

National Credit Union Administration
SUPPORTING STATEMENT

Credit Union Service Organizations (CUSOs)
12 CFR Part 712
OMB No. 3133-0149

A. JUSTIFICATION

1. Circumstances that make the collection of information necessary.

Part 712 of the National Credit Union Administration's (NCUA) regulations implements authority in the Federal Credit Union Act (FCU Act)¹ which relate to federally insured credit union (FICU) lending or investment activity with a credit union service organization (CUSO). The rule addresses NCUA's safety and soundness concerns for activities conducted by CUSOs and imposes certain information collection activities on FICUs that have investment or lending relationships with, or conduct operations through, CUSOs.

Part 712 extends certain aspects of the rule to federally insured, state chartered credit unions (FISCUs) and to add new requirements for FICUs. Under the amended rule, FICUs with an investment in, or loan to, a CUSO must obtain a written agreement with the CUSO (or revise any current agreement the FICU has with a CUSO) to provide that the CUSO will: (1) account for all its transactions in accordance with generally accepted accounting principles (GAAP); (2) prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant; (3) provide complete access to the books and records of the CUSO; and (4) annually report directly to NCUA and the appropriate state supervisory authority (SSA) certain financial and other information prescribed by the rule. 12 CFR §712.3(d).

2. Purpose and use of the information collection.

The information collection requirement activity prescribed by §712.3(d) is collected by accessing the CUSO Registry. CUSO's report basic registration information, including the CUSO's name and address, point of contact, services offered, the names and charter numbers of credit unions investing in, lending to, or receiving services from the CUSO, and investor and subsidiary information. In addition, for any CUSO engaged in complex or high-risk activities, as defined in the rule, the report must contain additional, enhanced, more detailed information, including audited financial statements and more specific customer information. 12 C.F.R. §712.3(d)(4).

A FICU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FICU and the CUSO. Section 712.4(b) requires that prior to investing in a CUSO, the FICU must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the FICU's exposure to loss of its loans to or investments in the CUSO. 12 C.F.R. §712.4(b).

¹ 12 U.S.C. §§1756, 1757(5)(D) and (7)(I), 1766, 1781(b)(9), 1782, 1784, 1785, 1786, and 1789(11)

Section 712.2(d) also requires that a FICU that is or, as a result of recapitalizing an insolvent CUSO, will become less than adequately capitalized must, under certain circumstances, obtain NCUA (or SSA, if applicable) approval to recapitalize a CUSO that has become insolvent.

In summary, Part 712 contains the following information collection requirements:

1. Before making a loan to, or investment in, a CUSO, a FICU must obtain a written agreement from the CUSO (or revise any current agreement the FICU has with a CUSO) that the CUSO will: follow GAAP; prepare financial statements at least quarterly and obtain an annual opinion audit from a certified public accountant; provide access to its books and records to NCUA and the appropriate SSA; and annually report financial and other information directly with NCUA and the appropriate SSA. (Recordkeeping requirement).
2. A FICU with an investment in, or loan to, a CUSO must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the FICU's exposure to loss of funds invested in, or loaned to, the CUSO. (Recordkeeping requirement).
3. A FICU that is or, as a result of recapitalizing an insolvent CUSO will become, less than adequately capitalized, must seek NCUA's or the appropriate SSA's approval before recapitalizing a CUSO that has become insolvent. (Reporting requirement).
4. A CUSO with an investment or loan from a FICU must annually submit a report directly to NCUA and the appropriate SSA, if applicable, containing financial and other information prescribed in Part 712. (Reporting requirement).
5. An SSA may obtain an exemption for FISCUs from compliance with CUSO accounting, audits and financial statement requirements by submitting a copy of the legal authority pursuant to which it secures the information required and supporting documentation to the NCUA's regional office having responsibility for that state. (Reporting requirement).

These requirements enable NCUA to monitor a FICU's involvement with its CUSO for safety and soundness purposes. NCUA notes some elements of the rule reflect sound business judgment and represent usual and customary business practices. For example, obtaining a written agreement with an entity before investing funds in its operations, requiring that its financial statements be prepared in accordance with GAAP, and obtaining a legal opinion as to corporate matters are standard business practices. The burden hours reported in Item 12 below exclude the hours attributable to engaging in these usual and customary business activities.

NCUA conducts regular, periodic examinations of FCUs and participates in examinations of FISCUs. The information collected from CUSO registry is used by NCUA in its review for reporting compliance for credit unions with a loan to or investment in a CUSO. As part of the examination process, NCUA also 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 critical in preventing or minimizing losses to the National Credit Union Share Insurance Fund (NCUSIF), which provides federally guaranteed share (deposit) account insurance for all FICUs.

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 also needs access to the books and records of the CUSO. Without that access, NCUA cannot thoroughly and accurately evaluate the potential risks CUSOs pose 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 and lending limits in the FCU Act, which limit FCU loans to, and investment in, all CUSOs to one percent of the FCU's unimpaired capital and surplus, respectively. 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. Use of Information Technology.

The *CUSO Registry* is a web-based system that CUSOs use to provide information directly to NCUA. This information provided is used by NCUA in its examinations of FCUs and FISCUs. In addition to general information like a CUSO's legal name, address, and contact information, the system will allow CUSOs to provide:

- Information regarding ownership and subsidiaries
- Services offered by the CUSO, including basic financial information as applicable for specific services
- Credit union clients served by the CUSO

No special software is required. The *CUSO Registry* is a web-based application. The *CUSO Registry* supports the following browsers:

- Internet Explorer 11; Microsoft Edge
- Firefox (version 24 and extended support release (ESR))
- Google Chrome (version 21 and later)
- Opera (version 15.0+ (Blink) and 12.0+ (Presto))
- Safari (version 6.0+)

4. Duplication of Information.

There is no duplication of this information. The information the rule requires is unique to each credit union or situation.

5. Efforts to Reduce Burden on Small Entities.

The burden on small FICUs is minimal because much of the required information collection is already maintained by FICUs that have a relationship with a CUSO.

NCUA considers credit unions having less than \$100 million in assets to be small for purposes of the Regulatory Flexibility Act². As of June 30, 2018, there were 3,904 FICUs with assets under \$100 million. Of those 3,904, only 997 (25.5%) reported any interest (loan or investment) in a CUSO. Approximately only 25.5 percent of small credit unions reported having any interest in a CUSO.

6. Consequences of Not Conducting Collection.

Failure to require these collections would expose FICUs to significant losses and could result in losses to the NCUSIF.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

There are no special circumstances. This collection is consistent with the guidelines in 5 C.F.R. §1320.5(d)(2).

8. Efforts to Consult with Persons Outside the Agency

A 60-day notice was published in the Federal Register on October 10, 2018, at 83 FR 50962 soliciting comments from the public. The NCUA received three comments on the paperwork and regulatory burden of part 712.

One commenter expressed concern that part 712 conditions the ability of federally insured credit unions to invest in CUSOs by requiring credit unions to obtain an agreement that provides the NCUA with access to the CUSO's books and records. The commenter believes the term books and records is vague and can result in significant paperwork burden (especially when the CUSO is also regulated by a state entity). The commenter also noted that certain information collected by the NCUA (such as financial audits, listing of customers, and other business information) is not included on the registry. The commenter recommended that the NCUA decrease the paperwork and documentation requested from CUSOs since not all of the requested information is used for the registry. Finally, the commenter urged the NCUA to take corrective action to ensure its examiners conduct monitoring of CUSOs, rather than robust inquiries and unofficial examinations.

A second commenter expressed appreciation for changes the NCUA has made to reduce the overall burden associated with the collection effort. In addition, this commenter expressed

² Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2, 68 FR 30950 (May 29, 2003), IRPS 13-1, 78 FR 4032 (Jan. 18, 2013) and IRPS 15-1, 80 FR 57512 (November 23, 2015).

its opposition to any legislative initiative that would grant the NCUA direct oversight authority of third-party vendors such as CUSOs.

Another commenter requested that the NCUA take action to reduce the filing burden associated with updating the CUSO registry on an annual basis. The NCUA has made to changes to the CUSO registry application to streamline the information collection process for previous filer, and will continue to research ways to increase efficiency.

The NCUA is not taking any action in response to these comments at this time. The NCUA believes it is imperative to have complete and accurate financial information about CUSOs and the nature of their services to ensure protection of the NCUSIF and to identify emerging systemic risk posed by CUSOs within the credit union industry. The information collections under part 712 allow the agency to adequately evaluate the relationships between CUSOs and credit unions and the systemic risk posed by those relationships.

9. Payment or Gifts to Respondents

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

10. Assurance of Confidentiality

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. CUSO reports may contain or consist of trade secrets and commercial or financial information which relate to the business, personal, or financial affairs of a person or organization, are furnished to NCUA. This type of information will be kept private to the extent permitted by law including the Freedom of Information Act (FOIA).

11. Questions of a Sensitive Questions Nature

Information collected to identify a contact individual covered by the system includes name, address, and telephone number. The CUSO Registry System is covered by SORN NCUA-18, Credit Union Service Organization (CUSO) Register System and was published on July 30, 2015 at 80 FR 45557.

12. Burden of Information Collection

1. §§ 712.3(d)(1) – (d)(3). FICUs – Written Agreement.

Prior to investing or lending to a CUSO, a FICU must obtain a written agreement from the CUSO (or revise any current agreement the FICU has with a CUSO) that the CUSO will: follow GAAP; prepare financial statements at least quarterly and obtain an annual opinion audit from a certified public accountant; provide access to its books and records to NCUA and the appropriate SSA; and annually report financial and other

information directly with NCUA and the appropriate SSA. Based on a three-year average of data showing the number of affected credit unions and number of loans to and investments in CUSOs, NCUA estimates a total of 120 new CUSO investments will be made each year.

FCUs:.....120
Frequency of response:.....on occasion
Hour burden:.....4 hours

4 hours x 120 = 480 hours

2. FICUs - Written Legal Opinion.

Prior to investing or lending to a CUSO, a FICU must obtain a written legal opinion confirming the CUSO is established in a legally sufficient way to limit the FICU's exposure to loss on its loans or investments in the CUSO. Current burden hours for this rule relate to new relationships between credit unions and CUSOs. Based on a four-year average of data showing the number of affected credit unions and number of loans to and investments in CUSOs, NCUA estimates a total of 120 new CUSO investments will be made each year.

FICUs:.....120
Frequency of response:.....on occasion
Hour burden:.....4 hours

2 hours x 120 = 480 hours

3. FCUs - Obtaining regulatory approval.

A FCU that is or, as a result of recapitalizing an insolvent CUSO will become, less than adequately capitalized, must apply for and obtain prior written approval from the FCU's regulator before recapitalizing a CUSO that has become insolvent. According to NCUA's records, as of June 30, 2018, there were only 28 FCUs that were less than adequately capitalized (i.e., net worth of under 6%). Of these FCUs, 9 reported having an interest in a CUSO. NCUA estimates it would take a FCU approximately two hours to complete a request for the regulator's approval for an investment to recapitalize an insolvent CUSO.

Number of less than adequately capitalized
FCUs with an interest in a CUSO as of 6/30/2018:.....9
Frequency of response:.....on occasion
Hour burden:.....2 hours

2 hours x 9 = 18 hours

4. FISCUs - Obtaining regulatory approval.

A FISCU that is or, as a result of recapitalizing an insolvent CUSO will become, less than adequately capitalized, must apply for and obtain prior written approval from its SSA before recapitalizing a CUSO that has become insolvent. According to NCUA’s records, as of June 30, 2018, there were only 5 FISCUs that were less than adequately capitalized (i.e., net worth of under 6%). Of these FISCUs, 3 reported having an interest in a CUSO. NCUA estimates it would take a FISCU approximately two hours to complete a request for the SSA’s approval for an investment to recapitalize an insolvent CUSO.

Number of less than adequately capitalized
 FCUs with an interest in a CUSO as of 6/30/2018:.....3
 Frequency of response:.....on occasion
 Hour burden:.....2 hours

2 hours x 3 = 6 hours

5. FISCUs - Obtaining regulatory approval.

A FISCU that is or, as a result of recapitalizing an insolvent CUSO will become, less than adequately capitalized, must submit to NCUA a copy of the application sent to the SSA requesting permission to recapitalize the CUSO. According to NCUA’s records, as of June 30, 2018, there were only 5 FISCUs that were less than adequately capitalized (i.e., net worth of under 6%). Of these FISCUs, 3 reported having an interest in a CUSO. NCUA estimates it would take a FISCU approximately one hour to submit a copy to NCUA.

Number of less than adequately capitalized
 FCUs with an interest in a CUSO as of 6/30/2018:.....3
 Frequency of response:.....on occasion
 Hour burden:.....1 hours

1 hours x 3 = 3 hours

6. CUSO reporting to NCUA – basic information.

According to CUSO registry data, as of December 30, 2017, 5,573 FICUs reported a total of 947 unique CUSO interests based upon individual Employer Identification Numbers. NCUA estimates that completing the CUSO registry would require 0.5 hours.

CUSOs as of 12/31/2017:.....947
Frequency of response:.....annual
Hour burden:.....0.5 hour

0.5 hour x 947 = 473.5 hours

7. CUSO engaged in complex or high-risk activities reporting to NCUA – expanded information.

NCUA estimates that of the 947 CUSO interests reported above, 400 CUSOs are engaging in complex or high-risk activities (i.e., credit and lending, IT, or custody, safekeeping, and investment management services). These CUSOs must furnish additional detailed information in the report in addition to the basic information described above.

CUSOs as of 12/31/2018:.....400
Frequency of response:.....annual
Hour burden:.....3 hours

3 hours x 400 = 1,200 hours

8. SSA Exemption

As of 6/30/2018, only one SSA has submitted a request for exemption for FISCUs from compliance with CUSO accounting, audits and financial statement requirements. NCUA estimates the request would require 5 hours to submit.

Total SSA requests as of 6/30/18:.....1
Frequency of response:.....annual
Hour burden:.....5 hours

5 hours x 1 = 5 hours

Burden Summary:

	Citation	Information Collection Activity	Type of Burden	# Respondents	# Responses per Respondent	# Annual Response	Hours per Response	Total Annual Burden
1	712.3(d)(1) thru (d)(3)	Written Agreement	record-keeping	120	1	120	4	480
2	712.4(b)	Written Legal Opinion	record-keeping	120	1	120	4	480
3	712.2(d)(2)(i)	FCUs - Obtaining regulatory approval	reporting	9	1	9	2	18
4	712.2(d)(2)(ii)	FISCUs - Obtaining regulatory approval (must apply for and obtaining prior written approval from its SSA before recapitalizing a CUSO that has become insolvent)	third-party disclosure	3	1	3	2	6
5	712.2(d)(2)(ii)	FISCUs - Obtaining regulatory approval (must submit to NCUA a copy of the application sent to the SSA requesting permission to recapitalize the CUSO)	reporting	3	1	3	1	3
6	712.3(d)(4)	CUSO reporting to NCUA - basic information (via CUSO Registry)	reporting	947	1	947	0.5	473.5
7	712.3(d)(5)	CUSO engaged in complex or high-risk activities reporting to NCUA - expanded information (via CUSO Registry)	reporting	400	1	400	3	1,200
8	712.10(b)	SSA Exemption	reporting	1	1	1	5	5
TOTALS						1,603		2,666

Based on the labor rate of \$35 per hour, the total cost to respondents is \$93,310.

13. Capital Start-up or On-going Operation and Maintenance Costs

There are no capital start-up or operation and maintenance costs.

14. Annualized Costs to Federal Government

NCUA conducts regular, periodic examinations of FCUs and frequently participates in examinations of FISCUs by SSAs. Insofar as these examinations consider all aspects of a credit union’s business, including relationships with any CUSOs, there is no additional cost to NCUA relating to the ICs contained in this rule. In addition, NCUA routinely receives and reviews requests from credit unions on various issues, and is prepared to process requests concerning recapitalization of CUSOs without additional cost.

Ongoing costs for maintenance and operation of the CUSO Registry System are integrated into NCUA’s budget and are estimated to be approximately \$300,000 per year.

15. Changes in Burden

Overall burden has been reduced since the previous OMB approval due to program changes and burden adjustments. Overall burden has been reduced by 8,893 hours from 11,559 hours to 2,666 hours.

The bulk of the original OMB submission contained items which only needed to be completed one time by all FICUs with an interest in a CUSO. Specifically, the submission contained 8,900 hours for all FICUs with loans or investment in CUSOs to change written agreements with CUSOs relating to certain accounting and reporting items. Going forward, written agreement requirements will only apply to new CUSO investments. NCUA estimates there will be 120 new investments in CUSOs each year. A reduction of 8,420 burden hours is attributed to this program change.

Since the previous submission, NCUA has launched the web-based *CUSO Registry* system which has provided a better estimate of the number of CUSOs in existence. The total number of CUSOs is less than previously estimated, which has reduced the overall burden. In the previous submission, NCUA estimated there were 1,149 CUSOs and 600 complex CUSOs which would need to meet reporting requirements to the NCUA. As of 12/31/2017, NCUA *CUSO Registry* data reports 947 CUSOs and approximately 400 complex CUSOs.

A total reduction of 473 burden hours is attributed to adjustments that includes a reduction of 701 hours due to changes in the number of CUSOs reporting via the registry and an increase of 228 burden hours due to additional adjustments.

16. Information Collection Planned for Statistical Purposes

The information collection is not used for statistical purposes.

17. Request Non-display the Expiration Date of the OMB Control Number

The display of the date of expiration of the OMB approval may be confusing to respondents. This date may be confused with a due to date of the actual collection instrument. A non-display of this date is requested.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR §1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.