



March 27, 2017

Larry Fazio
Scott Neat
Vincent Vieten
Mike McKenna
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Examiner Guidance Regarding Potential Conflict of Interest in Member Business Lending Rule

Dear Messrs. Fazio, Neat, Vieten and McKenna:

I am writing on behalf of NACUSO's business lending CUSO members and the credit unions that own them. We are concerned about the interpretation of "independence" in Part 723.7(c) of the Member Business Lending Rule regarding conflicts of interest and we are asking for additional guidance from NCUA in the case of CUSO service providers.

Credit unions often rely on CUSOs to provide much needed expertise in the business and commercial lending space. Sharing this cost among several credit unions is necessary in order to obtain the expertise for an affordable price, especially since the aggregate limit on business lending restricts many credit unions from spreading their costs over a greater number of loans. Credit union owners of these business lending CUSOs use the CUSOs as their collaborative back office. If credit unions cannot rely upon the expertise of the CUSO and had to duplicate the effort with another business lending expert separately retained, the underlying purpose of the CUSO would be nullified. The costs of business lending would actually increase with the use of a CUSO. The impact of this situation is that some credit unions would stop making business loans, hire staff with lower expertise levels that the credit unions could individually afford and/or make business loans with much higher costs.

A common practice in business lending is that a lender is paid a fee by the borrower when the loan closes. While not universal, this is the common practice by most business lending CUSOs. This model can reduce the costs charged to credit unions for the services as the fees paid by the borrower will offset the fees paid by the credit union to the CUSO. We have been advised that the NCUA's concern is that if a third party is only paid if a loan closes the third party would not be sufficiently independent of the transaction to give unbiased advice to the credit unions.

However, per Part 723.7(c), a CUSO's independence and advice is never tainted as to a credit union that owns a controlling interest under GAAP. We presume that the reason for this exception is that a CUSO would never act against the interests of a credit union owner that controls the management of the CUSO. We agree with this concept. However, we note that if a controlling interest is over 50%, then this exception has little practical applicability as we are not aware of any credit union that owns

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over 50% of a business lending CUSO. The cost containment model needs multiple credit union participants.

We are asking that a CUSO's independence also be implied more broadly for CUSOs that are controlled by credit unions. As owners/users, the credit unions directly oversee the governance of the CUSO. All are aligned with the goal of providing the most effective advice and services. They are sharing costs not making a profit. If a CUSO has ten credit union owners, they will each hold the CUSO management accountable. The CUSO management would be acting against its own best interests if it provided questionable advice to any of the owners/users simply to get a fee at closing. It is contrary to the business model and common sense to assume that the CUSO would provide marginal advice to any owner credit union. If the credit unions are collectively in control of a CUSO they are just as powerful as one credit union in control of the CUSO.

Many business lending CUSOs provide underwriting services to credit unions that are not owners. To assume that a CUSO will provide substandard advice to non-owners just to earn a fee is contrary to the culture and self-interest of the CUSO management if that management consists of credit union owner/clients.

We are asking NCUA to recognize that if a CUSO is controlled by credit unions the CUSO would be permitted to provide the independent business lending advice to all its credit union clients, regardless of the business model for the payment of fees.

Our members are also seeking guidance on Part 723.7(1). It would appear that there is no independence requirement for providing services related to the transaction such loan servicing. We want to confirm that this would also include other services such as business development, collections and document preparation so long as these services are delivered separately from the credit analysis.

We note that this letter does not constitute a request for a General Counsel Opinion but is a means to open up a dialogue on the topic.

We thank you for your consideration and we are available should you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Jack M. Antonini". The signature is written in a cursive style with a large, looping initial "J".

Jack M. Antonini
President and CEO