



June 26, 2008

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

Re: Comment on Proposed Rule 712, CUSO Amendments

Dear Ms. Rupp:

This is a comment letter by the National Association of Credit Union Services Organizations ("NACUSO").

**Expanding the Scope of Certain Services to Include Persons within the Field of Membership.** NACUSO supports the change to permit CUSOs to provide checking and currency services and electronic transaction services to persons who are members or within the field of membership of a credit union with an investment in, loan to, or contract with the CUSO. This is a logical extension of the corresponding power granted to credit unions. We urge NCUA to fully implement the powers granted by the Financial Services Regulatory Relief Act of 2006, particularly permitting CUSOs to primarily serve persons within a credit union's field of membership with regard to the sale, servicing, and processing of money transfer instruments.

**Adding Credit Card Loan Origination as a Permitted Activity.** NACUSO supports adding credit card loan origination as a permitted activity. Credit unions have been searching for a credit union owned solution that can purchase credit card portfolios of credit unions desiring to sell their portfolios. This enables credit unions to aggregate the operation to obtain economies of scale that are critical in the credit card lending business.

**Loan Participations.** NACUSO supports clarifying that a CUSO has the ability to buy and sell participation interests in loans they are authorized to make. CUSOs are "credit union organizations" and are eligible organizations under the loan participation rule. We note NCUA's comment that the loan participation rule would not support the sale to FCUs of participation interests in a credit card portfolio which consists of open-end, revolving credit. We respectfully request that the loan participation rule be reviewed in its entirety as the rule is outdated in other respects and not just as to open-end revolving credit. CUSOs are being used by credit unions in collaborative enterprises as the originator of mortgage loans, business loans, student loans, and now credit card loans. The loan participation rule did not contemplate CUSOs as originators and

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the collaborative models that have developed. For example, if a CUSO originates a loan, must the CUSO retain a minimum amount? The rule only refers to a FCU as an originator which must retain 10% of the face value of the loan. If the CUSO is required to hold any portion of the loan it originates, it puts pressure on the capital of the CUSO and reduces its effectiveness. The CUSO investment limitation restricts the ability of a credit union to replenish the CUSO's capital. We have heard concerns that the originator must stay in the loan participation as a safety and soundness safeguard, i.e. the originator will not purposely underwrite bad loans if it has a material stake in the performance of the loan. Is this concern met if the CUSO is selling loan participations to its owners which control the CUSO? We also note that if the CUSO sold a whole loan to a credit union as an eligible obligation, the credit union is prevented by the loan participation rule from selling loan participations in the loan because the credit union was not the original lender. Why would NCUA want to have a rule that would limit a credit union's liquidity options? The credit union industry has outpaced the loan participation rule. The rule must be updated in order to provide an effective means to balance the business needs of the credit unions with effective safety and soundness practices.

**Adding Payroll Processing Services as a Permitted Activity.** NACUSO supports adding payroll processing as a permitted activity. Credit unions are currently providing payroll processing as a financial service. Payroll processing is a valuable ancillary service to serve business members.

**Additional Examples of Permissible Activities with Approved Categories.** NACUSO supports the addition of the examples which include employee leasing services and support, purchase and servicing of non-performing loans, business counseling and related services for credit union business members, and referral and processing of loan applications for members turned down by the credit union.

**Propose Adding All Lending that is Permitted by a Credit Union as a Permitted Activity.** NACUSO proposes adding all lending that is permitted by a credit union as a permitted activity of a CUSO. There is no logical argument to exclude unsecured lending and vehicle secured lending from the permitted services of a CUSO. These restrictions are historical relics that should be cast aside. Credit unions should be given the option of being able to use a CUSO to aggregate volume and manage risk across all of the credit union's lending lines. NACUSO cannot detect any safety and soundness issues that would justify excluding certain lines of lending by a CUSO. A CUSO is very useful as an originating lender in a model where credit unions are aggregating their lending efforts to reach economies of scale. We request that the CUSO lending authority extend not only to loans that the CUSO originally funds but also permits CUSOs to buy loans that have been funded by another lender such as in the case of

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indirect lending. NACUSO understands that setting up successful indirect lending programs requires the car dealers perceive credit unions as a reliable lending source for qualified loans. Otherwise car dealers will go elsewhere. While credit unions have a right to refuse to accept loans that meet their lending criteria, it is imperative to maintain a successful indirect lending program that an alternative lending source such as a CUSO be available to pick up the slack by purchasing qualified loans the credit unions elect not to fund. We ask for your favorable consideration of the request for CUSOs to have the power to fund and buy all types of loans that a FCU is eligible to make.

**Propose Adding Payday Lending Powers.** Payday lending has negative press and deservedly so in many cases. Many payday lenders charge fees and interest rates that drive up the cost of credit to exploitive rates. Many commentators see payday lenders as preying upon the underserved. Yet there is a need and demand from many members for this service and they will go elsewhere if credit unions cannot provide the service. Credit unions who survey their members are often surprised to find that the members who use payday lenders are not limited to members of modest means. They find that some of their employees use payday lenders. Credit unions can turn their backs on these members or they can provide an alternative payday lending product of lesser cost coupled with education and incentives to break the payday lending cycle. There are some alternative payday lending services offered by credit unions. The problem these credit unions face is that the recovery of the costs on this short term credit drives the APR over the 18% usury cap. Credit unions cannot afford to provide the service without using legal loopholes which can be detrimental to their members. For example, some credit unions charge an application fee for each loan disbursement which is not included in the APR calculation under Regulation Z. The application fee must be charged to the members regardless of whether the application is approved or denied. This result is particularly harsh to members who can least afford the fees. It is time NCUA consider addressing the issue straight on. One approach is to raise the credit union's usury cap for these loans. Another solution is to permit CUSOs to provide payday loans. CUSOs are not limited by the NCUA usury cap. CUSOs of state chartered credit unions in Washington and Missouri are permitted to provide payday loans and have done so without adverse financial consequences to the CUSO or the investing credit unions. Members are being financially exploited every day by predatory lending practices of payday lenders. Credit unions want to help their members break this destructive cycle but they cannot do it without the necessary regulatory powers.

**Requiring Federally Insured State Chartered Credit Unions to Provide NCUA Access to its CUSO's Books and Records and Taking Steps to Ensure Corporate Separateness.** NACUSO has not experienced significant negative feedback from FISCUs on this point. We note that FCUs are able to operate without issue and many FISCUs voluntarily

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comply already. We also note that if a CUSO is co-owned by both state and federal chartered credit unions, NCUA has access to the CUSO's books and records through the FCU owner(s). If there is significant push back from the state chartered credit unions due to fear of the expansion of federal authority over state chartered credit unions, then we propose requiring compliance with the federal rule only if the state credit union regulator did not have similar CUSO provisions and the ability to share the information with NCUA. We note that some states permit CUSO activities not permitted by NCUA. We do not believe that NCUA should in any way impede or hinder the full exercise of powers granted to a CUSO of a state chartered credit union even if those powers exceed the powers granted to a CUSO of a federal credit union.

**Recapitalization of CUSO.** NACUSO does not oppose the concept that NCUA should have the ability to control the CUSO investment in less than adequately capitalized credit unions per Part 702.202(b)(2). The proposed change to the CUSO Regulation would require the credit union to obtain the approval of the Regional Director to invest in a CUSO if the credit union is less than adequately capitalized or if by reason of the credit union's investment in the CUSO, it would render the credit union less than adequately capitalized and the investment would be in excess of the CUSO investment limitations, considering all aggregate cash investments. We note that in some cases the CUSO may hold the key to reviving the fortunes of the credit union either by providing non-interest income or reducing operating costs. We are encouraged by the fact that additional investment is not prevented but may be approved by the Regional Director. We recommend that a time limit for the Regional Director's decision be established to insure that the Regional Director makes a timely decision to enable the credit union to take advantage of the benefits of the CUSO if that is the determination.

**Amendment Requests.** NACUSO supports amending Part 712.7 but not deleting it. The purpose of Part 712.7 is to enable requests for additional permissible services to be considered on a timely basis. Currently the CUSO Regulation is reviewed every three years. The concern of NACUSO is the financial marketplace moves at such a fast pace that the ability of credit unions to respond to the market is greatly impeded if a credit union could not get a request before the Board sooner than once every three years. Theoretically, anyone may petition the Board but from a practical manner, unless an issue is in the headlines of newspapers of general circulation or is a safety and soundness concern, the issue is put off until the regulatory cycle brings it around. The proposal indicates that there has been only one request to amend the CUSO Regulation to add a permitted service. We credit the General Counsel's Office for this statistic. They have worked well with the credit union community and have been flexible to interpret requested services within the current permitted services when they deem it appropriate and explained the reasons why the requested service could not be a CUSO service when it was deemed inappropriate. NACUSO does not want to lose the ability to get a proposed service on

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the agenda of NCUA on a relatively expedited basis if warranted. We do not know what the future holds but we know the pace of change is increasing and we know new permitted services will be requested. If the current sixty day turn-around is too short for the staff to adequately review a proposal, then we do not object to extending that time frame and retain Part 712.7. The rule has apparently not been a burden to have on the books to date and may be a benefit going forward.

**Comments to Opinion Audit Requirement.** The cost of an annual opinion audit is a very real burden to many multi-owned CUSOs that are trying to preserve their capital to serve the credit union owners. We note that the minority owners, who the rule is supposed to protect, have to share in this costly burden to the CUSO. The cost of the audit is often disproportionate to any benefit a minority owner could derive from it. There has to be some materiality built into this rule, i.e. whether the investment amount is sufficient to justify the cost of the audit. Control is another factor that should be considered. Credit unions that own a controlling interest in a CUSO do not have to be protected in the same manner as credit union investors who do not own a controlling interest. Credit unions owning a controlling interest can compel an audit. The NCUA can define a controlling interest but we understand under GAAP a controlling interest is at least a 20% ownership interest. We recommend that a non-opinion annual audit be required if there are any non-controlling credit union investments in a multi-owned CUSO in excess of \$50,000 and an annual opinion audit if there are any non-controlling credit union investments in a multi-owned CUSO in excess of \$200,000. We believe this proposal strikes a balance in the costs versus benefits analysis.

We thank NCUA for the opportunity to comment on this proposed regulation change. As the number of credit unions shrinks and the number of CUSOs grows in response to the pressures of the financial marketplace, the impact of CUSOs on the financial well-being of credit unions continues to rise. NACUSO believes that more extensive and effective credit union collaboration through CUSOs is essential for the success of credit unions. NACUSO appreciates the support of NCUA in empowering CUSOs to realize their potential for the benefit of credit unions and their members.

Respectfully submitted,

*Thomas C. Davis*

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