

Cooperative Credit Union Association

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Creating Cooperative Power

April 30, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RIN 3133–AE95

Re: Cooperative Credit Union Association Inc.’s Comments on Proposed Rule: Credit Union Service Organizations (CUSOs)

BY ELECTRONIC MAIL: <http://www.regulations.gov>

Dear Ms. Conyers-Ausbrooks:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. (“Association”), please accept this letter relative to a request for comments, as extended, issued by the National Credit Union Administration Board (“NCUA”) on proposed amendments to the credit union service organization (“CUSO”) rule¹ (“proposed rule”). The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island which further serve over 3.6 million consumer members.

I. Support for the proposed rule exists as CUSOs are a true cooperative partner that adds value to enable the success of both a CUSO and its credit union owners.

The Association appreciates the efforts of NCUA in advancing a more modern review of its CUSO regulatory framework, has long advocated for change,² and supports the proposed rule. It is well established that CUSOs are valuable tools which provide needed corporate flexibility and partnership opportunities for credit unions of all charters and sizes as they seek to diversify products and services. Partnerships with CUSOs empower credit unions regardless of geography to offer sometimes new and competitively priced, as well as innovative, products and services that make a substantive difference in members’ lives and at critical moments when members’ need for help is the greatest. A cornerstone of the industry remains serving the underserved and the proposed rule serves to strengthen the bond credit unions have to members by shared values, relationships and expanded products and services.

¹ 86 Fed. Reg. 16680 (Mar.31, 2021); 86 Fed. Reg. 11645 (Feb.26, 2021).

² Most recently, the Association advocated for reasonably expanded CUSO authority for all credit unions, including corporate credit unions. NCUA Comment Letter July 20, 2020, RIN 3133-AF13.

The Association also notes that the CUSO and credit union landscape is not without regulation. As corporations created under state law, CUSOs operate within defined governance protocols and other state and/or federal oversight depending on the nature of the activity³. In addition, credit union lenders to and investors in CUSOs are also directly supervised by primary and insuring regulators operating within maximum lending and investment caps. Furthermore, NCUA has imposed transparency and additional supervisory authorities through its establishment of a CUSO registration process and requirements of written agreements with CUSOs to provide the NCUA with complete access to any books, records, and the ability to review the CUSO's internal controls. 12 C.F.R. §712.3 (d)(3). Finally, some CUSOs have been formed with corporate credit union partners who are also heavily regulated. The NCUA has access to the personnel, facilities, books, records, and any other documents of corporate CUSOs through Part 704 of its own regulations, which mitigates regulatory fears of unsupervised risk.

Within the Association's member states, local CUSOs abound helping credit unions better serve their consumer and business members as they navigate the evolving financial services marketplace, the rapid ascension of technology and fintechs, and the unprecedented impact of the pandemic and natural disasters occurring in the local, regional, and global economies.⁴

The remainder of this comment letter shares member views on the following areas which are the subject of the proposed rule:

- Expanded authorized CUSO powers to include all types of loans that a federal credit union may directly originate;
- Additional flexibility to the NCUA to approve permissible activities and services; and
- Broader federal credit union investment authority in CUSOs.

II. Expanded authorized CUSO lending powers

The Association suggests that expanded authorized CUSO lending powers and permissible direct lending activities go hand in hand. The authority of CUSOs to lend directly to consumers is a seasoned power which was began prudently with specified types of permissible loans⁵. The driving decision factors to make these loans through a CUSO structure has been their complexity, not only in expertise or specialization required, but economies of scale, member demand, and marketplace shifts. Looking ahead, the Association applauds efforts to authorize greater lending options such as automobile, personal, small dollar, solar and other loans. It

³ Examples include state auto lending laws, small loans laws, unfair and deceptive practices acts, and federal consumer laws enforced by the Federal Trade Commission and Consumer Financial Protection Bureau.

⁴ According to NCUA's Registry, 48 CUSOs are based within Association member states offering check services, statement processing, remote deposit capture, business loans, student loans, realty services, market research, information technology, on line and mobile banking, financial counseling, and more.

⁵ Current permissible loans for CUSOs are mortgage loans, credit cards, student loans and business loans.

NCUA Comment Letter on CUSOs

April 30, 2021

Page 3

should be noted that credit union delivery of small dollar loans often assists in breaking the cycles of predatory lending in local communities.

With respect to auto and other lending, historically viewed as less complex or even part of the traditional lending roots of natural person credit unions, delivery to members through a CUSO structure helps to minimize concentration and other risks, expand balance sheet opportunities for credit unions, and benefit from technological advancements and compliance through shared costs. In particular, auto lending also serves as a dual example of drastic changes in the car buying process with the advent of technology and car buying services.

The Association also urges the NCUA to favorably consider opportunities for CUSOs to aggregate loans from credit unions, similar to current authority to do so for mortgages and student loans for sale to the secondary market, to increase volume and pipelines with a goal toward improved access to securitization markets. As credit unions engage in this activity, risk would be diffused, loans could be sold, and additional capital could be retained or used to promote further lending. In all cases, the Association firmly believes that competition in the marketplace shines the light where needed, is good for consumers, and that members are best served through credit unions and their related structures.

The proposed rule also addresses another important activity of great value to our members, which has also increased in popularity during the current state of excess liquidity. Accordingly, the Association is pleased to support the provisions relative to participation loans. 86 Fed. Reg. 11647 (Feb. 26, 2021). Specifically, the grant of authority to CUSOs to purchase and sell participation interests that are permissible for federal credit unions to purchase and sell is welcomed. During the periods of high liquidity, as well as loan volume cycles, such CUSO authority for participation loans and the additional proposed expanded lending authorities will significantly help to stabilize balance sheets and deepen collaborative alternatives within the industry.

Finally, the Association strongly believes and reminds the NCUA that the ecosystem of credit unions and CUSOs is a delicate balance between the profit and not-for-profit business models under the umbrella of collaboration. Lessons learned by the extensive collaborations to date reveal that scale alone is not enough, that relationships should be selected solely based on the value of the service in comparison to the price, and that collaboration is a relationship not a transaction. The forward-facing member relationship of natural person credit unions is paramount. A successful back-office collaboration has to work as one system supporting the entire structure. Supervising this balance rests with NCUA to ensure that the strategic vision and purpose of natural person credit unions is not diluted as the expanded authorities found with the proposed rule are implemented.

The Association does however, question one of NCUA's conclusions in the proposed rule that for consistency purposes within the CUSO Registry, all loan originations should be referred to as complex or high risk. 86 Fed. Reg. 11647 (Feb. 26, 2021). Previously, only more complex lending activities such as mortgage, business, credit card, and student loans were subject to complex or high-risk requirements. 12 CFR 712.3(d). NCUA describes automobile lending "as a

core area of a federal credit union's business" and therefore "a reasonable expansion of CUSO lending authorities." 86 Fed. Reg. 11646 (Feb. 26, 2021). Additional rationale and justification for this heightened classification change of core lending activities is requested to promote transparency and to avoid any misinterpretation of overreach by CUSO Registry regulation.

III. Additional flexibility to NCUA to approve permissible activities and services in writing

The Association supports changes found within the proposed rule which seek to update, expedite, and simplify the process to approve permissible CUSO activities. Importantly, the Association reminds NCUA of the recent changes it made to the process for permissible CUSO activities for corporate credit unions, found within Part 704 of its regulations, and urges the same transparent and parallel process, both in the clarity of language and format, for natural person credit unions. From a procedural standpoint, the Association does not believe that there is a material distinction in the processes and supports a reduction in the regulatory burden and consistency for ease of administration and industry understanding.

IV. Request for comment on the authority for expanded investment authority in CUSOs

As the proposed rule notes, the list of preapproved activities and services in the CUSO rule has not been substantively revised in over thirteen years. At that time, credit card and payroll processing services were added and the authority to invest in and loan to CUSOs that buy and sell loan participations⁶. Additions to this list are overdue.

The Association urges the NCUA to reevaluate and expand such investment authorities now. It is without question that Boston is an important fintech hub, evidenced in part by the successful DCU Fintech Innovation Center, a nonprofit program dedicated to fostering fintech startups and the congressional U.S. House Task Force on Financial Technology chaired by Congressman Stephen Lynch. Fintech investment is a prime example of an appropriate activity to consider by authorizing investment in the shares, stocks, or obligations of any organization organized and operated for the purpose of providing services which are closely related to banking as determined by NCUA.

V. Additional Resources Recommended

a) CUSO Guidance/Best Practices Manual

Credit unions investing in and lending to CUSOs must be aware of not only the relevant credit union provisions, but also should be aware of provisions governing corporate credit unions. The Association encourages the NCUA to develop a manual on CUSO requirements, particularly if the proposed rule is finalized, that will be an important compliance tool for credit unions, their

⁶ 73 Fed. Reg. 79307 (Dec. 29, 2008).

related interests, as well as examiners to fully understand what NCUA requires of those partnering with CUSOs. This request could not be more relevant than when NCUA is considering and finalizing all or part of the proposed rule.

b) Virtual Office Hours

Successful understanding and implementation of regulatory changes, especially those that involve multiple industry stakeholders, requires communication, attention to detail and listening. Periodic dialogue sessions made available by the NCUA, similar to those recently launched by the Federal Deposit Insurance Corporation, in a virtual format targeted to host conversations about credit union and banking related innovative and collaborative relationships between the parties on CUSO and other emerging topics is welcomed. The Association also notes that this topic was recently the subject of discussion with its members and NCUA Vice Chairman Kyle Hauptman.⁷

VI. Conclusion

The NCUA is commended for its continuing efforts to look ahead and pursue a regulatory framework for CUSOs, credit unions and itself that will allow sufficient flexibility to remain progressive in the financial service landscape for credit unions. Without question, Association member credit unions support this synergy and believe it is an integral component of the collaborative credit union system. In essence, CUSOs are essential driving forces to promoting competitiveness, stability, and public confidence in the credit union system.

The Association appreciates the opportunity to comment on NCUA's proposed rule. If you have any questions about the recommendations set forth in this comment letter or require further information, then please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.

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⁷ Association Webinar: *A Dialogue with NCUA Board Vice Chairman Kyle Hauptman*, April 28, 2021.