

National Credit Union Administration
1 Supporting Statement for Paperwork Reduction Act Submission
OMB Control Number 3133 – 0149
12 C.F.R. Part 712
Credit Union Service Organizations
2008

A. Justification

1. ***Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.***

Part 712 of the National Credit Union Administration's (NCUA) regulations implements authority in the Federal Credit Union Act relating to federal credit union (FCU) lending or investment activity with credit union service organizations (CUSOs). The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain recordkeeping obligations on FCUs that have relations with or conduct operations through CUSOs. NCUA has no direct regulatory authority over CUSOs.

Requirements in the rule that raise Paperwork Reduction Act issues are:

- i) the credit union must obtain a written agreement from the CUSO, before making a loan to or investment in the CUSO, that the CUSO will: follow generally accepted accounting principles (GAAP); will prepare financial statements at least quarterly and obtain an annual opinion audit from a certified public accountant; and agree to provide access to its books and records to the NCUA;
- ii) the credit union must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the credit union's exposure to loss of its loans or investments in the CUSO; and
- iii) the credit union must submit a written request to NCUA for approval of any proposed activity or service by the CUSO that is not already preapproved in the rule.

These requirements enable NCUA to monitor an FCU's involvement with its CUSO for safety and soundness purposes and help to assure that CUSOs are properly established and maintained in accordance with applicable state law. NCUA notes some elements of the rule reflect sound business judgment and represent usual and customary practices that businesses typically follow in the ordinary course. For example, securing a written agreement with an entity before investing funds in its operations is a standard business practice, as is requiring that its financial statements be prepared in accordance with GAAP.

NCUA is proposing to extend certain aspects of the rule to federally insured, state chartered credit unions (FISCU) and to modify certain aspects that currently apply to FCUs. Under the proposal, a FISCU with an investment in or loan to a CUSO would be required to obtain a written agreement with the CUSO providing NCUA and the relevant SSA with access to the CUSO's books and records and the requirement that it take steps to assure that it maintains a corporate identity separate from its CUSO. The proposed amendment would also require that an FCU modify its existing agreement with its CUSO to provide for access to books and records by any state regulatory authority having oversight responsibility for any FISCU that also has a loan, investment or contract for services with the CUSO.

Another aspect of the proposal raising Paperwork Reduction Act considerations is the requirement that any FCU that is less than adequately capitalized, within the meaning of NCUA's Prompt Corrective Action rule (12 CFR part 702) seek NCUA approval before recapitalizing a CUSO that has become insolvent.

Copies of the current rule and the proposed changes are included in this submission.

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

NCUA conducts regular, periodic examinations of FCUs. As part of its examination, NCUA reviews written agreements, legal opinions and CPA opinion audits relating to FCU involvement with CUSOs to determine the safety and soundness of the FCU. This information is critically important in helping to avert or minimize losses to the National Credit Union Share Insurance Fund (NCUSIF), which provides the federally guaranteed account insurance for all federally insured credit unions.

FISCUs are exposed to significant potential safety and soundness and reputation risks based on their relationship with their CUSOs. Although NCUA has the right to examine books and records belonging to a FISCU, it does not enjoy a similar right concerning access to the books and records of the CUSO. Without that access, NCUA cannot thoroughly and accurately evaluate CUSO risks to FISCUs and, ultimately, the risk to the NCUSIF. It should be noted that not all states impose the same type of relatively strict investment limits in the FCU Act, which limit FCU investment in all CUSOs to one percent of unimpaired capital and surplus. 12 U.S.C. §1757(7)(I). Similarly, not all states limit the types of activities in which a CUSO may engage. Further, without some assurance that the FISCU is insulated from claims that might be asserted against its CUSO, there is risk that the FISCU could lose more than the value of its investment in its CUSO.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection*

techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The information required to be produced or maintained under this proposal is unique to the facts of each case and, in the case of legal opinions, calls for the exercise of professional judgment. By its nature, the information is not capable of automation.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This is the only NCUA rule that pertains directly to CUSOs. The information the rule requires is unique to each credit union or case, and is not duplicated in any other required submission or recordkeeping.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

No methods are used to minimize the burden because much of the required recordkeeping is already maintained by FCUs that have a relationship with a CUSO. The requirement of submitting a request to NCUA for approval of proposed new activity works to the ultimate benefit of all FCUs. Once approved, NCUA informs FCUs through a regulatory change or formal legal opinion it publishes on its website so that other interested FCUs may take advantage of the approval without having to submit anything in writing.

As noted in the preamble to the proposed changes to the rule submitted along with this request, of the 3,599 credit unions (FCUs and FISCUs) meeting NCUA's small entity criteria (i.e., assets of less than ten million dollars) that filed a form 5300 call report with NCUA as of December 31, 2007, only 195 reported any interest in a CUSO. Since approximately only 5.5% of small credit unions reported having any interest in CUSOs, NCUA has determined the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Moreover, compliance with the proposed new requirements in the rule is not mandated until six months following publication of a final rule in the *Federal Register*. This will give all credit unions an opportunity to make necessary arrangements to comply with the rule. Finally, good business practice mandates that much of the recordkeeping proposed to be required under the rule is already maintained by credit unions that have a relationship with a CUSO. Accordingly, the rule does not contain extraordinary burden reduction methods.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The requirements in the rule, including the proposed additions, pertaining to written agreements and legal opinions and the requirement that undercapitalized FCUs seek advance approval before investing in insolvent CUSOs are one-time events. Failure to require these collections would expose credit unions to significant losses and could result in losses to the NCUSIF.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with the guidelines set out in 5 C.F.R. 1320.6.**

No special circumstances exist that would cause this collection to be conducted in a manner inconsistent with OMB guidelines.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The proposed changes to this information, as published in the *Federal Register*, include a public notice soliciting comment on this information collection. The comment period for the proposal is 60 days. We will consider all public comments received, including any relating to the information collection aspects of the proposed rule.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

NCUA will not make any payment, gift or remuneration to anyone in connection with this proposed rule.

- 10. Describe any assurance of confidentiality provided to respondents and the**

basis for the assurance in statute, regulation, or agency policy.

The proposal addresses documents, such as an agreement between a credit union and its CUSO, and legal opinions, which are and would remain credit union property. There is no requirement in the proposal that the documents be made public. Moreover, to the extent that they are reviewed as part of an examination and become related to an examination report, the documents would remain non-public and exempt from public disclosure under exemption 8 of the Freedom of Information Act. 5 U.S.C. 522(b)(8).

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.*

There are no questions of a sensitive nature related to this proposed rule.

12. *Provide estimates of the hour burden of the collection of information.*

Current burden hours associated with this information collection, based on three-year average data showing number of affected institutions and number of investments in CUSOs, estimate a total of 135 new CUSO investments would be made each year. Using this data, in 2005 NCUA estimated the burden hours for compliance with the rule to be 560 hours, broken down as follows:

a. Written agreement relating to accounting and access to information.

Average number of new FCU investment interests reported in CUSOs:	135
Frequency of response:	annually
Annual hour burden:	2

2 hours x 135 = 270

b. Written legal opinion.

Number of respondents, i.e., requiring new or updated opinion per year:	135
Frequency of response:	annually
Annual hour burden:	2

2 hours x 135 = 270

c. Request for approval of new activity:

Number of respondents:	1 per year (est.)
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Frequency of response:	one time only
Annual hour burden:	20

20 hours x 1 = 20

Updating the rule and extending its application to FISCUs, NCUA retains its estimate of two hours for the time it will take for a credit union to implement an agreement with its CUSO regarding access to information and an additional two hours to obtain a written legal opinion. All FISCUs with an investment in or loan to a CUSO will need to comply with these requirements as an initial matter; however, thereafter, the rule's impact will only be on those FISCUs that enter into a new arrangement with a CUSO.

According to NCUA records, of the 3,065 FISCUs that filed a form 5300 call report with NCUA as of December 31, 2007, 1,044 reported at least one interest in a CUSO. These FISCUs reported a total CUSO count of 2,219. At year-end 2006, there were 3,173 FISCUs, of which 1,050 reported at least one interest in a CUSO. These FISCUs reported a total CUSO count of 2,183. For year-end 2005, there were 3,302 FISCUs, of which 1,017 reported at least one CUSO investment. These FISCUs reported a total CUSO count of 2,035. The three-year average suggests that, despite declining numbers of credit unions (due mainly to merger and consolidation activity), FISCUs make approximately 92 new investments in CUSOs each year. Using these estimates, information collection obligations imposed by the rule, on an annual basis, are analyzed below:

Initial Compliance by All FISCUs:

a. Written agreement relating to access to information.

Total FISCU investment interests reported in CUSOs, 12/31/2007:	2,219
Frequency of response:	one-time
Initial hour burden:	2
2 hours x 2,219 = 4,438	

b. Written legal opinion.

Number of respondents;	2,219
Frequency of response:	one-time
Initial hour burden:	2
2 hours x 2,219 = 4,438	

Annual Compliance Obligations

a. Written agreement relating to corporate separateness and access to information.

Average number of new FISCU investment interests reported in CUSOs:	92
Frequency of response:	annually
Annual hour burden:	2

2 hours x 92 = 184

b. Written legal opinion.

Number of respondents, i.e., requiring new or updated opinion per year:	92
Frequency of response:	annually
Annual hour burden:	2

2 hours x 92 = 184

The current proposal will require some FCUs with an investment in or loan to a CUSO to revise the current agreement they have with their CUSO to provide for access to books and records by any SSA, if the CUSO also has a loan or investment from a FISCU or provides any contractual services to a FISCU. According to NCUA records, of the 5,036 FCUs that filed a form 5300 call report with NCUA as of December 31, 2007, 1,112 reported at least one interest in a CUSO; a total of 2,190 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect one-half of all CUSOs owned by FCUs. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the written agreement relating to access to information.

One-half of total FCU investment interests reported in CUSOs, 12/31/2007:	1,095
Frequency of response:	one-time
Initial hour burden:	1

1 hour x 1,095 = 1,095

The proposed rule would require certain credit unions to seek and obtain prior approval from NCUA before making an investment to recapitalize an insolvent CUSO. According to NCUA's records, as of December 31, 2007, there were only 36 FCUs that were less than adequately capitalized (i.e., net worth of under 6%). According to year-end 2007 call report data, none of these FCUs currently has any interest in any CUSOs. As of

December 31, 2007, there were no FCUs at or near the less than adequately capitalized threshold reporting an investment in an insolvent CUSO. NCUA estimates it would take an FCU approximately two hours to complete a request for NCUA's prior approval for an investment to recapitalize an insolvent CUSO.

Obtaining NCUA prior approval:

Total FCUs less than adequately Capitalized, 12/31/2007:	36
Frequency of response:	one-time
Initial hour burden:	2

2 hours x 36 = 72

Grand Total Burden Hours, including initial, one time burden and annual burden:

10,971 hours.

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information.

There is no submission or filing fee associated with making this information available to the NCUA or of submitting a request for approval of a new activity. Any ancillary costs such as copying charges or postage would be de minimis. While there are professional fees associated with securing a CPA opinion audit and a legal opinion, these services are part of the customary and usual business practice in this context and so are not included here.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

As noted above, NCUA conducts regular, periodic examinations of FCUs and also frequently participates in examinations of FISCUs. Insofar as these examinations consider all aspects of a credit union's business, including relationships with any CUSOs, there is no additional cost to the NCUA (or any other agency) relating to the information collection contained in this rule. In addition, NCUA routinely receives and reviews a myriad of requests from credit unions on a wide range of issues, and so is prepared to process requests concerning recapitalization of CUSOs without additional cost.

15. Explain the reasons for any program changes or adjustments reported in

Items 13 or 14 of the OMB Form 83-I.

This is an update of an information collection. The proposed amendment would extend some aspects of NCUA's CUSO regulation to FISCUs and would therefore increase the number of institutions that are affected by the regulation. The information collection requirements are one-time obligations that will help NCUA assure the continued safety and soundness of the industry. The proposal will also obligate some FCUs to make one-time adjustments to existing agreements with their CUSOs to specifically allow for access to books and records of the CUSO by relevant state credit union regulators. The proposal would also require certain less than adequately capitalized FCUs to obtain NCUA's prior approval before re-capitalizing an insolvent CUSO.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

As noted above, the information sought under this rule is either not covered by or exempt from disclosure under the Freedom of Information Act. There are no plans to publish or disseminate any of the information publicly.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There are no forms associated with this information collection and so we are not seeking approval not to display the expiration dates of OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no exceptions to the certification statement identified in Item 19 of the OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.