

Supporting Statement for Paperwork Reduction Act Submission
OMB Control Number 3133 – 0149
12 C.F.R. Part 712
Credit Union Service Organizations
2013

A. Justification

1. ***Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.***

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) any FCU that is less than adequately capitalized must seek NCUA approval before recapitalizing a CUSO that has become insolvent.

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 extends certain aspects of the rule to federally insured, state chartered credit unions (FISCUs). Under the rule, a FISCU with an investment in or loan to a CUSO is 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 rule also requires 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 rule 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.

- 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)(l). 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 rule 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.

Since the rule was adopted in 2009, the NCUA Board changed the small credit union definition threshold from \$10 million in assets to \$50 million in assets. As of March 31, 2013, there are 4,515 credit unions reporting assets under \$50 million. Of those 4,515, only 364 report any interest (loan or investment) in a CUSO. Since approximately only 8 percent of small credit unions reported having any interest in CUSOs, NCUA determined the rule does not have a significant economic impact on a substantial number of small credit unions. Moreover, good business practice mandates that much of the recordkeeping required under the rule is already maintained by credit unions that have a relationship with a CUSO.

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 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.

8. ***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.***

Notice of the information collection reinstatement and a request for comment was published in the Federal Register with a 60-day comment period on August 5, 2013 (78 FR 47425).

NCUA received one comment pertaining to this collection which questioned the burden calculations. The comment stated that the calculations don't "take into account the amount of time credit unions devote to the maintenance and reporting of CUSO-related matters". Burden calculations used in this collection are associated with the previous CUSO rule amendments for 12 CFR 712 and not related to the amendment to the CUSO rule which was approved by the NCUA Board on November 21, 2013. Any maintenance and reporting of CUSO-related matters are addressed in the 5300 Report filing and are not required as part of the rule under review, so they are not addressed in this burden calculation. Burden estimates for the recently approved CUSO rule, which will be effective June 30, 2014, were separately included in the final rule to be published in the Federal Register.

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 collection.

10. ***Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.***

The rule 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 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.

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

Current burden hours for this rule relate to new relationships between credit unions and CUSOs. Based on a three-year average of data showing the number of affected institutions and number of investments in CUSOs, NCUA estimates a total of 133 new CUSO investments would be made each year. Using this data, NCUA estimates the burden hours for compliance with the rule to be 532 hours, broken down as follows:

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

Average number of new FICU investment interests reported in CUSOs:	133
Frequency of response:	annually
Annual hour burden:	2

2 hours x 133 = 266

b. Written legal opinion.

Number of respondents, i.e., requiring new or updated opinion per year:	133
Frequency of response:	annually
Annual hour burden:	2

2 hours x 133 = 266

Total burden for compliance: 532 hours

The rule requires 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 March 31, 2013, there were only 15 FCUs less than adequately capitalized (i.e., net worth of under 6%) that had any interest in a CUSO. Assuming that

all of these credit unions had to ask for a waiver (a highly conservative estimate), NCUA estimates it would take the FCU approximately two hours to complete a request for prior approval for an investment to recapitalize an insolvent CUSO.

Obtaining NCUA prior approval:

Total FCUs less than adequately Capitalized, 03/31/2013:	15
Frequency of response:	one-time
Initial hour burden:	2

2 hours x 15 = 30

Grand Total Burden Hours: 562 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. 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 timeframe for credit unions to amend existing agreements with their CUSOs is over, thus eliminating the initial burden of the rule as approved in 2008.

The information collection requirements now are one-time obligations that help NCUA assure the continued safety and soundness of the industry. The rule also requires 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.