

National Credit Union Administration
SUPPORTING STATEMENT

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

Summary of rulemaking action:

The NCUA published a proposed rule on February 26, 2021, at 86 FR 11645, to amend to credit union service organization (CUSO) regulation to expand the list of permissible activities and services for CUSOs to include originating any type of loan that a Federal credit union (FCU) may originate and granting the Board additional flexibility to approved permissible activities and services.

Under the proposed rule, CUSOs would be permitted to originate, purchase, sell, and hold any type of loan permissible for FCUs to originate, purchase, sell, and hold. Accordingly, CUSOs could originate categories of loans previously prohibited under the CUSO rule. The NCUA estimated 60 new CUSOs would enter into an agreement with a FICU (§ 712.3(d)); which would also require the FICU to obtain a written legal opinion prior to investing in a CUSO, as prescribed by § 712.4(b), and that these CUSO would be categorized as complex and be required to complete the expanded information via the CUSO Registry (§ 712.3(d)(5)). It is estimated that the increase in the number of respondents would increase total burden hours by 690.

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).

Under the FCU Act, FCUs have the authority to lend up to one percent of their paid-in and unimpaired capital and surplus, and to invest an equivalent amount, in CUSOs.² The NCUA regulates FCUs' lending to and investment in CUSOs in part 712 of its regulations. In general, a CUSO is an organization: (1) In which a FICU has an ownership interest or to which a FICU has extended a loan; (2) is engaged primarily in providing products and services to credit unions, their membership, or the membership of credit unions contracting with the CUSO; and (3) whose business relates to the routine daily operations of the credit unions it serves. The CUSO rule provides a list of preapproved activities and services related to the routine daily operations of credit unions.

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

² 12 U.S.C 1757

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.

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 CFR §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 CFR §712.4(b).

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 FICU, 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 FICU is insulated from claims that might be asserted against its CUSO, there is risk that the FICU 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 Act³. 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 the collection of information.

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

³ 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).

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 Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rulemaking on February 26, 2021, at 86 FR 11645, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule. Comments will be summarized and addressed in the PRA submission associated with the final rulemaking.

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.

11. Questions of a sensitive 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 System of Records Notice (SORN) NCUA-18, Credit Union Service Organization (CUSO) Register System, and was published in the *Federal Register* 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.

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.

3. FCUs - Obtaining regulatory approval.

An 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, only 28 FCUs were less than adequately capitalized (net worth of under 6%). Of these FCUs, 9 reported having an interest in a CUSO. NCUA estimates it would take an FCU approximately two hours to complete a request for the regulator's approval for an investment to recapitalize an insolvent CUSO.

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, only five FISCUs were less than adequately capitalized (net worth of under 6%). Of these FISCUs, three 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.

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, only five FISCUs were less than adequately capitalized (net worth of under 6%). Of these FISCUs, three reported having an interest in a CUSO. NCUA estimates it would take a FISCU approximately one hour to submit a copy to NCUA.

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.

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 (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.

8. SSA Exemption

As of June 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 five hours to submit.

*The proposed rule will expand the lending authority of CUSOs. NCUA estimates that 60 new CUSOs would emerge as a result of the new authority.

	Citation	Information Collection Activity	Affected Public	Type of Burden	# Respondents	# Responses per Respondent	# Annual Response	Hours per Response	Total Annual Burden	Previously Approved	Difference
1	713.3(d)	Written Agreement	FICU	recordkeeping	180	1	180	4	720	480	240
2	712.4(b)	Written Legal Opinion	FICU	recordkeeping	180	1	180	4	720	480	240
3	712.2(d)(2)(i)	FCUs - Obtaining regulatory approval	FCU	reporting	9	1	9	2	18	18	0
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)	FISCU	third-party disclosure	3	1	3	2	6	6	0
5		FISCUs - Obtaining regulatory approval (must submit to NCUA a copy of the application sent to the SSA requesting permission to recapitalize the CUSO)	FISCU	reporting	3	1	3	1	3	3	0
6	712.3(d)(4)	CUSO reporting to NCAU - basic information (via CUSO Registry)	CUSO	reporting	1,007	1	1,007	0.5	503.5	473.5	30
7	712.3(d)(5)	CUSO engaged in complex or high-risk activities reporting to NCUA - expanded information (via CUSO Registry)	CUSO	reporting	460	1	460	3	1,380	1,200	180
8	712.10(b)	SSA Exemption	SSA	reporting	1	1	1	5	5	5	0
					1,843	1	1,843	1.820673	3,356	2,666	690

Total Respondents	CUSOs	1,467	1,651
	FICU	183	
	SSA	1	

Based on the labor rate of \$35 per hour, the total cost to respondents is \$117,460.

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 are integrated into NCUA's budget and are estimated to be approximately \$300,000 per year.

15. Changes in Burden

Under the proposed rule, CUSOs would be permitted to originate, purchase, sell, and hold any type of loan permissible for FCU's to originate, purchase, sell, and hold. Accordingly, CUSOs could originate categories of loans previously prohibited under the CUSO rule. NCUA estimated 60 new CUSOs would enter into an agreement with a FICU (§ 712.3(d)); which would also require the FICU to obtain a written legal opinion prior to investing in a CUSO as prescribed by § 712.4(b), and that these CUSO would be categorized as complex and be required to complete the expanded information via the CUSO Registry (§ 712.3(d) (5)). NCUA estimates that the increase in the number of respondents would increase total burden hours by 690. A total of 3,356 burden hours are requested.

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.