



The National Voice of the State Credit Union System

April 30, 2021

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

Re: NASCUS Comments on Proposed Rule: Credit Union Service Organizations (CUSOs) –
RIN 3133–AE95

Dear Secretary Conyers-Ausbrooks:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits this letter in response to the National Credit Union Administration's (NCUA) request for comments on RIN 3133-AE95, Proposed Rule: Credit Union Service Organizations (CUSOs).² If finalized, the proposal would expand the list of permissible activities for a federal credit union (FCU) CUSO and reserve authority for the NCUA Board to approve additional activities without the traditional notice and comment.³ NCUA also seeks comment on whether to expand FCU investment authority to permit FCU's to investment in non-CUSO organizations.⁴

It is generally NASCUS' custom to reserve comment on NCUA proposals exclusively affecting FCUs. The proposal before us today would amend NCUA's Rules and Regulations governing the permissible products and services an FCU CUSO may offer but would not, directly, affect CUSOs owned exclusively by state credit unions (SCUs).⁵ However, because the proposal, if finalized, could influence state credit unions considering collaborating with FCU investors in the formation and ownership of a CUSO, NASCUS submits the following observations and recommendations for NCUA's consideration.

While NASCUS defers to the FCU system on the suitability of the proposed changes in FCU lending authority, we note that in some states SCU CUSOs already possess this expanded lending authority and it is a benefit to those systems. We are concerned however with possibility that NCUA may establish additional reporting requirements applicable to SCU CUSOs as a result of an expansion of powers for FCU CUSOs.⁶ NASCUS opposes extension of any additional reporting requirements to SCU CUSOs resulting from an expansion of FCU powers. With respect to NCUA's request for comments on providing greater flexibility for FCU to invest in non-CUSO entities, NASCUS recommends NCUA allow a limited amount of

¹ NASCUS is the professional association of the nation's 45 state credit union regulatory agencies that charter and supervise over 2,000 state credit unions. NASCUS membership includes state regulatory agencies, state chartered and federally chartered credit unions, and other important stakeholders in the state system. State chartered credit unions hold over half of the \$1.87 trillion assets in the credit union system and are proud to represent nearly half of the 125 million credit union members.

² "Credit Union Service Organizations" 86 Fed. Reg. 11645 (February 26, 2021).

³ Ibid.

⁴ Id. at 11649.

⁵ 12 C.F.R. 741.222.

⁶ 86 Fed. Reg. 11648 (February 26, 2021)

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FCU investment in an SCU CUSO without that CUSO becoming subject to FCU CUSO limitations.

CUSOs have a long history of serving the credit union movement. At the federal level, the legal framework authorizing CUSOs was part of the 1934 Federal Credit Union Act and the first NCUA CUSO regulation was promulgated in 1987.⁷ CUSO authority at the state level varies, but SCU CUSOs have also played an important role supporting the state credit union system. Since their inception, CUSOs have evolved to provide their credit union owners, and credit union clients, a varied array of products and services. We believe the innovative use of CUSOs has been a net benefit to the credit union system from both an operational and supervisory perspective.

Of course, NASCUS does not suggest that CUSO operations, current or expanded, are without risk. As with most products and services, CUSO activities are accompanied by varying risks that must be mitigated.⁸ However, we are confident that the CUSO regulatory framework will continue to evolve with the financial services sector to mitigate risk presented by CUSOs. NCUA and state regulators currently have access to CUSO books and records, many state regulators have direct supervisory authority over CUSOs and other third-party service providers, and many CUSO activities are licensed at the state level. Taken together with NCUA's CUSO Registry, a strong fabric of supervision exists to help safeguard the safety and soundness of the system.⁹

NASCUS appreciates the concerns of some in the credit union system that the expanded authorities of FCU CUSOs may introduce extra-regional competition from within the credit union movement. Of course, were this proposed rule to be finalized, all FCUs would be eligible to participate in CUSOs engaged in expanded lending activities.¹⁰ However, eligibility notwithstanding, there likely would be FCUs that operationally may not be capable of participating in the CUSO system, that may not have the opportunity to participate in such CUSOs, or simply may believe that such lending should be done by the credit union directly and therefore are not interested in participating in the CUSO system (which is well within their prerogative). Collaborating with a CUSO should not be a necessity in order for a credit union to remain vibrant and healthy. NASCUS encourages NCUA, as we do our state credit union regulators, to continue to evaluate prudent changes that enhance a credit union's ability to serve members and meaningfully engage in the marketplace.

⁷⁷ "Credit Union Service Organizations,": Guy Messick, available at <https://www.nacuso.org/wp-content/uploads/2018/02/History-of-CUSOs-2-7-18.pdf>.

⁸ While there have been a few instances of a credit union's CUSO contributing to the ultimate conservatorship of the credit union owner, these examples are few in the context of the sheer number of CUSOs operating safely as well as in the context of the bank and credit union failures of the past twenty years that had nothing to do with CUSOs or bank subsidiaries. See "FDIC Bank Failures in Brief – Summary 2001-2021" available at <https://www.fdic.gov/bank/historical/bank/>, and *Bankrate* "Failed Credit Union List 2012-2020" available at <https://www.bankrate.com/banking/credit-unions/list-of-failed-credit-unions/>.

⁹ In particular, the NCUA CUSO Registry

¹⁰ State credit unions look to state law for permissible activities for SCU CUSOs, but NASCUS anticipates many would also be eligible to participate in CUSOs offering expanded lending services.

Potential Regulatory Burden for SCU CUSOs

Although SCU CUSOs are generally not subject to NCUA product or service limitations, state CUSOs are subject to NCUA reporting requirements. We are concerned that an expansion of FCU CUSO authority might result in additional reporting burden for exclusively SCU owned CUSOs. State credit union CUSOs may provide products and services as authorized by state law free of many of the CUSO service restrictions currently in-place for FCU CUSOs. In some cases, state credit union CUSOs already have the authority now being proposed by NCUA for FCU CUSOs. To date, NCUA, the share insurance fund, and the credit union system have been able to manage any risk presented by SCU CUSOs within the existing reporting framework pursuant to existing Part 741.12. Nothing in the Supplemental Material identifies a pressing need to include SCU CUSOs in any new reporting requirements and we expect that should NCUA seek to include ALL CUSOs in any reporting requirements the agency would consult with the state regulators and subject proposed SCU CUSO reporting requirements to notice and comment. As noted above, many SCU CUSOs are already subject to oversight and supervision at the state level by way of state licensing requirements or state third party oversight authority and NCUA presents no compelling reason for expanding SCU reporting requirements based on expanding FCU authority.

NASCUS Encourages Investment Flexibility

NCUA also seeks comment on “adopting separate definitions for the types of organizations that an FCU may invest in or lend to, which potentially would expand the types of organizations eligible for FCU investment.”¹¹ Specifically, NCUA is considering allowing FCUs to form organizations with community banks to develop lending platforms to serve both member/customer bases.¹²

NASCUS has previously encouraged NCUA to consider permitting corporate credit union equity investments in non-CUSO entities for the purposes of maximizing innovation.¹³ Permitting FCUs to invest with banks would be consistent with our view of the need for greater flexibility for credit union investment.¹⁴

There are other changes NCUA could make to the FCU CUSO rule that could enhance inter-credit union collaboration. NCUA should consider allowing a limited amount of FCU investment in SCU CUSOs without those CUSOs being subject to FCU CUSO rules. Currently, § 712.1(d) defines a CUSO for purposes of application of the limitations and other requirements of Part 712 as any entity in which a FCU has an ownership interest or an entity to which a FCU has made a loan and the entity serves primarily credit union members.¹⁵

¹¹ 86 Fed. Reg. 11649.

¹² Ibid.

¹³ See NASCUS – Comments on Proposed Rule Corporate Credit Unions (RIN 3133-AF13) (July 27, 2020) available at <https://www.nascus.org/comment-letters/nascus-comments-on-proposed-rule-corporate-credit-unions/>.

¹⁴ NASCUS has encouraged state regulators to consider equity investment authority for state charters.

¹⁵ 12 C.F.R. 712(d).

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NASCUS recommends § 712.1(d) be amended to allow a FCU, or group of FCUs, to hold up to 25% ownership interest in a SCU CUSO without the CUSO becoming subject to the FCU provisions of Part 712.¹⁶

In closing, many of the changes proposed by NCUA, while expansive in some respects for FCUs, are not unprecedented. In some states, CUSOs are already authorized to engage in many of the lending activities of their credit union owners and clients. In addition, while CUSOs as defined by § 741.12 must serve **primarily** credit union members, they are not currently required, pursuant to NCUA's rules, to serve credit union members **exclusively**. With respect to the supervision of CUSOs, we reiterate that many CUSOs are subject to state oversight. We encourage NCUA to continue to work with NASCUS and state regulators to leverage state supervisory oversight of CUSOs and third-party service providers as needed to address any supervisory uncertainty NCUA may have related to any SCU CUSO or other third-party entity.

Thank you for the opportunity to provide our thoughts on the proposed changes to FCU CUSO authority. We are happy to discuss our recommendations further at your convenience.

Sincerely,

- signature redacted for electronic publication -

Brian Knight
Executive Vice President & General Counsel

¹⁶ NCUA seeks comments on whether FCU investment limitations should be reconsidered. Therefore, NASCUS' recommendation is within the scope of this request for comments.