be granted legislatively - not through regulation.

While some CUSOs have posed risks to the share insurance fund, it has been only a handful, and while those have been the most public failures, most CUSOs serve the needs of credit unions and their member-owners well.

As always, the Association is pleased to be able to present its comments and appreciates the thoughtfulness with which they are considered.

We would be happy to answer any questions you may have.

Sincerely,

Jaycee Winn
Director of Regulatory Advocacy
Northwest Credit Union Association