



September 26, 2011

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

RE: Notice of Proposed Rulemaking for Parts 712 and 741 – Credit Union Service Organizations

Dear Ms. Rupp,

The Credit Union Association of the Dakotas appreciates the opportunity to provide comment to the National Credit Union Administration regarding the proposed rulemaking for Parts 712 and 741 Credit Union Service Organizations (CUSOs). The Credit Union Association of the Dakotas represents seventy-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$4.5 billion and who have more than 450,000 members.

The Credit Union Association of the Dakotas does support the proposed amendment to §712.2(d)(3) relating to special rules for less than adequately capitalized Federally Insured Credit Unions as this has a direct correlation to the safety and soundness of a credit union.

On behalf of our members, we are opposed to the remaining proposed amendments to Parts 712 and 741 as they relate to increased regulatory burden for credit unions and overstep the authority of the NCUA. We believe that the rules, as proposed, will have a detrimental effect on credit unions' ability to be innovative and resourceful in bringing efficient and economic solutions to their credit unions and their members. The continued regulatory burden that is imposed on credit unions by requiring redundant and misplaced requirements, such as a majority of the changes proposed in this rule amendment, will have devastating consequences on credit unions, driving more credit unions to close their doors, merge, or limit the products and services offered to their members. CUSOs serve an important function for credit unions and their members and without the services and products that CUSOs provide to stay competitive with other financial institutions the credit union industry as a whole will be negatively impacted.

The financial outlook of many credit unions is uncertain. With limitations on fees, the mounting regulatory burden, assessments, and increased costs, the little income that a credit union derives from a CUSO or alternatively the money that a credit union saves from investing in a CUSO is a matter of necessity for credit unions. For example, with the increased compliance and regulatory burden that is placed on credit unions, if four credit unions can set up a CUSO to hire one person to provide compliance support or other back office functions to the four credit unions instead of each hiring their own individually, this saves each credit union thousands of dollars. Savings that are then passed onto their members. Certainly this type of CUSO provides no

systemic risk and virtually no risk to the credit union owners and thus should not be subject to the unnecessarily onerous requirements of this proposed rule. This type of small operational CUSOs and their credit union owners may actually be put at more risk as a result of this proposed rule as they are forced to expend cost for compliance with reporting and informational gathering requirements in this proposed rule.

The National Credit Union Administration does not have direct regulatory oversight or enforcement authority of CUSOs. *NCUA Legal Opinion Letter, 08-0843*. However, the NCUA seems to be attempting to overstep this limitation of authority by requiring a federally insured credit union to require its CUSOs to allow the NCUA more and more access into the CUSO itself. Chelsea Smith, Risk Management Specialist, with Sioux Empire Federal Credit Union, observes that "it seems to be a bit of a contradiction to retain that corporate separateness, but yet strengthen the oversight into CUSOs; an area where NCUA doesn't have authority as it stands now. I know that this continued plethora of regulatory oversight is amending the atmosphere within Credit Unions; and not for the better, I would argue."

The NCUA has provided little justification for requiring a CUSO, albeit through an agreement with a credit union, to provide such information as subsidiary information; disaster recovery plans and testing; list of services; list of clients by charter number, name, service and level of activity; contact information for each board member of the CUSO, affiliated credit union and their position at their credit union; and balance sheet, income statement, capital structure by credit union and amount, unfunded commitments, contingent liability, borrowings, investments, audits and loan activity information to the NCUA. The NCUA already has complete access to any book or record of the CUSO and the ability to review the CUSO's internal controls under §712.3(d)(3). What value would come in requiring confidential customer lists and other intellectual property of the CUSO? It appears the NCUA is on a fishing expedition and casting an unnecessarily large net.

We believe that the increased reporting and regulatory requirements proposed under this rule are beyond the NCUA's authority and that there are already adequate tools in place to protect Federally Insured Credit Unions from a safety and soundness standpoint. The NCUA already can request the financials of credit unions and the financials of every investment the credit union has made in CUSO investments.

However, should the NCUA find it necessary to pursue such measures as proposed, it should mitigate the regulatory burden on credit unions by implementing certain thresholds or criteria for this increased reporting as not all CUSOs would present the same level of risk. This was addressed by Chairman Debbie Matz in the September 2011 NCUA Report, wherein she noted that "a Credit Union Service Organization (CUSO) performing back-office functions for several small credit unions likely poses little risk to the NCUSIF. But, for example, when a CUSO originates speculative commercial loans or steers subprime, indirect auto loans to dozens of credit unions, it is another story." *Chairman's Corner: Regulating in Our Modern Marketplace, September 2011, Number 9, NCUA Report*. The proposed rule however appears to be in conflict with Chairman Matz statement and instead takes a "shotgun" approach aimed at all CUSOs regardless of size, complexity, or service when instead a more precise approach of targeting just those very few CUSOs that present any true systemic risk is more appropriate. If NCUA is concerned about the systemic risk CUSOs pose to the industry or



Page 3 of 3
September 26, 2011

the share insurance fund it should create automatic exceptions for the vast majority of CUSOs that present a lower risk, such as those noted above by Ms. Matz, and expand the exclusions for wholly owned CUSOs, as is already noted in NCUA §712.3(d)(2). This more targeted approach would provide the NCUA with the information it believes it needs to protect the NCUSIF while reducing the burden on smaller credit unions and smaller CUSOs.

Thank you for this opportunity to share our comments.

Respectfully,

A handwritten signature in black ink that reads 'Robbie Thompson'.

Robbie Thompson
CEO/President

A handwritten signature in black ink that reads 'Amy Kleinschmit'.

Amy Kleinschmit
Director of Compliance