

National Credit Union Administration
1SUPPORTING STATEMENT

Fidelity Bond and Insurance Coverage
(Section 704.18 and Part 713)
OMB No. 3133-0170

Summary of rulemaking

The NCUA published a final rule on July 24, 2019, at 84 FR 35517, to strengthen a board of directors' oversight of a credit union's fidelity bond coverage; ensure an adequate period to discover and file fidelity bond claims following a federally insured credit union's liquidation; codify a 2017 NCUA Office of General Counsel legal opinion that permits a natural person credit union's fidelity bond to include coverage for certain credit union service organizations (CUSOs), and address Board approval of bond forms.

Amended §713.4(d) provides that the NCUA Board must approve or reapprove the use of a bond form after a period of ten years from the date of approval by the NCUA Board.

A. JUSTIFICATION

1. Circumstances that make the collection of information necessary.

The Federal Credit Union Act (FCU Act) requires that certain credit union employees and appointed and elected officials be subject to fidelity bond coverage.¹ The FCU Act directs the Board to promulgate regulations concerning both the amount and character of fidelity bond coverage and to approve bond forms.² The pertinent portion of the FCU Act provides:

The Board is ... directed to require that every person appointed or elected by any Federal credit union to any position requiring the receipt, payment, or custody of money or other personal property owned by a Federal credit union or in its custody or control as collateral or otherwise, give bond in a corporate surety company holding a certificate of authority from the Secretary of Treasury ... as an acceptable surety on Federal bonds. Any such bond or bonds shall be in a form approved by the Board with a view to providing surety coverage to the Federal credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Board may determine to be reasonably appropriate. Any such bond or bonds shall be in such an amount in relation to the ... assets of the Federal credit union as the Board may from time to time prescribe

¹ 12 U.S.C. 1761a, 1761b, and 1766.

² The FCU Act also grants the Board the powers to require such other surety coverage as the Board may determine to be reasonably appropriate; to approve a blanket bond in lieu of individual bonds; and to approve bond coverage in excess of minimum surety coverage.

by regulation[.]³

Parts 704 and 713 of the NCUA's regulations implement the requirements of the FCU Act regarding fidelity bonds.⁴ Part 713 applies to natural person credit unions and Part 704 applies to corporate credit unions. The parts establish the requirements for a fidelity bond, the acceptable bond forms, and the minimum permissible coverage. Both parts require a FICU's board of directors to review annually its fidelity bond coverage to ensure it is adequate in relation to the potential risks facing the FICU and the minimum requirements set by the Board.

The regulations contain information collection requirements. These information collections enable the NCUA to ensure the fidelity bond coverage meets the minimal regulatory requirements established by NCUA and provides adequate protection against potential losses due to insider abuse such as fraud and embezzlement.

2. Purpose and use of the information collection.

The information collection requirements in these regulations are used by the NCUA to determine whether any deviations from standard practice by a federally insured credit union (FICU) is a risk to the safety and soundness of the institution and, by extension, the National Credit Union Share Insurance Fund (NCUSIF).

The regulations require that all bond forms must receive NCUA approval before a FICU may use them (§704.18(c) and §713.4(a) and (c)). This includes any riders, endorsements, renewals, or other documents that limit coverage of the approved bond form. Sections 704.18(c) and 713.4(d) state that NCUA approval on all bond forms expires after a period of 10 years from the date of the NCUA approval or re-approval of its use. NCUA approval of a bond is required before a bond form may be used by a FICU. If a natural person FICU wishes to reduce its required fidelity bond coverage, it must seek approval to do so, in writing, at least 20 days before the proposed reduction would go into effect (§713.5(e)).

The regulation allows natural person FICUs to increase its deductibles if it meets certain risk and capital requirements. Any deductible in excess of the amounts specified under §713.6(a)(1) must receive prior written permission from NCUA (§713.6(a)(2)). However, the regulation calls for an FICU that falls out of eligibility for the higher deductible to obtain a policy with the required coverage and to notify the appropriate NCUA regional office of its changed status and confirming that it has obtained the required coverage (§713.6(c)). Similarly, corporate credit unions must have the written approval of the NCUA at least 30 calendar days prior to the effective date of any change

³ 12 U.S.C. 1766(h).

⁴ 12 CFR pts. 704 and 713.

to its deductible that are in excess of the amounts specified in §704.18(e)(1) (§704.18(e)(2)). The information will be used by the NCUA in its efforts to monitor FICUs for safe and sound operations and is critically important in helping to avert or minimize losses to the NCUSIF, which provides share insurance for all FICUs.

Adequate insurance coverage can avert a FICU failure due to fraudulent losses; alternatively, where failure does occur, the NCUA, in its capacity as liquidator for the failed FICU, can recoup some of its losses through a claim under an insurance policy.

3. Use of information technology.

Credit unions and bond issuers can provide the required notifications and seek the required approvals through electronic means.

4. Duplication of information.

For natural person FICUs, eligibility for a higher deductible is a function, in part, of the credit union's financial condition. Several NCUA rules already call for the monitoring and reporting of this information, and such monitoring is a matter of good business practice in any case. FICUs may rely on call report data in reviewing whether they continue to qualify for the higher deductible. As noted in the response to the preceding section, however, the specific notice to NCUA about having obtained the required coverage is unique and not addressed in any of our other rules.

5. Efforts to reduce burden on small entities.

The burden associated with the notification requirements are minimal, regardless of size. The burden represents the minimum necessary to provide flexibility to FICUs while maintaining some level of oversight over safety and soundness.

6. Consequences of not conducting the collection.

The requirements to seek bond approval or to reduce the required level of coverage are required to ensure that any deviation from the minimum legal coverage requirements are justified by the circumstances faced by the FICU seeking such approval. Without requiring notification and approval of departures from the minimums fidelity bond standards, fidelity bond standards become difficult to enforce and lose their effectiveness in protecting individual FICUs and the NCUSIF.

The requirement that NCUA approval sunsets on all bond forms after 10 years, and bond forms must be re-approved after the 10-year sunset, will ensure that the bond forms comply with current regulations.

The requirements in Part 713 for written confirmation to the regional office are triggered only when requesting permission for deductibles in excess of the amount specified in the regulations or a change in the FICU's financial condition requires it to lower its deductible. The requirements in Part 704 are applicable only when a corporate credit union requests permission to use a deductible in excess of the minimums provided by the

regulation. Failure to provide this confirmation to the NCUA would diminish the NCUA's knowledge about the adequacy of bond coverage and could result in losses to the NCUSIF.

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

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

8. Efforts to consult with outside the agency.

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rulemaking on November 23, 2018, at 83 FR 59318, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule.

There were no direct comments received in response to the PRA notice; but comments were received in response to the proposed rule. The comments addressed the burden associated with the new information collection requirement prescribed by §713.4(d) and are discussed in the preamble of the final rule as follows:

The proposed rule added a new paragraph (d) to sunset its approval on all bond forms ten years after the form is approved. The impetus for this provision is the discovery that Board approved-bond forms were being interpreted in a way that was contrary to the NCUA's understanding of how the bond forms would be used. In addition, a review of previously approved bond forms, as part of issuing the 2017 legal opinion, revealed several instances of outdated provisions, additions that had not been approved by the Board, and some forms that contained provisions that were contrary to the FCU Act and Part 713 of the NCUA's regulations. To avoid instances of this in the future, the Board proposed to sunset its approval of a bond form after a period of ten years. Commenters had mixed opinions on this provision. While several commenters supported the ten-year sunset, many other commenters expressed concerns about the ten-year sunset date. Specifically, two commenters associated with the insurance industry expressed concerns because form approval is already a complicated process as it involves state insurance regulators. The Board understands the complexity involved in the approval process, but is maintaining the ten-year sunset. The Board believes the sunset is necessary to ensure bond forms are up-to-date and continue to provide adequate fidelity bond coverage for FICUs.

With respect to bond forms that the Board has approved before 2019, the Board proposed to allow its approval on these forms to continue until January 1, 2029. Several commenters expressed concerns about the NCUA's ability to reapprove bond forms, and particularly, reapprove all existing bond forms in 2029. Commenters believed that re-approval would be a resource-intensive process and suggested that the NCUA include qualifying language in case there is a delay and the NCUA has not reapproved all bond forms by their expiration date. The Board agrees that qualifying language is beneficial. Therefore, the final rule provides that approval for all existing bond forms sunsets after ten years unless otherwise determined by the NCUA Board. The Board believes the

addition of qualifying language provides reasonable flexibility while preserving its intent to sunset bond form approval after ten years.

Under the proposed rule, the ten-year approval period began on the date the Board approved a bond form. The proposed rule stated, however, that the ten-year period would not toll or start over if a bond carrier submits a revision to an approved bond form. One commenter believed that this is unnecessary and approval should always sunset ten years after a bond form is reviewed and approved. The Board has reconsidered and agrees with the commenter. Under the final rule, the Board's approval always sunsets ten years after a bond is reviewed and approved. The Board proposed to maintain the original sunset date because of concerns that a subsequent review may be targeted and not review the bond form in its entirety. To address this concern, under the final rule, a bond form will always be reviewed in its entirety.

9. Payment or gift to respondents.

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

10. Assurance of confidentiality.

There is no assurance of confidentiality other than that provided by law.

11. Questions of a sensitive nature.

The information collection does not include any sensitive questions or collect any personally identifiable information (PII).

12. Burden of information collection.

12 CFR	Information Collection Activity	# Respondents	Frequency	Total Annual Responses	Hours per Response	Total Annual Burden Hours
Corporate Credit Unions						
704.18(c)(3)	Obtain prior approval from NCUA to use bond form not on the approved list; amended or changed bond form since NCUA approved, and any rider, endorsement, renewal, or other document that limits coverage of approved bond form.	5	1	5	1	5
	NCUA approval on all bond forms expired after a period of 10 years from the date of NCUA approval or reapproved use of the bond form.	2	1	2	1	2
704.18(c)(5)	Written notification to NCUA by surety if bond is terminated in or deductible is increased above the permissible limits.	1	1	1	1	1
704.18(e)(2)	Obtain prior written approval for deductibles in excess of amounts identified in 704.18(e).	1	1	1	1	1
Natural Person Credit Unions						
713.4(a) & (c)	Obtain prior approval from NCUA to use bond form not on the approved list; amended or changed bond form since NCUA approved, and any rider, endorsement, renewal, or other document that limits coverage of approved bond form.	5	1	5	1	5
713.4(d)	NCUA approval on all bond forms expired after a period of 10 years from the date of NCUA approval or reapproved use of the bond form.	2	1	2	1	2
713.5(e)	Obtain prior written approval for a reduction in the required bond coverage.	1	1	1	1	1
713.6(a)(2)	Prior written permission for deductibles in excess of amounts identified in 713.6(a)(1)	1	1	1	1	1
713.6(c)	Notice in Change of Status disqualifying the CU from use of higher deductible limit	1	1	1	1	1
TOTALS		19		19		19

The resource cost of this collection (measured in dollars) is estimated by multiplying the total burden hours by \$35 – the approximate loaded average wage rate of credit union employees – resulting in an estimated cost to respondents of \$665.

13. Capital start-up or on-going operation and maintenance costs.

There are no startup or operations and maintenance costs associated with this collection.

14. Annualized costs to the Federal government.

We estimate that the cost to review and approve requests submitted under Parts 704 and 713 to be roughly equivalent to the time it takes the public to prepare such a request. This results in an estimated cost to the Federal Government of \$1,568.

15. Changes to burden.

The new information collection burden associated with obtaining NCUA approval on all bond forms expired after a period of 10 years from the date of NCUA approval or reapproved of its use is minimal, affecting an estimated four entities annually; for an increase of four hours attributed to this program change. Adjustments have been made to this information collection to capture current fidelity bond coverage requirements codified under §704.18 and 713. Total burden requested is 19 hours.

16. Information collection planned for statistical purposes.

This information will not be used for statistical purposes.

17. Request non-display the expiration date of the OMB control number.

There is no physical form for this submission of information. The OMB Control Number, along with the expiration date, will be displayed on the Federal government electronic PRA docket at www.reginfo.gov.

18. Exceptions to Certification for Purposes of Paperwork Reduction Act Submissions

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.