

April 30, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Re: Credit Union Service Organizations (CUSOs; RIN 3133-AE95)

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, I am writing to the National Credit Union Administration (NCUA) in response of the proposed amendments to the credit union service organization (CUSO) rule.¹ The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

CUNA supports the modest but important changes to the CUSO rule proposed by the NCUA Board.² Quite simply, the expanded CUSO lending authority will allow CUSOs to better serve credit union members by making loans that might be impracticable for some credit unions to make now or in the future. Furthermore, the proposed changes to the adding permissible CUSO activities process represents smart rulemaking that increases the NCUA's agility in considering and approving future permissible activities by CUSOs.

Expanded Credit Union Powers

The financial marketplace continues to evolve, and the way for credit unions to stay relevant and fulfill their mandated mission to provide financial services to those of "modest means" is to expand the products, services and delivery channels for these products and services to meet consumers' everchanging needs.³ Credit unions risk losing relevancy if their products and services do not evolve to meet the needs of today's and future consumers. Keeping up with the offerings of well-funded technology companies and large banks is difficult for community-based financial institutions for many reasons, with one of these reasons being strict regulations that

¹ 86 Fed. Reg. 11645 (Feb. 26, 2021).

² CUNA has a long history of advocating for credit unions to be able to use CUSOs as a way to serve member. See [CUNA's comment letter to NCUA](#), June 30, 2008 (Because the financial marketplace continues to evolve, credit unions and CUSOs need to be able to respond by expanding their product and service offerings, consistent with the Federal Credit Union Act (Act), or their ability to serve their members successfully will erode. In that connection, we urge the agency to consider permitting a broader range of additional activities for CUSOs.).

³ Pub. L. 105-219, § 2, Aug. 7, 1998, 112 Stat. 913. Credit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes because they are member-owned, democratically operated, not-for-profit organizations generally managed by volunteer boards of directors and because they have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.

limit what products and services credit unions can offer to members and how credit union can deliver these products and services. If regulations do not evolve to help credit unions continue to provide financial services, they could become the next Blockbuster – a business where the need still exists for its product but it did not evolve to deliver to its product as technology developed.

Credit unions, as member owned financial cooperatives, have a unique mission, and must continue to evolve to fulfill this mission. It is possible that banks and fintech companies could meet current credit union member needs, but would Americans be better off? To answer this question, one only needs to look at an incredible blog post by a fintech startup called Eco titled “Why people don’t need FDIC insurance.”⁴ This startup states that “The Eco App is the first consumer fintech product whose creators are truly aligned with its users.”⁵ We note that the Eco website lists its investors as some of the largest venture capital investors in Silicon Valley, a group known for making profits but not regarded for protecting consumers or their privacy. It is possible that Eco has the consumers’ best interests at heart, but trying to convince the public that deposit insurance is an outdated concept shows that Eco and its users’ interest are not aligned as members’ interests are with a member-owned business like credit unions. Companies, such as Eco, will be the future for consumers if credit unions cannot compete.

Do we feel comfortable letting companies like Eco, who trample on the most basic protections of deposit accounts, step in for credit unions? This is a potential result if we let credit unions continue to be hamstrung by outdated legal authority and regulations combined with old ways of thinking. The fight to stay relevant so credit unions can provide financial services to Americans is why CUNA advocates for credit unions to have the flexibility to deliver necessary financial services. Expanding credit union powers is necessary for credit unions to evolve to meet the demands of consumers, which is why CUNA supports expanded credit union powers and likewise expanded permissible activities for CUSOs.

We encourage the Board to continue to look at the Federal Credit Union Act (FCU Act or Act) through the lens of tomorrow instead of the rear-view mirror. As currently permitted, credit unions may lend to and invest in CUSOs and may also contract with CUSOs for certain services. While the Act governs the amount of lending and investments that federal credit unions (FCUs) may engage in regarding CUSOs, it does not delineate or limit the range of activities a CUSO may provide. The Act describes a CUSO as:

[A]ny organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.⁶

Because this description does not set specific parameters on the kinds of lending or other activities in which CUSOs may engage, we urge NCUA to allow a CUSO to choose from the entire range of activities permissible for an FCU.

Permissible CUSO Lending

We understand that some may view NCUA’s proposal to expand lending authority for CUSOs as major expansion of permissible activities for CUSOs - this simply is not the case. NCUA determined more than a generation ago that CUSOs can lend directly to consumers, although NCUA chose at that time to limit the permissible loans CUSO’s could originate, thus placing limits on a granted permissible authority. The Board, by

⁴ See <https://www.eco.com/posts/why-dont-people-need-fdic-insurance>.

⁵ We hope that Congress and the Consumer Financial Protection Bureau take a close look at the offerings and implications of the statement by Eco.

⁶ 12 U.S.C. § 1757(5)(D).

extending CUSO direct lending authority to all loans that FCUs can make, merely recognizes that lending is becoming more complex and that pooled resources through CUSOs may be necessary for some credit unions should they want to continue to offer loans to members in today's and tomorrow's evolving marketplace.

Among the current permissible loans for CUSOs are mortgage loans, credit cards, student loans and business loans. These are all loans that credit unions can also make directly to members, but sometimes choose for various reasons to do so through CUSOs. These reasons could include cost considerations, expertise, technology or lack of size that makes lending directly impracticable for a credit union. We expect these same reasons will drive credit unions to leverage CUSOs for automobile, personal loans and other loans they may not efficiently be able to provide directly. Lending CUSOs have helped drive credit union growth and financial stability for several decades through the effective use of the CUSO model, and this proven success certainly helps make the case to extend that already granted lending authority to the automobile lending and personal lending arenas.

Some credit unions have expressed concern that this rule would enable CUSOs to further compete directly with them in making loans, and we are cognizant of this concern. The Board states, in proposing this rule, that CUSOs "have been originating loans that are also core FCU lending products for over 30 years without negatively impacting FCUs."⁷ Although we agree with this statement by the Board, we acknowledge that there may be times when a credit union might compete with a CUSO when making a loan to a member. It is highly likely that these credit unions will also be competing with many banks and fintechs as well. Looking forward, we believe the far greater risk is that of credit unions being unable to compete with large banks and fintechs rather than CUSOs.

Unlike fintechs, CUSOs are not a faceless competitor to credit unions. CUSOs are businesses funded, operated and controlled by credit unions for the purpose of providing services to credit unions or credit union members. CUSOs' current lending activities demonstrate that there is a place in the market for both credit unions and CUSOs to lend directly to consumers. In the future, we see greater necessity for credit unions to pool resources through CUSOs to compete with large banks and fintechs, or run the risk of being unable to offer loans either directly or through a credit union-controlled entity.

Approval of Permissible CUSO Activities

CUNA supports the proposed changes that would simplify and make the process to approve permissible CUSO activities more efficient. As the Board notes, the current list of "permissible CUSO activities in §712.5 includes many of the core services and activities associated with the daily and routine operations of credit unions."⁸ The current process to add permissible activities to this list is cumbersome as it requires notice and comment rulemaking, which is a time-consuming and inefficient process when compared to the process already in place for corporate credit unions.

The process for the approval of permissible CUSO activities in "part 704⁹ permits corporate CUSOs to engage in any category of activity as approved in writing by the NCUA and published on the NCUA's website."¹⁰ This approach for corporate credit unions is more efficient as it allows approval of permissible CUSO activities without formal rulemaking. Adopting a similar approach for natural person FCUs makes the process to add permissible activities to natural person FCUs more efficient and likely much faster. NCUA could receive

⁷ Id. at 11646.

⁸ Id. at 11648.

⁹ See 12 C.F.R. 704.11(d)(3)(i)(C). Other categories of activities as approved in writing by the NCUA and published on the NCUA's website.

¹⁰ Id.

criticism on this approach because the process of adding permissible activities for CUSOs might not be as transparent and will not be subject to public comment; nonetheless, we think the advantages and nimbleness outweigh any argument that public input through the notice and comment rulemaking process is required.

We do note that the language included in the proposed rule wasn't necessary clear. For corporate credit unions, §704.11(d)(3)(i)(C) states "Other categories of activities as approved in writing by the NCUA and published on the NCUA's website." There is no equivalent section in the proposed rule text for §712.5(r). Proposed §712.5(r) mirrors the language in §704.11(d)(3)(ii) for corporates, which states "Once the NCUA has approved an activity and published that activity on its website, the NCUA will not remove that particular activity from the approved list, or make substantial changes to the content or description of that approved activity, except through the formal rulemaking process." We suggest that NCUA add similar language as §704.11(d)(3)(i)(C) so it is clear what the process is for adding other categories of approved or permissible activities for CUSOs.

Additional Investment in Credit Union Organizations

CUNA supports the Board exploring the ability of credit unions to invest additional capital in "credit union organizations" and urges the Board to move ahead with rulemaking that would authorize additional investment authority. The FCU Act restricts an FCU's investment in a CUSO to loans that do not exceed one percent of a credit union's paid-in and unimpaired capital and surplus.¹¹ The FCU Act also authorizes FCUs to invest up to one percent of total paid in and unimpaired capital and surplus, with the approval of the Board, in the shares, stocks, or obligations of any other organization providing services which are associated with the routine operation of credit unions.¹²

We agree with the Board's assessment that there are significant differences between lending to a CUSO and investing in an organization. The FCU Act differentiates between these two activities by using different language describing the lending and investment authority for CUSOs and organizations. Further, the Board points to the lending authority's reference to "credit union organizations" (CUSOs) and the FCU Act limits loans to those credit union organizations that primarily serve the needs of their member credit unions. In contrast, Section 107(7)(I), when defining investment authority, does not use the term "credit union organization" but instead uses the term "organization" when describing one of the entities authorized for credit union investment in the section. Also, Section 107(7)(I) does not limit investment authority to organizations that primarily serve the needs of their member credit unions.

The NCUA historically considered an organization described in Section 107(7)(I) of the FCU Act, and a CUSO as described in Section 107(5)(D) of the FCU Act, as identical entities and thus restricting credit union investment to CUSOs and limiting the investment to one percent of a credit unions paid-in and unimpaired capital and surplus. The Board should propose changes to its regulations that would properly decouple Section 107(5)(D) from Section 107(7)(I).

CUNA members have expressed the need for this expanded investment authority. For the same reasons that credit unions need expanded lending authority, FCUs need to invest in an array of organizations that do not primarily serve credit unions or credit union members, but still provide services that relate to the routine operations of FCUs. Giving credit unions the ability to partner with banks and fintech companies through investing in what would be a Section 107(7)(I) organization could greatly enhance credit unions' ability to provide financial services to their members.

¹¹ 12 U.S.C. 1757(5)(D), Section 107(5)(D).

¹² 12 U.S.C. 1757(7)(I), Section 107(7)(I).

Conclusion

CUNA supports the changes detailed in this proposed rule and encourages the Board to implement a final rule incorporating these changes. Moreover, the Board should move quickly to propose a rule expanding FCUs' investment authority in organizations, as CUNA members are missing out daily on opportunities to work with entities outside of the current CUSO structure.

We encourage the Board to discount the unhelpful comments and form letter writing campaign that could come from the banking trade associations. They are vested in the status quo for credit unions as a way of limiting one competitor to their banking members. We expect they will incorrectly claim NCUA does not have the legal authority that the agency has exercised for 30 years.

CUNA will continue to work with Congress, the NCUA and the private sector to break down barriers that impede credit unions from serving Americans. Credit union members and Americans who do not belong to credit unions benefit from a robust credit union system focused on the financial well-being of Americans, because credit unions force other institutions to focus more on consumer needs as well. Credit unions are the rising tide that helps all consumers, and all consumers will be harmed if credit unions do not succeed.

If you have any questions about our comments, please do not hesitate to contact me at (202) 508-6705.

Sincerely,

A handwritten signature in cursive script that reads "Lance Noggle".

Lance Noggle
Senior Director of Advocacy and Counsel &
Senior Counsel for Payments and Cybersecurity