CREDIT UNION ASSOCIATION OF THE DAKOTAS

July 27, 2020

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

RE: RIN 3133– AF13; Corporate Credit Unions

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its proposed rulemaking concerning corporate credit unions.

The NCUA issued a proposed rule relating to several areas concerning corporate credit unions. In general, CUAD is supportive of the proposed changes and appreciates the NCUA in its efforts to update regulations relating to corporate credit unions. However, there are two areas of the proposed rule for which CUAD has concerns and recommends revisions, these concerns are discussed below.

With regard to proposed changes for the 12 CFR 704.2 definitions, the proposal would define a CUSO, to mean both a CUSO under part 712 and a corporate CUSO under part 704. 12 CFR 712.1 defines CUSO to mean, "any entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including cashing checks and money orders for a fee, and selling negotiable checks, including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1), to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members."

The proposed definition of "corporate CUSO" under proposed 704.2 goes on to provide that this term means, "a CUSO, as defined in part 712, that: (1) Is a consolidated CUSO; (2) A corporate credit union has the power, directly or indirectly, to direct the CUSO's management or policies; (3) A corporate credit union owns 25 percent or more of the CUSO's contributed equity, stock, or

membership interests; or (4) The aggregate corporate credit union ownership meets or exceeds 50 percent of the CUSO's contributed equity, stock, or membership interests." *85 FR 17294*

As discussed by the NCUA is its proposed rulemaking, "the proposed definition makes it clear that the term CUSO applies to both NP [natural person] CUSOs and corporate CUSOs unless otherwise stated. For example, when calculating tier 1 capital under part 704, a corporate credit union must deduct, in part, investments in any ''unconsolidated CUSO.'' By using the term ''CUSO,'' instead of the defined terms ''corporate CUSO'' and ''consolidated CUSO,'' the proposed rule should be clear that a corporate credit union must deduct unconsolidated investments in both a NP CUSO and a corporate CUSO." *85 FR 172090*

CUAD is concerned regarding the removal of the distinction between corporate CUSOs and natural person CUSOs. Removing this distinction from the corporate CUSO rules of 704.11 will result in the aggregation of investments and loans to all NP and corporate CUSOs. In the NCUA's discussion of the proposed rule it states that, "The proposed rule does not amend the current aggregate limitations on investments and lending." 85 FR 17290 Which CUAD acknowledges is a true statement, current investment and loan limitations under 12 CFR 704.11(b) provides that "The aggregate of all investments in member and non-member corporate CUSOs that a corporate credit union may make must not exceed 15 percent of a corporate credit union's total capital. (2) The aggregate of all investments in and loans to member and nonmember corporate CUSOs a corporate credit union may make must not exceed 30 percent of a corporate credit union's total capital. A corporate credit union may lend to member and nonmember corporate CUSOs an additional 15 percent of total capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law."

The proposed rule still includes the same numerical thresholds, specifically, "(a) Investment and loan limitations. (1) The aggregate of all investments in member and non-member CUSOs that a corporate credit union may make must not exceed 15 percent of a corporate credit union's total capital. (2) The aggregate of all investments in and loans to member and nonmember CUSOs a corporate credit union may make must not exceed 30 percent of a corporate credit union's total capital. A corporate credit union may lend to member and nonmember CUSOs an additional 15 percent of total capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law." *85 FR 17294*

However, by now including NP CUSOs in this equation the proposed rule is making a material change to existing rules for corporate credit unions in determining compliance with aggregate concentration limits. Corporate credit unions have been key sources of liquidity for NP CUSOs and this change, if implemented, would result in a reduction in credit union's access to liquidity and funding. The proposed rule should be amended to remove the inclusion of loans to both NP and Corporate CUSOs for purposes of determining compliance with the aggregate exposure limits of 12 CFR 704.11.

The proposal also seeks to add an appendix to Part 704 to list the permissible activities for corporate CUSOs. Currently, 12 CFR 704.11(e) provides that "A corporate CUSO must agree to limit its activities to: (i) Brokerage services, (ii) Investment advisory services, and (iii) Other

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categories of activities as approved in writing by NCUA and published on NCUA's Web site. (2) Once NCUA has approved an activity and published that activity on its Web site as provided for in paragraph (e)(1)(iii) of this section, NCUA will not remove that particular activity the approved list, or make substantial changes to the content or description of that approved activity, except through the formal rulemaking process."

As explained in the discussion of the proposed rule the reason for this change is, "to increase transparency and make it easier for corporate credit unions to determine if an activity has previously been determined by the Board to be permissible, the proposed rule would replace the permissible activities list from the NCUA website with a new appendix to part 704."

CUAD is concerned with the potential delay in innovation should a CUSO have to wait for the NCUA to amend the permissible activities list in through future rulemaking. NCUA should ensure that Corporate CUSOs can still receive approval for a permissible activity without having to wait for the proposed Appendix D to be revised through rulemaking. A change to this approval process will decrease flexibility and create unnecessary hurdles for the NCUA to quickly consider new activities for corporate CUSOs to engage in. With the increasing pace of innovation, the flexibility contained in the existing rule better positions corporate CUSOs to compete, remain relevant, and provide innovative solutions to their members.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

Amy Kleinschmit

Amy Kleinschmit
Chief Compliance Officer

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