

(E) Information from a consumer report that you obtain about an employee or prospective employee.

(ii) *Consumer information* does not include:

(A) Aggregate information, such as the mean credit score, derived from a group of consumer reports; or

(B) Blind data, such as payment history on accounts that are not personally identifiable, you use for developing credit scoring models or for other purposes.

(2) *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d). The meaning of consumer report is broad and subject to various definitions, conditions and exceptions in the Fair Credit Reporting Act. It includes written or oral communications from a consumer reporting agency to a third party of information used or collected for use in establishing eligibility for credit or insurance used primarily for personal, family or household purposes, and eligibility for employment purposes. Examples include credit reports, bad check lists, and tenant screening reports.

PART 721—INCIDENTAL POWERS

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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 guaranties, certification of electronic signatures, and share draft certifications.

(b) *Correspondent services.* Correspondent services are services you provide to other 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.

(c) *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.

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

(e) *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.

(f) *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. Finder activities may include offering third party products and services to members through the sale of advertising space on your web site, account statements and receipts, or selling statistical or consumer financial information to outside

vendors to facilitate the sale of their products to your members.

(g) *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.

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

(i) *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.

(j) *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, 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.

(k) *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, pre-paid phone cards, postage stamps, electronic benefits transfer script, and similar media.

(1) *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 member retirement, education and health savings accounts.

[66 FR 40857, Aug. 6, 2001, as amended at 69 FR 45238, July 29, 2004]

§ 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 establishment 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,