

dollars in assets may be forced to seek and pay for outside assistance when addressing incremental compliance burdens. Accordingly, credit unions with more than ten million dollars in assets should be able to handle incremental compliance burdens more easily than credit unions with less than ten million dollars in assets.

A definition of small credit union as one with less than ten million dollars in assets is also consistent with recent statutes and NCUA regulations providing credit unions with regulatory compliance relief. For example, in 1998 Congress amended the Federal Credit Union Act to require that credit unions follow 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 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.

The Board also proposed 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 and providing for notice to the public of that portion of the regulations that are under review each year. The final rule includes this provision.

This final rule includes a reference to *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies* (U.S. Small Business Administration, November, 2002) and requires NCUA staff to consult it when interpreting and implementing the requirements of the RFA. While a regulatory flexibility analysis is unnecessary if the Board certifies a regulation will not have a significant economic effect on a substantial number of small entities, the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires that agencies publish a statement "providing the factual basis for" any such certification

in the **Federal Register**. Pub. L. 104-121, 5 U.S.C. 605(b). IRPS 87-2 has provided that the certification will be published with a statement "explaining" the certification. This final rule replaces "explaining" with "providing the factual basis for."

B. Summary of Comments

NCUA received seventeen comment letters on the proposed rule: two from federal credit unions, five from state credit unions, eight from credit union trade organizations, one from a bank trade organization, and one from the National Association of State Credit Union Supervisors.

All of the commenters expressed support for changing the definition of small credit union to include more credit unions in the definition, with most of the commenters agreeing that small credit union should be redefined as a credit union with less than ten million dollars in assets. In addition, all the commenters who addressed the proposal to provide public notice of those regulations NCUA is reviewing each year as part of its three-year rolling review expressed approval for that notice.

Comments on the Asset Size Threshold for Small Credit Unions

The eleven commenters who supported a ten million dollar threshold generally noted it was consistent with current statutory definitions of small credit union and with the effects of inflationary changes since 1981 and would result in a reasonable percentage of all credit unions (about 52%) being considered small. One commenter supported the ten million dollar threshold but stated it should not be greater than ten million.

Five commenters thought the asset threshold should be greater than ten million dollars. Of these commenters, two thought the threshold should be 20 million dollars, one thought it should be 25 million dollars, one thought it should be at least 50 million dollars, and another thought it should be 100 million dollars.

The commenters supporting thresholds of 20 and 25 million dollars note that the percentage of credit unions under one million dollars in assets in 1981, when the current definition of small credit union was established, was roughly 63% of all credit unions, and that the percentages of credit unions today under 20 million and 25 million dollars (66% and 70%, respectively) are close to 63%. One of these commenters also states that "credit unions with 20 million dollars in assets, although slightly larger than those with ten

million dollars in assets, typically still do not have the resources to devote staff time solely to compliance issues."

The commenter who supported a 50 million dollar threshold stated that: (1) only 10% of credit unions under 20 million dollars in assets have "paid compliance directors," (2) only 16% of credit unions under 50 million dollars in assets have such directors, and (3) only 31% of credit unions between 50 million and 100 million dollars in assets have such directors. This commenter also noted that the federal banking regulators and the U.S. Small Business Administration generally set the RFA's small entity threshold for their regulated financial entities at 150 million dollars in assets. The commenter who supported a 100 million dollar threshold also made similar comments.

The Board appreciates the comments of those who supported a more expansive definition of small credit union but notes that a majority of the commenters supported the proposed definition. Further, the proposed is consistent with other statutory uses of the term small credit union while more expansive definitions would not be. In addition, while credit unions with ten million dollars or more in assets may not have staff devoted exclusively to compliance issues, the Board concludes, as noted in the NPRM, they are likely to have some staff that can devote time to compliance. This analysis is appropriate in light of the legislative history of the RFA discussed in the NPRM. Accordingly, the Board has decided to adopt the definition of small credit union from the proposed rule.

Miscellaneous Comments on the Definition of Small Credit Union and Applicability of the RFA

A few commenters thought the asset threshold for small credit unions should be adjusted periodically: one suggested revisiting the threshold each year; two suggested tying it to inflation; and another suggested that NCUA should reset the threshold yearly by declaring as small that group of the smallest credit unions whose combined assets equal 10% of the aggregate assets of all credit unions. The Board believes that annual adjustment is unnecessary and might have undesirable consequences. For example, with inflation levels likely to remain low for the foreseeable future, the Board does not think the threshold needs to be revisited each year. In addition, the rulemaking process for particular rules often spans more than one calendar year, and it would be difficult and confusing to change the definition for rules in progress every year. Finally, the use of a fixed, round