

1 **7535-01-U**

2 **NATIONAL CREDIT UNION ADMINISTRATION**

3 **12 CFR Parts 700, 701, 702, 708a, 708b, 750, and 790**

4 **[NCUA-2022-0008]**

5 **RIN: 3133-AF41**

6 **Asset Threshold for Determining the Appropriate Supervisory Office**

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

8 **ACTION:** Notice of proposed rulemaking.

9 **SUMMARY:** The NCUA Board (Board) is proposing to amend its regulations to revise the \$10
10 billion asset threshold used for assigning supervision of consumer federally insured credit unions
11 (FICUs) to the Office of National Examinations and Supervision (ONES). The proposed rule
12 would only apply to FICUs whose assets are \$10 billion or more (covered credit unions). The
13 proposed rule would provide that covered credit unions with less than \$15 billion in total assets
14 (tier I covered credit unions) not currently supervised by ONES will be supervised by the
15 appropriate NCUA Regional Office. Tier I covered credit unions currently supervised by ONES
16 and covered credit unions with \$15 billion and more in total assets (tier II and tier III covered

17 credit unions) would continue to be supervised by ONES. The proposed rule would not alter any
18 regulatory requirements for covered credit unions.

19 **DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF
20 PUBLICATION IN THE FEDERAL REGISTER].

21 **ADDRESSES:** You may submit written comments, identified by RIN 3133-AF41, by any of the
22 following methods (**Please send comments by one method only**):

23 • Federal eRulemaking Portal: <https://www.regulations.gov>. The docket number
24 for this direct final rule is NCUA-2022-0008. Follow the instructions for
25 submitting comments.

26 • Fax: (703) 518-6319. Include “[Your Name]—Comments on Asset Threshold
27 for Determining the Appropriate Supervisory Office” in the transmittal.

28 • Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National
29 Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-
30 3428.

31 • Hand Delivery/Courier: Same as mail address.

32 **Public inspection:** You may view all public comments on the Federal eRulemaking Portal at
33 <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons.

34 The NCUA will not edit or remove any identifying or contact information from the public
35 comments submitted. Due to social distancing measures in effect, the usual opportunity to

36 inspect paper copies of comments in the NCUA’s law library is not currently available. After
37 social distancing measures are relaxed, visitors may make an appointment to review paper copies
38 by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

39 **FOR FURTHER INFORMATION, CONTACT:** Yvonne Applonie, Director of Supervision,
40 Office of National Examinations and Supervision; or Rachel Ackmann, Senior Staff Attorney,
41 Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Yvonne Applonie
42 can also be reached at (703) 518-6595, and Rachel Ackmann can be reached at (703) 548-2601.

43 **SUPPLEMENTARY INFORMATION**

44 **I. Background**

45 *Part 702 Capital Planning and Stress Testing Requirements*

46 Part 702, subpart C, of the NCUA’s regulations (part 702) implements the NCUA’s
47 capital planning and stress testing requirements for consumer FICUs.¹ As discussed above, a
48 consumer FICU is defined as a covered credit union, and subject to capital planning and stress
49 testing requirements, if it has \$10 billion or more in total assets.² Covered credit unions are then
50 further divided into three tiers, and varying levels of regulatory requirements are imposed based
51 on those asset tiers. For example, tier I credit unions are not subject to stress testing

¹ 12 CFR 702.301. The term consumer FICU is being used instead of the term natural person FICU. This terminology is being used for clarity, however, the term natural person FICU will continued to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA’s regulations.

² 12 CFR 702.302.

52 requirements, however tier II and tier III credit unions are subject to stress testing requirements.

53 Under part 702:

54 • A tier I credit union is a covered credit union that has less than \$15 billion in total
55 assets;

56 • A tier II credit union is a covered credit union that has \$15 billion or more in total
57 assets, but less than \$20 billion in total assets, or is otherwise designated as a tier II credit union
58 by the NCUA; and

59 • A tier III credit union is a covered credit union that has \$20 billion or more in total
60 assets, or is otherwise designated as a tier III credit union by the NCUA.

61 *Agency Structure*

62 In 2012, the NCUA established a new office, the Office of National Examinations and
63 Supervision (ONES), and reorganized its central and field office structure. As part of its internal
64 restructuring, the NCUA transferred the responsibility for supervising covered credit unions to
65 ONES from the Regional Offices.³ Initially, covered credit unions were transferred to ONES on
66 January 1, 2014. Annually thereafter FICUs newly reporting assets of \$10 billion or more on
67 March 31 of a given calendar year are reassigned to ONES on the first day of the following
68 calendar year.

69

70 *COVID-19 Pandemic*

³ In general, Regional Office means the office of NCUA located in the designated geographical areas in which the office of the FICU is located.

71 Many FICUs have experienced significant balance sheet growth as a result of the
72 COVID-19 Pandemic and the corresponding policy response.⁴ For example, FICUs with just
73 below \$10 billion in total assets incurred balance sheet growth of about 14 percent on average
74 during the COVID-19 Pandemic, and in one case more than 34 percent. In contrast, FICUs with
75 assets just below the \$10 billion threshold had an average asset growth of only 9 percent in 2019.

76 In March 2021, the Board provided regulatory relief to FICUs meeting certain asset
77 thresholds through an interim final rule (Asset Threshold IFR).⁵ The Asset Threshold IFR
78 permitted FICUs to continue to use financial data as of March 31, 2020, to determine the
79 applicability of certain regulations for calendar years 2021 and 2022, instead of assets reported
80 as of March 31, 2021. The Asset Threshold IFR also made a conforming amendment to the
81 measurement date for determining ONES supervision. Under the Asset Threshold IFR, the
82 NCUA used financial data as of March 31, 2020, instead of March 31, 2021, to determine the
83 appropriate supervisory office of FICUs for calendar year 2022. As a result, no FICU was
84 transitioned to ONES supervision for calendar year 2022, even if the FICU had \$10 billion or
85 more in total assets as of March 31, 2021.

86 The next effective measurement period to determine whether a FICU is subject to capital
87 planning and stress testing requirements and ONES supervision is March 31, 2022. Unless the
88 threshold is changed, the Board anticipates at least nine new FICUs will meet or exceed the \$10

⁴ See generally, 86 FR 15397 (Mar. 23, 2021).

⁵ *Id.*

89 billion threshold as of March 31, 2022, and would become subject to ONES supervision
90 beginning January 1, 2023.

91 **II. The Proposed Rule**

92 The Board has reconsidered its policy of assigning all covered credit unions to ONES
93 supervision. Under the proposed rule, tier II and tier III covered credit unions would remain
94 subject to ONES supervision. The Board, however, would not assign tier I covered credit unions
95 to ONES supervision.⁶ Tier I covered credit unions would generally remain subject to Regional
96 Office supervision until they become tier II covered credit unions.⁷

97 Tier I covered credit unions that are currently supervised by ONES, however, would be
98 grandfathered under the proposed rule and remain subject to ONES supervision.⁸ The proposed
99 rule would grandfather tier I covered credit unions currently subject to ONES supervision to
100 provide continuity for institutions that are already accustomed to ONES supervision. The Board
101 believes that most grandfathered tier I covered credit unions would likely become tier II credit
102 unions, and subject to ONES supervision, due to organic growth within a short timeframe.
103 Given these covered credit unions would once again be subject to ONES supervision as tier II

⁶ As discussed in the *Reservation of Authority* section, the Board has the option of using its existing reservation of authority in part 702 to transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III covered credit union.

⁷ The proposed rule would also revise the authority citation in part 702 to cite 12 U.S.C. 1784(a) and 1786(e), which were previously added but inadvertently removed from the Code of Federal Regulations.

⁸ Accordingly, if a FICU had \$10 billion or more in total assets on or before March 31, 2020, then it is currently subject to ONES supervision. If a FICU has crossed the \$10 billion threshold since March 31, 2020, then it is not currently subject to ONES supervision due to the Asset Threshold IFR and, under this proposed rule, would not be subject to ONES supervision until it is a tier II covered credit union.

104 credit unions within a short timeframe, the Board believes transitioning the grandfathered credit
105 unions to Regional Office supervision is unnecessary. The Board, however, invites comments on
106 whether grandfathered credit unions should be subject to Regional Office supervision until they
107 become tier II covered credit unions.

108 The Board has reconsidered its position that all covered credit unions should transition to
109 ONES for two reasons. First, the agency can more effectively manage its resources by
110 continuing to supervise most tier I covered credit unions through the Regional Offices. Without
111 delaying the transition of tier I covered credit unions to ONES supervision, the number of
112 covered credit unions supervised by ONES would approximately double in calendar year 2023,
113 which would require a substantial reallocation of agency resources.

114 Second, the Board has reconsidered the level of risk to the National Credit Union Share
115 Insurance Fund (NCUSIF) posed by tier I covered credit unions. Applying a historical loss
116 factor of 30 percent on a FICU failure to the NCUSIF's equity suggests that a \$15 billion credit
117 union presents the same relative risk at the end of 2020 as an approximately \$10 billion FICU
118 did at the beginning of 2013 when covered credit unions were first transitioned to ONES
119 supervision.

120 The Board also does not believe that altering tier I covered credit unions' transition to
121 ONES supervision results in undue risk to the NCUSIF. Regulatory requirements for covered
122 credit unions are not affected by the proposed rule. For example, capital planning and stress
123 testing requirements are initially triggered at \$10 billion in assets.⁹ These requirements will

⁹ 12 CFR 702.302.

124 remain in effect for all covered credit unions regardless of a covered credit union’s supervisory
125 office.¹⁰

126 Additionally, the NCUA has implemented various supervisory tools which enhance
127 offsite monitoring of covered credit union risk. Under the proposed rule, these tools would
128 remain in use for the supervision of covered tier I credit unions regardless of their supervisory
129 office. Specifically, all covered credit unions would continue to be required to submit data to the
130 NCUA under the capital planning and stress test rule.¹¹ Data collection is part of the NCUA’s
131 strategic initiative to enhance supervision and is used to inform qualitative and quantitative
132 assessments and ratings of covered credit unions. Further, this data provides insight for offsite
133 supervision and enable timely risk identification and mitigation. The NCUA shares the results of
134 this information collection and collaborates with applicable state supervisory authorities on joint
135 supervisory efforts.

136 Finally, as discussed above, ONES was formed, in part, to provide enhanced supervision
137 of FICUs systemically important to the NCUSIF. And while regulatory requirements remain the
138 same for tier I covered credit unions under the proposed rule, certain aspects of ONES enhanced
139 supervision may vary for covered credit unions supervised by Regional Offices. The Board
140 believes this difference, along with other more technical procedures unique to ONES
141 supervision, is not necessary to adequately supervise tier I covered credit unions given the
142 mitigating factors discussed above.

¹⁰ Tier I covered credit unions’ capital plans would be subject to Regional Office review (provided the tier I covered credit union is not grandfathered under ONES supervision).

¹¹ 12 CFR 702.306(d).

143 Therefore, the Board does not believe that altering tier I covered credit unions' transition
144 to ONES supervision results in undue risk to the NCUSIF.

145

146 *Reservation of Authority*

147

148 The proposed change to the threshold for FICUs being supervised by ONES would
149 generally apply to new tier I covered credit unions. However, there may be rare instances that
150 warrant a FICU with assets between \$10 billion and \$15 billion to be assigned to ONES. To
151 address such situations, the Board may use existing reservations of authority in part 702 to
152 transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III
153 covered credit union.¹² When making any such determination, the Board would consider all
154 relevant factors affecting the covered credit union's safety and soundness, such as its activities,
155 business model, risk-management practices, and the types of assets held. Any exercise of
156 authority under this section by the NCUA would be in writing and would consider the financial
157 condition, size, complexity, risk profile, scope of operations, and level of net worth of the
158 covered credit union, in addition to any other relevant factors. The Board solicits comments on
159 its proposed use of the reservation of authority to transfer a tier I covered credit to ONES
160 supervision.

¹² 12 CFR 702.301.

161 **III. Legal Authority**

162 The Board is issuing this proposed rule pursuant to its authority under the Federal Credit
163 Union Act (FCU Act).¹³ Under the FCU Act, the NCUA is the chartering and supervisory
164 authority for federal credit unions (FCUs) and the federal supervisory authority for FICUs. The
165 FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and
166 FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the
167 Board to prescribe regulations for the administration of the FCU Act.¹⁴ Section 209 of the FCU
168 Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or
169 appropriate to carry out its role as share insurer for all FICUs.¹⁵ Accordingly, the FCU Act
170 grants the Board broad rulemaking authority to ensure that the credit union industry and the
171 NCUSIF remain safe and sound.

172 **IV. Request for Comments**

173 The Board seeks comment on all aspects of this proposed rule. In particular, the Board
174 seeks comment on the advantages and disadvantages of adjusting the threshold for determining
175 which credit unions are supervised by ONES. Should the Board consider other amendments to
176 its supervisory process for covered credit unions? Is the definition of ONES credit union

¹³ 12 U.S.C. 1751 *et seq.*

¹⁴ 12 U.S.C. 1766(a).

¹⁵ 12 U.S.C. 1789.

177 sufficiently clear? Should the definition state explicitly that it does not include tier I covered
178 credit unions that are not grandfathered?

179 **V. Regulatory Procedures**

180 *Paperwork Reduction Act*

181 The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency
182 by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44
183 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a
184 reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information
185 collection. The proposed rule will not affect any existing or impose any new information
186 collection requirements.

187 The information collection requirement under OMB No. 3133-0199, Capital Planning
188 and Stress Testing, that tier I covered credit unions retain a record of their annual capital plan
189 will remain in effect regardless of a covered credit union's supervisory office.

190 *Regulatory Flexibility Act*

191 The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a
192 proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the
193 agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and
194 publish such analysis in the *Federal Register*. Specifically, the RFA normally requires agencies

195 to describe the impact of a rulemaking on small entities by providing a regulatory impact
196 analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100
197 million to be small entities.¹⁶ A regulatory flexibility analysis is not required, however, if the
198 agency certifies that the rule will not have a significant economic impact on a substantial number
199 of small entities and publishes its certification and a short, explanatory statement in the *Federal*
200 *Register* together with the rule. The proposed rule affects the supervisory office assigned to
201 oversee large FICUs with \$10 billion or more in total assets. Therefore, the Board certifies that
202 it would not have a significant economic impact on a substantial number of small credit unions.

203 *Executive Order 13132*

204 Executive Order 13132 encourages independent regulatory agencies to consider the
205 impact of their actions on state and local interests. The NCUA, an independent regulatory
206 agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere
207 to fundamental federalism principles.

208 This proposed rule would not have substantial direct effects on the states, on the
209 relationship between the National Government and the states, or on the distribution of power and
210 responsibilities among the various levels of government. The NCUA has therefore determined
211 that this rule does not constitute a policy that has federalism implications for purposes of the
212 executive order.

¹⁶ NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

214 The NCUA has determined that this proposed rule would not affect family well-being
215 within the meaning of section 654 of the Treasury and General Government Appropriations Act,
216 1999.¹⁷

217 **List of Subjects in 12 CFR Part 700, 701, 702, 708a, 708b, 750, and 790**

218 **12 CFR Part 700**

219 *Credit unions.*

220

221 **12 CFR Part 701**

222 *Credit, Credit unions, Reporting and recordkeeping requirements.*

223

224 **12 CFR Part 702**

225 *Credit unions, Reporting and recordkeeping requirements.*

226

227 **12 CFR Part 708a**

228 *Credit unions, Reporting and recordkeeping requirements.*

229

230 **12 CFR Part 708b**

231 *Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.*

232

233 **12 CFR Part 750**

234 *Credit unions, Golden parachute payments, Indemnity payments.*

235

236 **12 CFR Part 790**

237 *Organization and functions (Government agencies).*

238 By the NCUA Board on February 17, 2022.

239

240

Melane Conyers-Ausbrooks

¹⁷ Pub. L. 105–277, 112 Stat. 2681 (1998).

241
242 For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 700, 701,
243 702, 708a, 708b, 750, and 790 as follows:

244 **PART 700—DEFINITIONS**

245 1. The authority citation for part 700 continues to read as follows:

246 **Authority:** 12 U.S.C. 1752, 1757(6), 1766.

247 2. In § 700.2, revise the definitions of Regional Director and Regional Office to read as
248 follows:

249 **§ 700.2 Definitions.**

250 * * * * *

251 Regional Director means the representative of NCUA in the designated geographical area
252 in which the office of the federally insured credit union is located or, for ONES credit unions
253 under part 702 of this chapter, the Director of the Office of National Examinations and
254 Supervision.

255 Regional Office means the office of NCUA located in the designated geographical areas
256 in which the office of the federally insured credit union is located or, for ONES credit unions
257 under part 702 of this chapter, the Office of National Examinations and Supervision.

258 * * * * *

259 **PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS**

260 **3.** The authority citation for part 701 continues to read as follows:

261 **Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766,
262 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C.
263 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–
264 3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

265 4. Revise § 701.14(c)(3)(i) to read as follows:

266 * * * * *

267 **§ 701.14 Change in official or senior executive officer in credit unions that are newly**
268 **chartered or are in troubled condition.**

269 (c) * * *

270 (3) * * *

271 (i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the
272 case of a corporate credit union or a ONES credit union under part 702 of this chapter, with the
273 Director of the Office of National Examinations and Supervision. All references to Regional
274 Director will, for corporate credit unions and ONES credit unions under part 702 of this chapter,
275 mean the Director of Office of National Examinations and Supervision. State-chartered federally
276 insured credit unions will also file a copy of the notice with their state supervisor.

277 * * * * *

278
279 **PART 702—CAPITAL ADEQUACY**

280 5. The authority citation for part 702 is revised to read as follows:

281 **Authority:** 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

282 6. In § 702.302, add a definition of “ONES credit union”, in alphabetical order, to read as
283 follows:

284 **§ 702.302 Definitions.**

285 *****

286 *ONES credit union* means a credit union subject to supervision by the Office of National
287 Examinations and Supervision and includes tier I covered credit unions that had \$10 billion or
288 more in total assets as of March 31, 2020, and tier II and tier III covered credit unions.

289 *****

290 **PART 708a—BANK CONVERSIONS AND MERGERS**

291 7. The authority citation for part 708a continues to read as follows:

292 **Authority:** 12 U.S.C. 1766, 1785(b), and 1785(c).

293 8. In § 708a.101, revise the second sentence of the definition of Regional Director to
294 read as follows:

295 **§ 708a.101 Definitions.**

296 * * * * *

297 For corporate credit unions and natural person credit unions defined as *ONES credit*
298 unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office
299 of National Examinations and Supervision.

300 * * * * *

301 9. Revise the second sentence of the definition of Regional Director in § 708a.301 to read
302 as follows:

303 **§ 708a.301 Definitions.**

304 * * * * *

305 For corporate credit unions and natural person credit unions defined as ONES credit
306 unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office
307 of National Examinations and Supervision.

308 * * * * *

309 **PART 708b—MERGERS OF INSURED CREDIT UNIONS INTO OTHER CREDIT**
310 **UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS**

311 10. The authority citation for part 708b continues to read as follows:

312 **Authority:** 2 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

313 11. In § 708b.2, revise the second sentence of the definition of Regional Director to read
314 as follows:

315 **§ 708b.2 Definitions.**

316 * * * * *

317 For corporate credit unions and natural person credit unions defined as ONES credit
318 unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office
319 of National Examinations and Supervision.

320 * * * * *

321 **PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS**

322 10. The authority citation for part 750 continues to read as follows:

323 **Authority:** 12 U.S.C. 1786(t).

324 11. In § 750.6(a), revise the third sentence to read as follows:

325 **§ 750.6 Filing instructions; appeal.**

326 (a) * * * In the case of a Federal or state-chartered corporate credit union or ONES credit union
327 under part 702 of this chapter, such written requests must be submitted to the Director of the
328 Office of National Examinations and Supervision. * * *

329 * * * * *

330 **PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION**

331 12. The authority citation for part 790 continues to read as follows:

332 **Authority:** 12 U.S.C. 1766, 1789, 1795f.

333 13. Revise the first sentence in § 790.2(c)(2) to read as follows:

334 **§ 790.2 Central and field office organization.**

335 * * * * *

336 (c)

337 (2) * * * Similar to a Regional Director, the Director of the Office of National

338 Examinations and Supervision manages NCUA’s supervisory program over credit unions;

339 however, it oversees the activities for corporate credit unions and of natural person credit unions

340 defined as ONES credit unions under part 702 of this chapter, in accordance with established

341 policies. * * *

342 * * * * *

343

344