



"A CUSO Solution for Vendor Due Diligence"

August 5, 2011

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
Email: regcomments@ncua.gov
Re: **Comments to the Proposed Amendments to the NCUA Regulations**
CUSOs 12 CFR Parts 712 and 741

Dear Ms. Rupp:

As a CUSO, Credit Union Vendor Management, LLC, "CUVM", would like to comment on the proposed Amendments to 12 CFR Parts 712 and 741 regarding additional regulation of CUSOs.

Background:

CUVM is a small collaborative CUSO born of an entrepreneurial idea to reduce or eliminate certain redundant activities with respect to NCUA's Regulations on Vendor Due Diligence and Vendor Management. Our ownership group consists of nine credit unions, the Mountain West Credit Union Association (fka The Colorado Credit Union Association) and the company's CEO. Our primary focus is the reduction of operational costs for our customer credit unions and to ultimately provide a return on investment for our owners. We work with over 50 credit unions across the country and strive to bring industry leadership, education, and innovation to vendor due diligence and vendor management.

It has been our observation that most credit unions are not in a position, by themselves, to be as efficient as we are at our tasks nor do they possess the concentrated expertise and proprietary systems we have created as a CUSO dedicated to our specific services. This pooling of financial and human resources, investment risk sharing, and a needed product/service deliverable are the essence of the collaborative approach which defines CUSOs.

Below we have submitted for your consideration several reasons we respectfully oppose additional regulation of CUSOs under CFR Parts 712 and 741.

1. In reading the proposed Regulations it is our position that the case for the amended rules has not been sufficiently made given that sufficient and appropriate regulations are already in place. Specifically NCUA currently has the power to inspect the books and records of CUSOs and to compel credit union owners to make needed changes if the CUSO is not in compliance with the CUSO Regulation or if a safety and soundness issues exists. We don't need additional regulatory burdens that will cost us time and money when there are regulations in place to address serious issues.
2. In NCUA's own statements you indicate there is no current authority for the direct regulation of CUSOs. However, these amendments clearly expand NCUA's reach over CUSOs by compelling financial reporting directly to the agency for evaluation. "This looks and feels like vendor authority and the direct regulation of CUSOs which has not been authorized by Congress"(1). We are confident sufficient and appropriate regulations are in place to address the NCUA's concerns about problem CUSOs and or credit union owners and that this additional regulation is not needed.
3. NCUA as a government entity is subject to the FOIA and would be compelled to disclose the documents filed with the NCUA pursuant to this proposed regulation. Financial reports and other private or sensitive information, not required to be filed by non-CUSO vendors, would be required to be disclosed to a requesting party. Vendors competing directly with CUSOs would be able to access information they themselves are not willing or required to disclose and it would create an unfair advantage to non-CUSO vendors.
4. There are many successful CUSOs which bring considerable income to their credit union owners. Consider that without the initial risk to fund a CUSO these valued sources of income and services would not have developed and would not exist today. Without innovation and risk to develop potential sources of income, the industry will have a very difficult time in the long term. Also, the initial risk and decision to invest in a CUSO is fragile and additional regulatory burdens could very well prevent or stifle some credit unions from participating altogether. Our CUSO is in that start up phase and the "initial risk" spoken of above is fresh in our minds. Of further concern is that the NCUA may eventually desire to expand their authority to determine if a CUSO idea is of merit before it would be allowed to start. This stifling of entrepreneurial effort would have a chilling effect on innovation and investment for supporting business ideas. "When regulatory considerations replace value factors in the decision to invest in a CUSO, credit unions suffer. Innovation is needed if the credit union industry is to survive and, frankly, history has proven that innovation does not blossom as splendidly under a severe regulatory environment as it does with a more balanced approach to regulation – such as currently exist with agencies and authorities." (1).

5. The total investment and loans to CUSOs is a small fraction (22 basis points) of the total assets in the credit union system. As such, it is clear CUSOs do not pose a systemic risk to the insurance fund. “There has been no empirical data presented to prove that CUSOs are inefficient, performing poorly or threatening the safety and soundness of the credit union industry as a whole. Each credit union’s CUSO investment risk and lending risk is less than 2% of its assets. This is a *de minimus* amount. The loss from such a small investment would, in the overwhelming majority of instances, not be material to the financial health of the credit union; however, these limits – already in place without the need for the current proposal to be laid atop them - permit credit unions the freedom to experiment and find new solutions to old problems without direct regulatory encumbrances.

6. In the press we have observed articles regarding CUSOs which have contributed to credit union failures. Given these few examples, we suggest that there may have been a need for more supervision and scrutiny and that this could still have been accomplished under the current regulations and with more active examination of the CUSO directly. Also, we hope small CUSOs and those that do not pose a significant risk to its owners would be exempted from any proposed regulation. There are differences in criticality and potential risk that should be taken into consideration for examiners and regulation but is not addressed in the amendments. Also, we feel that the regulation as it is proposed for all CUSOs is overkill based on the actual risk involved.

7. We are concerned about the basis NCUA would use to evaluate a CUSO. For example, as in our case, as an Operational CUSOs we are designed to save our customer credit unions operating costs through collaborative efforts and operational efficiencies. Secondly to provide an adequate return to our owners. “If NCUA follows the model outlined in this proposed rule to review CUSOs based solely on balance sheets and income statements, there will arise additional questions that must be answered. For example, how does NCUA expect to see the value of CUSOs to credit unions or analyze risk solely through a balance sheet or income statement? What will be the NCUA’s standards of review for CUSO success? Does NCUA intend to shut down a CUSO that does not have a large ~~balance sheet or income statement~~ regardless of the positive financial or service impact the CUSO has for its credit union owners? (1)”. This is a huge concern from our perspective given our typical start up stage financials and our altruistic drive to assist smaller credit unions be compliant with NCUA regulations.

Our sincere hope is that this proposed amendment will be withdrawn by NCUA and that a further study of the issues will be undertaken so that all aspects of the regulations intended and unintended impact can be appropriately measured and understood. We hope you will include both CUSOs and the owner credit unions in any further dialogue.

Thank you for your consideration of our comments.

Sincerely,


Rock J. Carter, CEO

Cc: **The Honorable Debbie Metz, Chairman**
The Honorable Michael Pappal, Board Member
The Honorable Gigi Hyland, Board Member
Jack M. Antonini, CEO, NACUSO

(1) NACUSO / Jack M. Antonini Letter to NCUA dated August 4, 2011