

CUSO EXAMINATIONS

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**PART I:
THE CURRENT LEGAL
LANDSCAPE**

NCUA EXAMINER AUTHORITY

CUSOs are separate legal entities subject to applicable state laws and federal laws depending on the services provided

NCUA regulates federally insured credit unions; it does not regulate CUSOs

NCUA has a contractual right to review the books and records of a CUSO
Part 712.3(d)

All CUSO reviews should be limited to determining the degree of risk the CUSO poses to owner credit unions

CUSO SERVICES

A CUSO must
primarily serve
credit unions or
credit union
members

There is not a black and white rule on what “primarily” means

You must have a clear presentation of this analysis and why your method is the correct or best way to determine that the CUSO is “primarily” serving CUs or members

CUSO PERMISSIBLE SERVICES

The CUSO must **only** perform services that are **permissible** under **Part 712.5**

Credit unions cannot just invest in any company regardless of whether it is a great investment or opportunity

Credit unions can only invest in companies that perform certain permitted services

The list of categories in Part 712.5 is exclusive but a credit union can request an opinion from NCUA regarding the permissibility of a particular service

MAINTAINING SEPARATENESS

This is called
**Piercing the
Corporate Veil**

To maintain separateness a
CUSO should:

Be adequately capitalized

Keep accurate and separate
books and records including
meeting minutes

Have a distinct governing body
that act separately from the
credit union

Have separate operating
accounts and does not
comingle funds

CUSO DOCUMENTATION

Key elements of separateness

Articles of Incorporation,
Certificate of Organization
Bylaws, Operating Agreement

Evidence of Capital
Investment

Meeting minutes

Attorney Opinion Letter
regarding separateness

NCUA access agreement

MORE KEY DOCUMENTATION

**Minimum items to
have prior to an
examination**

Cost Reimbursement
Agreement between CU and
CUSO

Service Agreement setting
forth the client relationship
with CUSO customers

Policies and procedures
manual including privacy

Business plan with current
projections to show feasibility

CUSO internal or external
audit documentation

PART II: RISK CONSIDERATIONS

SYSTEMIC RISK

How much risk are individual CUSOs to their specific clients, and how do CUSOs affect the industry in the aggregate

CUSO failures that affect the credit union clients

CUSOs who are “bad actors” in the eyes of the regulators

Note the FIS situation

The NCUA has the authority to take an examination in any direction if the NCUA believes that the area under scrutiny might affect the safety and soundness of the credit union

CUSO BUSINESS MOST AT RISK FOR REVIEW

Which CUSOs can
expect the toughest
examinations

IT/Data Processors who
cannot provide evidence of
strong security practices

Lending or servicing CUSOs
who mislead credit unions as
to risk

Payment system CUSOs who
do not have an effective
DR/BR solution

Trust CUSOs who cannot
effectively show how the
fiduciary agreements affect
the credit union

NCUA EXAMINATION DETAILS

Common elements of an NCUA examination

Examinations will be based on the FFIEC Third Party Relationship guidelines and Chapter 25 of the NCUA Examination Manual

Emphasis on transparency between the CUSO and the credit union clients as to services provided, risk ownership, remedies, and exit clauses

NCUA EXAMINATION DETAILS

Other key factors influencing an examination direction

100% or majority owned CUSOs will not face the same level of scrutiny unless these CUSOs perform services for non-owners

The NCUA pointed out that CUSOs who mirror the functions of a credit union, especially with regard to lending, can expect to have the same type of examination process that credit unions are subject to

INVESTMENT RISK

What happens to the credit unions if they lose their investment or if the CUSO is unable to pay back loans

Will look at your financials and key ratios (e.g. acid test ratio) to determine the business health of the CUSO

Will look at your agreements with the credit unions to determine whether the credit unions are impermissibly over-invested (especially CUs that are undercapitalized)

SECURITY RISK

**Is the CUSO properly
protecting the non-
public personally
identifiable
financial
information of
members**

The CUSO agreements need to have member privacy referenced directly in the agreement

The CUSO must have policies and procedures regarding member policy, and must be able to prove the privacy requirements are met

LEGAL RISK

**Can the credit union
be held liable for
the obligations of
the CUSO**

This is a major concern of CUSOs that are single-owned

Co-mingling of financials and personnel substantially increases the risk

Ensure all legal documentation is in order

COMPLIANCE RISK

Ensure that the
CUSO is following all
state and federal
regulations for the
business engaged
in

Can be difficult for CUSOs who
operate in multiple states

Regulatory agencies from
other states can and will
participate in regulatory
examinations

Review agreements to ensure
that state and federal
regulations are not violated

Very good idea for policies
and procedures to reference
regulations

PERFORMANCE RISK

What happens to the credit union if the CUSO is unable to perform obligations

Does the CUSO have a strong DR/BR program that is regularly tested

What remedies or alternatives does the CU or the members have

Is there an effective exit strategy for the credit union

BUSINESS RISK

**Does the CUSO
and the credit
union understand
where risk resides**

Is the risk understood by the credit union

Is the risk reflected in agreements and marketing materials

Will the CUSO story and the credit union story agree on due diligence and risk mitigation

PREPERATION OF MATERIALS

**Exams will likely
have additional
common
elements**

Expertise and reporting
structure for staff

Staff training

Analysis of marketing
materials

Client billing procedures

Expense allocations between
CU and CUSO

Strategic plans

**PART III:
ADDITIONAL REGULATORY
CONCERNS FOR CUSOS**

THE NEW PROPOSED RULE

NCUA wants to
directly review
CUSOs

NCUA wants direct authority of
CUSOs

Starts with information
gathering

Focusing on “risky” service
offerings (lending and IT)

While not officially an
examination it will look and
feel like one

Coming in June! (Delayed
Implementation)

FUTURE EXAMINATIONS

Examiners will follow the **FFIEC guidelines** to conduct CUSO reviews

Other Agencies in FFIEC already examine vendors

NCUA has started tagging along on some exams

Plan to coordinate reviews across regions

CUSO management should demand exit interviews and the chance to address concerns

Review materials should not be made public

FREEDOM OF INFORMATION ACT

**Be careful what you
share with the
NCUA**

Make sure that NCUA acknowledges that the information is protected as both a trade secret and for examination purposes

Review of the CUSO should be focused on the services being provided to client credit unions

Review should not include business plans and sales materials unless they directly relate to compliance issues

**THANK YOU FOR YOUR
PARTICIPATION**