

§ 721.5

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a category provided in § 721.3, NCUA will notify you that the activity is permissible and treat the application as withdrawn.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

12 CFR Ch. VII (1-1-05 Edition)

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, directly or indirectly, in connection with your engagement in an activity authorized under this part, except as otherwise provided in paragraph (b) of this section. This section does not apply if a conflicts of interest provision within another section of this chapter applies to a particular activity; in such case, the more specific conflicts of interest provision controls. For example: An official or employee that refers loan-related products offered by a third-party to a member, in connection with a loan made by you, is subject to the conflicts of interest provision in § 701.21(c)(8) of this chapter.

(b) *Permissible payments.* This section does not prohibit:

- (1) Payment, by you, of salary to your employees;
- (2) Payment, by you, of an incentive or bonus to an employee based on your overall financial performance;
- (3) Payment, by you, of an incentive or bonus to an employee, other than a senior management employee or paid official, in connection with an activity authorized by this part, provided that your board of directors establishes written policies and internal controls for the incentive program and monitors compliance with such policies and controls at least annually; and