

September 22, 2011

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

Re: Comments on Proposed Rulemaking (CUSO)

VIA ELECTRONIC MAIL: regcomments@ncua.gov

Dear Ms. Rupp:

The Michigan Credit Union League (MCUL) appreciates the opportunity to comment on the NCUA Board's proposed rule to amend its CUSO regulation "to address certain safety and soundness concerns," as well as the amendment to the regulation regarding the requirements for insurance. MCUL is a statewide trade association representing 95% of the credit unions located in Michigan. MCUL respectfully requests that the NCUA Board takes the following letter into serious consideration when deliberating the passage of a final rule.

MCUL does not believe that NCUA currently has the legal authority to support its efforts to compel CUSOs to provide reports, financial or otherwise, to NCUA directly. Therefore, MCUL does not believe these provisions of the proposal could be enforced. In addition, MCUL believes that while NCUA is well-intentioned in attempting to protect the National Credit Union Share Insurance Fund (NCUSIF), many of the remaining elements of the proposal are flawed. With the exception of the provisions related to undercapitalized credit union CUSO investments, MCUL urges the Board to withdraw the remaining portion of the proposed rule until the Federal Credit Union Act (FCUA) is amended and more reasoned approach to address the safety and soundness of credit union CUSO investments can be undertaken.

NCUA Lack the Statutory Authority to Regulate CUSOs

MCUL does not believe that the current statutory framework provides NCUA with the legal authority to compel CUSOs to provide reports (financial or otherwise) directly to NCUA, and believes this proposal is an attempt to sidestep the Federal Credit Union Act (FCUA) in an attempt to regulate CUSOs. Section 1756 of the FCUA reads as follows:

Reports and examinations.—Federal credit unions [emphasis added] shall be under the supervision of the Board, and shall make financial reports to it as and when it may require, but at least annually. Each **Federal credit union** [emphasis added] shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the Board.

If a final rule were to be written as proposed, MCUL does not believe such a rule would provide NCUA with sufficient legal authority to enforce it. This is apparent in NCUA's attempt to hold a

credit union's share insurance in the balance should a CUSO fail to comply with the rule's terms.

Rationale is Insufficient to Support the Proposal's Premise

The rationale behind the proposed rule is that the NCUA Board "believes 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."

Currently, NCUA Part 712 requires federal credit unions (FCUs) to obtain written agreements from a CUSO to provide NCUA with "complete access to any books and records of the CUSO and the ability to review CUSO internal controls." With this ability to be afforded complete access, MCUL does not understand why it is that NCUA believes it cannot obtain "complete and accurate financial information about CUSOs and the nature of their services."

NCUA further states that "the information NCUA has been able to compile on CUSOs is incomplete and flawed, as the agency is attempting to gather pertinent information from customer credit unions rather than directly from the CUSO. The Board notes that without further reporting directly CUSOs, it is impossible for NCUA to determine which CUSOs maintain relationships with credit unions, the financial condition of CUSOs, and the full range of services those entities are offering."

Aside from the fact that NCUA lack the legal standing to require direct reports from CUSOs, MCUL believes the proper remedy until the FCUA can be amended is to determine the types of information credit unions should provide to NCUA regarding its CUSO investments to ensure uniformity, clarity and sufficiency.

Share Insurance Provisions are Punitive and Unnecessary

Currently under Part 741.222, a federally insured credit union (FICU) could lose its NCUSIF coverage if it does not comply with the Part 712 provisions related to making a CUSO's books and records available to NCUA and the requirement to maintain a separate corporate identity from a CUSO. The proposed rule would expand the loss of share insurance provisions to cover the direct reporting mandate on CUSOs and their subsidiaries.

MCUL is growing increasingly concerned with NCUA's continued approach to tie share insurance protection to proposed rules under the guise of "safety and soundness." MCUL strongly opposes this expansion and believes the sole purpose of this unnecessarily punitive approach is to ensure credit union compliance with provisions that cannot be legally enforced against CUSOs. MCUL believes this expansion could well have a chilling effect on future CUSO investments, as credit unions would not have the sufficient control to ensure a CUSO's compliance with the rule's requirements.

MCUL vehemently urges the NCUA Board to reconsider its approach to link share insurance to third-party compliance, especially with regard to provisions that cannot be enforced against the third party.

“Systemic Risk” of CUSOs is Overstated

Part of the NCUA Board’s rationale for its proposed rule is to “ensure protection of the NCUSIF and to identify emerging systemic risk posed by CUSOs within the credit union industry,” yet the proposal does not address any evidence to suggest that CUSOs are posing a systemic risk.

Because both state- and federally-chartered credit unions are limited in the level of investments in CUSOs,¹ MCUL does not see the “systemic” risk of the CUSO environment, seeing as not all credit unions are investing in the same CUSOs. Additionally, according to the August 4, 2011 letter presented by the National Association of Credit Union Service Organizations (NACUSO), the total amount invested by credit unions in CUSOs represents 22 basis points; an amount which is smaller than the 25 basis point Temporary Corporate Credit Union Stabilization Fund Assessment that was announced at the August NCUA Board meeting.

The CUSOs that have failed did not pose the same widespread ripple effect on the credit union industry or the NCUSIF that the corporate credit union meltdown has and is continuing to pose. MCUL believes the NCUA Board is widely overstating its case that CUSOs present an “emerging systemic risk” in the credit union industry that necessitates this proposed rule.

Before approving an FCU investment in a CUSO, Part 712 outlines the required CUSO characteristics and permissible activities. Part 712.5 provides that “NCUA may at any time, based upon supervisory, legal or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services.” MCUL believes the regulatory framework already exists to limit the activities that pose a “systemic risk” to credit union investors. If credit unions are not currently providing sufficient information regarding CUSO activities, the regulation should impose an ongoing reporting requirement on the *credit unions* until the FCUA authorizes NCUA to obtain such information directly from a CUSO.

“Subsidiary CUSO” Definition Vague and Unsupported by Statute

The proposed rule would prohibit a FICU’s investment in a CUSO unless all of the “subsidiaries” of the CUSO follow all applicable laws and regulations, which would include the provisions of the proposal. For the reasons stated above, MCUL does not believe NCUA has the statutory authority to enact or enforce this provision of the regulation. Without legal authority or incentive to comply, “subsidiaries” would unfortunately place credit union CUSO investors in the unfortunate position of losing their respective NCUSIF coverage in the event these far removed entities failed to comply.

Under the proposal, a “subsidiary” would be considered to be any entity in which a CUSO invests. The Board believes that “without this change there is an inherent risk that a subsidiary

¹ Section 401(gg) of the Michigan Credit Union Act limits state-charted credit union loans to and investments in CUSOs to six percent (6%) of the credit union’s assets, or up to a limit of twelve percent (12%) of assets with prior Commission approval. NCUA Part 712.1(a) limits an FCU’s investments to one percent (1%) of the FCU’s paid-in and unimpaired capital and surplus as it is last calendar year financial report.

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CUSO could negatively impact the investing credit union and ultimately the NCUSIF.” MCUL believes this definition is overly broad and the argument is specious at best.

Again, MCUL vehemently urges the NCUA Board to reconsider its approach to link share insurance to third-party compliance, especially with regard to provisions that cannot be enforced against the third party.

Undercapitalized Credit Union Investments

Currently under Part 712.(d)(3), FCUs that are less than adequately capitalized may not invest in a CUSO if the investment would require a total cash outlay of more than 1% of the credit union's paid in and unimpaired capital and surplus, unless the credit union receives prior written approval from its NCUA regional director. The proposal would apply this general requirement to undercapitalized state-chartered credit unions, which would have to obtain approval from their respective state regulator and notify the appropriate NCUA Regional Director of the request for approval. The limit on the amount of the investment would be determined by state law; if such limits do not exist under a state credit union's state laws, the 1% limit on undercapitalized federal credit unions would apply.

MCUL does not oppose these provisions. However, MCUL believes there should be an appeal mechanism in place to respond to a regional office's denial of a CUSO investment application.

Conclusion

MCUL is concerned that NCUA is attempting to bypass the legislative process in order to regulate CUSOs and their subsidiaries by threatening the loss of share insurance on the part of credit unions to ensure compliance. MCUL respectfully requests the NCUA Board to cease tying share insurance to regulatory proposals designed to address issues of safety and soundness.

MCUL does not oppose requiring undercapitalized state-chartered credit unions to file an additional application to the respective NCUA Regional Offices, so long as an appeals process is established to respond to application denials. However, MCUL urges the Board to withdraw the remaining provisions of the proposed rule until the Federal Credit Union Act (FCUA) is amended and more reasoned approach can be undertaken to address the issues regarding CUSO investments.

MCUL appreciates the opportunity to comment on this proposed rule.

Sincerely,



Dave Adams
Chief Executive Officer

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