



## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 712

### RIN 3133-AE95

### Credit Union Service Organizations (CUSOs)

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is seeking comment on a proposed rule that would amend the NCUA's credit union service organization (CUSO) regulation. The proposed rule would accomplish two objectives: expanding 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 approve permissible activities and services. The NCUA is also seeking comment on broadening FCU investment authority in CUSOs.

**DATES:** Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments, identified by RIN 3133-AE95, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Credit Union Service Organizations (CUSOs)” in the transmittal.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

*Public Inspection:* You may view all public comments on the Federal eRulemaking Portal (<http://www.regulations.gov>) as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov)

**FOR FURTHER INFORMATION CONTACT:** *Policy and Analysis:* Jacob McCall, (703) 518-6624; *Legal:* Rachel Ackmann, Senior Staff Attorney, (703) 548-2601; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

**Legal Authority and Background**

The Board is issuing this rule pursuant to its authority under the Federal Credit Union Act (FCU Act).<sup>1</sup> Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for federally insured credit unions (FICUs). The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.<sup>2</sup> Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.<sup>3</sup> Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

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.<sup>4</sup> The NCUA regulates FCUs' lending to and investment in CUSOs in part 712 of its regulations (CUSO rule).<sup>5</sup> 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.<sup>6</sup> The CUSO rule provides a list of preapproved activities and services related to the routine daily operations of credit unions.<sup>7</sup>

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<sup>1</sup> 12 U.S.C. 1751 *et seq.*

<sup>2</sup> 12 U.S.C. 1766(a).

<sup>3</sup> 12 U.S.C. 1789.

<sup>4</sup> 12 U.S.C. 1757.

<sup>5</sup> 12 CFR part 712. All sections of part 712 apply to FCUs. Sections 712.2(d)(2)(ii), 712.3(d), 712.4, and 712.11(b) and (c) apply to federally insured, state-chartered credit unions (FISCUs), as provided in § 741.222 of the chapter. FISCUs must follow the law in the state in which they are chartered with respect to the sections in part 712 that only apply to FCUs. Corporate credit union CUSOs are subject to part 704. Any amendments to part 704 would occur through a separate rulemaking and are not included in this proposed rule.

<sup>6</sup> *See* 12 CFR 712.1(d), 712.3(b), and 712.5.

<sup>7</sup> 12 CFR 712.5.

The list of preapproved activities and services in the CUSO rule has not been substantively revised since 2008.<sup>8</sup> The 2008 final rule added two new categories of permissible CUSO activities: (1) credit card loan origination and (2) payroll processing services. The 2008 final rule also added new examples of permissible CUSO activities and clarified that FCUs may invest in and loan to CUSOs that buy and sell participations in loans they are authorized to originate. In the 2008 final rule, commenters requested additional CUSO lending authority. Specifically, commenters requested the authority to make car loans, including direct lending and the purchase of retail installment sales contracts from vehicle dealerships, and to engage in payday lending. The NCUA, however, declined further expansions of CUSO lending authority at that time.<sup>9</sup>

## **II. Proposed Rule**

The Board proposes to amend the CUSO rule to permit CUSOs to originate any type of loan that an FCU may originate and grant the Board additional flexibility to approve permissible CUSO activities and services outside of notice and comment rulemaking.<sup>10</sup> Each proposed change is discussed in detail below.

### **Expansion of Permissible CUSO Lending Activity**

The Board has reconsidered its 2008 position on permitting CUSOs to engage in all types of lending. The Board now believes that permitting CUSOs to originate any type of loan that an

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<sup>8</sup> 73 FR 79307 (Dec. 29, 2008).

<sup>9</sup> The NCUA's rationale for not extending CUSO lending authority more broadly is discussed in detail in Section II, Proposed Rule.

<sup>10</sup> Originate means to fund or make loans. This is separate from the already recognized authority of CUSOs to engage in loan support services that include loan processing and servicing under § 712.5(j).

FCU may originate may better enable FCUs to compete effectively in today's marketplace and better serve their members.

As discussed above, the FCU Act permits an FCU to lend to or invest in a CUSO that provides services associated with the routine and daily operations of credit unions. The NCUA has interpreted this statutory authority broadly to permit an FCU to lend to and invest in a CUSO that does most of the same activities and services permissible for an FCU.<sup>11</sup> However, to date CUSOs have not been permitted to originate certain kinds of loans.<sup>12</sup>

The NCUA historically has been reluctant to grant CUSOs general lending authority for all loans for several reasons. First, the NCUA has been hesitant in granting CUSOs authority to provide consumer loans as it may be perceived as a dilution of the FCU common bond requirement.<sup>13</sup> Specifically, because CUSOs may serve people that are not members of an FCU, the NCUA has been concerned about FCUs benefiting from CUSO profits generated from non-members. Second, the NCUA has also expressed concern that if member loans were being made by CUSOs, the NCUA would have a duty to examine such loans and that would lead to stricter NCUA examination authority over CUSOs.<sup>14</sup> Finally, the NCUA has also limited CUSO lending authority due to concerns that permitting CUSOs to engage in a core credit union function could negatively affect affiliated credit union services.<sup>15</sup>

Due to these concerns, the NCUA has previously found compelling justification for expanding CUSO lending authority for only four types of loans: (1) business; (2) consumer mortgage; (3) student; and (4) credit cards.<sup>16</sup> In granting CUSOs these lending authorities, the NCUA has considered factors specific to each type of lending, such as whether these activities

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<sup>11</sup> 12 CFR 712.5.

<sup>12</sup> *See*, 62 FR 11779 (Mar. 13, 1997).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 68 FR 16450 (Apr. 4, 2003).

<sup>16</sup> *Id.* *See also*, 73 FR 79307 (Dec. 29, 2008).

require specialized staff or economies of scale, and, as discussed below, whether loan aggregation was prevalent in the marketplace for the particular type of lending.

For example, when the NCUA permitted CUSOs to engage in credit card origination, the agency expressed concern that the scale, expertise, and back office operational support required to be successful in the credit card business was causing many FCUs without such resources to sell their credit card portfolio to other financial institutions.<sup>17</sup> The NCUA has also permitted expanded CUSO lending when economies of scale, which an individual FCU may not have, made lending more economically viable.<sup>18</sup> When the NCUA granted CUSOs the ability to originate consumer mortgage loans, it stated that economies of scale are essential to provide mortgage loans in a cost effective and professional manner.<sup>19</sup> The Board has stated that enabling FCUs to realize the benefits of economies of scale offered by CUSOs may allow FCUs to offer services to their members that otherwise could not be offered. For example, in permitting CUSOs to engage in business loan origination, the NCUA noted that FCUs could afford their small business members access to loans that the FCU may otherwise not be able to offer.<sup>20</sup> In addition, the NCUA has also permitted CUSOs to engage in lending where loan aggregation for resale on a secondary market is customary such as consumer mortgage and student loan origination.<sup>21</sup> The Board has previously cited the strict rules in the secondary market as justification for expanding CUSO lending authority.<sup>22</sup>

In past rulemakings, the NCUA has also discussed why the agency declined to expand CUSO lending authority more broadly. The NCUA stated that a primary rationale for allowing CUSOs to engage in a particular kind of loan origination is that an FCU may not possess the level of expertise or resources required for a successful loan program, whereas the CUSO may.

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<sup>17</sup> 73 FR 79307 (Dec. 29, 2008). *See also*, 73 FR 23982 (May 1, 2008).

<sup>18</sup> 51 FR 10353 (Mar. 26, 1986).

<sup>19</sup> *Id.*

<sup>20</sup> 68 FR 56537 (Oct. 1, 2003).

<sup>21</sup> 63 FR 10743 (Mar. 5, 1998).

<sup>22</sup> *Id.*

With respect to vehicle loan origination, the NCUA stated that most FCUs are able to successfully originate vehicle loans and do not need the expertise of a CUSO.<sup>23</sup> Similarly, in declining to expand CUSO lending authority to general consumer loans, the NCUA described such loans as “relatively easy to offer and process” and did not believe such loans shared similar characteristics with other more sophisticated lending categories permissible for CUSOs.<sup>24</sup>

After reexamining CUSO authority, the Board is now considering whether it is appropriate to expand CUSO lending authority. It is currently permissible for CUSOs to engage in several types of lending, including consumer mortgage, business, student, and credit card. These categories of permissible CUSO lending represent several core areas of FCU business. The proposed rule would permit a reasonable expansion of CUSO lending authorities, and the Board expects the proposed rule would principally result in CUSOs originating automobile loans and small dollar consumer loans.

One reason the NCUA has historically been hesitant to expand CUSO lending is the concern that if CUSOs engaged in a core credit union function, it could negatively affect affiliated credit union services. As discussed above, CUSOs, however, have been originating loans that are also core FCU lending products for over 30 years without negatively impacting FCUs. Given this extensive history, the Board does not believe the expansion of CUSO lending authority in the proposed rule would be disruptive to FCUs.

The Board also believes that recent technological developments have further increased the benefits of allowing CUSOs to engage in expanded loan originations. As noted by the U.S. Treasury Department, consumer expectations for financial services are expanding with unprecedented speed. The market to originate loans has grown increasingly complex as technological changes, including digitization, help drive changes to the established lending

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<sup>23</sup> 73 FR 79307 (Dec. 29, 2008).

<sup>24</sup> 63 FR 10743 (Mar. 5, 1998).

landscape.<sup>25</sup> Digital lending is increasingly common throughout the household and small business lending market as consumers derive credit from a highly diverse mix of financial institutions and nonbank firms. For example, nonbank firms constitute a significant share of the consumer lending market and are increasingly targeting lending products traditionally provided by credit unions, including auto finance, small-dollar consumer lending, and unsecured consumer credit.<sup>26</sup> Nonbank companies now account for a significant percent of the outstanding non-mortgage consumer loan market.<sup>27</sup>

The U.S. Treasury Department noted that “[n]onbank digital lenders have gained outsized attention in recent years, driven in part by their rapid rate of growth and employment of new technology-intensive approaches to lending.”<sup>28</sup> These firms, particularly lenders active in consumer and small business lending, have digitized the customer acquisition, origination, underwriting, and servicing processes. Moreover, these lenders are creating customer experiences that may be more timely and seamless than the techniques employed by some credit unions, and these changes also appear to reduce expenses, which lowers the cost of credit as well as providing greater access to credit. In contrast, many credit unions have yet to digitize their lending at a similar level. The U.S. Treasury Department stated that, “[k]ey elements of digitization employed by new digital lenders are rapidly expanding across the wider banking and financial institution landscape and are expected to permeate all major lending segments over time.”<sup>29</sup>

To compete effectively in a market with a rising prevalence of these technology-based lenders, FCUs may need to rely increasingly on pooling their resources to fund CUSOs and to

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<sup>25</sup> See U.S. Treasury, “A Financial System That Creates Economic Opportunity: Nonbank Financials, Fintech, and Innovation,” July 2018. Available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

<sup>26</sup> *Id.* at 87.

<sup>27</sup> *Id.* at 84.

<sup>28</sup> *Id.* at 85.

<sup>29</sup> *Id.*



build the necessary infrastructure. The costs for research and development, acquisition, implementation, and specialized staff capable of managing these new technologies may be prohibitive for all but a very few of the largest FCUs. CUSOs may provide the means for FCUs to address these challenges and may enable FCUs to collaboratively develop technologies that better serve their members.

The Board recognizes that CUSOs provide significant value to the credit union industry by facilitating cooperation among credit unions. With CUSOs' collaborative business model, CUSOs are able to foster shared innovation among credit unions to achieve economies of scale, develop expertise, and better serve their members. These attributes allow CUSOs to offer financial services to credit union members more efficiently than an individual credit union may otherwise be able to offer, particularly for small credit unions.<sup>30</sup> The cooperation and transfer of knowledge among credit unions through CUSOs can have long-term positive implications for the safety and soundness of the credit union system.

Accordingly, 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. Therefore, CUSOs could originate types of loans previously prohibited by the CUSO rule, including general consumer loans, direct auto loans, and unsecured loans and lines of credit. CUSOs could also purchase vehicle-secured retail installment sales contracts (RICs) from vehicle dealers. In proposing this change, the Board acknowledges and recognizes the importance of existing relationships that FCUs have with local vehicle dealers in connection with originating vehicle loans. The Board intends for this proposed rule to protect and maintain those relationships.

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<sup>30</sup> 47 FR 30462 (July 14, 1982). One of the original purposes of CUSOs was to permit small credit unions to join together to perform functions and engage in activities at a lesser cost than could be accomplished by an individual credit union.

Under the proposed rule, CUSO originated loans would not be subject to the same restrictions as loans originated by FCUs. For example, part 701 of the NCUA's regulations imposes conditions on FCU lending relating to loan terms such as interest rate, maturity, and prepayment.<sup>31</sup> These restrictions would not apply to CUSO-originated loans because CUSOs, even wholly owned CUSOs, are separate entities from FCUs and are not subject to direct NCUA supervision. However, an FCU may not purchase a loan from a CUSO unless the loan meets the requirements of the NCUA's eligible obligations rule.<sup>32</sup> Similarly, an FCU may not purchase a loan participation from a CUSO unless it complies with the NCUA's loan participations rule.<sup>33</sup>

### ***Loan Participations***

In addition to specifically permitting CUSOs to engage in consumer mortgage, business, and student loan origination, the current CUSO rule also permits CUSOs to buy and sell participation interests in such loans. The inclusion of this authority to buy and sell participation interests in such loans stems from the FCU Act and the NCUA's loan participation rule, which classifies a CUSO as a "credit union organization" authorized to engage in the purchase and sale of loan participations.<sup>34</sup> The NCUA's loan participation rule, however, does not permit the sale to FCUs of participation interests in open-end, revolving credit.<sup>35</sup> Therefore, the current CUSO rule only permits CUSOs to originate credit card loans, but not the authority to buy and sell participation interests in credit card loans. To remain consistent with the NCUA's loan participation rule, this proposed rule would grant CUSOs the authority to only purchase and sell participation interests that are permissible for FCUs to purchase and sell.

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<sup>31</sup> 12 CFR part 701.

<sup>32</sup> See, 12 CFR 701.23(b).

<sup>33</sup> 12 CFR 701.22.

<sup>34</sup> 12 U.S.C. 1757(5)(E); 12 CFR 701.22(a).

<sup>35</sup> 73 FR 79307 (Dec. 29, 2008).

## ***CUSO Registry***

Under the current CUSO rule, a FICU must obtain a written agreement from a CUSO the FCU loans to or invests in that the CUSO will annually submit to the NCUA a report containing basic registration information for inclusion in the NCUA's CUSO registry (CUSO Registry).<sup>36</sup> CUSOs that are engaged in complex or high-risk activities have additional obligations with respect to the CUSO Registry.<sup>37</sup> Under the current CUSO rule, complex or high-risk activities are defined to include credit and lending, including business loan origination, consumer mortgage loan origination, loan support services, student loan origination, and credit card loan origination.<sup>38</sup> For consistency, the proposed rule would remove the specific subcategories of lending and instead refer to all loan originations as complex or high risk. Lending activities are considered complex or high risk because they involve credit unions' core business function, tend to affect a large number of credit unions, and present a high degree of operational and financial risk.<sup>39</sup> Specifically, FICUs making loans to and investments in CUSOs engaged in credit and lending activities may be exposed to significant levels of credit, strategic, or reputation risks.<sup>40</sup>

## **Expansion of Permissible CUSO Activities to Other Activities as Approved by the Board in Writing**

Currently, the list of permissible CUSO activities in § 712.5 includes many of the core services and activities associated with the daily and routine operations of credit unions. The list,

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<sup>36</sup> 12 CFR 712.3(d).

<sup>37</sup> *Id.* Complex or high-risk CUSOs must agree to include in their report: (1) a list of services provided to certain credit unions, and (2) the investment amount, loan amount, or level of activity of certain credit unions. Complex or high-risk CUSOs must also agree to provide the CUSO's most recent year-end audited financial statements to the NCUA. CUSOs engaged in credit and lending services are also required to report the total dollar amount of loans outstanding, the total number of loans outstanding, the total dollar amount of loans granted year-to-date, and the total number of loans granted year-to-date.

<sup>38</sup> 12 CFR 712.3(d)(5)(i).

<sup>39</sup> 78 FR 72537 (Dec. 3, 2013).

<sup>40</sup> *Id.*

however, does not provide the Board flexibility to consider additional activities and services without engaging in notice and comment rulemaking. In contrast, part 704 permits corporate CUSOs to engage in any category of activity as approved in writing by the NCUA and published on the NCUA's website.<sup>41</sup> Amending part 712 to be similar to part 704 has the potential to reduce regulatory burden by allowing the rule to expand as technology shapes the routine and daily operations of credit unions. Accordingly, under the proposed rule, the list of permissible activities in § 712.5 would include a catchall category for other activities as approved in writing by the NCUA and published on the NCUA's website. The proposed rule would also provide that once the NCUA has approved an activity and published that activity on its website, the NCUA would not remove that particular activity from the approved list, or make substantial changes to the content or description of that approved activity, except through formal rulemaking procedures.

### **III. Request for Comment on the Proposed Rule**

The above proposed changes are consistent with the Board's ongoing efforts to reduce regulatory burden while assuring that FCUs operate in a safe and sound manner. The Board welcomes comment on all aspects of the proposal<sup>42</sup>, including, but not limited to, the following questions:

- (1) Is the term "any type of" loan sufficiently clear such that FCUs would be able to comply with the proposed rule? Are there any types of loans that FCUs cannot originate that CUSOs currently do originate?

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<sup>41</sup> 12 CFR 704.11(d)(3)(ii). Approved activities are listed on the NCUA's website at: <https://www.ncua.gov/regulation-supervision/corporate-credit-unions/corporate-cuso-activities/approved-corporate-cuso-activities>.

<sup>42</sup> Many FCUs have considerable experience with CUSO lending relationships, therefore the Board is not providing the usual 60-day comment period for this proposal which would relieve a regulatory prohibition on certain forms of CUSO lending. See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

- (2) Please discuss, and provide supporting information, on the costs of the development or acquisition, implementation, and maintenance of technology-based lending services.
- (3) Would the proposed rule enable FCUs to offer additional technology-based lending services that FCUs may be otherwise unable to offer their members?
- (4) The Board is also considering whether permitting CUSOs to originate additional types of loans would facilitate FCUs' access to securitization markets. It may be cost prohibitive for FCUs to securitize loans because securitizations are most cost effective with a large volume of loans. FCUs may also have difficulty aggregating loans to complete a securitization due to restrictions on purchasing loans and market concerns relating to varying underwriting standards. Therefore, the Board solicits comment on whether a CUSO could serve as an aggregator of loans to allow FCUs better access to securitization markets.
- (5) Does the proposed rule expose FCUs to unnecessary safety and soundness risks? If so, are there steps the Board should consider to mitigate such risks?
  - a. For example, should the NCUA gather additional data about CUSO lending activities? If so, what data?
  - b. Should the NCUA consider additional constraints on an FCU's ability to purchase and hold loans originated by a CUSO?
  - c. Should the NCUA consider risk retention requirements for CUSO lending activities? The Board notes that FCUs that sell loan participations must maintain 10 percent of the loan.
- (6) Would permitting CUSOs to engage in any type of lending as FCUs lead to additional reputational risk for FCUs? Loans from affiliated CUSOs may not comply with the same consumer protection limits as FCU loans, for example FCUs are subject to usury restrictions and a regulatory structure for issuing payday alternative loans (referred to as PALs).

- (7) Does expanding CUSO lending authority to include additional core FCU lending categories create unnecessary competition for FCUs, particularly small FCUs?
- (8) Instead of adopting a provision similar to the corporate CUSO provision that allows the NCUA to add additional categories of permissible activities for all CUSOs on its website, should the Board require individual FCUs to petition the Board for permission to lend to or invest in CUSOs that do additional activities or services not already listed in §712.5?
- (9) Should the Board publish on its website any conditions imposed on activities permissible through the approval process?
- (10) Should the Board consider additional changes to the permissible activities list for CUSOs?

#### **IV. Request for Comment on the Authority to Invest**

An FCU's authority to lend to and invest in a credit union organization is provided for in two separate provisions of the FCU Act. The FCU Act authorizes an FCU to lend to credit union organizations provided the extensions of credit do not exceed one percent of the FCU's paid-in and unimpaired capital and surplus.<sup>43</sup> A credit union organization is defined as any organization, as determined by the Board, which is established primarily to serve the needs of its member credit unions and whose business relates to the daily operations of the credit unions they serve. In contrast, the FCU Act authorizes FCUs to invest up to one percent of its total paid in and unimpaired capital and surplus, with the approval of the Board, in the shares, stocks, or obligations of any other organization providing services which are associated with the routine operations of credit unions.<sup>44</sup>

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<sup>43</sup> 12 U.S.C. 1757(5)(D).

<sup>44</sup> 12 U.S.C. 1757(7)(I). Provided, however, that such authority does not include the power to acquire control directly or indirectly, of another financial institution, nor invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility or any other similar organization, corporation, or association, except as otherwise expressly provided by the FCU Act.

There are significant differences between these lending and investment authorities in the FCU Act. The lending authority refers to “credit union organizations” and limits such entities to those that primarily serve the needs of their member credit unions. In contrast, the investment authority does not use the term “credit union organization”, but instead generally refers to an “organization”. In addition, the investment authority is not limited to organizations that primarily serve the needs of their member credit unions.

The NCUA has historically interpreted the lending and investment authority under the FCU Act as referring to the same types of organizations.<sup>45</sup> The NCUA’s first CUSO rule explicitly stated that “an organization described at Section 107(7)(I) of the [FCU Act], and a ‘credit union organization,’ as described at Section 107(5)(D) of the [FCU Act], are identical entities.”<sup>46</sup> The NCUA explained its interpretation in the preamble to its 1977 final rule after several commenters questioned the definitional section of the proposed rule that defined “credit union service corporation” to be both the entity described at Section 107(7)(1) and Section 107(5)(D). In the preamble, the NCUA discussed that the thrust of the comments was that the definition was unduly restrictive and was not legally mandated. In response, the NCUA stated that “in light of the mandate in the legislative history by Congressman St Germain that [investment] authority is to be ‘exercised on a carefully controlled basis by NCUA,’ the Administration feels justified in tying the two definitions together.”<sup>47</sup> The NCUA also stated that it found no substantive difference in an organization “which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve” and an organization “providing services which are associated with the routine operations of credit unions.”<sup>48</sup> The NCUA also stated that the legislative history indicated

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<sup>45</sup> 44 FR 12401 (Mar. 7, 1979).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

that the House committee stands ready to review investment interpretation matters upon request from NCUA “[s]hould a case be made for a more liberal interpretation of the provisions.”<sup>49</sup>

The NCUA also noted that the FCU Act specifically “intertwines the lending and investment powers. For instance, section 107(7)(A) allows a Federal credit union to “invest” its funds in “loans exclusively to members.”<sup>50</sup> Due to the preceding analysis, the NCUA believed that its interpretation of sections 107(5)(D) and 107(7)(I) were justified. The NCUA stated that “[w]hile it may restrict the permissible activities for Federal credit unions in this field, legislative history mandates a rather conservative approach.”<sup>51</sup>

The NCUA is now considering whether to reconsider this longstanding interpretation. Specifically, the NCUA is considering adopting separate definitions for the types of organizations that an FCU may invest in or lend to, which potentially would expand the types of organizations eligible for FCU investment. For example, the NCUA could permit FCUs to invest in organizations that do not primarily serve credit unions or credit union members, but still provide services that relate to the routine operations of FCUs. Under such an interpretation of the FCU Act, FCUs could potentially invest in companies that broadly serve the financial service community, but do not primarily serve credit unions and their members. For instance, an FCU could form an organization with community banks to create a lending platform that could be used by both the FCU’s members and the community banks’ customers.

The Board notes that the statutory limitations on the amount of investments would remain unchanged. An FCU is only authorized by the FCU Act to invest up to one percent of its total paid in and unimpaired capital and surplus in organizations. An FCU that has already invested one percent of its total paid in and unimpaired capital and

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



surplus in CUSOs would not be authorized to invest any additional money. Instead, such an FCU would have to reallocate its investments if it sought to make any investments that were previously prohibited.

The Board invites comments on whether it should reconsider its longstanding interpretation of the lending and investment authorities under the FCU Act. In addition, the Board invites comments on the following specific questions:

1. Do specific provisions and the legislative history of the FCU Act suggest that the NCUA could take a less conservative approach to interpreting the lending and investment authorities?
2. The investment authority under the FCU Act states that Board approval is required before an FCU can make an investment in an organization. Currently, the regulation provides for this approval through the pre-approved permissible activities list in § 712.5. If the Board were to consider permitting investments that are not included in § 712.5, should approval be required for each investment to determine if the activities of the organization relate to the routine operations of FCUs? If the Board requires separate notice requirements, should current investments be grandfathered?
3. Please discuss appropriate safety and soundness limitations that the Board should consider if it reinterprets its interpretation. Should the Board impose a requirement that the FCU's ownership interest in the organization not be speculative? For example, should an FCU be permitted to have an investment in an organization that is still developing a product? If the Board reinterprets its interpretation, should the Board impose a separate capital treatment for new investments that are currently prohibited?

## V. Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million).<sup>52</sup>

A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule.

This proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule imposes no requirement or costs on small entities and only expands the list of permissible activities for CUSOs. The proposed rule would expand the list of activities that are considered complex or high risk for purposes of the CUSO Registry, however, the Board does not expect the additional reporting requirements to entail substantial regulatory burden. Accordingly, the NCUA certifies that the proposed rule would not have a significant economic impact on a substantial number of small FICUs.

### *Paperwork Reduction Act*

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<sup>52</sup> See 80 FR 57512 (Sept. 24, 2015).

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection.

The NCUA is seeking comments on proposed revisions to the information collection requirements contained 12 CFR part 712, which has been submitted to the Office of Management and Budget (OMB) for review and approval under OMB control number 3133-0149. 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. 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 a 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.

*OMB Control Number:* 3133-0149.

*Title of information collection:* Credit Union Service Organizations (CUSOs), 12 CFR Part 712.

*Estimated number of respondents:* 1,843.

*Estimated number of responses per respondent:* 1.

*Estimated total annual responses:* 1,843.

*Estimated burden per response:* 1.82.

*Estimated total annual burden:* 3,356.

The NCUA invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public records. Due to the limited in-house staff, email comments are preferred. Comments regarding the information collection requirements of this rule should be (1) mailed to: [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov) with "OMB No. 3133-0149" in the subject line; faxed to (703) 837-2406, or mailed to Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, VA 22314, and to the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Select "Currently under 30-day Review – Open for Public Comments" or by using the search function.

### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the Executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the National Government and

the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the Executive order.

*Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).<sup>53</sup>

**List of Subjects in 12 CFR Part 712**

Administrative practices and procedure, Credit, Credit unions, Insurance, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 14, 2021.

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Melane Conyers-Ausbrooks,  
Secretary of the Board.

For the reasons discussed above, the Board proposes to amend 12 CFR part 712 as follows:

**PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)**

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<sup>53</sup> Pub. L. 105-277, 112 Stat. 2681 (1998).

1. The authority citation for part 712 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

2. Amend §712.3 by revising paragraphs (d)(5)(i), (d)(5)(ii) introductory text, and (d)(5)(iii) to read as follows:

**§ 712.3 What are the characteristics of and what requirements apply to CUSOs?**

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(i) Credit and lending:

(A) Loan support services, including servicing; and

(B) Loan origination, including originating, purchasing, selling, and holding any loan as described in § 712.5(q).

(ii) Information technology:

\* \* \* \* \*

(iii) Custody, safekeeping, and investment management services for credit unions.

\* \* \* \* \*

3. Amend §712.5 as follows:

a. Revise paragraph (a) introductory text;

b. In paragraph (a)(4), add a semicolon at the end of the paragraph;

c. Revise paragraph (b) introductory text;

d. In paragraph (b)(11), remove the period and add a semicolon in its place;

e. Remove paragraphs (c), (d), (n), and (s);

f. Redesignate paragraphs (e) through (t) as paragraphs (c) through (p);

g. Revise newly redesignated paragraphs (c) introductory text, (d) introductory text, (e) introductory text, (f) introductory text, (g) introductory text, and (h) introductory text;

h. In newly redesignated paragraph (h)(3), remove the word “and”;

i. Revise newly redesignated paragraphs (i) introductory text, (j), (k), (l), and (m) introductory text;

j. In newly redesignated paragraph (m)(3), remove the period and add a semicolon in its place;

k. Revise newly redesignated paragraph (n);

l. In newly redesignated paragraph (o), remove “*CUSO investments in non-CUSO service providers:*” and remove the last period and add a semicolon in its place;

m. In newly redesignated paragraph (p), remove the period and add a semicolon in its place; and

n. Add new paragraphs (q) and (r).

The additions read as follows:

**§712.5 What activities and services are preapproved for CUSOs?**

\* \* \* \* \*

(a) Checking and currency services:

\* \* \* \* \*

(b) Clerical, professional and management services:

\* \* \* \* \*

(c) Electronic transaction services:

\* \* \* \* \*

(d) Financial counseling services:

\* \* \* \* \*

(e) Fixed asset services:

\* \* \* \* \*

(f) Insurance brokerage or agency:

\* \* \* \* \*

(g) Leasing:

\* \* \* \* \*

(h) Loan support services:

\* \* \* \* \*

(i) Record retention, security and disaster recovery services:

\* \* \* \* \*

(j) Securities brokerage services;

(k) Shared credit union branch (service center) operations;

(l) Travel agency services;

(m) Trust and trust-related services:

\* \* \* \* \*

(n) Real estate brokerage services;

\* \* \* \* \*

(q) Loan origination, originating, purchasing, selling, and holding any type of loan permissible for Federal credit unions to originate, purchase, sell, and hold, including the authority to purchase and sell participation interests that are permissible for Federal credit unions to purchase and sell; and

(r) Once the NCUA has approved an activity and published that activity on its website, the NCUA will not remove that particular activity from the approved list, or make substantial changes to the content or description of that approved activity, except through formal rulemaking procedures.