

*C. Does the final rule create any new burdens for credit unions?*

No, neither the October 2012 proposal nor this final rule creates any new regulatory burdens for FCUs. To the contrary, as mentioned above, the Board is providing regulatory relief to FCUs that qualify for the LICU designation.

### III. Regulatory Procedures

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule makes nonsubstantive, technical amendments and extends regulatory relief to FCUs. NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

#### B. Paperwork Reduction Act

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.<sup>8</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. As noted above, the amendments make minor, technical corrections and extend regulatory relief. The final rule does not impose or modify paperwork burdens.

#### 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 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 the various levels of government. NCUA has determined that this final rule 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 will not affect family well-being

within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>9</sup>

#### E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996<sup>10</sup> (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.<sup>11</sup> NCUA does not believe this final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

#### List of Subjects

##### 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

##### 12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board on January 10, 2013.

**Mary F. Rupp,**

*Secretary of the Board.*

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 701 and 741 as set forth below:

### PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

■ 2. Revise § 701.34(a)(1) to read as follows:

#### § 701.34 Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify

NCUA in writing within 90 days of receipt of any NCUA notifications.

\* \* \* \* \*

### PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

#### § 741.204 [Amended]

- 4. Amend § 741.204 by:
- a. Removing the words “the appropriate regional director” in paragraph (b) and adding in their place the word “NCUA”.
  - b. Removing the words “the NCUA Regional Director” wherever they appear and adding in their place the word “NCUA”.
  - c. Removing the words “the appropriate NCUA Regional Director” wherever they appear and adding in their place the word “NCUA”.

[FR Doc. 2013–00859 Filed 1–17–13; 8:45 am]

**BILLING CODE 7535–01–P**

### NATIONAL CREDIT UNION ADMINISTRATION

#### 12 CFR Parts 702, 741 and 791

RIN 3133–AE07

#### Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations

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

**ACTION:** Final rule.

**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 two NCUA regulations that apply asset thresholds to grant relief from risk-based net worth and interest rate risk requirements. The amended IRPS increases the asset threshold that identifies credit unions to which NCUA will give more robust consideration of regulatory relief in future rulemakings. The amended regulations similarly include increased asset thresholds, granting immediate and prospective relief from existing regulatory burden to a larger group of small credit unions.

**DATES:** This rule is effective February 19, 2013.

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

<sup>8</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>9</sup> Public Law 105–277, 112 Stat. 2681 (1998).

<sup>10</sup> Public Law 104–121, 110 Stat. 857 (1996).

<sup>11</sup> 5 U.S.C. 551.

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

**SUPPLEMENTARY INFORMATION:**

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

**I. Background**

*What changes does this final rule make?*

The Regulatory Flexibility Act, Public Law 96-354, as amended (RFA), generally requires federal agencies to determine and specially consider the impact of proposed and final rules on small entities. Since 2003, NCUA has defined “small entity” in this context as a credit union with less than \$10 million in assets.<sup>1</sup> This final rule and IRPS 13-1 redefines “small entity” as a credit union with less than \$50 million in assets. The final rule also amends 12 CFR 702.103, increasing to \$50 million the asset threshold used to define a “complex” credit union for determining whether risk-based net worth requirements apply, and 12 CFR 741.3(b)(5), exempting all federally insured credit unions (referred to as FICUs or credit unions) with assets of \$50 million or less from interest rate risk rule requirements. To cross-reference IRPS 13-1, the final rule makes a technical amendment to 12 CFR 791.8.

*What changes were proposed?*

On September 20, 2012, the Board issued a proposed rule and IRPS with a 30-day comment period, which the Board later extended to 60 days. The proposal increased from \$10 million to \$30 million the asset thresholds used to define small entity under the RFA and to determine the applicability of interest rate risk and risk-based net worth requirements, subject to review every three years.<sup>2</sup> This increase addressed the Board’s concern that various asset thresholds affecting regulatory relief for small FICUs were outdated. By proposing an increase to the applicable thresholds to \$30 million, the Board intended to account for industry asset growth, consolidation, and inflation, while avoiding undue risk to the National Credit Union Share Insurance Fund (NCUSIF).

*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, Public Law 104-121. The RFA requires federal agencies to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities.<sup>3</sup> If so, agencies must prepare an analysis that describes the rule’s impact on small entities.<sup>4</sup> The analysis must include descriptions of any significant alternatives that minimize the impact.<sup>5</sup> This requirement encourages federal agencies to give special consideration to the ability of smaller entities to absorb compliance burden imposed by new rules.

In IRPS 81-4, the Board initially defined “small entity” for purposes of the RFA as any credit union with less than \$1 million in assets.<sup>6</sup> IRPS 87-2 superseded IRPS 81-4 but retained the definition of “small entity” as a credit union with less than \$1 million in assets.<sup>7</sup> The Board updated the definition in 2003 to include credit unions with less than \$10 million in assets.<sup>8</sup> IRPS 87-2 and IRPS 03-2 were incorporated by reference into NCUA’s rule governing the promulgation of regulations.<sup>9</sup>

When the Board updated its RFA threshold to \$10 million, it noted that amendments to the Federal Credit Union Act (FCU Act) in 1998 employed a \$10 million threshold for multiple new provisions.<sup>10</sup> These new provisions addressed the use of generally accepted accounting principles and voluntary audits; prompt corrective action (PCA) for new credit unions; and assistance for small credit unions in filing net worth restoration plans.<sup>11</sup> IRPS 03-2 set the threshold in NCUA’s RFA definition consistent with the \$10 million threshold in the new FCU Act provisions. The Board has not increased the RFA threshold since 2003.

**II. Summary of Public Comments**

The public comment period for the proposed rule and IRPS ended on November 26, 2012. NCUA received 51 comments from 52 commenters. The commenters included 19 federal credit unions, 13 state-chartered credit unions,

four trade associations (representing credit unions and state credit union regulators), 15 state credit union leagues, and one individual.

Almost all commenters expressly supported the Board’s efforts to relieve regulatory burden, with just over half advocating for changes to the proposed asset threshold, the criteria NCUA uses to define small entity, and/or the proposed three-year review period. In addition to resource concerns, multiple commenters drew comparisons between FICUs and non-credit union institutions with which they compete to advocate for a higher RFA threshold. The general comments on the proposal are described in detail below.

*What were the general comments supporting the proposed rule or advocating for a higher asset threshold?*

Commenters generally fell into groups that supported or advocated three different asset thresholds or ranges, including (a) \$30 million; (b) \$40 million to approximately \$50 million; and (c) approximately \$100 million to \$500 million. The first group, comprised of 22 commenters, supported the rule without advocating changes. These commenters noted that raising the threshold would give them more time and resources to serve members. Seventeen of these commenters submitted similar form letters.

A second group of six commenters advocated for a threshold between \$40 million and \$51.5 million. Two of these commenters suggested NCUA reference the Home Mortgage Disclosure Act reporting threshold (currently \$42 million) to support increasing the RFA threshold to \$40 million or \$50 million. One commenter suggested an increase to \$45 million, noting minimal operational differences between credit unions of \$30 million and \$45 million. Finally, one of these six commenters suggested NCUA adopt a threshold of \$51.5 million based on an industry risk assessment.

A third group, comprised of 16 commenters, suggested NCUA reference the \$175 million asset threshold the Small Business Administration (SBA) uses in its small business size standards.<sup>12</sup> Most of these commenters suggested that NCUA simply adopt the SBA’s threshold for the RFA, stating that the Consumer Financial Protection Bureau and Federal Reserve Board have done so.<sup>13</sup> These commenters also

<sup>3</sup> 5 U.S.C. 603, 604, 605(b). The term “small entity” as used in the RFA includes small businesses, small organizations, and small government jurisdictions. <sup>5</sup> U.S.C. 601(6). Credit unions fall within the definition of organization. <sup>5</sup> U.S.C. 601(4). The RFA gives agencies authority, under certain conditions, to establish their own definition of “small entity.” Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> 46 FR 29248 (June 1, 1981).

<sup>7</sup> 52 FR 35231 (Sept. 8, 1987).

<sup>8</sup> 68 FR at 31949.

<sup>9</sup> 12 CFR 791.8(a).

<sup>10</sup> 68 FR at 31950.

<sup>11</sup> 12 U.S.C. 1782(a)(6); 1790d.

<sup>12</sup> 13 CFR 121.201.

<sup>13</sup> One commenter that advised referencing the SBA’s threshold suggested \$150 million as a threshold for NCUA. Another advised a comparison to the Consumer Financial Protection Bureau in suggesting a \$150 million threshold.

<sup>1</sup> IRPS 03-2, 68 FR 31949 (May 29, 2003).

<sup>2</sup> The proposal also included a technical amendment to 12 CFR 791.8.

generally supported the SBA's proposal to increase its size standard to \$500 million and suggested that NCUA follow such an increase, if finalized.<sup>14</sup> One of these commenters suggested NCUA weigh three different metrics, including industry percentages, loss history, and the SBA's size standard to support a threshold of \$99 million. Two of these commenters acknowledged \$40 million and \$50 million, respectively, as minimum alternatives to the SBA threshold.

*What were the general comments on the three-year review period and criteria for defining small entities?*

Eleven commenters thought NCUA's RFA threshold should be reviewed or automatically adjusted every 18 months, or at least more frequently than every three years, asserting that the SBA reviewed its threshold on such a schedule. The other supportive commenters (over two-thirds of all commenters) either expressed support for the three-year review period or did not mention the review period in their comments supporting the proposal. A few commenters suggested using one or more additional or alternative criteria to define small entity, including number of branches, number of employees, relative risk, and gross revenues.

*What were the comments opposing or not expressly supporting the proposed rule?*

One commenter stated that the RFA is bad policy for financial institutions and that smaller institutions have more risk and should be subject to equally or more stringent standards and oversight. This commenter thought the proposed rule would create a tiered regulatory system and impede consolidation and efficiency that benefits members. One commenter noted the challenge and expense of regulatory compliance but did not expressly support or oppose any aspect of the proposed rule. Finally, one commenter advocated for three groups of small credit unions: A micro small group (less than \$10 million), a small

group (\$10 million to \$30 million), and a mid-small group (\$30 million to \$50 million).

*What other comments did NCUA receive?*

A few commenters made suggestions that no other commenters proposed or made suggestions on matters the Board did not address in the proposed rule. One commenter, who otherwise supported reference to the SBA's threshold, suggested NCUA use an alternative threshold of \$50 million for the interest rate risk and risk-based net worth rules. Several commenters that supported reference to the SBA threshold stated that NCUA should use a separate threshold of \$50 million for assistance eligibility from the Office of Small Credit Union Initiatives to avoid strain on NCUA's budget. One commenter suggested a longer period between examinations for well-run FICUs.

One commenter criticized NCUA for requiring compliance with the interest rate risk rule on the rule's September 30, 2012 effective date and stated that failing to relieve small credit unions from proposed Financial Accounting Standards Board requirements further negated the benefit of increasing the asset threshold in that rule.<sup>15</sup> Another requested that NCUA include more discussion in the final rule's preamble of the proposed emergency liquidity rule and discuss which rules would remain unchanged by the new threshold.<sup>16</sup> One commenter suggested removal of the term "complex" from NCUA regulations and an immediate effective date for the final rule.<sup>17</sup>

Multiple commenters stated that NCUA's complexity index from the proposed rule's preamble was not a reliable indicator of risk and would unnecessarily reduce the scope of regulatory relief and become a disincentive to diversify products and services.<sup>18</sup> A couple commenters also requested more rigorous RFA analysis for NCUA regulations.<sup>19</sup>

The Board has carefully considered all the public comments it received in response to the proposed rule and IRPS. Recognizing the concerns and suggestions the above commenters raised, the Board has made a substantial adjustment in the final rule. The final rule and the Board's response to the public comments are discussed below.

### III. Final Rule

*What changes does this final rule make?*

a. The RFA Asset Threshold

This final rule and IRPS 13-1 amends IRPS 87-2 and partially supersedes IRPS 03-2 by changing the definition of "small entity" to include credit unions with less than \$50 million in assets. Several commenters advocated for a threshold near \$50 million based on industry characteristics, risk data, and the Home Mortgage Disclosure Act reporting threshold set by the Consumer Financial Protection Bureau. The Board believes increasing the RFA threshold to \$50 million is reasonable and supportable. As the starting point for its analysis in the proposed rule, the Board used industry percentages for credit unions of less than \$10 million in assets from 1998, when Congress established a \$10 million threshold in multiple provisions of the FCU Act. Based on Call Report data from September 30, 2012, a threshold of \$50 million would still approximate several of the industry percentages from 1998 that the Board referenced in the proposed rule.

As shown in the table below, FICUs with less than \$50 million in assets currently represent 569.6 percent of the NCUSIF, which is very close to the percentage represented by credit unions with less than \$10 million in assets in 1998 (562.0 percent).<sup>20</sup> Further, using a \$50 million threshold, the percentage of system assets and system net worth would remain within one percentage point of 1998 ratios. A \$50 million threshold also makes a reasonable allowance for asset growth before the Board's next review of the threshold.

<sup>14</sup> 77 FR 55737, 55747 (Sept. 11, 2012).

<sup>15</sup> The Board understands that some FICUs exempt from interest rate risk rule requirements because of this final rule nevertheless adopted an interest rate risk policy and program as of September 30, 2012 to comply with the interest rate risk rule's deadline. The Board determined an extension of the September deadline was imprudent due to uncertainty about when the proposed rule would become final and what threshold amount the final rule would incorporate after consideration of public comments. With respect to FASB requirements, the FCU Act contains provisions governing compliance with generally accepted accounting principles. See, e.g., 12 U.S.C. 1782(a)(6). Only Congress can amend these FCU Act

provisions; the Board cannot alter them by regulation.

<sup>16</sup> The Board will consider regulatory burden in the emergency liquidity rule in a manner consistent with the principles expressed here and seeks to avoid blending parallel, ongoing rulemakings. Further, the Board believes a discussion of unaffected thresholds would make this rulemaking confusing and more cumbersome without contributing to its clarity. This final rule and IRPS will affect only the thresholds it expressly addresses.

<sup>17</sup> The term "complex" appears in the FCU Act in connection with risk-based net worth requirements. See 12 U.S.C. 1790d(d). Only Congress can amend the FCU Act.

<sup>18</sup> The complexity index is only one reference point that helped the Board develop a proposed threshold. While the index is a good indicator of a FICU's relative risk, it does not necessarily measure whether a particular risk presented by an exemption from a specific rule is acceptable.

<sup>19</sup> The Board welcomes general comments in this respect and also particular comments on ensuring an effective RFA analysis in future regulations.

<sup>20</sup> The table also shows percentages for various other asset thresholds, based on the most recent Call Report, for comparison to the 1998 percentages. The percentages for FICUs with less than \$10 million in assets from 1998 and for FICUs with less than \$50 million in assets today are shaded for ease of comparison.

| Threshold (\$M)     | % Units     | % System assets | % System net worth | % NCUSIF     | # Units      |
|---------------------|-------------|-----------------|--------------------|--------------|--------------|
| < \$10 (1998) ..... | <b>60.4</b> | <b>5.5</b>      | <b>6.9</b>         | <b>561.2</b> | <b>6,637</b> |
| < \$10 .....        | 34.9        | 1.0             | 1.3                | 80.4         | 2,402        |
| < \$25 .....        | 54.2        | 3.1             | 4.0                | 264.3        | 3,731        |
| < \$30 .....        | 58.0        | 3.8             | 4.8                | 325.5        | 3,997        |
| < \$35 .....        | 61.2        | 4.5             | 5.6                | 384.2        | 4,213        |
| < \$40 .....        | 63.5        | 5.1             | 6.2                | 434.7        | 4,374        |
| < \$45 .....        | 65.8        | 5.8             | 7.0                | 490.9        | 4,532        |
| < \$50 .....        | <b>67.8</b> | <b>6.4</b>      | <b>7.7</b>         | <b>569.6</b> | <b>4,672</b> |
| < \$175 .....       | 86.0        | 18.1            | 19.7               | 1534.5       | 5,925        |
| < \$500 .....       | 94.2        | 34.5            | 36.3               | 2931.4       | 6,485        |

Commenters advocating that the Board set the threshold higher than \$50 million, including up to \$175 million or \$500 million, generally suggested that the Board reference indicators outside of the credit union industry. The Board believes it should establish NCUA's RFA threshold by focusing primarily on credit union characteristics, rather than external indicators and thresholds that apply across multiple and distinct institution charters. A \$50 million threshold will represent a substantial majority of FICUs, close to 68 percent, and almost 6.5 percent of system assets. It will also align with the RFA's language permitting agencies to establish a definition that is appropriate to their own activities, as opposed to the activities of other agencies.<sup>21</sup>

In the context of the SBA's broad mandate covering a host of industries, a \$175 million threshold encompasses only 54 percent of all financial institutions and only three percent of total financial institution assets. Under the narrower scope of NCUA's regulatory authority, the SBA's \$175 million threshold envelops 86 percent of FICUs and over 18 percent of FICU assets. When compared in this context, the percentages of FICUs (68 percent) and assets (6.4 percent) under this rule's \$50 million threshold are significantly higher than the percentages of all financial institutions (54 percent) and their assets (three percent) under the SBA's \$175 million threshold.<sup>22</sup>

With respect to commenters advocating alternative criteria for the RFA definition, the Board continues to believe that an asset threshold is the best and most transparent measurement for NCUA's RFA definition. Using an asset threshold is consistent with size standards that appear elsewhere in the FCU Act and NCUA regulations. Further, regardless of a FICU's business model, the Board believes the total assets measurement remains the

principal comparative tool that the industry uses to determine a FICU's relative size.

#### b. The Review Period

The final rule sets an initial review period of two years, but it retains the three-year period from the proposed rule for subsequent reviews. The majority of commenters either expressly supported the proposed review period or did not advocate for an alternative period. As stated in the proposal, a three-year review period provides a reasonable time within which to discern new trends in percentage, loss, and risk data. In addition, a three-year period is consistent with the longstanding review period NCUA uses for all its regulations. It provides sufficient time to avoid the uncertainty of a continuous cycle of rulemakings and policy adjustments that a shorter period could create.

Finally, a three-year period will provide more frequent review than that required of the SBA, which several commenters referenced. Under the Small Business Jobs Act of 2010 (Jobs Act), the SBA must review at least one-third of its size standards in 18-month intervals, starting from date the Jobs Act was enacted, with no longer than five-year review periods thereafter.<sup>23</sup> Reviewing one-third of size standards at 18-month intervals would bring each standard up for SBA review every 4.5 years. The Board will initially review the size standards in this rule, however, within two years of its effective date. After that, the Board will review the standards every three years. The Board believes a shorter initial review period is appropriate given the time passed since the threshold was last reviewed and updated.

#### c. The Interest Rate Risk and Risk-Based Net Worth Rules

This final rule adopts a \$50 million asset threshold for defining a "complex"

credit union in 12 CFR 702.103(a). This update will increase by approximately 2,270, to around 4,670, the number of FICUs removed from the definition of "complex" based on asset size alone. The increase eliminates the possibility that these FICUs could become subject to additional PCA provisions due solely to a risk-based net worth requirement.

In addition, the final rule exempts FICUs of \$50 million or less in assets from the requirements of 12 CFR 741.3(b)(5), NCUA's interest rate risk rule. The final rule will streamline the tiered system in the interest rate risk rule by simply requiring all FICUs with more than \$50 million in assets to adopt an interest rate risk policy and program. FICUs with \$50 million or less in assets will not be subject to interest rate risk requirements by regulation, regardless of their first mortgage loans and investment maturities. This change will increase by approximately 2,270, to a total of around 4,670, the number of FICUs that are exempt, based on asset size alone, from adopting an interest rate risk policy and program.

In general, incremental risk elevation will accompany the exclusion of more FICUs from regulations aimed principally at reducing risk. The Board believes the incremental risk presented by raising the regulatory thresholds to \$50 million is acceptable, especially when weighed against the advantages of implementing a uniform threshold across multiple regulations and the benefits of regulatory relief.

The proposed rule's preamble acknowledged that FICU loss history since 1998 shows that even FICUs with somewhat more than \$30 million in assets have caused a relatively small amount of losses to the NCUSIF. Loss history data for FICUs of various asset sizes from 1998 through September 30, 2012 appears below.

<sup>21</sup> See 12 U.S.C. 601(4) (permitting agencies to establish one or more definitions that "are appropriate to the activities of the agency").

<sup>22</sup> 77 FR 55747.

<sup>23</sup> 77 FR 55737.

| Assets (\$M)           | Number of failures       |            | NCUSIF Loss (\$M)    |            | Percentage of total NCUSIF losses |                |
|------------------------|--------------------------|------------|----------------------|------------|-----------------------------------|----------------|
|                        | Failures for asset range | Cumulative | Loss for asset range | Cumulative | Percent for asset range (%)       | Cumulative (%) |
| < \$10 .....           | 205                      | 205        | \$138.5              | \$138.5    | 14.3                              | 14.3           |
| \$10 to < \$20 .....   | 12                       | 217        | 31.0                 | 169.5      | 3.2                               | 17.5           |
| \$20 to < \$30 .....   | 8                        | 225        | 22.8                 | 192.2      | 2.4                               | 19.9           |
| \$30 to < \$40 .....   | 9                        | 234        | 36.2                 | 228.4      | 3.7                               | 23.6           |
| \$40 to < \$50 .....   | 4                        | 238        | 11.3                 | 239.7      | 1.2                               | 24.8           |
| \$50 to < \$60 .....   | 1                        | 239        | 3.3                  | 243.1      | 0.3                               | 25.1           |
| \$60 to < \$70 .....   | 0                        | 239        | 0.0                  | 243.1      | 0.0                               | 25.1           |
| \$70 to < \$80 .....   | 2                        | 241        | 11.3                 | 254.4      | 1.2                               | 26.3           |
| \$80 to < \$90 .....   | 4                        | 245        | 22.4                 | 276.8      | 2.3                               | 28.6           |
| \$90 to < \$100 .....  | 3                        | 248        | 66.1                 | 342.9      | 6.8                               | 35.4           |
| \$100 to < \$200 ..... | 10                       | 258        | 76.3                 | 419.2      | 7.9                               | 43.3           |
| \$200 to < \$500 ..... | 7                        | 265        | 512.7                | 931.9      | 53.0                              | 96.3           |
| ≥ \$500 .....          | 1                        | 266        | 36.1                 | 968.0      | 3.7                               | 100.0          |

As reflected in the table below, almost half of total losses over the last ten years for FICUs under \$50 million in assets

occurred in credit unions with under \$10 million in assets, which were already exempt from interest rate risk

and risk-based net worth regulatory requirements.

| Asset size                       | < \$10M | < \$20M | < \$30M | < \$40M | < \$50M |
|----------------------------------|---------|---------|---------|---------|---------|
| # Failures Last 10 years .....   | 132     | 143     | 151     | 160     | 162     |
| Losses (\$M) Last 10 years ..... | \$104.4 | \$150.3 | \$171.7 | \$207.9 | \$212.8 |
| Avg. # Failures Per Year .....   | 12.3    | 13.3    | 14      | 14.9    | 15.1    |

More specifically, NCUA determined that, as of the last Call Report, only one credit union between the proposed \$30 million threshold and a \$50 million threshold would have been subject to additional PCA because it failed to meet risk-based net worth requirements. Further, only 4.5 percent of FICUs with assets between \$10 million and \$50 million have a net worth ratio below seven percent.

For the interest rate risk rule, 56.3 percent of the approximately 2,270 FICUs between \$10 million and \$50 million were not covered by the rule as of the last Call Report, because their level of first mortgage loans and investment maturities, relative to net worth, exempted them. The 992 FICUs with assets between \$10 million and \$50 million that were subject to the interest rate risk rule as of September 30, 2012 (because of their level of first mortgage loans and investment maturities, relative to net worth) held only 2.7 percent of industry assets. As with IRPS 13-1, the Board will review and consider adjusting the thresholds in 12 CFR 702.103(a) and 741.3(b)(5) within two years of the effective date of this final rule and, subsequently, at least once every three years. This review period will permit the Board to adjust the thresholds accordingly if the risk and losses attributable to increased thresholds are greater than expected.

*How does the final rule and IRPS affect FICUs?*

The change to the RFA threshold will ensure that regulatory burden will be more consistently and robustly considered for approximately 2,270 additional FICUs. Around 4,670 FICUs with less than \$50 million in assets would come within the RFA's mandates. Future regulations, including the proposed emergency liquidity rule, 77 FR 44503 (July 30, 2012), will be more thoroughly evaluated to determine whether FICUs below \$50 million in assets should be exempt from some provisions or separately considered.

The \$50 million threshold for defining "complex" credit unions would categorically exclude around 2,270 more FICUs from the definition of "complex" based on asset size alone, bringing the total number of excluded FICUs to approximately 4,670. NCUA previously defined a "complex" credit union in 12 CFR 702.103 as one with more than \$10 million in assets and with a risk-based net worth requirement of more than six percent. If a "complex" credit union fails its risk-based net worth requirement, the credit union is subject to mandatory PCA requirements that it otherwise would not be subject to when measured solely by its net worth.<sup>24</sup> These PCA requirements govern earnings retention, net worth

restoration plans, asset increases, and member business loans. Of the 2,270 additional credit unions that the final rule excludes, approximately 358 FICUs with at least six percent net worth are no longer subject to a risk-based net worth requirement. These FICUs are removed one step further from the possibility of PCA requirements.

The new \$50 million threshold in NCUA's interest rate risk rule categorically excludes around 2,270 more FICUs from complying with the interest rate risk rule based on asset size alone. Once again, this change brings the total FICUs excluded to around 4,670. The prior version of the regulation required FICUs between \$10 million and \$50 million in assets holding combined first mortgages and investments with maturities greater than five years that equal or exceed net worth to adopt and implement an interest rate risk policy. Of the approximately 2,270 additional FICUs that this final rule and IRPS excludes, 992 are no longer required by regulation to adopt and implement an interest rate risk policy.

**IV. Regulatory Procedures**

*A. Regulatory Flexibility Act*

The RFA requires NCUA to prepare an analysis to describe any significant economic impact a final rule may have on a substantial number of small entities (defined in this final rule and IRPS as credit unions with under \$50 million in

<sup>24</sup> 12 CFR 702.202(a).

assets). In this case, the final rule and IRPS expands the number of FICUs defined as small entities under the RFA from those with less than \$10 million in assets to those with less than \$50 million. It similarly expands the group of FICUs eligible for relief from risk-based net worth and interest rate risk requirements. The final rule will reduce compliance burden for approximately 2,270 more FICUs and, therefore, will not raise costs in a manner that requires a regulatory flexibility analysis or a discussion of alternatives for minimizing the final rule's compliance burden.

With respect to additional FICUs covered by the RFA for future regulations, the final rule and IRPS provides prospective relief in the form of special and more robust consideration of their ability to handle compliance burden. This prospective relief is not quantifiable. 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 regulatory flexibility analysis is required.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Public Law 104-13 (PRA), applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. 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. This final rule's changes to 12 CFR 702.103 and 741.3(b)(5) will cause an immediate and prospective reduction in paperwork burden related to PCA requirements and interest rate risk policies for FICUs between \$10 million and \$50 million in assets. The changes to IRPS 87-2, as amended by IRPS 03-2, will not create any new paperwork burden for FICUs. Thus, NCUA has determined that the requirements of this final rule and IRPS do 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 does 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 the various levels of government. NCUA has determined that this final rule 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 of 1999, Public Law 105-277.

#### E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined in the Administrative Procedure Act.<sup>25</sup> NCUA believes this final rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act, but a determination from the Office of Management and Budget is pending.

#### List of Subjects

##### 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

##### 12 CFR Part 741

Credit unions, Requirements for insurance.

##### 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on January 10, 2013.

**Mary Rupp,**

*Secretary of the Board.*

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

For the reasons stated above, IRPS 13-1 amends IRPS 87-2 (52 FR 35231, September 18, 1987) and partially supersedes IRPS 03-2 (68 FR 31951, May 29, 2003) by revising the second sentence in Section II, paragraph 2 of IRPS 87-2 and adding two sentences to the end of Section II, paragraph 2 of IRPS 87-2 to read as follows:

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

\* \* \* \* \*

<sup>25</sup> 5 U.S.C. 551.

2. \* \* \* NCUA will designate credit unions with less than \$50 million in assets as small entities. \* \* \* Within two years of the effective date of the increase to \$50 million, 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. Thereafter, the NCUA Board will conduct reviews of the asset threshold every three years.

\* \* \* \* \*

#### Conforming Amendments to NCUA Regulations

For the reasons discussed above, the Board amends 12 CFR parts 702, 741 and 791 as follows:

#### PART 702—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 702 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1790d.

■ 2. In § 702.103, amend paragraph (a) by:

■ a. Removing “ten” and adding in its place “fifty”, and

■ b. Removing “(\$10,000,000)” and adding in its place “(\$50,000,000)”.

#### PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), 1781-1790 and 1790d; 31 U.S.C. 3717.

■ 4. In § 741.3, revise paragraph (b)(5) to read as follows:

#### § 741.3 Criteria.

\* \* \* \* \*

(b) \* \* \*

(5) The existence of a written interest rate risk policy (“IRR policy”) and an effective interest rate risk management program (“effective IRR program”) as part of asset liability management. Federally insured credit unions (“FICUs”) with assets of more than \$50 million, as measured by the most recent Call Report filing, must adopt a written IRR policy and implement an effective IRR program. Appendix B to this Part 741 provides guidance on how to develop an IRR policy and an effective IRR program. The guidance describes widely accepted best practices in the management of interest rate risk for the benefit of all FICUs.

\* \* \* \* \*

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

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

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

■ 6. In § 791.8, revise 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 Statements 03-2 and 13-1.

\* \* \* \* \*

[FR Doc. 2013-00864 Filed 1-17-13; 8:45 am]

BILLING CODE 7535-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 35**

[Docket No.: FAA-2010-0940-0001; Amdt. No. 35-9]

RIN 2120-AJ88

**Critical Parts for Airplane Propellers**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Aviation Administration (FAA) is amending the airworthiness standards for airplane propellers. This action would require a safety analysis to identify a propeller critical part. Manufacturers would identify propeller critical parts, and establish engineering, manufacturing, and maintenance processes for propeller critical parts. These new requirements provide an added margin of safety for the continued airworthiness of propeller critical parts by requiring a system of processes to identify and manage these parts throughout their service life. This rule would eliminate regulatory differences between part 35 and European Aviation Safety Agency (EASA) propeller critical parts requirements, thereby simplifying airworthiness approvals for exports.

**DATES:** Effective March 19, 2013.

Affected parties, however, are not required to comply with the information collection requirement[s] in § 35.16 until the Office of Management and Budget (OMB) approves the collection and assigns a control number under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control number[s] assigned by the Office of Management and Budget (OMB) for this [these] information collection requirement[s].

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Jay Turnberg, Engine and Propeller Directorate Standards Staff, ANE-111, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803-5299; telephone (781) 238-7116; facsimile (781) 238-7199, email: [jay.turnberg@faa.gov](mailto:jay.turnberg@faa.gov). For legal questions concerning this action, contact Vincent Bennett, FAA Office of the Regional Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803-5299; telephone (781) 238-7044; facsimile (781) 238-7055, email: [vincent.bennett@faa.gov](mailto:vincent.bennett@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, section 44701, "General requirements." Under that section, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for airplane propellers. This regulation is within the scope of that authority because it updates the existing regulations for airplane propellers.

**I. Overview of Final Rule**

Part 35 does not specifically define the term propeller critical part. Consequently, there are no requirements for design, manufacture, maintenance, or management of propeller critical parts. This rule defines and requires the identification of propeller critical parts,

and establishes requirements to ensure the integrity of those parts.

**II. Background**

On December 20, 2006, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop recommendations that would address the integrity of propeller critical parts, as well as be in harmony with similar European Aviation Safety Agency (EASA) regulations. This rule addresses those recommendations, a copy of which can be found in the docket of this rulemaking.

*A. Statement of the Problem*

Propeller critical parts are not adequately addressed by current regulations. Presently, the FAA does not—

- Have a specific definition for a propeller critical part, or
- Require type certificate holders to identify propeller critical parts.

Consequently, propeller manufacturers are not required to provide information concerning propeller critical part design, manufacture, or maintenance.

*B. Summary of the NPRM*

Primary failure of certain single propeller elements (for example, blades) can result in a hazardous propeller effect. Part 35 does not specifically identify these elements as propeller critical parts. Consequently, there are no requirements for design, manufacture, maintenance, or management of propeller critical parts. EASA, however, has regulations that identify a specific definition for propeller critical part, and regulations to reduce the likelihood of propeller critical part failures. These regulations, EASA Certification Specifications for Propellers (CS-P), are CS-P 150, Propeller Safety Analysis and CS-P 160 Propeller Critical Parts Integrity. The EASA regulations specifically require propeller manufacturers to identify propeller critical parts and provide adequate information for the design, manufacture, and maintenance of those parts to ensure their integrity throughout their service life. This FAA action establishes standards equivalent to the EASA regulations, thereby simplifying airworthiness approvals for export of these parts.

**Safety Analysis (§ 35.15)**

We proposed to revise § 35.15(c) to require the identification of propeller critical parts, and that applicants establish the integrity of these parts using the standards in proposed § 35.16. Section 35.15(c) refers to the failure of