

**§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 interlocking 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.

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AUTHORITY: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, 1786, and 1789(a)(11).

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

**§712.1 What does this part cover?**

(a) This part establishes when a federal credit union (FCU) can invest in and make loans to credit union service organizations (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 chapter.

(b) All sections of this part apply to FCUs. Sections 712.2(d)(2)(ii), 712.3(d), 712.4 and 712.11(b) and (c) of this part apply to federally insured, state-chartered credit unions (FISCUs), as provided in §741.222 of this chapter. FISCUs must follow the law in the state in which they are chartered with

respect to the sections in this part that only apply to FCUs.

(c) As used in this part, federally insured credit union (FICU) means an FCU or FISCU.

(d) As used in this part, CUSO means any entity in which a FICU has an ownership interest or to which a FICU has extended a loan, and that entity is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including cashing checks and money orders for a fee, and selling negotiable checks, including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, 15 U.S.C. 1693o–1), to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

[78 FR 72548, Dec. 3, 2013]

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

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(2) *Special rule in the case of less than adequately capitalized FICUs.* This rule applies in the case of a FICU that is currently less than adequately capitalized, as determined under part 702 of this chapter, or where the making of an investment in a CUSO would render the FICU less than adequately capitalized under part 702 of this chapter. Before making an investment in a CUSO:

(i) A less than adequately capitalized FCU, or an FCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, 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, but limited to the immediately preceding seven (7) years) in an amount that is in excess of 1% of its paid-in and unimpaired capital and surplus; or

(ii) A less than adequately capitalized FISCU, or a FISCU that would be rendered less than adequately capitalized by the recapitalization of a CUSO, must obtain prior written approval from the appropriate state supervisory authority 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, but limited to the immediately preceding seven (7) years) in an amount that is in excess of the investment limit in the state in which it is chartered. A FISCU must also contemporaneously submit a copy of this request to the appropriate NCUA regional office. If there is no state limit in the state in which a FISCU is chartered, the requirements in paragraph (d)(2)(i) of this section will apply to that FISCU.

(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; 73 FR 79312, Dec. 29, 2008; 78 FR 32545, May 31, 2013; 78 FR 72548, Dec. 3, 2013]

### § 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 *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.

(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

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“generally accepted accounting principles” (GAAP).

(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:

(1) Account for all of 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 that wholly owned CUSO is included in the annual consolidated financial statement audit of the investing FICU;

(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) Annually submit, pursuant to NCUA guidance, a report directly to NCUA and the appropriate state supervisory authority, if applicable. A newly formed CUSO (including a pre-existing business which becomes subject to this regulation by virtue of a credit union investment or loan) must file a report within 60 days of its formation. The report must contain basic registration information, including the CUSO’s legal name; tax identification number; address; telephone number; Web site; primary point of contact; services offered; the name(s) and charter(s) of credit union(s) investing in, lending to, or receiving services from the CUSO; and investor and/or subsidiary CUSO(s). In addition, for any CUSO engaged in complex or high-risk activities, the report must contain:

(i) For each credit union investing in, lending to, or receiving services from the CUSO:

(A) A list of services provided to each credit union;

(B) The investment amount, loan amount, or level of activity of each credit union;

(ii) The CUSO’s most recent year-end audited financial statements; and

(iii)(A) For CUSOs engaged in credit and lending services:

(1) The total dollar amount of loans outstanding;

(2) The total number of loans outstanding;

(3) The total dollar amount of loans granted year-to-date; and

(4) The total number of loans granted year-to-date.

(B) Such information must be provided by loan type for each type of loan originated or serviced by the CUSO.

(5) For purposes of paragraph (d)(4) of this section, complex or high-risk activities include preapproved CUSO activities and services related to credit and lending, information technology, and custody, safekeeping, and investment management services for credit unions. Specific activities related to these categories include:

(i) Credit and lending:

(A) Loan support services, including servicing; and

(B) Loan origination, including originating, purchasing, selling, and holding any loan as described in §712.5(q).

(ii) Information technology:

(A) Electronic transaction services;

(B) Record retention, security, and disaster recovery services; and

(C) Payroll processing services.

(iii) Custody, safekeeping, and investment management services for credit unions.

(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; 73 FR 79312, Dec. 29, 2008; 78 FR 72548, Dec. 3, 2013; 86 FR 59301, Oct. 27, 2021]

### §712.4 What must a FICU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* A FICU and a CUSO must be operated in a manner

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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

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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 amount 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 otherwise 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 [Reserved]

#### § 712.10 How can a state supervisory authority obtain an exemption for FISCUs from compliance with § 712.3(d)(1), (2), and (3)?

(a) The NCUA Board may exempt FISCUs in a given state from compliance with any or all of § 712.3(d)(1), (2), and (3) if the NCUA Board determines the laws in that state are equal to, or more stringent than, § 712.3(d)(1), (2), and (3), and the laws and procedures

available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access and information it believes is necessary to evaluate the safety and soundness of FICUs having business relationships with CUSOs owned by FISCUs in that state.

(b) To obtain an exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures the information required in § 712.3(d)(1), (2), and (3) of this part to NCUA’s regional office having responsibility for 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 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 state supervisory authority must also provide the regional director with an assurance that NCUA, upon request, will have access to copies of any financial statements or reports which a CUSO has provided to the state supervisory authority.

(e) 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.

(f) 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.

[78 FR 72549, Dec. 3, 2013]

#### § 712.11 What requirements apply to subsidiary CUSOs?

(a) *FCUs investing in a CUSO with a subsidiary CUSO.* FCUs may only invest

in or loan to a CUSO, which has a subsidiary CUSO, if the subsidiary CUSO satisfies all of the requirements of this part. The requirements of this part apply to all tiers or levels of a CUSO's structure.

(b) *FISCUs investing in a CUSO with a subsidiary CUSO.* FISCUs may only invest in or loan to a CUSO which has a subsidiary CUSO, if the subsidiary CUSO complies with the following:

(1) All applicable state laws and rules regarding CUSOs; and

(2) All of the requirements of this part that apply to FISCUs, which are listed in §712.1. The requirements of this part that apply to FISCUs apply to all tiers or levels of a CUSO's structure.

(c) For purposes of this section, a subsidiary CUSO is any entity in which a CUSO has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members.

[78 FR 72549, Dec. 3, 2013]

## PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERALLY INSURED CREDIT UNIONS

Sec.

713.1 What is the scope of this section?

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

713.3 What bond coverage must a federally insured credit union have?

713.4 What bond forms may a federally insured credit union use?

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 federally insured 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 federally insured 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. Federally insured, state-chartered credit unions are required by §741.201 of this chapter to comply with the fidelity bond coverage requirements of this part. Corporate credit unions must comply with §704.18 of this chapter in lieu of this part.

[84 FR 35524, July 24, 2019]

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

(a) The board of directors of each federally insured 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 federally insured credit union and the minimum requirements set by the NCUA Board; and

(b) The board of directors of each federally insured credit union must review all applications for purchase or renewal of its fidelity bond coverage. After review, the federally insured credit union's board must pass a resolution approving the purchase or renewal of fidelity bond coverage and delegate one member of the board, who is not an employee of the federally insured credit union, to sign the purchase or renewal agreement and all attachments; provided, however, that no board members may be a signatory on consecutive purchase or renewal agreements for the same fidelity bond coverage policy.

[84 FR 35524, July 24, 2019]

### §713.3 What bond coverage must a federally insured credit union have?

(a) At a minimum, your bond coverage must:

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

(2) Cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members;

(3) Include an option for the liquidating agent to purchase coverage in the event of an involuntary liquidation that extends the discovery period for a