National Association
of Federal Credit Unions
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May 4, 2015

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on amending Interpretive Ruling and Policy Statement (IRPS) 87-2, the definition of "small entity." (RIN 3133-AE45)

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing you regarding the National Credit Union Administration's (NCUA) request for comment on changes to the definition of "small entity." *See* 80 FR 11954 (March 4, 2015). NAFCU applauds NCUA for proposing to increase the asset threshold for "small entity" status and committing to reevaluate the threshold every three years; however, for reasons discussed in more detail below, NAFCU believes the proposed $100 million threshold is far too low.

Regulatory Relief under RFA

The *Regulatory Flexibility Act* (RFA) requires NCUA to prepare analysis on a proposed or final rule to determine if the rule will have a significant economic impact on a substantial number of small credit unions. If an initial NCUA analysis confirms that a proposed rulemaking may have a significant economic impact on small credit unions, then the RFA requires the agency to conduct a "small entity" impact analysis. These analyses are referred to as the initial regulatory flexibility analysis (IRFA) or final regulatory flexibility analysis (FRFA) depending on the stage of the regulatory process. The IRFA and TRFA are used to determine whether an exemption or other separate consideration should be applied to "small entities." It should be noted that the results of the IRFA and TRFA ***do not*** automatically exempt credit unions falling within its scope from the new rule but only ensures they received special consideration by NCUA for potential regulatory relief.

In 1987, NCUA initially implemented the RFA, in part, by defining "small entity" as a credit union with less than $1 million in assets. The threshold has increased twice since the

original definition and has remained at the current level of less than $50 million in assets since 2013. NCUA's present proposal would increase the "small entity" asset threshold from credit unions with less than $50 million in assets to credit unions with less than $100 million in assets. While the RFA authorizes NCUA to promulgate its own definition of "small entity," NAFCU would stress that the language of the RFA does not require the use of a bright-line asset threshold. The RFA's language only mandates that the entity "is not dominant in its field." As NAFCU has consistently maintained, arbitrary asset thresholds are not an appropriate measure for dictating a credit unions' eligibility for regulatory relief and run the risk of bifurcating the industry.

Nevertheless, if NCUA is insistent on using an asset threshold then NAFCU agrees that the threshold for "small entity" status should be increased beyond its current level of $50 million or less in assets. NAFCU recommends that NCUA adopt the Small Business Administration's (SBA) small business size standard for credit unions of $550 million or less in assets *or*, in the alternative, the Consumer Financial Protection Bureau's (CFPB) threshold of $175 million or less in assets, used for purposes of forming panels under the *Small Business Regulatory Enforcement Fairness Act* (SBREFA).

Threshold Increase Needed

NCUA's proposed rule would amend the definition of "small entity" for purposes of special consideration for regulatory relief under the RFA. The definition would be amended by increasing the asset threshold from less than $50 million in assets to less than $100 million in assets. In addition, the proposed rule would retain the three-year review cycle that the board adopted in 2013.

NAFCU strongly suggests that NCUA adopt a much higher asset threshold for the definition of "small entity" and urges the agency to use existing applications and analysis of the RFA. For example, it has been suggested that the NCUA Board consider what would constitute a small entity relative to the entire universe of financial institutions within which a federal credit union competes and advocated for an increase to the "small entity" asset threshold in a final rule to not less than $250 million and, preferably, to not less than $550 million, which would be consistent with the SBA small business size standards for credit unions. NAFCU would also like to point out that the CFPB uses a threshold of $175 million or less in assets when assembling panels for the purposes of complying with its SBREFA obligations. NAFCU believes NCUA should adopt a comparable standard so that the definition of "small entity" is largely consistent among government agencies.

NCUA indicates that it will use the "small entity" threshold for studying "regulatory relief" for smaller federally-insured credit unions when promulgating future rules and policies, as well as making adjustments to examination schedules. While we welcome the prospect of regulatory relief to more credit unions, with the ever-growing regulatory compliance burden on smaller credit unions, we believe a threshold of $550 million but not less than $175 million is far more appropriate.

By relying on a $100 million threshold, NCUA will not consider many small, well-capitalized credit unions when promulgating rules. For instance, one of NAFCU's members has almost $150 million in assets, yet operates out of one branch, and only employs fifteen full-time employees. Under the proposed rule, this credit union will not be considered a "small entity," and therefore will not be taken into consideration when NCUA is studying the economic impact of future rules on credit unions with "small entity" status.

Conclusion

For the reasons noted above, NAFCU strongly suggests that NCUA raise its "small entity" asset threshold well beyond the proposed $100 million or less in assets. Creating a higher threshold using the SBA standard or, at minimum, CFPB standard will provide small credit unions with the regulatory relief they desperately need in order to compete and thrive. In addition, a higher threshold will ensure that small, well-capitalized federal credit unions are not penalized for being well-capitalized.

NAFCU appreciated the opportunity to share its thoughts on the proposed amendment to the definition of "small entity" and would like to discuss this matter further. Should you have any questions or concerns, please feel free to contact me at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

Alexander Monterrubio
Regulatory Affairs Counsel