

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.

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**§ 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 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

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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;
  - (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