

CHAPTER 13-03-23 CREDIT UNION SERVICE ORGANIZATIONS

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13-03-23-01. Authority to invest in credit union service organizations or subsidiary credit union service organizations.

State credit unions may invest in credit union service organizations or subsidiary credit union service organizations, subject to the limitation provided for in this chapter and subject to approval by order of the board.

History: Effective January 1, 2007; amended effective January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-02. Definitions.

Unless the context otherwise requires, terms in this chapter have the following meanings:

1. "Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.
2. "Credit union service organization" means a financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.
3. "Immediate family member" means a spouse or other family member living in the same household.
4. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund. For any credit union, net worth does not include the allowance for loan and lease loss account.
5. "Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee; chief executive officer (typically this individual holds the title of president or treasurer or manager); any assistant chief executive officers, e.g., assistant president, vice president, or assistant treasurer or manager; and the chief financial officer or comptroller.

6. "Subsidiary credit union service organization" means any entity in which a credit union service organization 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 or credit union service organizations.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-03. Application.

An application to establish, make an initial investment, or increase the amount of an investment in a credit union service organization must be submitted to the commissioner in writing and must contain the following:

1. A full explanation and complete documentation of the proposed credit union service organization;
2. A listing of proposed management and their qualifications;
3. A proposed business plan with financial projections for at least three years;
4. The amount of investment authority requested; and
5. Any additional information as requested by the board or commissioner.

Once an application is determined to be complete by the commissioner, it must be submitted to the board for consideration. The board shall issue an order to either approve or disapprove the application. Upon notice of disapproval, the applicant has fifteen days to petition for a hearing before the board.

History: Effective January 1, 2007; amended effective January 1, 2013.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-04. Hearing.

A public hearing by the board may be required on applications to invest in credit union service organizations whenever the board or commissioner determines that it is in the public interest to hold such a hearing or whenever a credit union or party requests an opportunity to be heard is granted. Notice of hearing on an application will be issued at least thirty days prior to the hearing on the application.

History: Effective January 1, 2007.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-05. Permissible services and activities.

1. A state credit union, upon being granted authority under section 13-03-23-03, and complying with all applicable state licensing requirements, may invest in those credit union service organizations or subsidiary credit union service organizations that provide one or more of the following services and activities:
 - 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 United States 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. Business loan origination, including the authority to buy and sell participation interests in such loans;
- d. Consumer mortgage loan origination, including the authority to buy and sell participation interests in such loans;
- e. Electronic transaction services:
 - (1) Automated teller machine services;
 - (2) Credit card and debit card services;
 - (3) Data processing;
 - (4) Electronic fund transfer 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 and Keogh, deferred compensation, and other personnel benefit plans;
 - (2) Estate planning;

- (3) Financial planning and counseling;
- (4) Income tax preparation;
- (5) Investment counseling;
- (6) Retirement counseling; and
- (7) Business counseling and consultant services;
- 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;
 - (3) Provision of group purchasing programs; and
 - (4) Real estate settlement services;
- i. Leasing:
 - (1) Personal property; and
 - (2) Real estate leasing of excess credit union service organizations property;
- j. 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 nonperforming loans; and
 - (6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;
- 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, and CD-ROM data storage and retrieval services;
 - (4) Provision of forms and supplies; and
 - (5) Record retention and storage;

- I. Securities brokerage services;
- m. Shared credit union branch (service center) operations;
- n. Student loan origination, including the authority to buy and sell participation interests in such loans;
- o. Travel agency services;
- p. Trust and trust-related services:
 - (1) Acting as administrator for prepaid 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. Credit union service organization investments in noncredit union service organization service providers: in connection with providing a permissible service, a credit union service organization or subsidiary credit union service organization may invest in a noncredit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods and services;
- s. Credit card loan origination; and
- t. Payroll processing services.

If a credit union service organization or subsidiary credit union service organization intends on offering any services and activities not previously authorized under an application submitted in accordance with section 13-03-23-03, the credit union shall notify the commissioner at least twenty days prior to any change of operations.

- 2. The board may issue an order approving any service or activity which is not expressly authorized in subsection 1.
- 3. Based upon supervisory, legal, or safety and soundness reasons, the board or commissioner may at any time limit any of the credit union service organization or subsidiary credit union service organizations activities expressly listed in subsection 1 or adopted by the board under subsection 2.
- 4. The board in granting approval for a service or activity shall consider all relevant factors, including:
 - a. Whether the credit union service organization or subsidiary credit union service organizations management or staff possesses adequate expertise or skills to perform the service or activity; and
 - b. Whether the proposed activity or service is reasonably expected to be profitable.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-06. Limitations on investments in and loans to credit union service organizations or subsidiary credit union service organizations.

The following limitations apply to state credit unions for investments in credit union service organizations or subsidiary credit union service organizations:

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations or subsidiary credit union service organizations in an amount exceeding ten percent of its net worth.
2. Credit unions may not make loans to a credit union service organization or subsidiary credit union service organizations in which it is affiliated in an amount exceeding ten percent of its net worth.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-07. Conflict of interest.

Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization, or subsidiary credit union service organization, either directly or indirectly, or from any person being served through the credit union service organization or subsidiary credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization or subsidiary credit union service organization, provided the individual is not compensated by the credit union service organization or subsidiary credit union service organization. Further, the credit union service organization or subsidiary credit union service organization may reimburse the state credit union for the services provided by the individual.

History: Effective January 1, 2007; amended effective January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-06

13-03-23-08. Examinations.

A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization and subsidiary credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans. In order to accomplish the forgoing, each credit union must have a written agreement in place with the credit union service organization and any subsidiary credit union service organization, prior to investing in or lending to the credit union service organization or subsidiary credit union service organization, and prior to the credit union service organization investing in or lending to the subsidiary credit union service organization, providing that the credit union service organization and subsidiary credit union service organization will:

1. Provide the department with the right to inspect or examine all records of the credit union service organization;
2. Account for all its transactions in accordance with generally accepted accounting principles;
3. Prepare quarterly financial statements and provide the credit union with a copy of these statements within forty-five days of the quarter end;

4. 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 credit union service organization is not required to obtain a separate annual financial statement audit if that wholly owned credit union service organization is included in the annual consolidated financial statement audit of the investing credit union; and
5. Comply with applicable federal, state, and local laws.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08

13-03-23-09. Structure of a credit union service organization and subsidiary credit union service organization.

1. A credit union and a credit union service organization or subsidiary credit union service organization must be operated in a manner that demonstrates to the public the separate corporate existence of the credit union and the credit union service organization or subsidiary credit union service organization. Good business practices dictate 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 credit union service organization or subsidiary credit union service organization to the extent the credit union service organization or subsidiary credit union service organization is treated as a department of the credit union; and
 - f. Unless the credit union has guaranteed a loan obtained by the credit union service organization or subsidiary credit union service organization, all borrowings by the credit union service organization or subsidiary credit union service organization indicate that the credit union is not liable.
2. Prior to a credit union investing in a credit union service organization or subsidiary credit union service organization, the credit union shall obtain written legal advice as to whether the credit union service organization or subsidiary credit union service organization 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 credit union service organization or subsidiary credit union service organization. In addition, if a credit union invests in, or makes a loan to, a credit union service organization or subsidiary credit union service organization, and that credit union service organization or subsidiary credit union service organization plans to change its structure, the federally insured credit union also shall obtain prior written legal advice that the credit union service organization or subsidiary credit union service organization 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 credit union service organization or subsidiary credit union service organization. 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 credit union or the credit union service organization or subsidiary credit union service organization.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06