

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observance of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule, Interpretive Ruling and Policy Statement 02-4, Developing and Reviewing Government Regulations.

SUMMARY: This proposed rule, Interpretive Ruling and Policy Statement (IRPS) 02-4, amends the Regulatory Flexibility Act provisions of NCUA's IRPS 87-2. The Regulatory Flexibility Act generally requires federal agencies to prepare analyses to describe the impact of proposed and final rules on small entities. Since 1981, the NCUA has defined small entity in this context to mean those credit unions with less than one million dollars in assets. The proposed rule redefines small entity to mean those credit unions with less than ten million dollars in assets. In addition, the proposed rule amplifies a provision regarding NCUA's policy of reviewing all existing regulations every three years by stating that one-third of existing regulations will be reviewed each year and the public will receive notice of those regulations under review.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Send comments to Becky Baker, Secretary to the NCUA Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You may also fax comments to (703) 837-2914, or e-mail comments to regcomments@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street,

Alexandria, Virginia 22314-3428 or telephone: (703) 518-6555.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (the Act) encourages federal agencies to use innovative administrative procedures in dealing with small entities that would otherwise be unnecessarily affected by federal regulations. 5 U.S.C. 601 *et seq.*; S. Rep. No. 96-878, at 1 (1980). The Act requires federal agencies to conduct a special analysis for each proposed rule that will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605(b). The analysis must describe the impact of the proposed rule on small entities and include a description of any significant alternatives to the rule that minimize the impact. 5 U.S.C. 604.

The term "small entities" as used in the Act includes small businesses, small organizations, and small government jurisdictions. 5 U.S.C. 601(6). Credit unions, as not-for-profit associations, fall within the definition of "organization." 5 U.S.C. 601(4). An agency that regulates small organizations may unilaterally establish its own definition of small organizations for purposes of the Act. *Id.* In 1981, the NCUA defined small credit union for purposes of the Act as any credit union having less than one million dollars in assets. NCUA IRPS 81-4, 46 FR 29248, June 1, 1981. IRPS 87-2 superseded IRPS 81-4, but continued the definition of small credit unions for purposes of the Act as those with less than one million dollars in assets. 52 FR 35231, 35232, September 8, 1987. IRPS 87-2 is incorporated by reference into NCUA's current rule governing the promulgation of regulations. 12 CFR 791.8(a).

The NCUA Board is opposed to placing unnecessary regulatory burdens on any credit union, regardless of size. Still, the Act requires particularly close analysis of the burden federal regulators, including NCUA, place on smaller entities. The Act's legislative history indicates that small entities need special consideration because they cannot absorb the impact of additional regulation as well as large entities. S. Rep. No. 96-878, at 4 (1980). Large entities are better able to withstand additional regulation for two reasons. First, large entities can spread the incremental cost of regulatory

compliance over more units of output, or production, than smaller entities. Second, large entities can keep the incremental cost of compliance down because they are likely to employ internal staff with some compliance responsibilities. This internal staff may be able to absorb additional, incremental compliance burdens. Smaller entities, on the other hand, may have to hire additional staff or purchase expensive consulting services to handle any additional compliance burden. *Id.*

In light of this legislative history, the Board believes that NCUA's current definition of small credit union as one with less than one million dollars in assets, adopted in 1981, is now outdated. Today, some credit unions with significantly more than one million dollars in assets may not be able to maintain the staffing level of many 1981-era credit unions that had less than one million dollars in assets.¹

The Board proposes to change the qualifying asset size for a small credit union from less than one million dollars in assets to less than ten million dollars in assets. The Board notes that today's credit unions with approximately one million dollars in assets average only 0.5 full-time and 1.2 part-time employees, indicating that there may be little or no staff time available for compliance issues. In contrast, federally insured credit unions with about ten million dollars in assets currently employ an average of 4.5 full-time employees and 1.3 part-time employees, which together constitute more than five full-time employee equivalents. Accordingly, a credit union with ten million dollars in assets employs on average about five times more staff than a credit union with one million dollars in assets employs. Part of this additional staffing may be available to perform compliance oversight and absorb incremental compliance burdens.

The proposed definition of small credit union is consistent with recent statutes and NCUA regulations providing regulatory compliance relief. For example, in 1998 Congress amended the Federal Credit Union Act (FCUA) to require that credit unions follow

¹ Due to inflation, the purchasing power of a dollar has decreased by almost half since 1981, and the cost of hiring staff has increased accordingly. It takes approximately \$1.98 to purchase in 2002 what \$1.00 purchased in 1981. Data obtained from Oregon State University, www.orst.edu/Dept/pol-sci/fac/sahr/cv2002.pdf (Sept. 10, 2002).

generally accepted accounting principles, but at the same time excused credit unions with less than ten million dollars in assets under a *de minimus* exception. 12 U.S.C. 1782(a)(6)(C)(i), (iii). Another 1998 amendment to the FCUA requires NCUA to provide "small credit unions," defined as those under ten million dollars in assets, with special assistance in meeting prompt corrective action requirements. 12 U.S.C. 1790d(f)(2). Finally, NCUA regulations provide that federally insured credit unions with less than ten million dollars in assets may file a short form call report in the spring and fall. 12 CFR 741.6(a). The Board is not aware of any federal statute or any NCUA rule, regulation, or policy that defines small credit union in a manner that includes credit unions with more than ten million dollars in assets.

The Board also notes that by increasing the threshold from one million dollars in assets to ten million dollars in assets the percentage of federally insured credit unions considered to be small will return to a percentage much closer to the percentage captured by the size standard first adopted in 1981. In 1981, about 63% of all federally insured credit unions had assets of less than one million dollars and so were considered to be small. Today, due in part to credit union consolidation, only about 12% of all federally insured credit unions have assets of less than one million dollars. In contrast, credit unions with less than ten million dollars in assets currently constitute about 52% of all federally insured credit unions.

The Board proposes to add a provision in Section IV of IRPS 87-2 stating how NCUA carries out the policy of reviewing all existing regulations every three years. For several years, the Office of General Counsel has identified and reviewed one-third of existing regulations on a rolling schedule to ensure that all regulations are reviewed at least every three years. In addition, the Board believes in encouraging public participation in the review of regulations and proposes to amend IRPS 87-2 to provide for notice to the public of that portion of the regulations that are under review each year.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed IRPS 02-4 amending IRPS 87-2.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an

analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, currently meaning those under one million dollars in assets. The proposed regulation will change the definition of small credit union to increase the number of credit unions receiving the procedural benefits of the Regulatory Flexibility Act and will provide notice to the public and opportunity to comment on regulations under internal review. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

Paperwork Reduction Act

NCUA has determined that the proposed rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

The Treasury and General Government Appropriations Act, 1999—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).

Lists of Subjects in 12 CFR Part 790

Organization and functions (Government agencies).

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,
Secretary of the Board.

Interpretative Ruling and Policy Statement 02-4, Developing and Reviewing Government Regulations

For the reasons stated above, IRPS 02-4 amends IRPS 87-2 (52 FR 35231, September 18, 1987) by revising the second sentence in Section II, paragraph 2., and adding a sentence to the end of Section IV to read as follows:

II. Procedures for the Development of Regulations

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2. * * * Credit unions having less than ten million dollars in assets will be considered to be small entities. * * *

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IV. Review of Existing Regulations.
* * * To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

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Conforming Amendment to NCUA Regulations, 12 CFR Part 791

For the reasons stated above, amend 12 CFR Part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

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

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

2. Amend § 791.8 by revising paragraph (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 Statement 02-4.

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