**Section 190.5 Credit Union Service Organizations**

a) The provisions of this Section apply to credit unions investing in or lending to a Credit Union Service Organization (CUSO), which is a credit union organization as defined in Section 1.1 of the Act.

b) Prior to the initial investment in or loan to a CUSO, the records of the credit union shall contain the following information:

1) The name and location of the CUSO.

2) Services provided by the CUSO.

3) The names of the officers, employees and agents of the CUSO and their relationship to the credit union and the credit union's directors, officers, staff and members.

4) The form of organization under which the CUSO operates, including but not limited to corporation, limited partnership, general partnership, joint venture, limited liability company, or limited partnership.

5) The most recent financial statements of the credit union and the CUSO.

6) The customer base served by the CUSO.

7) The credit union's investments in or loans to other CUSOs.

8) The credit union's indebtedness to any other credit unions, corporations, financial institutions, credit union organizations, or other organizations.

c) A credit union and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the credit union and the CUSO.

1) Good business practices dictate that each must operate so that:

A) Its respective business transactions, accounts and records are not intermingled;

B) Each observes the formalities of its separate corporate procedures;

C) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

D) Each is held out to the public as a separate enterprise;

E) The credit union does not dominate the CUSO to the extent that the CUSO is treated as a department of the credit union; and

F) Unless the credit union has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the credit union is not liable.

2) Prior to a credit union investing in or making a loan to a CUSO, the credit union must obtain a written legal opinion as to whether the CUSO is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO. In addition, if a CUSO in which a credit union has made an investment or loan plans to change its form of organization under subsection (b)(4), the credit union must obtain a prior written legal opinion that the CUSO will remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO. The legal opinion 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 legal opinion may be provided by independent legal counsel of the credit union.

d) Additional Requirements

1) The CUSO must comply with the definition of a credit union organization as defined by Section 1.1 of the Act.

2) The amount a credit union may invest in and/or loan to a CUSO is subject to Board of Director approval and the following limitations:

A) Any loan to the CUSO does not cause aggregate loans to credit union organizations, per Section 51(4) of the Act, to exceed the greater of 6% of the paid-in and unimpaired capital and surplus of the credit union.

B) Any investment in the CUSO does not cause the aggregate investment in CUSOs to exceed the greater of 6% of the paid-in and unimpaired capital and surplus of the credit union in accordance with the statutory limitation on investments in CUSOs.

C) The limit on loans to CUSOs is independent and separate from the limit on investments in CUSOs.

D) "Paid-in and unimpaired capital and surplus" means shares, as defined in Section 1.1 of the Act, and undivided earnings.

E) If the investment limits described in this subsection (d)(2) 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 credit union, divestiture is not required. A credit union may continue to invest up to the authorized amount without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

3) Any CUSO in which a credit union invests or lends that directly or indirectly originates, purchases, facilitates, brokers, or services loans to consumers in Illinois shall not charge an interest rate that exceeds the applicable maximum rate established by the Predatory Loan Prevention Act [815 ILCS 123/15-5-5].

4) All dealings between the credit union's directors, officers, employees, their family members or any corporation, partnership, proprietorship or association in which these individuals hold interest and the CUSO are disclosed. Any agreements between these individuals, businesses or associations and the CUSO must be structured to project economic benefit, increased efficiencies and/or cost effective service to the credit union and must not project a detrimental effect on the earnings or sound operation of the credit union. For purposes of this subsection (d)(4) "family member" means a spouse or a child, parent, grandchild, grandparent, brother or sister, or the spouse of that individual.

5) All agreements between the credit union and the CUSO must be structured to project economic benefit, increased efficiencies and/or cost effective service to the credit union and must not project a detrimental effect on the earnings or sound operation of the credit union.

e) Prior to investing in or lending to the CUSO, the credit union must enter into a written agreement with the CUSO.

1) The written agreement must contain clauses that state the CUSO will:

A) Provide the Department with complete access to any books and records of the CUSO, with the costs of examining these records borne by the credit union served in accordance with the per diem rate set out in Section 12 of the Act.

B) Follow GAAP.

C) Provide the credit union with the financial statements of the CUSO on at least a quarterly basis and Certified Public Accountant (CPA) audited financial statements on an annual basis.

2) The agreement must also contain a clause reciting that the parties agree to terminate their contractual relationship:

A) Upon 90 days written notice to the parties by the Secretary that the safety and soundness of the credit union is threatened pursuant to the Department's cease and desist and suspension authority as outlined in Sections 8(4), 8(5) and 61 of the Act.

B) Immediately upon the parties' receipt of written notice from the Secretary when the Secretary reasonably concludes, based upon specific facts set forth in the notice to the parties, that the credit union will suffer immediate, substantial and irreparable injury or loss if it remains a party to the service contract.

3) The termination of the underlying agreement between the CUSO and the credit union shall in no way operate to relieve the CUSO of repaying any investment, indebtedness or other obligation due and owing the credit union at the time of termination.

f) In recording all transactions with the CUSO, GAAP shall be followed by the credit union.

(Source: Amended at 46 Ill. Reg. 18508, effective November 1, 2022)