



*Nor Cal CU Strategies, LLC*

Filed via: [regcomments@ncua.gov](mailto:regcomments@ncua.gov)

September 26, 2011

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

Re: Comments on Notice of Proposed Rulemaking – CUSOs

Dear Ms. Rupp:

Nor Cal CU Strategies (NCCU) is owned by credit unions under \$150,000,000 in assets and is dedicated to strengthening these credit unions through collaboration. Now more than ever, credit unions need to find ways to generate net income to survive. Credit unions cannot live solely off the net interest margin as we have in the past. New services and new sources of income safely and soundly delivered and with appropriate risk mitigation, are needed. Credit unions need to be more efficient and lower operating costs. CUSOs have served as the means for credit unions to innovate, meet their members' financial needs and oftentimes to do so in a shared ownership/shared risk format. Examples of NCCU collaboration efforts are: 1) pooled resources for 1<sup>st</sup> mortgage lending expertise, 2) Vendor Due Diligence preferred pricing and much more.

While NCCU recognizes that the agency has many issues of significance to deal with in these challenging times for credit unions, it is disheartening that the message we hear from NCUA is discouragement, not encouragement, to credit unions as they seek to collaborate and work within the successful CUSO structure. The message we hear is that the 22 basis points of total industry assets invested in CUSOs pose a risk to credit unions and, this results in NCUA needing more information about CUSOs so that NCUA can make a case to Congress to give NCUA vendor authority and ultimately direct regulation of CUSOs.

NCUA's regulation of CUSOs, in addition to the regulation that CUSOs already face from other regulatory bodies such as the SEC, state insurance commissions, real estate commissions, etc., will serve as a costly prohibitive factor that could well stifle the ability of CUSOs to innovate and the willingness of credit unions to invest CUSOs within their statutory limits to do so. When regulatory considerations replace value factors in the decision of a credit union to invest in a CUSO, credit unions suffer.

NCCU does not see that additional regulation by NCUA would provide any recognizable regulatory value beyond what already exists. We recognize that NCUA already has the power to inspect the books and records of CUSOs and direct the credit union owners to make changes if the CUSO is out of compliance with the CUSO Regulation or if a safety and soundness problem exists. It is our contention that NCUA's power over CUSOs and CUSO activity is already sufficient to stem serious risk issues without imposing additional burdens of regulatory oversight.

NCCU has serious concerns with NCUA's legal authority regarding the proposed amendment. NCUA has expanded its existing reach over CUSOs as this proposal goes so far as to require CUSOs to provide financial information directly to NCUA which NCUA will then retain and evaluate. This looks and feels like vendor authority and direct regulation of CUSOs which has not been authorized by Congress. Most CUSOs, including NCCU and the credit union owners share this concern and fear that the legal authority for this proposal could, if finalized in its current form, conceivably become a source of lengthy and expensive litigation for the agency to sustain.

By imposing this level of regulatory burden upon them, CUSOs will be put at a severe competitive disadvantage with non-CUSO competitors. For example, should it enact this proposed rule as currently drafted, NCUA will be requiring CUSOs to submit their business plans, balance sheets, income statement and customer lists to the agency. It is obvious that the gathering and holding of this information puts a burden on CUSOs that their non-CUSO competitors will not face. By requiring these submissions which seem far above the bounds of necessity from an agency seeking only to monitor broad issues of purported systemic risk, NCUA will expose CUSOs to a marketplace disadvantage of huge proportions by exposing confidential business plans and clients lists to public dissemination through FOIA requests and potentially other areas where NCUA makes data available to the public as a governmental entity. NCCU feels that it is incumbent upon all involved in the sustainability of the credit industry to remember that CUSOs are the most visible and oft-used collaborative arm of credit unions trying to solve operational and financial issues together.

In NCCU's view, NCUA has not made a compelling case that CUSOs pose a systematic risk to credit unions that requires such a drastic and far reaching regulatory change. There has been no empirical data presented to prove that CUSOs are inefficient, performing poorly or threatening the safety and soundness of the credit union industry as a whole. Each credit union's CUSO investment risk and lending risk is less than 2% of its assets. The loss from such a small investment would, in the overwhelming majority of instances, not be material to the financial health of the credit union; however, these limits – already in place without the need for the current proposal to be laid atop them – permit credit unions the freedom to experiment and find new solutions to old problems without direct regulatory encumbrances.

There are a number of terms in the proposed rule that give the impression that it has not been completely analyzed as to its impact and are in need of significant clarification. For example, 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? The informal rule has been that if there is an intent that a subsidiary of a CUSO was formed for the purpose of evading the CUSO rule, that would not be allowed. We ask that this continue to be the rule as there may be very good business reasons for a CUSO rule that would not be allowed.

Another question is unanswered in the proposed rule. NCUA proposes 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. What is meant by "aggregate cash outlay" on a cumulative basis? Is this reduced by dividends received by the credit union from a CUSO investment? How far back does the cumulative calculation go? What if a credit union invested in a CUSO and has written the investment off ten years ago, does that count? How do investments in other CUSOs figure in to the analysis?

It is the position of NCCU that this proposed rule be withdrawn and not be enacted as a final rule. We believe firmly that, as drafted, it will choke off CUSO opportunities at a time when credit unions need them most. While we understand that NCUA rightfully does not want credit unions throwing additional money into a failing CUSO, we believe that NCUA has existing authority to discover and stem these situations on grounds of safety and soundness in the limited number of cases where they may occur.

It is important to recognize that many very successful CUSOs, such as NCCU, drive significant savings and income to credit unions but do not have sizable capital structure or generate large amounts of income. Operational CUSOs are designed to save the credit union's operating costs and not the make a significant amount of money.

NCCU has considered and is concerned about the impact this proposed rule, if enacted, would have on the staffing and operational budget of NCUA. With the wide range of activities that CUSOs are engaged in, the amount of expertise to compile, review, monitor and evaluate CUSOs will undoubtedly require the agency to hire significant staff. This is an unnecessary agency expense that will be borne, unfortunately, by the very credit unions that may now elect not to invest in a CUSO because of this new regulatory burden and oversight.

In closing, NCCU wants to re-state that it is philosophically committed to innovation, collaboration and return on credit union investment through the CUSO mode, as proven by the very creation of NCCU. Therefore, we strongly encourage the NCUA Board to withdraw this proposal in its entirety.

NCCU thanks you for the opportunity to comment.

Sincerely,

Diana Michaels  
Chairman, Nor Cal Credit Union Strategies, LLC (NCCU)