

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 791**

**RIN: 3133-AE45**

**Promulgation of NCUA Rules and Regulations**

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

**ACTION:** Final rule and Interpretive Ruling and Policy Statement 15-1.

**SUMMARY:** The NCUA Board (Board) is issuing a final rule to amend Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and 13-1. The amended IRPS increases the asset threshold used to define the term “small entity” under the Regulatory Flexibility Act<sup>1</sup> (RFA) from \$50 million to \$100 million and, thereby, provides transparent consideration of regulatory relief for a greater number of credit unions in future rulemakings. The final rule and IRPS also makes a technical change to NCUA’s regulations in connection with procedures for developing regulations.

**DATES:** This rule and IRPS is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kevin Tuininga, Lead Liquidations Counsel, Office of General Counsel, National Credit Union Administration, 1775 Duke

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<sup>1</sup> P.L. 96-354.

Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6543.

## **SUPPLEMENTARY INFORMATION**

- I. Background
- II. Summary of Public Comments
- III. The Final Rule and IRPS
- IV. Regulatory Procedures

### **I. Background**

#### **A. What Changes Does This Final Rule and IRPS Make?**

The RFA, as amended, generally requires federal agencies to determine and consider the impact of proposed and final rules on small entities. Since adopting IRPS 13-1 in 2013, the Board has defined “small entity” in this context as a federally insured credit union (FICU) with less than \$50 million in assets.<sup>2</sup> This final rule and IRPS 15-1 redefines “small entity” as a FICU with less than \$100 million in assets. In addition, the final rule amends §791.8(a) of NCUA’s regulations to reference IRPS 15-1. Section 791.8(a) governs NCUA’s procedures for developing regulations and incorporates IRPS 87-2 and each of its amendments.

#### **B. What Changes Were Proposed?**

On February 19, 2015, the Board issued a proposed rulemaking and IRPS with a 60-day comment period.<sup>3</sup> In doing so, the Board proposed to increase from \$50 million to

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<sup>2</sup> IRPS 13-1, 78 FR 4032 (Jan. 18, 2013).

<sup>3</sup> 80 FR 11954 (Mar. 5, 2015).

\$100 million the asset threshold used to define small entity under the RFA. In support of proposing to double, rather than incrementally increase, the RFA threshold, the Board weighed competitive disadvantages within the credit union industry, relative threats to the National Credit Union Share Insurance Fund (Insurance Fund), and the need for broader regulatory relief. The proposed increase would provide an additional 733 small FICUs with special consideration of the economic impact of proposed and final regulations, bringing the total number of FICUs covered by the RFA to approximately 4,690. The proposed rule and IRPS 15-1 retained the three-year review cycle the Board adopted in 2013. Finally, the proposal referenced IRPS 15-1 in §791.8(a) of NCUA's regulations governing regulatory procedures.

### **C. What is the History and Purpose of the RFA?**

Congress enacted the RFA in 1980 and amended it with the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>4</sup> The RFA, in part, requires federal agencies to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities.<sup>5</sup> If so, the RFA requires agencies to engage in a small entity impact analysis, known as an initial regulatory flexibility analysis (IRFA) for proposed rules and a final regulatory flexibility analysis (FRFA) for final rules.<sup>6</sup> The IRFA and FRFA (or a summary of them) must be published in the Federal Register.<sup>7</sup> If an agency determines that a proposed or final rule will not have a “significant economic

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<sup>4</sup> Pub.L. 104-121. A principal purpose of the 1996 amendment was to provide an opportunity for judicial review of agency compliance with the RFA. *Id.*

<sup>5</sup> 5 U.S.C. 603, 604, 605(b).

<sup>6</sup> 5 U.S.C. 603, 604.

<sup>7</sup> *Id.*

impact on a substantial number of small entities,” the agency may certify as much in the Federal Register and forego the IRFA and FRFA.<sup>8</sup>

For an IRFA, the procedural requirements include, among other things, “a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply,” a description of reporting, recordkeeping, and other compliance burden, and an identification of any overlapping or conflicting federal rules.<sup>9</sup> In addition, the IRFA must “contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives . . . and which minimize any significant economic impact of the proposed rule on small entities.”<sup>10</sup> This discussion must include alternatives such as allowing “differing compliance or reporting requirements or timetables,” “the clarification, consolidation, or simplification of compliance and reporting requirements,” “the use of performance rather than design standards,” and a full or partial exemption for small entities.<sup>11</sup>

The FRFA must meet requirements similar to that of the IRFA, but must also discuss and respond to public comments and describe “the steps the agency has taken to minimize the significant economic impact on small entities . . . , including a statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule . . . was rejected.”<sup>12</sup>

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<sup>8</sup> 5 U.S.C. 605(b).

<sup>9</sup> 5 U.S.C. 603(b). The IRFA must also include a description of why the agency is considering action and “a succinct statement of the objectives of, and legal basis for, the proposed rule . . . .” *Id.*

<sup>10</sup> 5 U.S.C. 603(c).

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. 604(a).

These processes encourage federal agencies to give special consideration to the ability of smaller entities to absorb compliance burdens imposed by new rules.

The RFA establishes terms for various subgroups that fall within the meaning of “small entity,” including “small business,” “small organization,” and “small governmental jurisdiction.”<sup>13</sup> FICUs, as not-for-profit enterprises, are “small organizations,” within the broader meaning of “small entity.” The RFA permits a regulator, including NCUA, to establish one or more definitions of “small organization,” as appropriate to the activities of the agency.<sup>14</sup> An agency’s definition must be subjected to public comment and published in the Federal Register.<sup>15</sup> The RFA provides a default definition of “small organization” as “a not-for-profit enterprise which is independently owned and operated and is not dominant in its field . . . .”<sup>16</sup>

In 1981, the Board initially defined “small entity” in IRPS 81-4 as any FICU with less than \$1 million in assets.<sup>17</sup> IRPS 87-2 superseded IRPS 81-4, but retained the definition of “small entity” as a FICU with assets under \$1 million.<sup>18</sup> The Board updated the definition in 2003 to include FICUs with less than \$10 million in assets with IRPS 03-2.<sup>19</sup> The last update occurred in 2013, when the Board increased the defining threshold to include FICUs with less than \$50 million in assets.<sup>20</sup> In addition, the Board

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<sup>13</sup> 5 U.S.C. 601.

<sup>14</sup> 5 U.S.C. 601(4).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> IRPS 81-4, 46 FR 29248 (June 1, 1981).

<sup>18</sup> 52 FR 35231 (Sept. 8, 1987).

<sup>19</sup> 68 FR 31949 (May 29, 2003).

<sup>20</sup> IRPS 13-1, 78 FR 4032 (Jan. 18, 2013).

pledged to review the RFA threshold after two years and thereafter on a three-year cycle, similar to its regulatory review process.<sup>21</sup> On February 19, 2015, the Board issued a proposed rule and IRPS with a 60-day comment period, proposing to increase the threshold used to define “small entity” from \$50 million to \$100 million.<sup>22</sup>

## **II. Summary of Public Comments**

The public comment period for the proposed rule and IRPS ended on May 4, 2015. NCUA received 16 comment letters from commenters that included credit union trade associations, state credit union leagues, federal credit unions, and a federally insured, state-chartered credit union.<sup>23</sup> All commenters expressly supported the proposal at some level. One commenter supported the proposal without advocating any additional changes or expressing concerns. A number of commenters, however, made specific recommendations or expressed concerns about one or more aspects of the proposal.

### **A. What Were the General Comments on the Asset Threshold?**

More than one-third of commenters either expressed some level of satisfaction with the \$100 million threshold or did not directly advocate a specific threshold higher than \$100 million. Two of these commenters observed that the proposed threshold “sufficiently captures small [FICUs] that have unique challenges and particular sensitivity to even the smallest regulatory requirement.” Another stated that the increase will benefit and

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<sup>21</sup> Id. IRPSs 87-2, 03-2, and 13-1 are referenced in NCUA’s rule governing the promulgation of regulations. 12 CFR 791.8(a).

<sup>22</sup> 80 FR 11954 (Mar. 5, 2015).

<sup>23</sup> The comments can be found on the Web at the following address:  
<http://www.ncua.gov/Legal/Regs/Pages/PR20150219Promulgation.aspx>.

account for the FICUs generally facing significant challenges based on the characteristics NCUA identified in the proposal. One commenter noted that increasing the RFA threshold to \$100 million is consistent with NCUA's proposed definition of the term "complex" credit union for risk-based capital purposes. This commenter also stated that \$100 million seemed appropriate in comparison to the RFA threshold used for banks. One commenter praised NCUA for proposing to increase the threshold to \$100 million only two years after approving an increase from \$10 million to \$50 million. Multiple commenters, including some that expressed satisfaction with the proposed threshold, alluded to compelling reasons to set the threshold higher than \$100 million, but did not directly advocate a specific number or discuss the reasons for doing so.

Approximately half of the commenters expressed concern about the proposed \$100 million asset threshold and recommended a higher threshold for the final rule. Many from this group favored the \$550 million threshold set by the Small Business Administration (SBA), citing one or more of the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Federal Reserve Board as examples of regulators that use the SBA asset threshold for purposes of the RFA. Some commenters also suggested a threshold of at least \$250 million, as an alternative to \$550 million. One commenter suggested that \$175 million would also be more appropriate than \$100 million, noting that the Consumer Financial Protection Bureau uses this threshold to assemble panels in complying with its obligations under the Small Business Regulatory Enforcement Fairness Act. Another commenter suggested \$300 million as the appropriate asset threshold.

Two commenters posited that, if NCUA is willing to adopt a risk-based capital rule with requirements on par with banking regulators, it should be willing to bring its RFA threshold into parity as well. One commenter maintained that even FICUs with \$250 million in assets are not dominant in their field and did not present greater risk to the Insurance Fund, particularly because the RFA does not mandate specific changes to existing regulations.

One commenter argued the RFA does not require use of a bright-line asset threshold, which risks “bifurcating the industry” when used to determine eligibility for regulatory relief. This commenter also expressed concern that some FICUs over \$100 million in assets but with few employees and branches will not be taken into consideration when NCUA is studying the economic impact of rules on FICUs under the \$100 million threshold. A few commenters that advocated an asset threshold higher than \$100 million contended that NCUA should consider the definition of “small entity” in the context of the entire group of financial institutions against which FICUs compete, including banks.

At least eight commenters expressed concerns about the capacity of NCUA’s Office of Small Credit Union Initiatives (OSCUI) to serve small credit unions under an increased asset threshold. Many of these commenters suggested that NCUA should separate the eligibility threshold OSCUI uses from the asset threshold set for RFA purposes, leaving the OSCUI threshold at \$50 million or adjusting it to \$75 million. If NCUA increases



OSCUI's eligibility threshold,<sup>24</sup> some commenters encouraged NCUA to provide OSCUI with additional or adequate resources to help bolster and preserve small credit unions. One commenter recommended that NCUA establish a process to allocate OSCUI resources to various asset categories for a more equitable distribution to the smallest credit unions.

### **B. What Were the Comments on the Review Period?**

Two commenters advocated, without elaboration, that NCUA adjust the threshold annually based on an index to capture a percentage of the smallest credit unions. One commenter asked for review every two years and another advocated an annual review. Anticipating additional future increases in the RFA threshold, one commenter suggested that NCUA increase efficiency and avoid more comment periods by effecting a larger increase in the final rule.

### **C. What Other Comments Did NCUA Receive?**

Several commenters commented generally on excessive regulatory burden, a lack of resources and employees to cope with the burden, and the continuing loss of small FICUs. One commenter asked that NCUA explain in the preamble to the final rule the circumstances under which it might make distinctions among small FICUs. Another commenter noted the RFA classification does not convey any immediate regulatory relief to FICUs in existing rules and recommended that NCUA revisit its current

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<sup>24</sup> The proposed rule and IRPS did not address the eligibility threshold for OSCUI assistance. While NCUA will consider the comments it received on the OSCUI threshold, that threshold is not addressed in this final rule and IRPS.

regulations to consider substituting the final rule's small entity threshold for existing size standards. This commenter also criticized the use of the term "small credit union" in both the Small Credit Union Exam Program and the RFA context, indicating that using the same term in reference to different thresholds could be confusing.

The Board has carefully considered all the public comments it received in response to the proposed rule and IRPS. The final rule and IRPS and the Board's response to the public comments are discussed below.

### **III. The Final Rule and IRPS**

Based on the comment letters and economic analysis of FICUs in various asset ranges, the Board maintains \$100 million is the most appropriate asset threshold for the final rule and IRPS. The proposed threshold received significant support in public comments, and the factors NCUA considered in the proposal continue to support \$100 million as the most suitable threshold at this time. Increasing the RFA threshold to \$100 million will account for FICUs that generally face more significant challenges than their larger peers based on their relatively small asset base, membership, and economies of scale.

Increasing the threshold to levels recommended by a minority of commenters would cover up to 93 percent of FICUs and risk dilution of the RFA's special consideration for the smallest FICUs.<sup>25</sup> As explained below, the \$100 million threshold results in a similar

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<sup>25</sup> An asset threshold of \$175 million would cover 84 percent of all FICUs; \$250 million would cover 87% of all FICUs; \$550 million would cover 93 percent of all FICUs.

institution coverage ratio as the RFA threshold the FDIC uses in relation to banks. In addition, the \$100 million threshold covers a significantly greater percentage of FICU assets, compared to the percentage of bank assets covered by the banking agencies' \$550 million threshold.

Finally, the RFA threshold does not make larger FICUs ineligible for regulatory relief. The Board fully intends to continue to carefully consider the impact of all of its regulations on all FICUs.

#### **A. What Data Supports the \$100 Million Threshold?**

Data gathered for the period between 2001 and 2014 reflects the competitive disadvantages across multiple industry metrics for FICUs below \$100 million in assets, including the following:

- deposit growth rates;
- asset growth rates; membership growth rates;
- loan origination growth rates;
- inflation-adjusted average loan amounts;
- ratio of operating costs to assets;
- merger and liquidation trends;
- average year-to-date loan amounts;
- non-interest expenses per dollar loaned;
- average assets per full-time employee; and
- average non-interest expense per annual loan originations.

Particularly, rates of deposit growth, rates of membership growth, rates of loan origination growth, and the ratio of operating costs to assets, each discussed more fully below, exemplify differentiations between FICUs both above and below the \$100 million threshold.

(i) Slower Deposit Growth Rates

Smaller FICUs have consistently demonstrated an inability to grow their deposit base at a rate that keeps pace with larger FICUs. This slower growth rate makes it difficult for smaller FICUs to cover fixed costs, which are increasing over time. FICUs with growing deposits and loans are able to spread out fixed costs and incrementally reduce operating costs.

In general, deposit growth rates drop off significantly for FICUs with less than \$100 million in assets. FICUs with less than \$100 million in assets as of the end of the year 2000 grew their deposits by an average of 3.9 percent annually over the next 14 years. In comparison, FICUs with greater than \$100 million in assets as of the end of the year 2000 grew deposits at 7.1 percent annually, on average, over the same period. On an asset-weighted basis, the industry's average deposit growth rate from 2001 to 2014 was 6.8 percent per year.

(ii) Slower Membership Growth Rates

FICUs with less than \$100 million in assets also had significantly slower membership growth rates than larger FICUs. On average, FICUs with less than \$100 million in assets as of the end of the year 2000 had their membership shrink by 0.5 percent annually over the next 14 years. In contrast, FICUs \$100 million or more in assets as of the end of the year 2000 grew their membership by 2.3 percent annually over the same period. On an asset-weighted basis, the industry's membership growth rate was 1.8 percent per year from 2001 to 2014.

#### (iii) Slower Growth in Loan Originations

FICUs with less than \$100 million in assets also had significantly slower growth in loan originations than larger FICUs. On average, FICUs with less than \$100 million in assets as of the end of the year 2000 grew loan originations by 3.7 percent annually over the next 14 years. In contrast, FICUs with \$100 million or more in assets as of the end of the year 2000 grew their loan originations by 9.6 percent annually over the same period. On an asset-weighted basis, the industry's loan origination growth was 6.6 percent per year from 2001 to 2014.

#### (iv) Higher Operating Expenses

FICUs with less than \$100 million in assets also had higher annual operating expenses per unit of assets and per dollar of loan originations compared to other asset groups. On average, FICUs with less than \$100 million in assets as of the end of the year 2000 had annual operating expenses equal to 4.0 percent of assets over the next 14 years.

FICUs with \$100 million or more in assets as of the end of the year 2000 had annual operating expenses of 3.5 percent of assets over the same period.

The impact of these differences in operating expenses can be dramatic. Between 2001 and 2014, FICUs with less than \$100 million in assets as of the end of the year 2000, had operating expenses, on average, equal to 18 cents for every dollar in loan originations. This expense ratio was close to a third higher than FICUs with \$100 million or more in assets as of the end of the year 2000, which averaged annual operating expenses equal to 13 cents for every dollar in loan originations over the same period.

The 55 basis point difference in operating expenses between FICUs above and below the \$100 million asset threshold resulted in large and persistent differences in earnings between these FICUs. The earnings gap between FICUs above and below the threshold averaged 41 basis points over the 2001 to 2014 period. To put this in perspective, during that period, 25 percent of FICUs below the \$100 million asset threshold had negative earnings. Only 2.8 percent of FICUs with \$100 million or more in assets had negative earnings over the same period.

FICUs with persistently weak or negative earnings are more likely to go out of business via failure or merger. Despite representing 83 percent of all FICUs, FICUs with less than \$100 million in assets experienced 93 percent of mergers and liquidations since

2004. The disappearance of these FICUs threatens to deprive the credit union industry of a critical constituency.

Although the number of mergers and failures for FICUs below \$100 million is disproportionately high, these FICUs do not represent a correspondingly high risk exposure to the Insurance Fund. For FICUs with assets of \$50 million to less than \$100 million (those which this final rule and IRPS include in RFA coverage), losses have historically been relatively small. Nine FICUs between \$50 million and \$100 million in inflation-adjusted assets failed between the first quarter of 2001 and fourth quarter of 2014. Resulting losses totaled less than \$56 million. In contrast, losses for FICUs between \$100 million and \$250 million were \$379 million, more than six times that amount over the same period. FICUs between \$100 million and \$550 million accounted for \$790 million in inflation-adjusted losses.

Rather than expanding the RFA threshold to \$550 million or \$250 million, which would include FICUs responsible for significantly more losses and risk, the Board believes the \$100 million threshold represents a reasonable additional share for RFA coverage. FICUs with assets of \$50 million to less than \$100 million hold 4.5 percent of system assets, bringing the total system assets within RFA coverage to 10 percent. To the extent the increase to \$100 million results in more FICU exemptions from rules governing safety and soundness, it will not present material risk to the Insurance Fund.

For additional background, the table below shows the differentiation of the characteristics between the final rule’s \$100 million threshold and the expanded RFA coverage thresholds that also received support from some commenters. Unless otherwise indicated, the table includes cumulative data from 2001 to 2014.

	<b>Inflation-Adjusted Assets at Time of Failure</b>		
	<b>&lt; \$100M</b>	<b>&lt; \$250M</b>	<b>&lt; \$550M</b>
Share of Industry Losses	32%	63%	97%

  

	<b>Assets as of Year 2000</b>		
	<b>&lt; \$100M</b>	<b>&lt; \$250M</b>	<b>&lt; \$550M</b>
Asset Growth	77%	104%	125%
Membership Growth	-12%	0%	10%
Loan Growth	49%	78%	104%

The Board’s task under the RFA is to designate as “small” a subset of institutions to which its regulations apply, rather than comparing FICUs to the array of competing institutions that are not subject to NCUA’s regulations.<sup>26</sup> A \$100 million threshold covers a similar portion of FICUs and a significantly higher portion of FICU assets (76 percent and 10 percent, respectively) in comparison to the FDIC’s \$550 million RFA threshold for banks subject to its regulations (81 percent and 6 percent, respectively). In contrast, a \$250 million or \$550 million threshold for credit unions would cover a disproportionate percentage of FICUs and of total FICU assets, as reflected in the table below:

<sup>26</sup> The Initial Regulatory Flexibility Analysis requires consideration of alternatives such as “the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities....” 5 U.S.C. § 603(c)(1). Differing compliance and reporting requirements or timetables can only be considered within the group of institutions to which the regulations apply. Thus NCUA’s definition of “small entities” does not factor in banks or other institutions outside NCUA’s jurisdiction.



	<b>Credit Unions &lt; \$100M</b>	<b>Credit Unions &lt; \$250M</b>	<b>Credit Unions &lt; \$550M</b>	<b>Banks &lt; \$550M</b>
Share of Industry Assets	10%	20%	32%	6%
Share of Institutions	76%	87%	93%	81%

Although a bright line asset threshold arguably bifurcates groups of FICUs for purposes of the RFA, it also avoids diluting the pool of FICUs for which the RFA requires special consideration. The Board believes a threshold significantly higher than \$100 million would divert focus from the FICUs that are most in need of the RFA process. Further, the \$100 million threshold does not preclude the Board from considering regulatory impacts on larger FICUs. The Board fully intends to continue reviewing the impact of all of its regulations on all FICUs.

The RFA requires a formal, published, analytical process during promulgation of a regulation whenever such regulation would impose significant economic burdens on a substantial number of small FICUs. It subjects this published consideration to the benefit of public comments. It does not, however, impose a substantive limit on the conclusions the Board may draw based on its analyses. On the contrary, the Board is still able to make distinctions in future rulemakings above or below the threshold designated in this final rule and IRPS. The Board can make these distinctions based on its RFA analysis and its broader consideration of regulatory impacts across all FICUs.

The Board's rule governing liquidity and contingency funding demonstrates this possibility by imposing differing compliance requirements on three asset tiers of

FICUs.<sup>27</sup> The RFA threshold was \$50 million at the time of the rule's adoption. While the Board exempted FICUs with assets under \$50 million from most of the rule's compliance requirements, the Board also exempted a second tier (\$50 million to \$250 million) from some requirements. Only the largest tier (over \$250 million) is required to comply with the entire rule.

As the liquidity rule also demonstrates, asset thresholds remain a principal comparative tool used to determine a FICU's relative size. As such, an asset threshold, rather than an employee- or branch-based demarcation, continues to be the most transparent and administratively feasible as a framework for its RFA analyses. An asset threshold is consistent with size standards that appear in the FCU Act and other NCUA regulations.

With respect to review, the Board continues to believe that the three-year period the proposed rule retained from 2013 provides a reasonable time within which to discern and interpret new trends in relevant data. Further, it is consistent with the longstanding review period NCUA uses for all its regulations. Rather than an annual or biannual adjustment, the three-year cycle avoids the uncertainty of continuous fluctuation that more frequent adjustments could create. Further, the scheduled opportunity to study trends and receive comments provides an advantage over automatically indexed adjustments.

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<sup>27</sup> 12 CFR 741.12.

As discussed in the proposal, the Board will separately consider whether to align thresholds in existing rules, such as those applying interest rate risk and liquidity requirements, with the RFA threshold. The NCUA's regular three-year review cycle provides appropriate opportunities for these considerations. Individual reviews will facilitate transparent considerations of unique risks and compliance burdens specific to those rules, rather than encouraging a one-size-fits-all approach.

### **B. How Will the Final Rule and IRPS Affect FICUs?**

By increasing the RFA threshold to \$100 million in assets, the Board recognizes its role in ensuring additional scrutiny of regulatory costs for FICUs under that threshold. The increase requires the Board to engage in the RFA's public analytical process for the benefit of considerably more FICUs, whenever a regulation would impose significant economic burdens on a substantial number of them. Further, future rules are more likely to invoke an RFA analysis because of the greater number of FICUs for which the Board must consider substantial economic impacts.

The \$100 million threshold will cause NCUA to give special consideration to an additional 733 small FICUs. The total number of FICUs covered by the RFA will increase to approximately 4,690. This represents 75.6 percent of FICUs, which hold 10 percent of FICU assets. When an IRFA or FRFA is triggered, these additional FICUs will have the benefit of an opportunity to comment on a transparent and published analysis of impacts and alternatives. For all of these FICUs, future regulations will be thoroughly evaluated to determine whether an exemption or other separate

consideration should apply. The \$100 million threshold ensures that regulatory relief will be consistently and robustly considered for significantly more FICUs.

This final rule and IRPS retains the three-year review cycle that the Board adopted in 2013. The review period gives FICUs a regular opportunity to provide input on the Board's RFA threshold. Finally, the rule references IRPS 15-1 in §791.8(a) of NCUA's regulations governing regulatory procedures, replacing the reference to IRPS 13-1.

#### **IV. Regulatory Procedures**

##### **A. Regulatory Flexibility Act**

For any final rule it adopts, the RFA requires NCUA to prepare a FRFA that, among other things, describes the steps the agency has taken to minimize economic impact on small entities (currently defined by NCUA as FICUs with under \$50 million in assets), unless the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small entities. In this case, the final rule and IRPS expands the number of FICUs defined as small entities under the RFA. It, therefore, will not have a significant economic impact on a substantial number of FICUs under \$50 million in assets that are already covered by the RFA.

With respect to additional FICUs that will now be covered, the principal component of the final rule and IRPS will provide prospective relief in the form of special and more robust consideration of FICUs' ability to handle compliance burdens. This prospective

relief is not yet quantifiable. Further, the final rule and IRPS can only reduce, rather than increase, compliance burdens for these FICUs and, therefore, will not raise costs in a manner that requires a FRFA. Accordingly, NCUA has determined and certifies that the final rule and IRPS will not have a significant economic impact on a substantial number of small entities. No FRFA is required.

### **B. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.<sup>28</sup> For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. The changes to IRPS 87-2, as amended, will not create any new paperwork burden for FICUs. Thus, NCUA has determined that this final rule and IRPS does not increase the paperwork requirements under the PRA and regulations of the Office of Management and Budget.

### **C. Executive Order 13132**

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule and IRPS will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among

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<sup>28</sup> 44 U.S.C. 3507(d).

the various levels of government. NCUA has determined that this final rule and IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

#### **D. Assessment of Federal Regulations and Policies on Families**

NCUA has determined that this final rule and IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

#### **List of Subjects**

##### **12 CFR Part 791**

Administrative practice and procedure, Credit unions, Sunshine Act.

By the National Credit Union Administration Board on September \_\_, 2015.

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**Gerard Poliquin**

*Secretary of the Board*

For the reasons discussed above, the Board amends IRPS 87-2 (as amended by IRPS 03-2 and IRPS 13-1) by revising the second sentence of paragraph 2 of Section II and replacing the last two sentences of paragraph 2 of Section II to read as follows:

### **Interpretive Ruling and Policy Statement 87-2**

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## **II. Procedures for the Development of Regulations**

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2. \* \* \* NCUA will designate federally insured credit unions with less than \$100 million in assets as small entities. \* \* \* Every three years, the NCUA Board will review and consider adjusting the asset threshold it uses to define small entities for purposes of analyzing whether a regulation will have a significant economic impact on a substantial number of small entities.

\* \* \* \* \*

For the reasons discussed above, the Board amends 12 CFR part 791 as follows:

**PART 791 – RULES OF NCUA BOARD PROCEDURES; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS**

1. The authority citation for part 791 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789 and 5 U.S.C 552b.

2. Amend Section 791.8(a) to read as follows:

**§791.8 Promulgation of NCUA rules and regulations.**

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87-2, as amended by Interpretive Ruling and Policy Statements 03-2 and 15-1.

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