CU DIRECT
CORPORATION

September 2, 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 re: CUSOs 12 CFR Parts 712 and 741

Dear Ms. Rupp:

This comment letter is presented on behalf of CU Direct Corporation ("CU Direct") in response to NCUA's call for comments to the proposed amendments to the Agency's CUSO Regulations. In summary, CU Direct opposes the proposed amendments and respectfully submits the following comments:

A. CU Direct Corporation: Background Information

Since its formation more than fifteen years ago, CU Direct has been a leading CUSO and strong advocate for credit unions. CU Direct has ten regional offices throughout the U.S., serving more than 950 credit unions and 27.4 million members. CU Direct provides several credit union lending solution products including Credit Union Direct Lending or "CUDL" (www.cudl.com), Lending Insights (www.lendinginsights.com), and the new Lending 360 (www.lending360.com) and CUDL Retail (www.cudlretail.com) brands. CU Direct helped credit unions generate $8.6 billion in new auto loans while facing tough economic conditions in 2010. A 2010 analysis showed that CUDL credit unions outperformed other credit unions in member growth, auto loan penetration rate, and total auto loan growth. Through the first half of 2011, CU Direct worked with many credit unions to help them re-engage in point-of-sale lending – providing technology tools and strategic advice to help them manage risk and make more loans. This service is well beyond what any of our non-CUSO competitors provide.

In addition to the value its lending services provide credit unions, CU Direct has been an important source of non-interest income for its shareholders. In today's market, credit unions cannot survive solely off of net interest margin. For 2010, the company's Board of Directors approved a 3% dividend on the current share price of $1,000, totaling $1.4 million in dividend income to its 91 member credit union and credit union system shareholders. This is the sixth consecutive year that CU Direct has paid a dividend to its credit union industry shareholders for a total dividend payment over that timeframe of $7 million.

CU Direct represents the industry's ability to improve net income through savings realized by collaboration. CU Direct's flagship brand is the program known as "CUDL," providing indirect and point-of-purchase lending services for credit unions. These "aggregator" services allow credit unions to deliver better member experiences at the point of sale, greater sales efficiency and ultimately higher profits as a result of shared innovation and operational and process efficiencies. The proposed disclosure requirements and regulation of CUSOs will stifle the ability of CU Direct to continue to innovate and provide cost-effective products and services.

B. The Proposal Would Place CU Direct at a Competitive Disadvantage.

In the indirect environment, with the advance of technology and changes in the indirect marketplace, vehicle lenders, including credit unions and banks, are challenged to hold onto market share without the help of an aggregator like CU Direct. In addition to CU Direct, there are two other primary aggregators: DealerTrack, Inc. and RouteOne, LLC. DealerTrack was originally organized by large banks, and is now a publicly traded company. RouteOne, LLC was organized by a group of captive finance companies (e.g., Ford Finance, GMAC, etc.). Neither entity is regulated by banking industry regulators. We note that they also have credit union customers on their platforms.

CU Direct will be at a distinct competitive disadvantage in the marketplace if required to abide by a layer of regulation not applicable to its competitors. NCUA wants CUSOs to submit their balance sheets, income statements, and confidential business plans and customer lists to NCUA. CU Direct has provided, and will continue to provide, financial reports to credit unions and also directly to NCUA during meetings with NCUA personnel. However, the requirement to disclose confidential business plans and customer lists, documents that comprise a corporation's intellectual property, would potentially expose private business secrets to public dissemination through Freedom of Information Act requests. These same risks would not be faced by CUSO competitors and could, in fact, be exploited by them.

There is also an added cost burden associated with new regulatory compliance obligations that would fall to CUSOs but not CUSO competitors. Taken together, the unintended consequence of these added burdens is that credit unions may ultimately be forced to do business with the for-profit, non-CUSO, unregulated vendors. Services provided by these other entities are generally more expensive for the financial institution than those provided to credit unions by CU Direct. The importance of financially viable CUSOs to the health of credit unions should not be underestimated.

CU Direct, its shareholders and participating credit unions are the direct beneficiary of the non-overly regulated CUSO environment. As detailed above, adding a new layer of regulatory burdens to CU Direct could seriously impair its ability to serve its credit union owners and customers.

C. NCUA Already Has Adequate Authority to Manage System Risks.

We believe that NCUA already has appropriate authority to mitigate any real NCUSIF risk posed by CUSOs through existing regulatory control over credit unions. This includes its broad authority to stop credit union actions to resolve any safety and soundness issues, as well as its authority to order credit unions to divest themselves of ownership of a CUSO and to discontinue doing business with any vendor, including CUSOs.

Further, pursuant to section 712.3(d)(3), NCUA currently has the authority to examine the books and records of CUSOs. Current NCUA CUSO regulations also require credit unions to procure a legal opinion prior to the credit union investing in, or lending money to, a CUSO to ensure the CUSO is established in a manner that will limit the credit union's exposure to no more than the amount invested. This is in addition to NCUA's vendor due diligence requirements, which are applicable to CUSOs as well as third party vendors. These existing requirements already provide adequate means for the NCUA to effectively mitigate the less than 1% CUSO investment risk.

NCUA's stated reasons for imposing regulatory authority over all CUSOs are insufficient to justify new regulation. NCUA board members have publicly expressed a desire for parity with banks' regulatory authority over bank operating subsidiaries. Yet there is no evidence that this regulatory authority mitigated bank losses in the current economic crisis. Moreover, subsidiaries are entities of which one financial institution holds a controlling or greater than 50% ownership interest. CUSO investment is not the automatic equivalent of subsidiary ownership.

NCUA also cites substantial loan losses realized in a specific business lending CUSO as justification for the new regulation. Even if CUSOs that make business loans pose a risk that needs addressing, NCUA's attempt to apply a regulatory cure for a business lending CUSO to all CUSOs seems an overreaction when business lending CUSOs are estimated to constitute less than 1% of total CUSOs.

D. The Proposal is Not a Cost Effective Solution to the Perceived Problem.

There is no evidence that CUSOs pose a systemic risk to the credit union industry, especially one that requires regulatory change. The aggregate amount invested in and loaned to all CUSOs is only 22 basis points of industry assets. Each credit union's CUSO investment risk is less than 1% of its assets.

The additional costs of creating and enforcing the proposed CUSO rule, in terms of both staffing and operational budget of NCUA, is an unjustified and unnecessary expense the CUSO industry (and therefore the credit union owners) would have to bear. Either existing resources would have to be spread more thinly or additional resources with knowledge of the lines of business that each CUSO represents, would have to be added. Further, it seems implausible that NCUA would have the staff and expertise to evaluate the various for-profit business models utilized by the vast array of approved CUSO services listed in Section 712.5. To ensure even a minimum level of competence would no doubt require a substantial training investment. We respectfully contend that NCUA's efforts and resources would be more effective in addressing industry risk if they were directed at the agencies' *current* efforts to educate and hold accountable credit union management on service provider policies and due diligence, including selection, management, monitoring and risk mitigation activities.

E. If Not Withdrawn, the Proposal Needs to be Significantly Clarified.

While CU Direct believes that the proposal should be completely withdrawn, if that does not occur, there are key terms in the proposal that are not clearly defined making the related provisions difficult to implement. Several items need to be clarified and key questions addressed.

1. A *CUSO subsidiary* is defined in the proposal as any entity in which a CUSO invests at any level. Such a definition does not track typical state laws. Typically, a subsidiary is an entity in which significant control of more than 50% exists. As currently defined, CUSOs will likely be deemed out of compliance whenever a small investment does not yield the level of influence necessary to ensure a "subsidiary" is complying with the CUSO regulations.

2. A distinction should be made with regard to the risk of piercing the corporate veil of a CUSO w*holly owned by a single credit union* versus a CUSO *owned by multiple credit unions*. In CU Direct's case, with over 90 shareholders, it is extremely unlikely that any court in this country would find the type of circumstances present that would warrant piercing CU Direct's corporate veil. CU Direct is adequately capitalized, has its own unique corporate identity, does not have a common board of directors or employees with any credit union owner, no single credit union has control over it, and CU Direct maintains its own books and records.

   NCUA's purported rationale for this and future-contemplated actions is the risk of piercing a CUSOs corporate veil and its potential impact on the NCUSIF. Where such a risk does not exist as a matter of fact or law, there is no justification for regulatory action. NCUA should define and distinguish multi-credit union-owned entities and exempt them from regulatory burdens directed at single credit union-owned entities, i.e. true subsidiaries.

3. While we agree that a credit union should not invest in a CUSO if they don't have the funds, sufficient limits on their investment ability already exist today. Under the proposal, NCUA will curtail the power of credit unions with less than 6% capital to invest in CUSOs if the aggregate cash outlay to a CUSO exceeds the CUSO investment limitation on a cumulative basis. How is the proposed cumulative investment determined? How far back does the cumulative calculation go? Do investments made in CUSOs that have been sold or dissolved ten years ago affect the proposed cumulative calculation? How do investments in other CUSOs figure into the analysis? Finally, how do dividends paid out by a CUSO impact this calculation?

4. What is the procedure to obtain NCUA approval to make additional investments? What are the standards of review that NCUA will use? Is there a time period in which NCUA must respond to a request or can the request go unanswered indefinitely?

5. If NCUA is to review CUSOs based solely on balance sheets and income statements, there are significant questions that must be answered. 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? Will those standards vary depending on the nature of the CUSO's business activities? 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 on its credit union owners? This seems problematic when the CUSO is designed to be operated at the lowest possible cost for the very purpose of maximizing credit union value.

CU Direct joins NCUA's stand on ensuring prudent safety and soundness standards. However, we believe that this can be achieved without stifling the collaborative and innovative CUSO arm that NCUA originally envisioned. The whole point of a CUSO is to innovate for the benefit of the credit union owner. Innovation typically requires an element of risk-taking. Thus, the primary purpose for a credit union to form and use a CUSO structure is to segregate that innovation risk and confine it to another entity. We understand NCUA's concern regarding the risk of piercing of corporate and LLC veils. However, NCUA's current regulation and increased due diligence requirements sufficiently address that concern. No further action is necessary in that regard.

The power of collaborating with non-profit credit union owners can harness "systemic opportunities." The goal is to effectively accomplish this while appropriately keeping unacceptable risk in check. **<u>If you separate CUSOs and regulate them differently from other vendors, they will not be a viable solution for credit unions or their members</u>.** You will lose the benefits described above as well as the potential impact CUSOs can have on a marketplace, e.g., keeping a competitor's pricing lower for the industry, thereby increasing credit union net income.

We respectfully ask the NCUA to completely withdraw the proposed amendment.

Sincerely,

Tony Boutelle
President & CEO

cc: The Honorable Debbie Matz, Chairman
The Honorable Michael Fryzel, Board Member
The Honorable Gigi Hyland, Board Member
CU Direct Board, Shareholders and Participating Credit Unions