

SchoolsFirst[®]

FEDERAL CREDIT UNION

September 20, 2011

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

Re: Comments on the Proposed Amendments to NCUA Regulations: Parts 712 & 741 (CUSOs)

Dear Ms. Rupp,

I am writing on behalf of SchoolsFirst Federal Credit Union, which serves school employees in Southern California. We have more than 480,000 Members and over \$8.7 billion in assets. SchoolsFirst FCU appreciates the opportunity to comment on the NCUA's proposed rulemaking, which would amend its credit union service organization (CUSO) regulation.

SchoolsFirst FCU opposes the majority of the provisions in the proposed rulemaking as overreaching, unnecessary and, in the case of the proposed direct reporting by CUSOs provision, without legal authority.

Adequate Capital Requirements

Currently, federal credit unions that are less than adequately capitalized may not invest in a CUSO if the investment would require a total cash outlay of more than 1% of the credit union's paid in and unimpaired capital and surplus, unless the credit union receives prior written approval from its NCUA regional director. The proposal would apply this general requirement to undercapitalized state-chartered credit unions, which would have to obtain approval from their state regulator and notify NCUA of the request for approval. The limit on the amount of the investment would be determined by state law; if such limits do not exist under a state credit union's state laws, the 1% limit on undercapitalized federal credit unions would apply.

While we oppose the proposed rule in general, we support expanding the existing capital rules for federally-chartered credit unions to state-chartered credit unions. This is consistent with safety and soundness and we agree that it is an appropriate requirement.

NCUA Reporting Requirements /Access to CUSO records

We strongly oppose the proposed rule that would mandate both state and federally-chartered credit unions to include in their CUSO agreements a provision that would require CUSOs to submit financial reports *directly* to the NCUA and to the appropriate state regulator, if a state-chartered credit union is involved.

In addition, the provisions concerning the NCUA's access to the books and records of CUSOs is of particular concern. In our opinion, it remains unclear that NCUA has sufficient authority to examine the books and records of CUSOs.

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While Subsections 1757(5)(D) and 1757(7)(I) of the FCU Act authorize federal credit unions to lend to and invest in CUSOs, they do not address NCUA's authority over CUSOs. In fact, unlike other federal financial regulators, which have service company examination authority under the Bank Service Company Act, NCUA does not have express statutory authority over service organizations, such as CUSOs.

In light of the above, the NCUA has relied on its Section 204 general safety and soundness authority, as well as other general safety and soundness rulemaking provisions, as its legal support for reviewing the books and records of a CUSO. The proposal cites other general provisions as authority for the new proposal.

Given the fact that Congress removed NCUA's specific authority to examine CUSOs ten years ago, we think reliance on general authority to examine federal or state credit union CUSOs is tenuous at best and contravenes the intent of Congress. We also feel that the proposed language to allow NCUA to require direct reporting by CUSOs to NCUA and state regulators, as applicable, is unsupported by the FCU Act.

Furthermore, sufficient CUSO regulatory oversight already exists, as shown by the following:

- Pursuant to Section 712.3(d)(3) of NCUA Regulations, the NCUA has the ability to examine a CUSO's books and records. 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.
- Federally-insured credit unions are already required to comply with due diligence responsibilities. These include performing an adequate review before becoming involved with a CUSO. These responsibilities also include undertaking subsequent, ongoing reviews on a periodic basis to ensure the CUSO is providing intended services and does not present an undue risk that threatens its performance or poses a threat to the operations of its credit unions. Rather than issuing new requirements, the NCUA should focus on targeting problem areas and implementing existing requirements, such as due diligence.
- The NCUA has indirect supervisory ability of CUSOs through its direct oversight of credit unions. The NCUA can request the financials of credit unions and the financials of every investment the credit union has made. If the credit union has made an impermissible CUSO investment or one that examiners believe adversely impacts the safety and soundness of the credit union, the NCUA already has the authority to order divestiture of the investment.
- Each CUSO, as a separate entity, is subject to direct regulation by state licensing agencies. For example, a CUSO incorporated as an LLC in the state of California, is already subject to direct regulation, at a minimum, by the Secretary of State. If the CUSO is engaged in the financial services business, it is subject to even further supervision by the state Department of Financial Institutions and/or the state Department of Corporations.

Given the above, placing additional reporting and access requirements on CUSOs only adds to the cost structure of the NCUA and, subsequently, credit unions. The NCUA will most likely require additional resources by either conducting extensive training of existing staff or by hiring additional employees with a much more expanded range of expertise than currently exists to accommodate the variety of CUSO businesses. Since sufficient regulatory oversight exists (particularly at the state level), this is an unwarranted expense, which will ultimately be borne by credit unions by way of increased assessments.

Subsidiary CUSOs

The proposal would subject subsidiary CUSOs to all the requirements of the proposal. We do not believe NCUA has provided sufficient justification for this step and feel it is unwarranted. In addition, as with the provisions regarding oversight of parent CUSOs, we also do not believe the NCUA has sufficiently explained its legal basis for exercising this authority.

NCUSIF Coverage Conditioned on CUSO Rule Compliance

We disagree with the provision that would place credit unions at risk of losing coverage under the National Credit Union Share Insurance Fund (NCUSIF) if they fail to require all CUSOs with which they have a lending or investment relationship to comply with the direct reporting requirements of the proposal. Eliminating federal insurance coverage to shareholders rather than using the NCUA's oversight powers previously mentioned appears to "punish" rather than enforce safety and soundness.

Conclusion

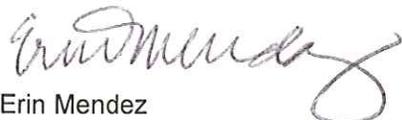
CUSOs as a whole do not pose a systemic risk to the credit union system or overall concerns to the National Credit Union Share Insurance Fund (NCUSIF). One of the major concerns with the proposal is that the NCUA has provided no data or analysis regarding current problems that could be used to substantiate the need for the proposal. It is a stretch to conclude that CUSO investment can be a true systemic risk to the credit union industry when the aggregate amount invested in and loaned to CUSOs is only 22 bps of total industry assets.

That does not mean that a small number of CUSOs have not had some issues, primarily with lending operations. Yet, rather than issuing a new proposed regulation that is tailored to address only identified problem areas, the NCUA is proposing to issue a comprehensive regulation that would have the effect of stifling CUSOs.

We do not oppose reasonable supervision or the NCUA's ability to address concerns appropriately. Given this and the other issues included in this letter, we strongly urge the NCUA to reconsider its Proposed Amendments to NCUA Regulations: Parts 712 & 741 (CUSOs).

We thank you for the opportunity to comment on this issue.

Sincerely,



Erin Mendez
Executive Vice President, Chief Operations Officer
SchoolsFirst Federal Credit Union

cc: Credit Union National Association (CUNA)
California/Nevada Credit Union League (CCUL)