

National Credit Union Administration
SUPPORTING STATEMENT

Subordinated Debt, 12 CFR Part 702, Subpart D
OMB No. 3133-0207

Summary of Final Rule Action:

A final rule was published on February 23, 2021, at 86 FR 11060, amending various parts of the NCUA's regulations to permit low-income designated credit unions (LICUs), Complex Credit Unions, and New Credit Unions to issue Subordinated Debt for purposes of regulatory capital treatment. Specifically, the rule creates a new subsection (§§702.401-702.414) in the NCUA's final risk-based capital (RBC) rule that would address the requirements and regulatory capital treatment of Subordinated Debt. This new subpart D would, among other things, contain requirements related to applying for authority to issue Subordinated Debt, credit union eligibility to issue Subordinated Debt, prepayments, disclosures, securities laws, and the terms of a Subordinated Debt Note.

A. JUSTIFICATION

1. Circumstances that make the collection of information necessary.

The NCUA amended its regulations to add a new section addressing limits on loans to other credit unions; an expansion of the borrowing rule to clarify that federal credit unions (FCUs) can borrow from any source; revisions to the risk-based capital (RBC) rule, and the payout priorities in an involuntary liquidation rule to account for Subordinated Debt and Grandfathered Secondary Capital; and cohering changes to part 741 to account for the other changes proposed in this rule that apply to federally insured, state-chartered credit unions (FISCU).

The borrowing authority granted to FCUs by the FCU Act, along with FCUs' statutory authority to enter into contracts and exercise incidental powers necessary or required to enable the FCUs to effectively carry on their business, supports the legal analysis that FCUs are authorized to incur indebtedness through the issuance of debt securities of the type contemplated by this proposed rule. Section 1757(9) of the FCU Act authorizes FCUs:

“to borrow, in accordance with such rules and regulations as may be prescribed by the Board, from any source, in an aggregate amount not exceeding, except as authorized by the Board in carrying out the provisions of subchapter III of this chapter, 50 per centum of its paid-in and unimpaired capital and surplus: Provided, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital.”

2. Purpose and use of the information collected.

The rule permits LICUs, Complex Credit Unions, and New Credit Unions to issue Subordinated Debt Notes for purposes of regulatory capital treatment.¹ It contains a series of requirements in respect of the Subordinated Debt and Subordinated Debt Note, disclosures and offering materials, repayment (including prepayment), and regulatory capital treatment. It also includes an application procedure for both the issuance and repayment of Subordinated Debt Notes.

- Under this rule, all eligible credit unions, regardless of designation type, are required to submit an initial application package for preapproval under § 702.408. This application will be used to determine if an eligible credit union meets the regulatory requirements to issue subordinated debt and whether the eligible credit union is able to manage and safely offer, issue, and sell the proposed Subordinated Debt. Furthermore, the application will also help determine the safety and soundness of the proposed use(s) of the Subordinated Debt and the overall condition of the eligible credit union.
- Sections 702.405, 702.406, and 702.408 of the rule details the Offering Document requirements for a planned issuance of Subordinated Debt Notes. The rule requires an Issuing Credit Union to deliver an Offering Document to potential investors in Subordinated Debt Notes and prescribes certain specific disclosures to be made in the Offering Document and in the Subordinated Debt Note itself. Section 702.405 covers the disclosure requirements for the Subordinated Debt Note. The eligible credit union will need to provide NCUA with a copy of the Offering Documents of the Subordinated Debt Note. NCUA will use the Offering Documents to determine if the issuance is in compliance with Securities Law and NCUA requirements.
- Section 702.409 covers preapproval requirements of federally insured state federal credit unions (FISCUs) to issue subordinate debt. NCUA is requiring a FISCU's state supervisory authority (SSA) concurrence before approving a FISCUs application to issue Subordinated Debt. As the primary regulator, the SSA will need to approve the issuance as part of its oversight responsibilities.
- Section 702.411 contain prior approval requirements to prepay subordinated debt. Eligible credit unions will require NCUA approval, and SSA approval for FISCUs, to prepay subordinated debt. The application is required to determine the safety and soundness of prepaying the subordinated debt.

¹ Regulatory capital treatment is based on the type of credit union issuing subordinated debt. A LICU may include subordinated debt in its RBC ratio and its net worth; a Complex Credit Union that is not a LICU may include subordinated debt in its RBC ratio; and a New Credit Union that is not a LICU may use Subordinated Debt to avail itself of various Prompt Corrective Actions.

3. Use of information technology.

The FCU Act does not prescribe any particular form for this information collection. Therefore, FICUs may use any information technology available to reduce the burden imposed by the regulation.

4. Duplication of information.

This collection of information is unique to NCUA and is not duplicated elsewhere.

5. Efforts to reduce burden on small entities.

This collection does not have a significant impact on a substantial number of small credit unions.

6. Consequences of not conducting the collection.

The information collected is required by regulation and is needed to meet the Agency's mission by providing a safe and sound credit union system.

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

A Note is an agreement of a financial contract to repay and is a binding contract between parties and is necessary until the financial obligation has been met. Records of a Note are to be retained for the period of financial obligation of the subject Note.

8. Efforts to consult with persons outside the agency.

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rulemaking on March 10, 2020, at 85 FR 13982, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule. The final rule was published February 23, 2021, at 86 FR 11060, which implemented the proposed amendments. No comments were directly received in response to the information collection requirements contained in the rule. Public comments to the rule have been summarized and addressed in the preamble of the final rule.

9. Payment or gifts to respondents.

There are no payments or gifts for information collected.

10. Assurance of confidentiality.

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

11. Questions of a sensitive nature.

No questions of a sensitive nature are asked. Personally Identifiable Information (PII) is not collected.

12. Burden of information collection.

The initial application requirement to issue subordinated debt can be found in §702.408(b) and is estimated to impact 25 credit unions annually and is estimated to take 100 hours per respondent. Following approval of the initial application, an issuing credit union must prepare and submit for each issuance of subordinated debt, an offering document for NCUA approval. This offering document is estimated to take each of the 25 issuing credit unions 40 hours to prepare. Additional reporting requirements covered under §§702.406, 702.408, 702.409, 702.411, and 702.414 involve requests for additional information, extensions, and prepayments. An issuing credit union must provide a copy of the approved offering document to each investor (§701.408(d)), and a FISCO must also provide a copy to its state supervisory authority (§702.409(a)); averaging an hour per respondent. Recordkeeping requirements to maintain records prescribed by this proposed rule is estimated to average 15 minutes per record. Section 701.25(b) requires federally-insured credit unions to establish a written policies for making loans to other credit unions. This recordkeeping requirement to retain this policy update is estimated to average 30 minutes and would impact 3,300 credit unions. A total of 5,662 burden hours is requested.

	12 CFR	Information Collection	Type	# Respondents	Frequency	Total Annual Responses	Hours per Response	Total Burden
1	701.25 (b)	Retain a record of written policies for FCUs making loans to other credit unions.	Record keeping	3,300	1	3,300	0.5	1,650
2	702.404 (e)	Include a disclosure statement and prohibition instructions in sub-debt note.	Record keeping	25	1	25	0.25	6.25
3	702.406 (c)	Issuing CU must receive a certification from potential investors of a sub-debt note.	Record keeping	25	1	25	0.25	6.25
4	702.406 (e)(1)	Issuing CU must apply in writing to NCUA indicating that intends to offer sub-debt notes.	Reporting	25	1	25	0.5	12.5
5	702.408(b)	CU requesting approval to issue sub-debt must submit an application to NCUA	Reporting	25	1	25	100	2,500
6	702.408(d)	Issuing CU must prep an offering document and have it "approved for use" by NCUA	Reporting	25	1	25	40	1,000
7		Issuing CU must provide each investor with an offering document	Disclosure	25	1	25	1	25
8	702.408(f)(1)	Issuing CU offering sub-debt notes to Natural Person investors, must file draft offering documents with NCUA and have it "approved for use"	Reporting	12.5	1	12.5	24	300
9	702.408(f)(1)(ii)	Issuing CU submit additional information, clarifications, or amendments for offering documents	Reporting	2.5	1	2.5	2	5
10	702.408(f)(2)	Once declared "approved for use" Issuing CU must file a copy of each of its offering documents with NCUA	Reporting	25	1	25	0.5	12.5
11	702.408(g)	Issuing CU must file a copy of offering documents exclusively to entity accredited investors with NCUA	Reporting	25	1	25	0.5	12.5
12	702.408(h)	Amendments to initial application must be filed and approved by NCUA	Reporting	1.5	1	1.5	10	15
13	702.408(i)	Issuing CU must notify NCUA of issuance and sale of sub-debt note.	Reporting	25	1	25	1	25
14	702.408(j)	Resubmission of initial application (to cure reasons identified by NCUA)	Reporting	1.5	1	1.5	4	6
15	702.408(k)(2)	Request for an extension for filing initial application	Reporting	1.5	1	1.5	0.5	0.75
16	702.408(l)(2)	Request to adjust filing date of initial application	Reporting	1.5	1	1.5	0.5	0.75
17	702.409(a)	FISCU must provide a copy of offering document to its state supervisory authority	Third-party disclosure	6.5	1	6.5	0.5	3.25
18	702.409(b)	FISCU must provide NCUA additional information if subject to federal income taxation	Reporting	6.5	1	6.5	1	6.5
19	702.411(b)	Issuing CU must submit a prepayment application to NCUA	Reporting	2.5	1	2.5	1	2.5
20	702.411(c)	FISCU must obtain written approval from its state supervisory authority to prepay the sub-debt	Record keeping	2.5	1	2.5	0.25	0.625
21	702.411(f)	Issuing CU that receives adverse written determination on its application to repay may cure by reapplying.	Reporting	2.5	1	2.5	0.5	1.25
22	702.414(a)(1)	Must have a written secondary capital plan	Record keeping	30	1	30	0.5	15
23	702.414(a)(10)	Must have an executed secondary capital account contract agreement	Record keeping	30	1	30	0.5	15
24	702.414(a)(11)	Must have an executed Disclosure and Acknowledgement	Record keeping	5	1	5	0.5	2.5
		Must provide a copy to the account investor	Third-party disclosure	5	1	5	1	5
25	702.414(c)(1)	Written request to NCUA for approval to redeem discounted secondary capital	Reporting	33	1	33	0.5	16.5
26	702.414(c)(4)	Written request to NCUA to early redemption exception.	Reporting	33	1	33	0.5	16.5

	TOTAL	3,300		3,702.50		5,662.1
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Based on the labor rate of \$35 per hour, the total cost to respondents is \$198,170.

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

Capital start-up cost estimates may include consulting fees and costs associated with additional internal resource needs for total cost of \$32,500.

14. Annualized costs to Federal government.

Based on the volume and complexity of the additional work associated with this rule, staff estimates the need for two additional legal staff at the CU-15 level with specialized expertise. In addition, the agency would need to retain outside counsel to bolster internal resources and expertise. The estimated annual cost for these resources is approximately \$1 million. The additional resources are necessary to maintain adequate staff with the requisite expertise to handle matters relating to securities law, subordinated debt disclosures, and asset securitization undertaken by credit unions.

15. Changes in burden.

This is a new information collection. Information collection requirements reported under §702.414 are currently cleared under OMB control number 3133-0140, Secondary Capital for Low-Income Designated Credit Unions. This burden currently claimed under OMB control number 3133-0140 will be consolidated under this new OMB control number and will be discontinued upon prolongation of this rule.

16. Information collection planned for statistical purposes.

The information is not planned for publication.

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

There are no traditional forms associated with this information collection requirement. The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal Government's electronic PRA docket website at www.reginfo.gov, when approved.

18. Exceptions to the Certification for Paperwork Reduction Act Submission.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not involve statistical methods.