

National Credit Union Administration

§ 712.1

(2) Is controlled or managed by persons who are members of a minority group or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in “troubled condition” as defined in § 701.14(b)(3) of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the NCUA approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the NCUA grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided in the approval.

[64 FR 66360, Nov. 26, 1999]

§ 711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

[61 FR 50702, Sept. 27, 1996, as amended at 64 FR 66360, Nov. 26, 1999]

§ 711.8 Enforcement.

Except as provided in this section, NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited inter-

locking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part.

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

Sec.

712.1 What does this part cover?

712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

712.3 What are the characteristics of and what requirements apply to CUSOs?

712.4 What must an FCU and a CUSO do to maintain separate corporate identities?

712.5 What activities and services are preapproved for CUSOs?

712.6 What activities and services are prohibited for CUSOs?

712.7 What must an FCU do to add activities or services that are not preapproved?

712.8 What transaction and compensation limits might apply to individuals related to both an FCU and a CUSO?

712.9 When must an FCU comply with this part?

712.10 How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?

AUTHORITY: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

SOURCE: 63 FR 10756, Mar. 5, 1998, unless otherwise noted.

§ 712.1 What does this part cover?

This part establishes when a Federal credit union (FCU) can invest in and make loans to CUSOs. CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to § 704.11 of this title. This part does not apply to state-chartered credit unions or the subsidiaries of state-chartered credit unions that do not have FCU investments or loans.

EFFECTIVE DATE NOTE: At 73 FR 79311, Dec. 29, 2008, § 712.1 was amended by revising the last sentence, effective Jan. 28, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 712.1 What does this part cover?

* * * Sections 712.3(d)(3) and 712.4 of this part apply to state-chartered credit unions and their subsidiaries, as provided in § 741.222 of this chapter.

§712.2

§712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

(a) *Investments.* An FCU's total investments in CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

(b) *Loans.* An FCU's total loans to CUSOs must not exceed, in the aggregate, 1% of its paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. Loan authority is independent and separate from the 1% investment authority of subsection (a) of this section.

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings (this does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer); and

(2) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 66 FR 65624, Dec. 20, 2001]

EFFECTIVE DATE NOTE: At 73 FR 79312, Dec. 29, 2008, §712.2 was amended by adding (d)(3), effective Jan. 28, 2009. For the convenience of the user, the added text is set forth as follows:

§712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) * * *

(3) *Special rule in the case of less than adequately capitalized FCUs.* This paragraph (d)(3) applies in the case of either an FCU that is currently less than adequately capitalized, as determined under part 702, or where the making of an investment in a CUSO would render the FCU less than adequately capitalized under part 702. Before making an investment in a CUSO, the FCU must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount in excess of one percent of the credit union's paid in and unimpaired capital and surplus.

§712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a limited partnership as a limited partner. For purposes of this part, "corporation" means a legally incorporated corporation as established and maintained under relevant federal or state law. For purposes of this part, "limited partnership" means a legally established limited partnership as established and maintained under relevant state law. For purposes of this part, "limited liability company" means a legally established limited liability company as established and maintained under relevant state law, provided that the FCU obtains written legal advice that the limited liability company is a recognized legal entity under the applicable laws of the state of formation and that the limited liability company is established in a manner that will limit potential exposure of the FCU to no more than the amount of funds invested in, or loaned to, the CUSO.

(b) *Customer base.* An FCU can invest in or loan to a CUSO only if the CUSO primarily serves credit unions, its membership, or the membership of credit unions contracting with the CUSO.

(c) *Federal credit union accounting for financial reporting purposes.* An FCU must account for its investments in or

loans to a CUSO in conformity with “generally accepted accounting principles” (GAAP).

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* An FCU must obtain written agreements from a CUSO, prior to investing in or lending to the CUSO, that the CUSO will:

(1) Account for all its transactions in accordance with GAAP;

(2) Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the credit union that is its parent; and

(3) Provide NCUA and its representatives with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA in carrying out its responsibilities under the Act.

(e) *Other laws.* A CUSO must comply with applicable Federal, state and local laws.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 64 FR 57365, Oct. 25, 1999; 66 FR 40578, Aug. 3, 2001; 70 FR 55228, Sept. 21, 2005]

EFFECTIVE DATE NOTE: At 73 FR 79312, Dec. 29, 2008, § 712.3 was amended in paragraph (b) by removing the period at the end of the sentence and adding the phrase “; *provided, however,* that with respect to any approved CUSO service, as set out in § 712.5, that also meets the description of services set out in § 701.30 of this chapter, this requirement is met if the CUSO primarily provides such services to persons who are eligible for membership in the FCU or are eligible for membership in credit unions contracting with the CUSO.” in its place; revise paragraph (d)(3), effective Jan. 28, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) * * *

(3)(i) Provide NCUA, its representatives, and the state credit union regulatory au-

thority having jurisdiction over any federally insured, state-chartered credit union 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 CUSO internal controls, as deemed necessary by NCUA or the state credit union regulatory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute.

(ii) The effective date for compliance with this section is June 29, 2009.

* * * * *

§ 712.4 What must an FCU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* An FCU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FCU and the CUSO. Good business practices dictate that each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) The FCU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FCU; and

(6) Unless the FCU has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the FCU is not liable.

(b) *Legal opinion.* Prior to an FCU investing in a CUSO, the FCU must obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FCU to no more than the loss of funds invested in, or lent to, the CUSO. In addition, if a CUSO in which an FCU has an investment plans to change its structure under § 712.3(a), an FCU must also obtain prior, written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the FCU to no more than the loss of funds invested in, or loaned

§ 712.5

12 CFR Ch. VII (1–1–09 Edition)

to, the CUSO. The legal advice must address factors that have led courts to “pierce the corporate veil” such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of the investing FCU or the CUSO.

§ 712.5 What activities and services are preapproved for CUSOs?

NCUA may at any time, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, an FCU may invest in, loan to, and/or contract with only those CUSOs that are sufficiently bonded or insured for their specific operations and engaged in the preapproved activities and services related to the routine daily operations of credit unions. The specific activities listed within each preapproved category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(a) *Checking and currency services:*

- (1) Check cashing;
- (2) Coin and currency services; and
- (3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

(b) *Clerical, professional and management services:*

- (1) Accounting services;
- (2) Courier services;
- (3) Credit analysis;
- (4) Facsimile transmissions and copying services;
- (5) Internal audits for credit unions;
- (6) Locator services;
- (7) Management and personnel training and support;
- (8) Marketing services;
- (9) Research services; and
- (10) Supervisory committee audits;

(c) *Business loan origination;*

(d) *Consumer mortgage loan origination;*

(e) *Electronic transaction services:*

- (1) Automated teller machine (ATM) services;

(2) Credit card and debit card services;

(3) Data processing;

(4) Electronic fund transfer (EFT) services;

(5) Electronic income tax filing;

(6) Payment item processing;

(7) Wire transfer services; and

(8) Cyber financial services;

(f) *Financial counseling services:*

(1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation, and other personnel benefit plans;

(2) Estate planning;

(3) Financial planning and counseling;

(4) Income tax preparation;

(5) Investment counseling; and

(6) Retirement counseling;

(g) *Fixed asset services:*

(1) Management, development, sale, or lease of fixed assets; and

(2) Sale, lease, or servicing of computer hardware or software;

(h) *Insurance brokerage or agency:*

(1) Agency for sale of insurance;

(2) Provision of vehicle warranty programs; and

(3) Provision of group purchasing programs;

(i) *Leasing:*

(1) Personal property; and

(2) Real estate leasing of excess CUSO property;

(j) *Loan support services:*

(1) Debt collection services;

(2) Loan processing, servicing, and sales; and

(3) Sale of repossessed collateral;

(k) *Record retention, security and disaster recovery services:*

(1) Alarm-monitoring and other security services;

(2) Disaster recovery services;

(3) Microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services;

(4) Provision of forms and supplies; and

(5) Record retention and storage;

(l) *Securities brokerage services;*

(m) *Shared credit union branch (service center) operations;*

(n) *Student loan origination;*

(o) *Travel agency services; and*

(p) *Trust and trust-related services:*

(1) Acting as administrator for pre-paid legal service plans;

National Credit Union Administration

§ 712.7

(2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and

(3) Trust services.

(q) *Real estate brokerage services.*

(r) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 33187, June 22, 1999; 64 FR 66361, Nov. 26, 1999; 66 FR 40578, Aug. 3, 2001; 68 FR 56551, Oct. 1, 2003]

EFFECTIVE DATE NOTE: At 73 FR 79312, Dec. 29, 2008, § 712.5 was amended in paragraph (a)(2) by removing the word "and" after the semicolon; amend paragraph (a)(3) by adding "and" after the semicolon; add a new paragraph (a)(4); amend paragraph (b)(9) by removing the word "and" after the semicolon; amend paragraph (b)(10) by adding "and" after the semicolon; add a new paragraph (b)(11); amend paragraph (c) by removing the semicolon at the end of the sentence and replacing it with the phrase: ", including the authority to buy and sell participation interests in such loans;" amend paragraph (d) by removing the semicolon at the end of the sentence and replacing it with the phrase: ", including the authority to buy and sell participation interests in such loans;" amend paragraph (f)(5) by removing the word "and" after the semicolon; amend paragraph (f)(6) by adding "and" after the semicolon; amend paragraph (h)(2) by removing the word "and" after the semicolon; amend paragraph (h)(3) by adding "and" after the semicolon; amend paragraph (j)(2) by removing the word "and" after the semicolon; amend paragraph (j)(3) by adding "and" after the semicolon; add new paragraphs (f)(7), (h)(4), and (j)(4) through (j)(6); amend paragraph (n) by removing the semicolon at the end of the sentence and replacing it with the phrase: ", including the authority to buy and sell participation interests in such loans;" add new paragraphs (s) and (t), effective Jan. 28, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

- * * * *
- (a) * * *
- (4) Stored value products.
- (b) * * *

(11) Employee leasing services

* * * *

(f) * * *

(7) Business counseling and consultant services;

* * * *

(h) * * *

(4) Real estate settlement services;

* * * *

(j) * * *

(4) Real estate settlement services;
(5) Purchase and servicing of non-performing loans; and

(6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;

* * * *

(s) Credit card loan origination;

(t) Payroll processing services.

§ 712.6 What activities and services are prohibited for CUSOs?

General. CUSOs must not acquire control of, either directly or indirectly, another depository financial institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility or similar organization, corporation, or association.

[63 FR 10756, Mar. 5, 1998, as amended at 64 FR 66361, Nov. 26, 1999]

§ 712.7 What must an FCU do to add activities or services that are not preapproved?

In order for an FCU to invest in and/or loan to a CUSO that offers an unpreapproved activity or service, the FCU must first receive NCUA Board approval. The request for NCUA Board approval of an unpreapproved activity or service must include a full explanation and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. The request must be submitted jointly to your Regional Office and to the Secretary of the Board. The request will be treated as a petition to amend § 712.5 and NCUA will request public comment or otherwise act on the petition within 60 days after receipt. Before you engage

§ 712.8

in the petition process, you should seek an advisory opinion from NCUA's Office of General Counsel as to whether a proposed activity is already covered by one of the authorized categories without filing a petition to amend the regulation.

[63 FR 10756, Mar. 5, 1998, as amended at 66 FR 40578, Aug. 3, 2001]

EFFECTIVE DATE NOTE: At 73 FR 79312, Dec. 29, 2008, § 712.7 was removed and reserved, effective Jan. 28, 2009.

§ 712.8 What transaction and compensation limits might apply to individuals related to both an FCU and a CUSO?

(a) *Officials and Senior Management Employees.* The officials, senior management employees, and their immediate family members of an FCU that has outstanding loans or investments in a CUSO must not receive any salary, commission, investment income, or other income or compensation from the CUSO either directly or indirectly, or from any person being served through the CUSO. This provision does not prohibit such FCU officials or senior management employees from assisting in the operation of a CUSO, provided the officials or senior management employees are not compensated by the CUSO. Further, the CUSO may reimburse the FCU for the services provided by such FCU officials and senior management employees only if the account receivable of the FCU due from the CUSO is paid in full at least every 120 days. For purposes of this paragraph (a), "official" means affiliated credit union directors or committee members. For purposes of this paragraph (a), "senior management employee" means affiliated credit union chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g. Assistant President, Vice President, or Assistant Treasurer/Manager) and the chief financial officer (Comptroller). For purposes of this paragraph (a), "immediate family member" means a spouse or other family members living in the same household.

(b) *Employees.* The prohibition contained in paragraph (a) of this section also applies to FCU employees not oth-

12 CFR Ch. VII (1-1-09 Edition)

erwise covered if the employees are directly involved in dealing with the CUSO unless the FCU's board of directors determines that the FCU employees' positions do not present a conflict of interest.

(c) *Others.* All transactions with business associates or family members of FCU officials, senior management employees, and their immediate family members, not specifically prohibited by paragraphs (a) and (b) of this section must be conducted at arm's length and in the interest of the FCU.

§ 712.9 When must an FCU comply with this part?

(a) *Investments.* An FCU's investments in CUSOs in existence prior to April 1, 1998, must conform with this part not later than April 1, 2001, unless the Board grants prior approval to continue such investment for a stated period.

(b) *Loans.* An FCU's loans to CUSOs in existence prior to April 1, 1998, must conform with this part not later than April 1, 2001, unless:

(1) The Board grants prior approval to continue the FCU's loan for a stated period; or

(2) Under the terms of its loan agreement, the FCU cannot require accelerated repayment without breaching the agreement.

§ 712.10 How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?

(a) The NCUA Board may exempt federally insured credit unions in a given state from compliance with § 712.3(d)(3) if the NCUA Board determines the laws and procedures available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access to CUSO books and records it believes is necessary to evaluate the safety and soundness of credit unions having business relationships with CUSOs owned by credit union(s) chartered in that state.

(b) To obtain the exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures access to CUSO books and records to NCUA's regional office having responsibility for

National Credit Union Administration

§ 713.4

that state, along with all procedural and operational documentation supporting and describing the actual practices by which it implements and exercises the authority.

(c) The state supervisory authority must also provide the regional director with an assurance that NCUA examiners will be provided with co-extensive authority and will be allowed direct access to CUSO books and records at such times as NCUA, in its sole discretion, may determine necessary or appropriate. For purposes of this section, access includes the right to make and retain copies of any CUSO record, as to which NCUA will accord the same level of control and confidentiality that it uses with respect to all other examination-related materials it obtains in the course of its duties.

(d) The regional director will review the applicable authority, procedures and assurances and forward the exemption request, along with the regional director's recommendation, to the NCUA Board for a final determination.

(e) For purposes of this section, whether an entity is a CUSO shall be determined in accordance with the definition set out in § 741.222 of this chapter.

[73 FR 79312, Dec. 29, 2008]

EFFECTIVE DATE NOTE: At 73 FR 79312, Dec. 29, 2008, § 712.10 was added, effective Jan. 28, 2009.

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

Sec.

713.1 What is the scope of this section?

713.2 What are the responsibilities of a credit union's board of directors under this section?

713.3 What bond coverage must a credit union have?

713.4 What bond forms may be used?

713.5 What is the required minimum dollar amount of coverage?

713.6 What is the permissible deductible?

713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

AUTHORITY: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

SOURCE: 64 FR 28720, May 27, 1999, unless otherwise noted.

§ 713.1 What is the scope of this section?

This section provides the requirements for fidelity bonds for Federal credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, etc., caused by persons outside the credit union.

§ 713.2 What are the responsibilities of a credit union's board of directors under this section?

The board of directors of each Federal credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potential risks facing the credit union and the minimum requirements set by the Board.

[64 FR 28720, May 27, 1999, as amended at 64 FR 57365, Oct. 25, 1999]

§ 713.3 What bond coverage must a credit union have?

At a minimum, your bond coverage must:

(a) Be purchased in an individual policy from a company holding a certificate of authority from the Secretary of the Treasury; and

(b) Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members.

§ 713.4 What bond forms may be used?

(a) A current listing of basic bond forms that may be used without prior NCUA Board approval is on NCUA's Web site, <http://www.ncua.gov>. If you are unable to access the NCUA website, you can get a current listing of approved bond forms by contacting NCUA's Public and Congressional Affairs Office, at (703) 518-6330.

(b) To use any of the following, you need prior written approval from the Board:

- (1) Any other basic bond form; or
- (2) Any rider or endorsement that limits coverage of approved basic bond forms.

[64 FR 28720, May 27, 1999, as amended at 70 FR 61716, Oct. 26, 2005; 73 FR 30478, May 28, 2008]