

Pt. 721

personal identifying information on an application or in response to notification that the application is incomplete.

17. Personal identifying information provided is not consistent with personal identifying information that is on file with the federal credit union.

18. For federal credit unions that use challenge questions, the person opening the covered account or the member cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

Unusual Use of, or Suspicious Activity Related to, the Covered Account

19. Shortly following the notice of a change of address for a covered account, the institution or creditor receives a request for a new, additional, or replacement card or a cell phone, or for the addition of authorized users on the account.

20. A new revolving credit account is used in a manner commonly associated with known patterns of fraud. For example:

a. The majority of available credit is used for cash advances or merchandise that is easily convertible to cash (e.g., electronics equipment or jewelry); or

b. The member fails to make the first payment or makes an initial payment but no subsequent payments.

21. A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

a. Nonpayment when there is no history of late or missed payments;

b. A material increase in the use of available credit;

c. A material change in purchasing or spending patterns;

d. A material change in electronic fund transfer patterns in connection with a deposit account; or

e. A material change in telephone call patterns in connection with a cellular phone account.

22. A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

23. Mail sent to the member is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the member's covered account.

24. The federal credit union is notified that the member is not receiving paper account statements.

25. The federal credit union is notified of unauthorized charges or transactions in connection with a member's covered account.

12 CFR Ch. VII (1–1–19 Edition)

Notice From Members, Victims of Identity Theft, Law Enforcement Authorities, or Other Persons Regarding Possible Identity Theft in Connection With Covered Accounts Held by the Federal Credit Union

26. The federal credit union is notified by a member, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

[72 FR 63769, Nov. 9, 2007, as amended at 74 FR 22644, May 14, 2009; 76 FR 18365, Apr. 4, 2011]

PART 721—INCIDENTAL POWERS

Sec.

721.1 What does this part cover?

721.2 What is an incidental powers activity?

721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

721.5 What limitations apply to a credit union engaging in activities approved under this part?

721.6 May a credit union derive income from activities approved under this part?

721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

AUTHORITY: 12 U.S.C. 1757(17), 1766 and 1789.

SOURCE: 66 FR 40857, Aug. 6, 2001, unless otherwise noted.

§ 721.1 What does this part cover?

This part authorizes a federal credit union (you) to engage in activities incidental to your business as set out in this part. This part also describes how interested parties may request a legal opinion on whether an activity is within a federal credit union's incidental powers or apply to add new activities or categories to the regulation. An activity approved in a legal opinion to an interested party or as a result of an application by an interested party to add new activities or categories is recognized as an incidental powers activity for all federal credit unions. This part does not apply to the activities of corporate credit unions.

§ 721.2 What is an incidental powers activity?

An incidental powers activity is one that is necessary or requisite to enable you to carry on effectively the business for which you are incorporated. An activity meets the definition of an incidental power activity if the activity:

- (a) Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;
- (b) Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and
- (c) Involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

The categories of activities in this section are preapproved as incidental to carrying on your business under § 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(a) *Certification services.* Certification services are services whereby you attest or authenticate a fact for your members' use. Certification services may include such services as notary services, signature guarantees, certification of electronic signatures, and share draft certifications.

(b)(1) *Charitable contributions and donations.* Charitable contributions and donations are gifts you provide to assist others through contributions of staff, equipment, money, or other resources. Examples of charitable contributions include donations to community groups, nonprofit organizations, other credit unions or credit union affiliated causes, political donations, as well as donations to create charitable foundations.

(2) *Charitable donation accounts.* A charitable donation account (CDA) is a hybrid charitable and investment vehicle, satisfying the conditions in paragraphs (b)(2)(i) through (vii) of this section, that you may fund as a means to

provide charitable contributions and donations to qualified charities. If you fund a CDA that satisfies all of the conditions in paragraphs (b)(2)(i) through (vii) of this section, then you may do so free from the investment limitations of the Federal Credit Union Act and part 703 of this chapter.

(i) *Maximum aggregate funding.* The book value of your investments in all CDAs, in the aggregate, as carried on your statement of financial condition prepared in accordance with generally accepted accounting principles, must be limited to 5 percent of your net worth at all times for the duration of the accounts, as measured every quarterly Call Report cycle. This means that regardless of how many CDAs you invest in, the combined book value of all such investments must not exceed 5 percent of your net worth. You must bring your aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.

(ii) *Segregated account.* The assets of a CDA must be held in a segregated custodial account or special purpose entity and must be specifically identified as a CDA.

(iii) *Regulatory oversight.* If you choose to establish a CDA using a trust vehicle, the trustee must be regulated by the Office of the Comptroller of the Currency (OCC), the U.S. Securities and Exchange Commission (SEC), another federal regulatory agency, or a state financial regulatory agency. A regulated trustee or other person or entity that is authorized to make investment decisions for a CDA (manager), other than the credit union itself, must be either a Registered Investment Adviser or regulated by the OCC.

(iv) *Account documentation and other written requirements.* The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The terms of the agreement must be consistent with this section. Your board of directors must adopt written policies governing the creation, funding, and management of a CDA that are consistent with this section, must review the policies annually, and may amend them from time

§ 721.3

12 CFR Ch. VII (1–1–19 Edition)

to time. Your CDA agreement and policies must at a minimum:

(A) Provide that the CDA will make charitable contributions and donations only to charities you name therein that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(B) Document the investment strategies and risk tolerances the CDA trustee or other manager must follow in administering the account;

(C) Provide that you will account for all aspects of the CDA, including distributions to charities and liquidation of the account, in accordance with generally accepted accounting principles; and

(D) Indicate the frequency with which the trustee or manager of the CDA will make distributions to qualified charities as provided in paragraph (b)(2)(v) of this section;

(v) *Minimum distribution to charities.* You are required to distribute to one or more qualified charities, no less frequently than every 5 years, and upon termination of a CDA regardless of the length of its term, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. Other than upon termination, you may choose how frequently CDA distributions to charity will be made during each period of up to 5 years. For example, you may choose to make periodic distributions over a period of up to 5 years, or only a single distribution as required at the end of that period. You may choose to donate in excess of the minimum distribution frequency and amount;

(vi) *Liquidation of assets upon CDA termination.* Upon termination of the CDA, you may receive a distribution of the remaining account assets in cash or you may receive a distribution in kind of the remaining account assets but only if those assets are permissible investments for federal credit unions under the Federal Credit Union Act and part 703 of this chapter; and

(vii) *Definitions.* For purposes of this section, the following definitions apply:

(A) *Distribution in kind* is your acceptance of remaining CDA assets, upon termination of the account, in their

original form instead of in cash resulting from the liquidation of the assets.

(B) *Qualified charity* is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

(C) *Registered Investment Adviser* is an investment adviser registered with the SEC pursuant to the Investment Advisers Act of 1940.

(D) *Total return* is the actual rate of return on all investments in a CDA over a given period of up to 5 years, including realized interest, capital gains, dividends, and distributions, but exclusive of account fees and expenses provided they were not paid to the credit union that established the CDA or to any of its affiliates.

(E) *Affiliate* is an entity in which the credit union has any ownership interest directly or indirectly. This would not apply to ownership due to the funding of employee benefits.

(c) *Correspondent services.* Correspondent services are services you provide to other credit unions including foreign credit unions that you are authorized to perform for your members or as part of your operation. These services may include loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, performing internal audits, and automated teller machine deposit services.

(d) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that you are otherwise authorized to perform, provide, or deliver to your members but performed through electronic means. Electronic services may include automated teller machines, electronic fund transfers, online transaction processing through a web site, web site hosting services, account aggregation services, and Internet access services to perform or deliver products or services to members.

(e) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment, or services that you properly invested in or established, in good faith, with the intent of serving your members or supporting your business operations. You may sell or

lease the excess capacity in facilities, such as office space and other premises. You may sell or lease the excess capacity in equipment or services, such as employees and data processing, if you reasonably anticipate that the excess capacity will be taken up by the future expansion of services to your members.

(f) *Financial counseling services.* Financial counseling services means advice, guidance or services that you offer to your members to promote thrift or to otherwise assist members on financial matters. Financial counseling services may include income tax preparation service, electronic tax filing for your members, counseling regarding estate and retirement planning, investment counseling, and debt and budget counseling.

(g) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that the two parties may negotiate and consummate transactions and include vendors of non-financial products, vendors that are other financial institutions, and vendors of financial products such as insurance and securities. Finder activities may include endorsing a product or service, negotiating group discounts on behalf of your members, offering third party products and services to members through the sale of advertising space on your website, account statements and receipts, and selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members. You may perform administrative functions on behalf of vendors to facilitate transactions between your members and another institution.

(h) *Loan-related products.* Loan-related products are the products, activities or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

(i) *Marketing activities.* Marketing activities are the activities or means you use to promote membership in your credit union and the products and serv-

ices you offer to your members. Marketing activities may include advertising and other promotional activities such as raffles, membership referral drives, and the purchase or use of advertising.

(j) *Monetary instrument services.* Monetary instrument services are services that enable your members to purchase, sell, or exchange various currencies. These services may include the sale and exchange of foreign currency and U.S. commemorative coins. You may also use accounts you have in foreign financial institutions to facilitate your members' transfer and negotiation of checks denominated in foreign currency or engage in monetary transfer services for your members.

(k) *Operational programs.* Operational programs are programs that you establish within your business to establish or deliver products and services that enhance member service and promote safe and sound operation. Operational programs may include electronic funds transfers, remote tellers, point of purchase terminals, debit cards, payroll deduction, payroll services, pre-authorized member transactions, direct deposit, check clearing services, savings bond purchases and redemptions, tax payment services, wire transfers, safe deposit boxes, loan collection services, and service fees.

(l) *Stored value products.* Stored value products are alternate media to currency in which you transfer monetary value to the product and create a medium of exchange for your members' use. Examples of stored value products include stored value cards, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, postage stamps, electronic benefits transfer script, and similar media.

(m) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for

§ 721.4

member retirement, education and health savings accounts.

[66 FR 40857, Aug. 6, 2001, as amended at 69 FR 45238, July 29, 2004; 73 FR 62856, Oct. 22, 2008; 75 FR 34621, June 18, 2010; 77 FR 31992, May 31, 2012; 78 FR 76731, Dec. 19, 2013; 81 FR 93580, Dec. 21, 2016]

§ 721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

(a) *Application contents.* To engage in an activity that may be within an FCU's incidental powers but that does not fall within a preapproved category listed in § 721.3, you may submit an application by certified mail, return receipt requested, to the NCUA Board. Your application must describe the activity, your explanation, consistent with the test provided in paragraph (c) of this section, of why this activity is within your incidental powers, your plan for implementing the proposed activity, any state licenses you must obtain to conduct the activity, and any other information necessary to describe the proposed activity adequately. Before you engage in the petition process you should seek an advisory opinion from NCUA's Office of General Counsel, as to whether a proposed activity fits into one of the authorized categories or is otherwise within your incidental powers without filing a petition to amend the regulation.

(b) *Processing of application.* Your application must be filed with the Secretary of the NCUA Board. NCUA will review your application for completeness and will notify you whether additional information is required or whether the activity requested is permissible under one of the categories listed in § 721.3. If the activity falls within a category provided in § 721.3, NCUA will notify you that the activity is permissible and treat the application as withdrawn. If the activity does not fall within a category provided in § 721.3, NCUA staff will consider whether the proposed activity is legally permissible. Upon a recommendation by NCUA staff that the activity is within a credit union's incidental powers, the NCUA Board may amend § 721.3 and will request public comment on the estab-

12 CFR Ch. VII (1–1–19 Edition)

lishment of a new category of activities within § 721.3. If the activity proposed in your application fails to meet the criteria established in paragraph (c) of this section, NCUA will notify you within a reasonable period of time.

(c) *Decision on application.* In determining whether an activity is authorized as an appropriate exercise of a federal credit union's incidental powers, the Board will consider:

(1) Whether the activity is convenient or useful in carrying out the mission or business of credit unions consistent with the Act;

(2) Whether the activity is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and

(3) Whether the activity involves risks similar in nature to those already assumed as part of the business of credit unions.

§ 721.5 What limitations apply to a credit union engaging in activities approved under this part?

You must comply with any applicable NCUA regulations, policies, and legal opinions, as well as applicable state and federal law, if an activity authorized under this part is otherwise regulated or conditioned.

§ 721.6 May a credit union derive income from activities approved under this part?

You may earn income for those activities determined to be incidental to your business.

§ 721.7 What are the potential conflicts of interest for officials and employees when credit unions engage in activities approved under this part?

(a) *Conflicts.* No official, employee, or their immediate family member may receive any compensation or benefit, directly or indirectly, in connection with your engagement in an activity authorized under this part, except as otherwise provided in paragraph (b) of this section. This section does not apply if a conflicts of interest provision within another section of this chapter applies to a particular activity; in such case, the more specific conflicts of interest provision controls. For example: An official or employee

National Credit Union Administration

§ 722.1

that refers loan-related products offered by a third-party to a member, in connection with a loan made by you, is subject to the conflicts of interest provision in § 701.21(c)(8) of this chapter.

(b) *Permissible payments.* This section does not prohibit:

(1) Payment, by you, of salary to your employees;

(2) Payment, by you, of an incentive or bonus to an employee based on your overall financial performance;

(3) Payment, by you, of an incentive or bonus to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls for the incentive program and monitors compliance with such policies and controls at least annually; and

(4) Payment, by a person other than you, of any compensation or benefit to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls regarding third-party compensation and determines that the employee's involvement does not present a conflict of interest.

(c) *Business associates and family members.* All transactions with business associates or family members not specifically prohibited by paragraph (a) of this section must be conducted at arm's length and in the interest of the credit union.

(d) *Definitions.* For purposes of this part, the following definitions apply.

(1) *Senior management employee* means your 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).

(2) *Official* means any member of your board of directors, credit committee or supervisory committee.

(3) *Immediate family member* means a spouse or other family member living in the same household.

PART 722—APPRAISALS

Sec.

722.1 Authority, purpose, and scope.

722.2 Definitions.

722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

722.4 Minimum appraisal standards.

722.5 Appraiser independence.

722.6 Professional association membership; competency.

722.7 Enforcement.

AUTHORITY: 12 U.S.C. 1766, 1789 and 3339. Section 722.3(f) is also issued under 15 U.S.C. 1639h.

SOURCE: 55 FR 30207, July 25, 1990, unless otherwise noted.

§ 722.1 Authority, purpose, and scope.

(a) *Authority.* Part 722 is issued by the National Credit Union Administration ("NCUA") under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. 101-73, 103 Stat. 183, 1989) and 12 U.S.C. 1757 and 1766.

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate-related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This part implements the requirements of title XI and applies to all federally related transactions entered into by the National Credit Union Administration or by federally insured credit unions ("regulated institutions").

(2) This part: (i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a state-certified appraiser and which by a state-licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the National Credit Union Administration.