

September 8, 2011

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-4328

Re: Comments on the Proposed Amendments to the NCUA Regulations on Credit Union Service Organizations, 12 CFR Parts 712 and 741

Dear Ms. Rupp:

Credit Union 24, Incorporated (“CU24”) is the owner and operator of both the Credit Union 24[®] and Member Access[®] electronic funds transfer (“EFT”) networks (collectively the “CU24 Networks”). The CU24 Networks provide debit card-related transaction switching, processing and related services nationally for credit unions and other financial institution participants. CU24 is one of only two credit union owned companies providing debit transaction EFT network services to credit unions nationally, in a market that is dominated by large, non-credit union owned competitors. CU24 is a cooperative organization for federal income tax purposes. Thus, while CU24 is owned by more than 300 credit unions, the coop rules restrict each credit union to ownership of no more than one share of CU24 stock.

In these challenging times, we applaud Chairman Matz’s public comments recognizing the balance the National Credit Union Administration (“NCUA”) must strike between supporting the long-term stability of the credit union industry while not impeding innovation. Historically NCUA has fostered credit union service organizations (“CUSOs”) with a balanced approach that nurtured the innovation, shared ownership/shared risk-taking, and problem solving potential of CUSOs, but recognized CUSOs could best realize their full potential to credit unions by NCUA not treating them the same as credit unions and subject to the same level of regulatory reporting and oversight. As a result, CUSOs now provide credit unions with countless credit union owned and directed service options where none existed before. Even so, many CUSOs (as is the case with CU24) compete shoulder-to-shoulder for business with non-credit union owned competitors. Today, credit unions are faced with tremendous challenges and need to become more efficient and lower their operating costs, find new or non-traditional sources of revenues, increase their efficiency, and be creative, innovate, and apply new or emerging technologies. CUSOs are in the vanguard of helping credit unions to achieve many of these goals.

We are dismayed by the scope and timing of the proposed amendments to the CUSO regulations in 12 CFR Parts 712 and 741, by the impact these changes would have on the CUSO industry as a whole, and in particular by the significant burden and ongoing deleterious impact these proposed regulations would have on CU24 and similar CUSOs. We urge NCUA to withdraw its proposed regulations. If NCUA believes there is a legitimate safety and soundness concern related to an identifiable systemic risk, then NCUA should only consider a revised proposed rule that narrowly addresses that risk after conducting a more thorough impact study. If the rationale for the proposed new regulations is the desire to learn more about the business of CUSOs, the CUSO regulations already have in place requirements to make CUSOs books and records available to NCUA.

The justification for these profound proposed changes is slight when weighed against the cost to the CUSO industry. With respect to the new information reporting requirements, NCUA argues these are warranted to enable it to gather complete and accurate information about credit unions' use of CUSOs and the services those entities provide to protect National Credit Union Share Insurance Fund and to identify emerging systemic risk posed by CUSOs within the credit union industry. Many commentators have already pointed out that nationally the CUSO investment and lending risk is de minimis (less than 2% of credit union assets). In the case of CU24, currently a new shareholder's investment risk would be \$2,500, and many of the "older" shareholders have paid in less, such that the average investment risk per CU24 shareholder credit union is a little more than a thousand dollars. The investment per credit union is thus extremely nominal in comparison to the benefits realized from share ownership, which includes participation in patronage dividends. Shareholders are entitled to participate in profits through patronage dividends, reducing their effective EFT costs, and rewarding them based upon the volume of their business conducted with CU24. In addition, both CU24 shareholders as well as non-shareholder participants in the CU24 Networks gain the benefit of economies of scale through receiving CU24's EFT services at rates negotiated by CU24, not available to individual credit unions. Through its shared networks of automated teller machines, including surcharge-free networks, and point of sale terminals, participating credit unions and their members enjoy nationwide geographic access to services. CU24 has brought together a highly trained, specialized, and experienced staff and third-party vendor team to meet the specialized EFT and related customer service requirements for its network participants and other services customers, something that typically would not be available to individual credit unions.

We therefore cannot conceive of what meaningful investment risk or "systemic" risk is at issue here with respect to CU24. Further, we are not aware that any such risk exists nationally with respect to CUSOs in general. NCUA itself acknowledges in its own CUSO examination manual that CUSOs exist as separate legal entities under state law, and as such limit the risk of loss to affiliated credit unions to each credit union's loans to and/or investment in the CUSO. If there are concerns as to specific CUSO activities, such as business lending, then why not design a rule that is tailored to solving the specific problem, instead of handcuffing the entire CUSO industry with unnecessary and burdensome requirements?

It is ironic that the proposed regulations themselves may be a source of risk to credit unions that rely on CUSOs and the services they provide. In the CUSO portion of its Examiner Manual, NCUA points out that loss of a CUSO service could affect the operations and financial condition of affected credit unions beyond their limited investments and/or loans. Positing regulations which impose heavy ongoing burdens on CUSOs will make it more difficult for them to compete against businesses that operate without these regulatory burdens. It will also affect their financial viability and have a chilling effect on credit unions' decisions to invest in and/or make loans to CUSOs. The potential costs and detriments to the CUSO industry imposed by these regulations would seem to be many and significant. Given the current economic conditions, competitive environment, and recent regulatory developments affecting payment card networks and card issuers, NCUA's proposed revisions to the CUSO regulations could not come at a worse time.

Under the regulations proposed by NCUA, since there is no de minimis investment or loan threshold under 12 CFR § 712.3(d), a credit union purchasing a single share of CU24 stock for an investment of

\$2,500 will require CU24 to provide NCUA and the appropriate state supervisory authorities, if applicable, with a financial report, at least annually, containing all of the information listed in the proposed regulation and as subsequently clarified in guidance yet to be issued by NCUA. We are very troubled by numerous provisions of this part of the proposal. The language “and the appropriate state supervisory authority, if applicable” is vague and unclear. Why is NCUA, a federal agency, mandating to CUSOs, which it acknowledges it does not charter or insure, and which are not subject directly to NCUA regulations or credit-union type examinations, that they submit reports containing proprietary business and financial information (which is covered by 12 CFR § 792.11(a)(4)) to state supervisory authorities as well, and which would not be covered by § 792.11(a)(4)? Should this not be left to states to regulate, if they so choose? The information to be included in the “financial reports” described in § 712.3(d)(4) and in the commentary of the proposed regulation is vague and unclear. As drafted and interpreted by us, CU24 could be forced to file dozens of reports annually, since it has state chartered federally insured credit union shareholders in numerous states across the country. This will be a very significant additional administrative and compliance burden that does not generate any revenue for CU24. Moreover, NCUA states that access to information will enable it to evaluate the relationships between CUSOs and credit unions and the systemic risk posed by those relationships. Does this mean that in order to evaluate and understand such relationships, NCUA could be requiring even more detailed and confidential information about such relationships? And, how much more time would CU24 have to spend helping to inform and educate NCUA about CU24’s EFT and related services businesses, which is completely different from the typical credit union business that is central to NCUA’s regulatory oversight?

The “financial report” that NCUA is requiring CUSOs to submit would contain confidential business and financial information, which could be subject to Freedom of Information Act (“FOIA”) disclosure, and possible disclosure under applicable state open records, open government and government in the sunshine statutes. The provisions of 12 CFR §§ 792.11(a)(4) and 792.29 offer businesses such as CU24 cold comfort indeed when it comes to protecting our most important business asset—our confidential and trade secret information. Public access to information marked as confidential would be disastrous, either by mistake or because a confidentiality request is disregarded as a result of a FOIA request, and this would place CU24 at a significant competitive disadvantage when compared with competing businesses that are not required to disclose their confidential business information to government agencies that may be subject to FOIA requests. CU24 will have to be much more proactive in protecting against unwarranted public disclosure of our confidential information, which will be another ongoing expense that does not generate any revenue.

We are also concerned that in §712.11(c) NCUA proposes that a subsidiary of a CUSO is any entity in which a CUSO invests. The concept of “control” is absent, and absent control, or the ability to control the activities of the subsidiary, it is not apparent how this could work. Nor does the proposal provide for any de minimis threshold. This would seem to preclude all non controlling investments (even nominal investments) by CUSOs on the basis that without a controlling investment a CUSO could not ensure through typical corporate governance procedures that the subsidiary CUSO would always comply with §712.11(a) and (b). This would also appear to make certain joint venture arrangements with third parties, such as vendors, for the purpose of developing solutions and securing more favorable pricing, much more challenging. When juxtaposed with the new reporting requirements, it is doubtful that

potential “private” joint venture partners would want to open themselves or their records up to such scrutiny or regulatory intrusion.

After comparing the proposed regulations with the existing CUSO regulations, and reviewing the current procedures in the CUSO portions of NCUA’s Examiner Manual, we ask: “why is there a need to change anything?” The current regulations acknowledge the reality on the ground, i.e. that NCUA lacks the direct regulatory authority over CUSOs. Nevertheless under the current procedures NCUA can examine the books and records of a CUSO to address any safety and soundness concerns and apparent systemic risks. NCUA notes that currently it lacks the ability to conduct offsite monitoring in the same way that it can for credit unions. But as already noted, CUSOs and their activities do not all fall squarely within NCUA’s regulatory authority. NCUA acknowledges that many activities performed by CUSOs are already subject to direct oversight by other state and federal regulatory authorities. The proposed regulations would add another layer of oversight to all CUSOs where none is warranted or authorized. Why is the solution for what might be a limited problem at best, to impose burdensome regulatory compliance and reporting requirements on the entire CUSO industry? It appears that NCUA has promulgated these regulations to address what is at best a very narrow concern and to improve its own understanding of the CUSO industry, but it has not adequately taken into consideration the financial, competitive, records disclosure and other negative effects of its proposal.

It is for the foregoing reasons we respectfully request NCUA to withdraw its proposed CUSO regulations.

Very truly yours,



James H. Park
President & CEO

Cc: Members of the Board of Directors, CU24
Bill Cheney, President & CEO, Credit Union National Association
Michael N. Lussier, Chair/Director-at-Large, National Association of Federal Credit Unions
Jack M. Antonini, President, National Association of Credit Union Service Organizations
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