

**From:** [John McKenzie](#)  
**To:** [Regulatory Comments](#)  
**Subject:** Comments on NCUA's Notice of Proposed Rulemaking (CUSO), 12 C.F.R. Parts 712 and 741  
**Date:** Friday, September 23, 2011 4:18:38 PM

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

Comments on NCUA's Notice of Proposed Rulemaking (CUSO), 12 C.F.R. Parts 712 and 741

Dear Ms. Rupp,

The Indiana Credit Union League (ICUL) appreciates the opportunity to comment on the NCUA Proposed Rule about CUSOs. The ICUL represents Indiana's credit unions with memberships totaling 2.16 million members, which is 96% of all credit union members statewide.

We oppose the proposed regulation as unnecessary and outside of the scope of NCUA's authority. NCUA has frequently stated that it has no regulatory authority over CUSOs, and appears to be using National Credit Union Share Insurance Fund (NCUSIF) coverage as leverage to gain this regulatory authority. NCUA has not demonstrated that there exists a systemic risk from CUSO operations. We are concerned that the proposed rule would result in credit unions being less willing to develop or invest in CUSOs, resulting in valuable benefits and services to their members going unmet by the credit union. Credit unions will also be unlikely to research and develop additional innovative ideas that would require a CUSO to implement as the regulatory burden is increased. The following provides additional details as to our concerns with the proposal.

Currently, credit unions investing in or lending to CUSOs must agree to allow NCUA to examine the books and records of the CUSO. The proposed rule would expand this requirement to impose obligations directly on all CUSOs that credit unions lend to or invest in to prepare quarterly financial statements, to obtain an annual audit, and to provide an annual report to NCUA and state regulators, as appropriate, all in conformance with generally accepted accounting principles (GAAP) or generally accepted auditing standards (GAAS). We are not opposed to greater transparency for credit unions, including more information from CUSOs to participating credit unions. However, we oppose these additional requirements on the grounds that this exceeds NCUA's authority. We do support an exemption or waiver process from the requirements to follow GAAP and GAAS for small CUSOs for which such requirements would impose a significant burden.

Currently, state-chartered credit unions can lose their NCUSIF coverage if they do not comply with requirements in the CUSO rule regarding providing access to their

CUSO's books and records to regulators and requirements to maintain separate corporate identities from their CUSO. The proposed rule would expand this to make the requirements to provide financial statements and financial audits prepared under GAAP or GAAS also conditions that must be met for credit unions lending to or investing in CUSOs or they risk losing NCUSIF coverage. The proposed rule would make these requirements conditions of NCUSIF coverage for federal as well as state-chartered credit unions that lend to or invest in CUSOs. We oppose these proposed provisions as punitive and regulatory overkill. Moreover, NCUA does not need to adopt these sanctions in order to enforce regulatory provisions.

The proposed rule would allow state credit union regulators to seek an exemption for their credit unions from the proposed provisions to require NCUA access to CUSO books and records and to require the preparation of financial reports and audits. While we oppose most of the underlying provisions as discussed above, should NCUA go forward with these provisions, we support exemptions and waivers for state and federal credit unions.

The proposed rule would also require entities termed "subsidiary CUSOs" that CUSOs invest in to comply with the CUSO rule. CUSO subsidiaries funded by CUSOs that receive investments or loans from state-chartered credit unions would have to also meet state requirements. We oppose these proposed requirements, and do not agree that NCUA has the authority to require this.

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 proposed rule 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. Because this requirement is consistent with safety and soundness and because federal credit unions are already subject to it, we generally support this requirement.

We encourage NCUA to withdraw the proposed regulation or significantly modify the proposed rule. We would encourage NCUA to focus on reducing the regulatory burden on credit unions, not increase it unnecessarily.

Sincerely,

John McKenzie  
President, Indiana Credit Union League