

August 31, 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 BECU (Boeing Employees Credit Union) appreciates the opportunity to submit the following comments in response to the National Credit Union Administration's (NCUA) proposed amendments referenced above. BECU recognizes that the NCUA has faced numerous challenges during the difficult economic times. BECU supports NCUA rulemaking that ensures the safety and soundness of credit unions and ensures the protection of the National Credit Union Share Insurance Fund (NCUSIF). BECU however, disagrees with the NCUA's position that CUSOs pose a systemic risk to credit unions.

The NCUA's stated objectives for the changes to the CUSO rules are: (1) to obtain complete information from CUSOs and the nature of their services; (2) to ensure protection of the NCUSIF; and (3) to identify emerging systemic risk posed by CUSOs within the credit union industry. BECU believes very strongly that these proposed amendments do not accomplish the NCUA's stated objectives, exceeds the NCUA's legal statutory authority, and will negatively impact CUSOs and the credit unions they serve.

BECU is a Washington State-chartered credit union with assets of \$9.6 billion and representing over 700,000 members, the majority of whom reside in Washington State. BECU utilizes several different CUSOs for a variety of services and products such as indirect lending, credit card and ATM processing, student loans, trust services, and real estate services. These services and products provide BECU with a vital source of non-interest income, cost savings, and a method for mitigating risk. They also enable BECU to remain competitive in the marketplace.

Prime Alliance Solutions, Inc. ("Prime Alliance") is a CUSO in which BECU has a majority ownership interest. Over the last ten years Prime Alliance was able to build one of the most unique, most efficient, mortgage origination, processing and secondary market technologies available today. The availability of the current CUSO structure enabled BECU to share its investment in the development of these innovative services and technologies with numerous credit unions nationwide. Prime Alliance's credit union clients have experienced the benefit of a more economical process through cost sharing while making the mortgage experience better for their members. BECU fears that the proposed changes to the CUSO rules make the sharing of these innovative processes and technologies, such as Prime Alliance, less attractive.

No Evidence of Systemic Risk

The NCUA deems CUSOs to be a systemic risk to the credit union industry as a result of major losses incurred by credit unions from lending CUSOs, particularly business lending CUSOs. There is no evidence, however, of such systemic risk. The NCUA cites one credit union failure associated with a CUSO. One credit union failure does not constitute systemic risk. The CUSO at issue was a business lending CUSO owned by Texans Credit Union. As stated by Chairman Matz in her testimony to Congress on June 16, 2011, the failure of this credit union was clearly a result of the deficiencies of the credit union's management, including the lack of planning, internal controls, oversight of the MBL program, and inadequate vendor due diligence. The failure was not based upon inherent flaws with the CUSO or member business lending. This testimony and evidence does not support the reasons cited by NCUA to expand its authority to directly regulate and oversee CUSOs. If the NCUA is concerned with business lending its approach should be targeted more towards its authority over credit union investments in business lending.

No Statutory Authority

The NCUA seeks vendor authority over the CUSOs, authority which expired at the end of 2000 and has not been reauthorized by Congress, to gather information directly from the CUSOs. The information will be used by the NCUA to determine which CUSOs maintain relationship with credit unions, evaluate the financial condition of the CUSOs, determine the full range of services offered by the CUSOs, and the identity of the customers to whom the services are provided.

The NCUA currently has the statutory authority to directly regulate the decisions of the credit union's management, enforce the credit union's compliance with the NCUA's vendor due diligence requirements, inspect the books and records of CUSOs, and require credit union management to make changes if a safety and soundness issue exists. The NCUA's current power over CUSOs is sufficient to accomplish its stated objectives.

Imposes a Cost Burden

The proposed amendments will impose cost burdens on credit unions. According to a May 4, 2011 article in the Credit Union Times, during an address at the National Association of Credit Union Service Organization's annual conference in Las Vegas, Gary Kohn, NCUA senior policy advisor, expressed concern over whether the NCUA has adequate expertise on staff to examine and monitor CUSO activities. According to the article Mr. Kohn also stated additional examiners may need to be hired and the agency will have to provide additional training. Although not stated, BECU is concerned that this will require an increase in the NCUA's budget and these costs will be passed on to the credit unions in the form of increased fees and NCUSIF transfers.

An annual CPA audit is time consuming and cost prohibitive, especially for the smaller CUSOs designed to provide efficiencies and cost savings to smaller credit unions. If this requirement is implemented we

suggest that the NCUA not implement it across the board and instead, allow smaller or less complex CUSOs to provide unaudited financial statements.

Puts confidential information at risk of disclosure

The CUSO information sought by the NCUA includes balance sheets, income statements, business plans, and confidential customer lists. Submitting this confidential information to the NCUA puts it at risk of disclosure pursuant to a Freedom of Information Act request. The potential public disclosure of this confidential information, as well as the costs of compliance, puts credit unions at a competitive disadvantage because, to our knowledge, banks are not required to provide similar information.

No Evidence Bank's Regulatory Authority over Operation Subsidiaries was Effective

The NCUA seeks to obtain parity with banks' regulatory authority over bank operating subsidiaries and third party service providers. The NCUA has offered no evidence that the bank's regulatory authority over operating subsidiaries and third party service providers did anything to mitigate the systemic risk of bank losses during the economic crisis.

Loss of NCUSIF Coverage is Punitive and Regulatory Overkill

Under the proposed rule state-chartered credit unions could lose their National Credit Union Share Insurance Fund (NCUSIF) coverage if the CUSO subsidiaries fail to provide to the NCUA financial statements and financial audits prepared under GAAP or GAAS, or if the credit unions lending to or investing in CUSOs fail to meet certain conditions. Loss of NCUSIF coverage is a draconian measure, punitive in nature, and constitutes regulatory overkill. This level of enforcement is unnecessary to ensure compliance by credit unions. The NCUA has a wide range of supervisory tools at its disposal making this level of enforcement unnecessary to ensure compliance.

Clarification is Required

In addition to Prime Alliance, BECU utilizes the services of many CUSOs including those that provide loan servicing, specialized loan origination (e.g., private student loan programs), investment advisor services, and loan payment protection products. Those CUSOs range in size and complexity, but nevertheless provide value to the credit unions they serve in the form of efficiencies and risk sharing. Many of these CUSOs do not generate large amounts of income in order to keep investor credit union costs low and to maximize member values. Such CUSOs could only generate additional capitalization through larger capital contributions by investing credit unions. As a result, BECU is concerned how the NCUA will determine whether a CUSO is adequately capitalized for purposes of these new amendments. The proposed amendments do not provide sufficient answers to the following questions:

- What does the NCUA consider an adequately capitalized CUSO?
- Would the current investment limits for credit unions inhibit low income credit unions from achieving adequate capitalization?

- What standards would NCUA apply to CUSOs (as opposed to credit unions) for analyzing value and risk through income and balance sheets?
- Will the NCUA attempt to shut down CUSOs that are undercapitalized according to credit union standards even though the CUSO has a positive financial or service impact for its credit union owners?

If the NCUA intends to move forward with implementation of these proposed amendments we ask that it more fully develop reasonable standards for assessing the “success” of a CUSO with input from credit unions.

Other terms contained in the proposed amendments are also unclear and require clarification before implementation. The NCUA has proposed to limit a less than adequately capitalized credit union’s CUSO investment to an amount invested “on a cumulative basis.” It is unclear what the NCUA means by “cumulative.” Will the NCUA be looking at a credit union’s cumulative investment to a single CUSO or aggregated among all CUSOs in which it has invested? Is there a period of time over which an investment in a single CUSO or aggregate investments in multiple CUSOs will be considered?

The proposed rules are also unclear as to what the NCUA will consider a “subsidiary” of a CUSO for purposes of this proposed rule. The term “subsidiary” is an unfamiliar term in the credit union regulatory environment and credit union concepts. Is there a minimum level of ownership by the CUSO in the company to make it a subsidiary? What about for a subsidiary of a subsidiary?

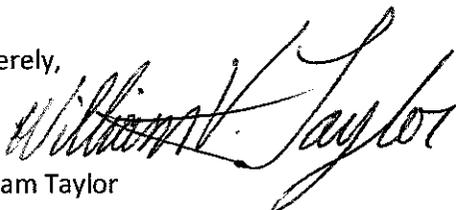
The proposed rule requires approval of the NCUA to invest in a CUSO, but fails to state how a credit union must go about getting such approval. In order to evaluate the burden this will place on individual credit unions, more detail about the approval process is needed, including standards for review and a time period during which the NCUA must respond to the approval request.

Conclusion

The proposal is not tailored to accomplish its stated objectives and is overreaching. The NCUA’s proposed amendments are likely to deter a credit union’s use of CUSOs, negatively impact the credit union’s ability to meet members’ needs, inhibit its ability to find new sources of non-interest income, and put credit unions at a competitive disadvantage to much larger financial institutions that can afford to develop the services provided by a CUSO in-house. For these reasons BECU asks the NCUA to withdraw this proposal and reconsider its approach to meeting its stated objectives.

Thank you for your consideration.

Sincerely,



William Taylor
Vice President of Legal & Compliance