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September 19, 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,

The proposal concerning CUSO's currently under review poses several high risks that I am sure would be defined as "unplanned".

NCUA clearly regulates credit unions and many credit unions own CUSO's. Lake Trust Credit Union, for instance, is an owner of the Mortgage Center, Michigan Business Connection, Member Gateways, members Development Corporation and the Trust for Credit Unions as well as several other smaller CUSO's. Each of these CUSO's serves at the pleasure and direction of their credit unions. A "one size fits all" type of regulation as proposed will apply to a very diverse CUSO industry will absolutely discourage CUSO formation in the future and actually subject the system to increased risks and costs.

NCUA's legal authority to approve the proposed regulatory changes is suspect. NCUA does not have regulatory authority over CUSOs yet this proposal requires CUSOs to provide financial information directly to NCUA which NCUA will retain and evaluate. This looks and feels like vendor authority and direct regulation of CUSOs which has not been authorized by Congress.

By imposing regulatory burdens on them, CUSOs are put at a competitive disadvantage with non-CUSO competitors. NCUA wants CUSOs to submit their confidential business plans, balance sheets, income statements and confidential customer lists. In gathering and holding this information, NCUA puts CUSOs in a competitive disadvantage by exposing private business secrets to public dissemination through FOIA requests. CUSOs are the collaborative arm of credit unions trying to solve operational and financial issues for credit unions and credit unions should not have unnecessary hurdles placed in their path as they seek solutions to their sustainability.

NCUA's two primary reasons for imposing regulatory authority over all CUSOs are inadequate to justify new regulation. NCUA desires parity with banks' regulatory authority over bank operating subsidiaries yet there is no evidence that the banks' regulatory authority over bank operating subsidiaries mitigated bank losses in the economic crisis. NCUA cites substantial loan losses realized in a certain business lending CUSO. Even if CUSOs that make business loans pose a risk that need addressing, NCUA's attempt to apply a regulatory cure for a business lending CUSO to all CUSOs is misguided when business lending CUSOs are estimated to constitute less than 1% of total CUSOs.

We do not necessarily disagree with NCUA's contention that CUSO's ideally should be held to the same general regulatory rules as their owners. It would be logical to question why a credit union would be able to conduct business through a virtual subsidiary that they would not be allowed to do within the credit union itself. If this question is asked, however, it also raises the same question relative to bank holding companies. The primary difference between the two, and the reason why the CUSO model promotes enhanced safety and soundness for the system, is that the CUSO structure generally distributes risks and costs across many different entities. The CUSO's we participate in perform activities that are 100% compliant with NCUA permissible activity rules for credit unions and as such we are not overly concerned with this aspect of the proposal except to the extent that anything that discourages CUSO formation will threaten the opportunity for innovation and enhanced safety and soundness for the system as a whole. It is this issue/concept that we are concerned with as well as the other portions of the proposal.

It appears that regulators think of CUSO's simply as *independent "third party service providers"*. Third party aggregator relationships create cost effective expertise and are crucial to businesses in all industries. It is clearly a benefit to credit unions, however, to be able to rely on third parties that they own and direct. Owner credit unions have fiduciary management responsibility for the CUSO's they own and the authority to control their activities. If CUSO's are creating higher than acceptable levels of risk, regulators should look to the credit unions that own them for proper management. To do otherwise 'throws the baby out with the bath water'. If everyone is performing their fiduciary responsibilities, NCUA included, there already exists more than enough authority and oversight currently to manage the real or potential risk. Adoption of the current proposal will cause fewer CUSO's to be formed and promote greater reliance on independent and self motivated third party providers who see credit unions and their members as nothing more than a source of profit. This will increase costs to credit unions, reduce benefits to credit union members, create more barriers to effective oversight and <u>increase systemic risk</u> to credit unions.

It is important to note that most CUSO's operate within the rules established by NCUA for their owners. The mission of these CUSO's is not to independently promote business outside of the rules, but rather to help their credit unions compete and serve on a more efficient and effective basis than individual credit unions can do on their own. It also permits credit unions to participate in certain already approved areas that the cost of entry may limit participation in. The "start up" costs can be shared amongst a group of like minded credit unions that any single one could not afford. Thus, the current proposal creates the potential for burdensome and expensive compliance requirements that could threaten the value proposition of engaging services from a CUSO. This will add cost, as well as financial and reputational risk, to credit unions that then feel compelled to justify an in-house solution or contract with a profit oriented private service provider.

As is obvious, we do not totally believe the direction of the current proposal to be without some merit. However, it's impact on credit unions can and will be negative if extended unevenly and too far creating many and severe "unintended consequences". We encourage the NCUA to be more detailed and transparent with its intentions and deliberate with the concerns it is targeting. The use of anecdotal examples and promotion of mismanaged rogue situations as evidence of threats to the system does not provide an adequate foundation for meaningful dialogue on how to improve the strength of the system as a whole. The simple reality is that many CUSO's have strong relationships with their field examination teams and work voluntarily and collaboratively with them to address mutual concerns. Examiners have limited opportunity to do the same with non-CUSO contractors.

The proposal as written is excessively vague and leaves too much to individual discretion and interpretation and will create unintended consequences if adopted in the form as proposed:

- There are terms in the proposal that are in need of significant clarification. What is meant by a subsidiary? Does a CUSO have to have controlling interest in a company or does a 1% ownership in a company make the company a subsidiary?

- NCUA plans to 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 far back does the cumulative calculation go? What if a credit union invested in a CUSO ten years ago, does that count? How do investments in other CUSOs figure in to the analysis?

- 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?

It should also be considered that many very successful CUSOs that drive significant savings and income to credit unions do not have a sizable capital structure or generate income. Operational CUSOs are designed to save the credit union's operating costs and not to make money. Financial service CUSOs are often formed solely for marketing or license purposes and income flows from a third party vendor directly to the credit unions. If NCUA is to review CUSOs based solely on balance sheets and income statements, there are 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? 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?

We all desire a safe, sound and vibrant financial services industry. Credit unions create value for the industry and extensive benefits to members in forming and engaging CUSO's and great caution should be exercised by NCUA in creating requirements that conflict with the benefits of owning or contracting with a CUSO.

At the present time, we request NCUA to withdraw the current proposal to more fully examine the "unintended consequences" that it would create in its current form.

Sincerely,

William J. Thiess
President
Lake Trust Credit Union
Chairman Michigan Business Connection