



National Credit Union Administration

May 29, 2014

Brian G. Lauer, Esq.
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211 N. Olive St.
Media, PA 19063-2810

Dear Mr. Lauer:

RE: Clarification of Amended CUSO Rule

You have asked for clarification of a provision in NCUA's newly amended credit union service organization (CUSO) regulation. Specifically, you have asked if a federally insured credit union (FICU) receiving products or services from a CUSO must enter into a written agreement in which the CUSO is obligated to submit an annual report to NCUA even if the FICU does not have an investment in or loan outstanding to the CUSO. The answer is no. The amended CUSO rule requires only those FICUs investing in or lending to a CUSO to obtain a written agreement requiring the CUSO to submit annual reports.¹

The NCUA Board amended the CUSO rule on November 21, 2013.² The new rule requires, among other things, a FICU to contractually bind a CUSO to submit an annual report to NCUA. Specifically, new §712.3(d)(4) states: "A FICU must obtain a written agreement from a CUSO before investing in or lending to the CUSO" that the CUSO will "annually submit . . . a report directly to NCUA and the appropriate state supervisory authority, if applicable." (Emphasis added).

Accordingly, it is clear that a FICU that invests in or lends to a CUSO must comply with the new §712.3(d)(4) annual reporting requirement.³ However, §712.3(d)(3) of the CUSO rule, which addresses access to CUSO books and records, makes reference to

¹ Generally, the amended CUSO rule requires FICUs to include, in their agreements with a CUSO, a requirement that a CUSO annually submit a financial report directly to NCUA or, in the case of a CUSO with an investment or loan from a federally insured, state-chartered credit union (FISCU), to NCUA and the appropriate state supervisory authority (SSA). The new reporting requirement is intended to protect the National Credit Union Share Insurance Fund by improving the quality of available information about CUSOs so that NCUA can better evaluate and identify emergent risks posed by CUSOs. 76 Fed. Reg. 44866 (July 27, 2011); 78 Fed. Reg. 72537 (Dec. 3, 2013); new §712.3(d)(4).

² 78 Fed. Reg. 72537 (Dec. 3, 2013). The amended rule is effective, and contractual changes are required by, June 30, 2014. CUSOs will begin submitting reports to NCUA under new §712.3(d)(4) when the agency's reporting system is fully operational, which will be by December 31, 2015.

³ The preamble to the final rule also indicates that the written agreement requirement is triggered by a FICU's investment in or loan to a CUSO. 78 Fed. Reg. 72537, 72543 (Dec. 3, 2013) ("[T]he final rule requires a FICU to obtain a written agreement from a CUSO before investing in or lending to the CUSO."); 78 Fed. Reg. 72537, 72544 (Dec. 3, 2013) ("For purposes of [the reporting] requirement, the definition of 'newly formed CUSO' includes a newly established business or an established business that becomes subject to this regulation by virtue of a credit union's investment or loan to the business.").

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FISCUs with an investment in, loan to, or “contractual agreement for products or services with the CUSO.” You have asked if the contractual agreement language in §712.3(d)(3) infers that FICUs with only a service contract with a CUSO must also obtain a written agreement for the CUSO to submit an annual report under new §712.3(d)(4). No, it does not.

A credit union with an investment in or loan to a CUSO must enter into a written agreement in which the CUSO contractually obligates itself to provide NCUA with access to its books and records. Specifically, §712.3(d)(3) states:

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* A FICU must obtain a written agreement from a CUSO before investing in or lending to the CUSO that the CUSO will:

...

(3) Provide NCUA, its representatives, and the state supervisory authority [,] having jurisdiction over any FICU with an outstanding loan to, investment in or contractual agreement for products or services with the CUSO [,] with complete access to any books and records of the CUSO and the ability to review the CUSO’s internal controls, as deemed necessary by NCUA or the state supervisory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute.⁴

Prior to 2008, the access to books and records provision applied only to FCUs with an investment in or loan to a CUSO. In 2008, however, the rule was amended to also provide NCUA with access to the books and records of CUSOs in which a FICU has an investment or lending relationship.⁵ The provision was also amended at that time to provide a reciprocal right of access to CUSO books and records to SSAs (having jurisdiction over any FICU with an outstanding loan to, investment in, or contractual agreement for products or services with the CUSO). The preamble to the 2008 proposed rule discussed the rationale for providing reciprocity to SSAs having supervisory responsibility over, not only FISCUs with an investment or lending relationship with a CUSO, but also FISCUs with only a service contract with a CUSO:

The Board understands . . . that not every SSA enjoys a right of access to books and records of CUSOs in which FISCUs chartered by that state have an investment or other relationship. There may also be cases in which a FICU has only a contractual relationship with a CUSO but does not have either a loan to or an investment in

⁴ 12 C.F.R. 712.3(d)(3) (emphasis added).

⁵ 73 Fed. Reg. 79307 (Dec. 29, 2008).

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the CUSO, which may be owned exclusively by one or more FCUs.

To address this circumstance, the Board proposes to change §712.3(d)(3) to require the credit union's agreement with the CUSO to permit access not only to NCUA but also to any SSA having supervisory responsibility over any FISCO that has a loan, an investment, or a contractual agreement for products or services with the CUSO. This will assure that an SSA with responsibility for a credit union has the opportunity to review and evaluate the risk to which its institutions may be exposed.⁶

The discussion in the 2008 preamble clarifies that the regulatory text regarding FISCUs with a "contractual agreement for products or services with the CUSO" was only intended to provide an SSA with access to CUSO books and records in the narrow circumstance where NCUA had a right to access the books and records of a CUSO that was owned exclusively by FCUs, but with which a FISCO had only a contractual relationship. Accordingly, the language in §712.3(d)(3) regarding FISCUs with a contractual agreement for products or services with a CUSO has no effect on the reach of new §712.3(d)(4), which provides that only those FISCUs investing in or lending to a CUSO must enter into a written agreement in which the CUSO contractually obligates itself to submit annual reports.

Sincerely,



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General Counsel

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14-0502

⁶ 73 Fed. Reg. 23982, 23984 (May 1, 2008).