

02-029

CHAPTER 134

Regulation #34

CREDIT UNION SERVICE CORPORATIONS

#### SUMMARY:

Section 864 of Title 9-B M.R.S., the Maine Banking Code, authorizes state-chartered credit unions to invest in service corporations. Section 131(37) identifies specific functions in which a service corporation, whether owned by a state-chartered financial institution or a state-chartered credit union, may engage. The same section also grants the Superintendent authority to promulgate regulations granting state-chartered credit union service corporations the power to engage in any activity authorized under federal law for service corporations owned or controlled by federally-chartered credit unions. That authority is granted with the intent of maintaining competitive equality between federally-chartered and state-chartered credit unions. This regulation establishes guidelines for state-chartered credit unions' investment in service corporations so that they may engage in activities permissible for service corporations owned by federally-chartered credit unions.

This regulation repeals and replaces the former Regulation 34 originally effective on August 21, 1996. Rulemaking is in response to Public Law 2017, Chapter 143. Chapter 143 amended 9-B M.R.S. § 445's requirements for notifying the Superintendent of investments in service corporations and amended 9-B M.R.S.

§ 864's limitation on the amount of such investments. This rulemaking also updates citations to federal law that were recodified since the last promulgation of Regulation 34.

#### SECTION I. AUTHORITY

Title 9-B M.R.S. § 111 declares that it is the policy of the State to supervise financial institutions in a manner to assure their strength, stability, and efficiency and encourage development and expansion of financial services advantageous to the public welfare.

Title 9-B M.R.S. § 131(37) gives the Superintendent the power to authorize by regulation a service corporation's engagement in any activity authorized under federal law for a service corporation owned or controlled by a federally-chartered credit union.

Title 9-B M.R.S. § 215 gives the Superintendent the power to implement by regulation, any provision of law relating to the supervision of financial institutions.

Title 9-B M.R.S. § 828 gives the Superintendent the authority to regulate state-chartered credit unions engaging in any activity which has been authorized under federal law or regulation for credit unions chartered by or otherwise subject to the jurisdiction of the federal government.

Title 9-B M.R.S. § 864 authorizes a state-chartered credit union to invest in service corporations as defined in Section 131.

## SECTION II. PURPOSE

The purpose of this regulation is to repeal and replace the former Regulation 34. It continues to authorize state-chartered credit unions to organize service corporations that can engage in any activity permissible for a federally-chartered credit union's service corporation.

## SECTION III. DEFINITIONS

For purposes of this regulation, the following terms have the following meanings:

- A. "Affiliated credit union" means a credit union that has invested, either directly or indirectly through an intermediary, in a service corporation.
- B. "Credit union" means a credit union as defined in 9-B M.R.S. § 131(12) or a credit union organized under the laws of the United States or another state.
- C. "Invest" means any advance of funds, including the purchase of securities and the making of a loan, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.
- D. "Net worth" has the same meaning as set forth in 9-B M.R.S. § 831(3).
- E. "Organize a service corporation" means to make the initial investment in a service corporation.
- F. "Service corporation" has the same meaning as set forth in 9-B M.R.S. § 131(37).

- G. "State credit union service corporation" means a service corporation in which a state-chartered credit union has invested.
- H. "State-chartered credit union" means a credit union as defined in 9-B M.R.S. § 131(12).

#### SECTION IV. GENERAL PROVISIONS

##### A. Authorization

- 1. Subject to prior written notification to the Superintendent pursuant to Section IV(D)(1), a state-chartered credit union may organize a service corporation and invest in a service corporation that provides services and activities authorized for service corporations in which federally-chartered credit unions may invest under the Federal Credit Union Act, 12 U.S.C. §§1757(5)(D) and 1757(7)(I), and National Credit Union Administration Regulations, 12 C.F.R. § 712.5.
- 2. Subject to the prior written approval of the Superintendent, pursuant to Section IV(D)(4), a state-chartered credit union may increase its investment in a state credit union service corporation in excess of the prescribed limits of Section IV(B)(2).

##### B. General Rules and Restrictions

- 1. A state credit union service corporation must be structured as either a corporation, a limited partnership, or a limited liability company in order to limit the state-chartered credit union's exposure to loss. If the state credit union service corporation is a limited partnership, the investing state-chartered credit union may participate only as a limited partner; if the state credit union service corporation is a limited liability company, the investing state-chartered credit union may participate only as a member. The state-chartered credit union must not engage in any activities which, under state law, would cause the credit union to lose its status as a limited partner or a member, and correspondingly its limited liability, and be treated as a general partner. The state-chartered credit union must

obtain a written legal opinion affirming its position as a limited partner or a member.

2. The aggregate investment in an individual state credit union service corporation by a state-chartered credit union may not exceed 20% of the state-chartered credit union's net worth, unless a higher amount is approved in writing by the Superintendent, as provided for in Section IV(D)(4).
3. The aggregate investment in all state credit union service corporations by an individual state-chartered credit union may not exceed 50% of the state-chartered credit union's net worth.
4. A state credit union service corporation must primarily serve credit unions and the membership of affiliated credit unions. State credit union service corporations formed from July 31, 1994 through October 1, 2017 primarily serve credit unions and the membership of affiliated credit unions within the meaning of this paragraph if at least 75% of the services provided in Maine are to credit unions and members of credit unions.
5. For credit unions formed after October 1, 2017, when determining whether a service corporation primarily serves credit unions and the membership of affiliated credit unions, the Superintendent shall consider the relevant federal laws and regulations in effect at the time of formation of the service corporation.
6. Notwithstanding the provisions of Section IV(A)(1), no state credit union service corporation may engage in any activity that is specifically prohibited under state law.

C. Supervisory Requirements

1. A state-chartered credit union must record its investment in a state credit union service corporation according to generally accepted accounting principles (GAAP).
2. Prior to making an investment in a service corporation, a state-chartered credit union must obtain a written agreement that the service corporation will account for all transactions in accordance with GAAP and provide financial statements and other reports in accordance with National

Credit Union Administration requirements for federally-insured credit unions found in d).12 C.F.R. § 712.3(d).

3. A state credit union service corporation shall be subject to the provisions of Parts 1 and 2 and Chapters 46, but not including Section 462, and Chapter 88 of the Maine Banking Code. The enumeration of the foregoing provisions of the Maine Banking Code shall not be held to make other sections of the Maine Banking Code inapplicable if those sections would otherwise be applicable to a state credit union service corporation pursuant to the activities in which it is engaged.
4. Each state credit union service corporation shall be subject to examination by the Bureau of Financial Institutions in the same manner and to the same extent as the investing state-chartered credit union.

#### D. Notifications

1. A state-chartered credit union seeking to organize a service corporation, invest in a service corporation, or increase its investment in a service corporation, must notify the Superintendent at least 30 days prior to the planned activity and provide the following information:
  - (a) The nature of the proposed activity;
  - (b) The scope or extent to which the activity will be provided;
  - (c) How that activity will benefit the members of the state-chartered credit union;
  - (d) How that activity is associated with routine credit union operations;
  - (e) The State or federal law under which the proposed activity is to be engaged;
  - (f) Evidence that the investment is within the prescribed limits of Section IV(B)(2) and (3) or, if the investment

exceeds the limit of Section IV(B)(2), a request to exceed that limit pursuant to Section IV(D)(4);

- (g) How the service corporation activity primarily serves credit unions and the membership of affiliated credit unions pursuant to Section IV(B)(4);
- (h) Evidence that the service corporation is or will be structured to limit the state-chartered credit union's exposure to loss as required by Section IV(B)(1); and
- (i) Any other information requested by the Superintendent.

2. The Bureau shall review the notification of the proposal to organize a service corporation, invest in a service corporation, or increase investment in a service corporation by a state-chartered credit union to ensure compliance with Section IV(D)(1)(a)-(i). If the proposal would negatively impact the safety and soundness of the investing state-chartered credit union, the Superintendent reserves the right to utilize authority provided under Chapter 23 of the Maine Banking Code to limit the state-chartered credit union's investment in the service corporation. The Superintendent also may exclude as an affiliated credit union for purposes of Section IV(B)(4) a credit union whose direct or indirect investment is considered de minimis.
3. A state-chartered credit union may not continue its investment in a state credit union service corporation if the Superintendent finds that the state credit union service corporation is engaging in activities which are not legally permissible. It is the responsibility of the investing state-chartered credit union to monitor the activities of the state credit union service corporation to ensure that they are legally permissible.
4. A state-chartered credit union that proposes to increase its investment in a state credit union service corporation above the limitation of Section IV(B)(2) must submit a written request to the Superintendent. The request shall include the basis for the increased investment and how the increased investment will benefit the members of the state-chartered credit union, as well as such additional information the Superintendent considers necessary.

## SECTION V. FEDERAL/STATE REGULATIONS

It is recognized that the National Credit Union Administration and the Maine Bureau of Financial Institutions have promulgated, or may promulgate, in the future, regulations governing the manner in which credit unions invest in service corporations. It is further recognized that there may exist differences in scope and coverage between this regulation and those promulgated by federal regulatory agencies. It is not the intent of this regulation to permit any practice which is not permitted by the National Credit Union Administration. To the contrary, besides any other restriction or limitation stated herein, each state-chartered credit union must comply with the regulations of the National Credit Union Administration, as appropriate.

## SECTION VI. EFFECTIVE DATE: August 25, 2019

Primary Sources of information relied upon by the Bureau in adopting the rule: 9-B M.R.S. § 864; 12 CFR 712.1 – 712.11; PL. 2017 ch. 143

## BASIS STATEMENT

This regulation repeals and replaces the former Regulation 34 originally effective on August 21, 1996. Rulemaking is in response to Public Law 2017, Chapter 143, which amended the requirements for notifying the Superintendent of investments in credit union service corporations as well as the maximum amount of such investments. The rule also updates citations in federal law that were recodified since the last promulgation of the rule. It is applicable to credit unions as that term is defined in 9-B M.R.S. § 131(12) and state credit union service corporations as defined in Section III (G) of this regulation.

Comments and Responses to Comments: The Bureau received no comments to this proposed rulemaking. Accordingly, there were no changes made to the adopted rule following the comment period, except that an effective date has been added.