



September, 21, 2011

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

RE: NCUA RIN 3133-AD93  
Credit Union Service Organizations

Dear Mrs. Rupp:

On behalf of the Credit Union Association of New York (the Association), I would like to take this opportunity to express my concerns regarding NCUA's proposal to expand its financial oversight over Credit Union Service Organizations. While the Association recognizes the need to remain vigilant of activities that may negatively impact the Share Insurance Fund, this proposal is a solution in search of a problem.

First, there is little evidence that CUSO mismanagement or misbehavior threatens the credit union system as a whole. While there are undoubtedly credit unions that have made bad investments in CUSOs and poorly managed CUSOs, these two facts by themselves do not justify increased NCUA oversight absent evidence that these isolated shortcomings reflect regulatory defects in the system as a whole. In fact, no such evidence exists.

CUSOs are for-profit entities, subject to state oversight, regulation and law to the same extent as other businesses. For instance, CUSO LLCs have managers who are legally obligated to act in the best interest of the CUSO and can be sued for failure to do so. Similarly, corporate CUSO's have Board of Directors and auditing requirements.

The proposal would be particularly burdensome for state chartered credit unions. NCUA would be allowed to block such credit unions from making CUSO investments if they are not well capitalized. Whereas federal credit unions have already been subject to limited CUSO oversight, no such restrictions have existed for state charters. Once again, there is no indication that states somehow do an inadequate job of regulating CUSO activities. In addition, the New York State Banking Department has the ability to question the CUSO

activities of state charters if these activities negatively impact a credit union's safety and soundness.<sup>1</sup>

If the NCUA chooses to go forward with this regulation, one area very much in need of clarification is that related to third party subsidiaries. While the NCUA stressed in the proposal's preamble that CUSO subsidiaries are not necessarily vendors, without a more clear and narrow definition of subsidiaries than currently proposed, it will be nearly impossible to comply with this regulation without mandating that vendors agree to be subject to NCUA review. In the event that the NCUA better distinguishes between vendors and third party CUSO subsidiaries, the question remains what proper roles does the NCUA have in overseeing a for profit institution? As is, this proposal compels the industry to contract with entities outside of the agencies jurisdiction to "voluntarily" submit to NCUA oversight. This approach to regulation is of questionable legality and should be used only in the rarest of circumstances.

NCUA faces a difficult challenge as it seeks to recalibrate its responsibilities following the country's financial crisis. This proposal doesn't strike the right balance because it proactively seeks to exercise its authority over institutions already subject to appropriate and sufficient oversight. I hope that you find our suggestions helpful.

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with a large initial "W" and "J".

William Mellin  
President /CEO  
Credit Union Association of New York

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<sup>1</sup> NY Banking Law Section 36(6) (to be recodified) gives examiners the right to "examine corporations or any other entity affiliated with any such banking organization. The following are deemed for the purposes of this section to be corporations or other entities affiliated with a banking organization."