

National Credit Union Administration

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that demonstrates to the public the separate corporate existence of the FICU 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 FICU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FICU; and

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

(b) *Written legal advice.* Prior to a FICU investing in a CUSO, the FICU must obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FICU to no more than the loss of funds invested in, or loaned to, the CUSO. In addition, if a FICU invests in, or makes a loan to, a CUSO, and that CUSO plans to change its structure under § 712.3(a), the FICU must also obtain prior written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the FICU to no more than the loss of funds invested in, or loaned to, the CUSO. The written 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 written legal advice must be provided by independent legal counsel of the investing FICU or the CUSO.

[78 FR 72549, Dec. 3, 2013]

§ 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;

(3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services; and

(4) Stored value products;

(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;

(10) Supervisory committee audits; and

(11) Employee leasing services;

(c) 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;

(d) 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;

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- (5) Investment counseling;
- (6) Retirement counseling; and
- (7) Business counseling and consultant services;
- (e) Fixed asset services:
 - (1) Management, development, sale, or lease of fixed assets; and
 - (2) Sale, lease, or servicing of computer hardware or software;
- (f) Insurance brokerage or agency:
 - (1) Agency for sale of insurance;
 - (2) Provision of vehicle warranty programs;
 - (3) Provision of group purchasing programs; and
 - (4) Real estate settlement services;
- (g) Leasing:
 - (1) Personal property; and
 - (2) Real estate leasing of excess CUSO property;
- (h) Loan support services:
 - (1) Debt collection services;
 - (2) Loan processing, servicing, and sales;
 - (3) Sale of repossessed collateral;
 - (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;
- (i) 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;
- (j) Securities brokerage services;
- (k) Shared credit union branch (service center) operations:
 - (1) Travel agency services;
- (m) Trust and trust-related services:
 - (1) Acting as administrator for pre-paid legal service plans;
 - (2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and
 - (3) Trust services;
- (n) Real estate brokerage services;
- (o) 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

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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;

- (p) Payroll processing services;
- (q) Loan origination, including originating, purchasing, selling, and holding any type of loan permissible for Federal credit unions to originate, purchase, sell, and hold, including the authority to purchase and sell participation interests that are permissible for Federal credit unions to purchase and sell; and
- (r) Other categories of activities as approved in writing by the NCUA and published on the NCUA's website. Once the NCUA has approved an activity and published that activity on its website, the NCUA will not remove that particular activity from the approved list or make substantial changes to the content or description of that approved activity, except through formal rule-making procedures.

[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; 73 FR 79312, Dec. 29, 2008; 75 FR 34621, June 18, 2010; 86 FR 59301, Oct. 27, 2021]

§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]

§712.8 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