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NAFCU
National Association of Federally-Insured Credit Unions

April 29, 2021

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

RE: Credit Union Service Organizations (RIN: 3133-AE95)

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the notice of proposed rulemaking issued by the National Credit Union Administration (NCUA) to amend its current credit union service organization (CUSO) regulation. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small financial service products. NAFCU and its member credit unions support the NCUA's proposed revision of its regulations to allow CUSOs to originate all loans that federal credit unions (FCUs) can originate, but requests that the NCUA solicit comment through the notice and rulemaking process before permitting additional CUSO activities. Relatedly, the NCUA should expand FCUs' lending and investment authorities to encourage innovation.

General Comments

The CUSO rule has not been revised since the last financial crisis in 2008. Considering lending has progressed a great deal in 13 years and the nation is facing yet another financial crisis due to the COVID-19 pandemic, it is necessary for the CUSO rule to remain up to date with current lending practices. Therefore, now more than ever, it is important that the CUSO rule be amended to keep credit unions innovative and thriving. By expanding CUSOs' lending abilities, smaller credit unions can minimize administrative costs and offer better rates through loan syndication. CUSOs were originally formed as a way for entities to help with the efficiency of credit union lending. Their permissible activities have developed into originating some types of loans and acting as a middleman in the origination of other loans.

The proposed rule would not dilute an FCU's common bond with its membership. For years, CUSOs have been able to originate loans that are core credit union products without any negative impact on FCUs' fields of membership. The standard practice of CUSOs is to originate the loan and funnel it back into the credit union system. Moreover, the proposed rule has a limitation that reinforces rather than replaces a credit union's core lending activities; CUSOs will only be allowed to originate loans that credit unions can already originate. Additionally, the NCUA currently requires that CUSOs contractually agree to reviews and examinations by the NCUA, which will permit the NCUA to verify where CUSOs are in fact primarily serving credit union members. Further, CUSOs will be required to comply with the NCUA's loan origination rules because that is the only way they can then sell a loan to an FCU.

Another potential role for CUSOs that the NCUA should consider is allowing CUSOs to act as aggregators of credit union loans, including mortgage loans. FCUs have the requisite authority to issue and sell securities as part of their incidental powers under the *Federal Credit Union Act* (FCU Act); however, CUSOs do not currently have regulatory approval to do the same. The NCUA should allow CUSOs to aggregate credit union loans and issue securities on the secondary market as many credit unions do not have the available resources and volume necessary to originate the requisite amount of loans to securitize assets on their own. All credit unions should be able to take advantage of this opportunity to further encourage growth and keep assets within the industry instead of forcing smaller institutions to sell to large banks or other aggregators. One of the best ways to combat the inaccessibility issue is to permit CUSOs to aggregate loans into large pools which can then be efficiently securitized and resold on the secondary market. CUSOs provide an avenue for credit unions to obtain a level of increased specialization and expertise, as well as innovation and economies of scale that they would otherwise struggle to achieve. Permitting CUSOs to aggregate loans and act as issuers would leverage these benefits to foster even more growth and ensure a safer and more sound credit union industry.

The NCUA should allow CUSOs to originate all loans that an FCU can but request comment through the standard notice and rulemaking process before permitting additional activities.

Expansion of Permissible CUSO Lending Activity

NAFCU supports the proposed rule's changes to require any loan purchased by an FCU from a CUSO to meet the requirements of the NCUA's eligible obligations rule. Expanding the lending activities of CUSOs will allow loans to remain in the credit union industry and not require credit union members to go elsewhere for loans that CUSOs are not currently able to originate. The proposed rule will allow credit unions to capture lending activity that is increasingly occurring through digital channels. For example, the auto industry is changing, and consumers are increasingly buying cars and obtaining loans online; the proposed change will improve opportunities for credit unions to become a stronger competitor in this digital market. Through this proposed rule, credit unions will be able to adapt to these new car buying services.

Expanding CUSOs' lending power does not threaten the safety and soundness of the credit union system or the National Credit Union Share Insurance Fund, but in fact, may only further strengthen the system because it will allow CUSOs to be more prevalent in those markets. FCUs will be able to better serve their members by competing effectively in today's increasingly digital market. Although it is possible that a large CUSO with a broad footprint could compete directly with smaller local credit unions, the benefits of broader powers offset the potential risks. The typical lending practice of a CUSO is to originate a loan and then sell that loan to a credit union, or in other words secure loans for credit unions. CUSOs are not structured to maintain the liquidity necessary to compete directly with credit unions as lenders and their purpose tends to be complementary, such as by supplementing an already mature lending process with more specialized offerings. CUSOs can be more niche in their focus and permit multiple credit unions, including those who would be potentially impacted, to purchase loans or directly invest in more efficient lending technology that would be cost prohibitive to develop on an individual basis. NAFCU supports the proposed rule's focus on technological adaptability through FCU and CUSO collaboration. The proposed rule will give FCUs a competitive edge in innovation.

Bypassing the Rulemaking Process

NAFCU does not support the NCUA having the flexibility to consider additional permissible CUSO activities and services without engaging in notice and comment rulemaking. NAFCU does not support amending Part 712 of the NCUA regulations to mirror Part 704, providing the NCUA the flexibility to consider additional activities and services CUSOs are permitted to provide without engaging in notice and comment rulemaking. This part of the proposed rule would frustrate the agency's longstanding commitment to transparency in all important aspects of the regulatory process. NAFCU supports reducing the regulatory burden and streamlining the approval process for additional CUSO activities and services but encourages the NCUA to rely on the rulemaking process before granting additional authorities. NAFCU recognizes that following notice and comment rulemaking may slow down the overall process for permitting additional activities; therefore, as a counterbalance, NAFCU suggests limiting the comment period to thirty days whenever proposing a rule that would add to the list of permissible activities for CUSOs to streamline the process as much as possible.

Lending and Investment Authorities

NAFCU supports the NCUA reconsidering its interpretation of the lending and investment authorities in the FCU Act. Investment in financial technology (fintech) should not be limited to investments in CUSOs. To remain competitive in a fintech landscape where larger banks can easily acquire startup talent and innovative products in their infancy, credit unions need the authority to invest as stakeholders in promising technology companies without needing to rely on the limited functionality of a CUSO to make strategic inroads with financial product developers. Due to the COVID-19 pandemic, credit unions are trying to figure out where to allocate their liquid assets. Because of their limited direct investment powers, credit unions are potentially missing opportunities to invest directly in innovative and beneficial new strategies that would serve members well and lead to additional growth and stability for the industry.

CUSOs are limited as they must primarily serve credit unions, a fact that may deter fintech companies from engaging with credit unions to the extent that they see the CUSO structure as more of a hinderance than a benefit to reaching a wide consumer audience. The NCUA must also recognize that collaboration between fintechs and credit unions as equal partners does not necessarily mean that an FCU's common bond will necessarily erode. Reasonable investment limitations could be implemented to ensure that "seed investments" in fintech companies do not change the common bond of the credit union or its member-driven focus.

In the absence of greater investment flexibility, current limitations will continue to impair the credit union industry's ability to compete at a critical turning point in the financial services landscape. In just the past year, new special purpose depository institutions have gained acceptance with banking regulators, even while touting business models that are radically different from anything previously seen in the traditional banking landscape.[1] Granting credit unions the comparatively modest authority to invest outside of CUSOs does not disrupt the safety and soundness of the industry but rather enhances the credit union system's adaptability and resilience at a time of disruptive change.

NAFCU requests that credit unions be allowed to invest directly in financial technology to "bring strategic technology solutions to credit unions that enable them to effectively compete in a rapidly changing technology environment."[2] The National Association of Credit Union Service Organizations (NACUSO) has issued a white paper titled "Enabling Collaborative Fintech in Credit Union Industry," that explains a specific example of how credit unions can invest in fintech in order to remain competitive in an increasingly challenging marketplace. NACUSO's white paper proposes a rule with recommended language based on the provisions and prohibitions of the FCU Act.[3] NAFCU requests that the NCUA consider the rule proposed in this white paper.

Conclusion

NAFCU appreciates the opportunity to comment on the proposed rule regarding CUSOs and supports CUSOs originating any loan an FCU can originate. It also suggests that NCUA maintain its notice and rulemaking process before permitting additional activities for CUSOs but seek to streamline the process. Finally, NAFCU requests that the NCUA expand FCUs' lending and investment authorities to encourage innovation, adaptability, and future stability. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

Sincerely,

Aminah M. Moore
Regulatory Affairs Counsel

[1] *See* Office of the Comptroller of the Currency, "OCC Chief Counsel's Interpretation on National Trust Banks," Interpretive Letter # 1176 (January 2021) (confirming that the OCC may determine an activity of a state-chartered trust company to be permissible under 12 U.S.C. § 24 (Seventh), which permits national banks to engage in the business of banking and activities incidental to the business of banking); *see also* Office of the Comptroller of the Currency, Press Release, "OCC Conditionally Approves Conversion of Anchorage Digital Bank" (January 13, 2021), available at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html.
[2] NACUSO, Enabling Collaborative Fintech in Credit Union Industry, 2 (2021).
[3] *See Id*. at 9.