recommence those payments by the end of the next calendar quarter, and make up all missed payments (rather than add them to the end of the loan term). In addition, interest accrues on missed loan payments. The use of the COTS software package will permit the Board to quickly adapt the administration of the TSP to the ever-changing legal and programmatic requirements affecting the TSP and defined contribution plans. Therefore, to more fully benefit from this adaptability and to minimize the need for customization of the COTS package, the Executive Director proposes to conform the loan program to the private-sector model and to amend the Board's regulations to codify these changes.

Authority Under Which the Rule Is Proposed

The rule proposed in this notice will be issued under the authority of 5 U.S.C. 8351(e), 8432(a)(3), 8432a(a)(1), 8432a(b), 8433(g)(2), 8433(h)(4), 8474(b)(5), and 8474(c)(1).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

James B. Petrick,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 03–8245 Filed 4–3–03; 8:45 am]

BILLING CODE 6760–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 704, 712, and 723

Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NCUA is proposing to amend its member business loan (MBL) regulation by: changing certain requirements for construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs; revising and clarifying provisions regarding MBL aggregate loan limits, loan-to-value requirements, loans to credit unions and credit union service organizations (CUSOs), experience requirements, and MBL documentation requirements; and simplifying or removing confusing or unnecessary provisions in the MBL regulation. In addition, NCUA proposes to amend the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

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

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov*. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA adopted its first MBL rule in April 1987 and has subsequently amended the rule, including the most recent, substantive amendments made to conform to the limitations imposed by the Credit Union Membership Access Act (CUMAA). 12 U.S.C. 1757a, Pub. L. 105–219, 112 Stat. 913 (1998). Under the current rule, the Board may exempt federally insured, state-chartered credit unions (FISCUs) in a state from NCUA's MBL rule if the Board determines the state has developed an MBL rule that minimizes risk and accomplishes the overall objectives of NCUA's rule. 12 CFR 723.20. The Board has approved seven state MBL rules. 7 Tex. Admin. Code § 91.709; Mo. Code Regs. Ann. tit. 4, § 100–2.045; Wash. Admin. Code § 208–460–010 to –170; Md. Regs. Code tit. 9, § 09.03.01.14; Wis. Admin. Code § 72.01–.18; Conn. Agencies Regs. § 59; Or. Admin. R. § 441–720–0300 to –0380.

In reviewing state rules, the Board has approved some rule provisions that relaxed some of NCUA's requirements, concluding that they did not create an undue risk to the National Credit Union Share Insurance Fund (NCUSIF). The Board believes it should amend NCUA's MBL rule in three areas it liberalized in approving state rules: construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The Board believes that, by incorporating these provisions and adopting certain other proposed amendments, NCUA's rule will allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the NCUSIF. The NCUA Board will continue to be responsive to changes in the MBL marketplace, either by approving state specific rules or considering future changes to this rule.

The Board is proposing several amendments to revise and clarify certain provisions that have caused confusion or created unnecessary regulatory burden. These amendments relate to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposes that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit.

In addition, the Board is proposing an amendment to the PCA rule related to business lending. The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702.

Finally, the Board proposes to amend the CUSO rule to permit CUSOs to make business loans. During prior rulemakings, commenters asked the Board to authorize business loan origination as a permissible CUSO activity. 66 FR 40575, Aug. 3, 2001; 63 FR 10743, Mar. 3, 1998. Previously, the Board believed that permitting CUSOs to offer business loans, a core credit union function, could negatively affect affiliated credit union services. The Board has reconsidered its position and believes that, by authorizing CUSOs to engage in business loan origination,

credit union members, particularly small businesses, will have a greater opportunity to obtain loans that their credit union may not be able to grant.

B. Section-by-Section Analysis

Outstanding Loan Balance, Sections 723.1, 723.3, 723.8, 723.16, 723.21

The Board proposes to adopt the phrase ''outstanding member business loan balance'' as a new definition in § 723.21 and use it in various sections in the rule, including §§ 723.1, 723.3, 723.8, and 723.16. The proposed definition for ''outstanding member business loan balance'' is:

> [T]he outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a State or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse.

This definition reflects NCUA's interpretation of various provisions in the MBL rule since the current rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit.

One example of an interpretation that the Board proposes to include in the definition of outstanding MBL balance concerns participation interests sold without recourse. The Board addressed this issue during the agency's 1999 MBL rulemaking in the final rule's preamble, rather than in the regulation's text. In the preamble, the Board agreed with a commenter that, when participating out loan interests, an originating credit union should count only the amount of the loan it holds towards its aggregate loan limit, provided that the loan participation sold is without recourse. 64 FR 28721, 28727, May 27, 1999. The Board has determined that the proposed rule should include this interpretation, as well as other interpretations and CUMAA exclusions, so that credit unions can easily ascertain the factors that are involved in calculating outstanding MBL balances.

The Board believes the rule should use outstanding MBL balance throughout the rule for uniformity and to avoid confusion. Clarifying the use of outstanding MBL balances in the rule incorporates the Board's positions stated in past rulemakings and interpretations provided in NCUA legal opinions.

As part of the proposal to adopt the definition of ''outstanding MBL balance,'' the Board also proposes to delete and reserve § 723.9, which addresses calculation of the limit on loans to one borrower. The proposed definition of ''outstanding MBL balance'' contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

Loan Participations

The Board has reconsidered its position regarding the treatment of loan participations by purchasing credit unions and proposes to exclude participation interests from the calculation of the aggregate MBL limit. The Federal Credit Union Act expressly requires a credit union to include only MBLs it makes to its members in calculating its statutory aggregate MBL limit. 12 U.S.C. 1757a(a). Participation interests purchased by a credit union from an originating eligible organization are not loans made by the participating credit union. The Board, therefore, proposes that these loans need not be included in calculating the participating credit union's aggregate loan limits.

The Board believes CUMAA's legislative history supports this interpretation as consistent with the congressional goal that credit unions fulfill their mission of meeting the credit and savings needs of consumers. Selling MBL participations without recourse permits an originating credit union to obtain additional liquidity enabling it to meet the demand for both consumer and small business loans to members. A credit union that purchases participation interests in loans from other originating lenders does so as a means of investing its excess funds and bases its participation decision on normal investment considerations, including safety and return. As a member-owned and controlled lender, a credit union will purchase participation interests only after meeting its members' own lending needs. The due diligence analysis by the purchasing credit union enhances the overall creditworthiness process in credit union business lending. In addition, these participations diversify the risk of MBLs within the credit union system, ultimately making credit unions safer and better able to meet the needs of both consumer and small business members.

While the Board believes that purchased MBL participation interests need not be included in the aggregate loan limit, a purchased participation interest is a business loan asset and carries the associated risks. A participating credit union, therefore, must otherwise comply with part 723 and subject these loans to the PCA risk-weighting standards under part 702 as though the credit union had originated the MBLs. This means that a participating credit union must have an MBL policy, employ an individual or use the services of an independent third-party with the requisite lending experience, perform the appropriate due diligence, and comply with the collateral requirements and loans to one borrower limit in part 723, in addition to all other provisions of the MBL rule when purchasing a MBL participation interest from any eligible organization.

Finally, the Board notes that, in order for a participating credit union to exclude participation interests it has purchased, the purchase must be a *bona fide* transaction to fulfill a business purpose. The sale and purchase of participation interests in MBLs among credit unions cannot be used as a means to circumvent the regulation's aggregate loan limit. For example, credit unions may not enter into participation agreements that, in effect, permit them to swap portions or all of their MBL portfolios and, thereby, claim that the participation interests are excluded from the aggregate loan limit.

Loans to Credit Unions and CUSOs, Section 723.1

The Board proposes to amend § 723.1 to clarify that loans made by Federal, natural person credit unions to other natural person credit unions and CUSOs are not MBLs. The Federal Credit Union Act grants federal credit unions (FCUs) distinct, express authority to lend to credit unions and CUSOs, independent from their authority to make MBLs. 12 U.S.C. 1757(5)(C), (D). While CUMAA placed limitations on a federally insured credit union's authority to make MBLs to members, 12 U.S.C. 1757a, the law did not alter an FCU's authority to lend to credit unions or CUSOs and did not impose limits on the amount an FCU could lend to these entities beyond the statutory conditions that pre-dated CUMAA. 12 U.S.C. 1757(5)(C), (D).

The proposed rule also permits FISCUs to exclude loans to credit unions and CUSOs in calculating their aggregate MBL limit if the state supervisory authority determines that state law grants distinct authority to lend to credit unions and CUSOs separately from the authority to make MBLs. In the absence of authority similar to that in the Federal Credit Union Act, a FISCU's loans to credit

unions and CUSOs are subject to the MBL rule.

The Board also proposes to amend NCUA's corporate credit union rule to conform with the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs comply with the MBL rule's aggregate loan limit. 12 CFR 704.11(b)(4).

Construction and Development Lending, Section 723.3

The Board proposes to lower the MBL rule's mandatory equity requirements for construction and development loans by requiring a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. Currently, the MBL rule requires a borrower to have a 35% equity interest or receive a waiver from an NCUA regional director. 12 CFR 723.3(b). The Board has permitted three states to lower the minimum equity interest required in land development loans to 30% and four states to lower the equity interest in loans for construction projects and combination land development and construction projects to 25%. It found the lowered equity requirements were consistent with NCUA's safety and soundness considerations. The Board believes an equity interest of 25% should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project.

The Board also proposes certain other changes related to financing the construction of single-family residential properties to lessen the regulatory burden for members engaged in this business. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, who will purchase and reside in the property, the Board proposes that such a loan not be subject to the aggregate 15% of net worth limit of § 723.3(a) or the proposed new 25% equity interest requirement. These loans would instead be subject to the normal MBL collateral requirements of § 723.7. Second, the Board proposes that this same relief from the aggregate net worth limit and the equity interest requirement be provided for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner. The Board recognizes that losses in credit unions from construction and development lending have historically resulted from large development projects, both commercial and residential. The Board believes there is minimal risk in removing the additional regulatory requirements for those loans where a prospective homeowner is contractually obligated to the member-borrower or for one construction or development loan for a single-family residence per member-borrower. These proposed changes will afford added flexibility to insured credit unions in meeting the needs of members who own small businesses engaged in building individual residential properties.

Direct Experience Requirement, Section 723.5

The Board proposes to make two amendments to § 723.5 that emphasize the need for experienced and impartial individuals to evaluate MBLs. The rule requires credit unions to use the services of an individual, whether the individual is an employee or third-party contractor, with lending experience that is directly related to the type of MBLs the credit union offers. The proposed amendment provides that this individual must understand the complexity and risk exposure of the credit union's MBLs. This requirement is critical to a successful MBL program because of the vast array of businesses, types of collateral, and underwriting procedures associated with MBLs.

The second proposed amendment provides that a credit union may obtain the services of a third-party to meet the direct experience requirements of § 723.5 if the third-party has no interest or involvement in the MBL transaction. The independence of the third-party is fundamental to ensuring that the credit union performs its due diligence before originating an MBL or purchasing an interest in an MBL. The proposal provides, therefore, that the third-party may not have an interest in the transaction other than providing its impartial expertise to the credit union.

Member Business Loan Policy, Section 723.6

The Board proposes to amend § 723.6 to allow a credit union to adopt analysis and documentation requirements in its MBL policy that are appropriate for the type or types of MBLs the credit union intends to make. Currently, the rule requires the same documentation for every MBL regardless of size, business, or loan type. The Board recognizes that documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested.

Loan-to-Value Ratio, Section 723.7

The Board proposes to make several amendments to this section. First, the Board proposes a minor technical amendment in the format of § 723.7 by removing the chart used to establish the rule's collateral requirements and providing an explanation in plain English. Second, the Board proposes to exclude MBLs made for the purchase of vehicles from the rule's loan-to-value requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle that is used for commercial purposes. The Board proposes to exclude these loans because loans a credit union makes to purchase these vehicles for consumer use are not subject to the loan-to-value ratios required under the MBL rule and this standard represents the current business market. The Board believes these MBLs present little or only minimally greater risk than a comparable consumer loan and that credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board intends that this exclusion will be used to finance combined personal/business use vehicles and not, for example, to finance fleet purchases.

The Board also proposes to remove the principal liability and guarantee requirement from this section. The MBL rule currently requires principals to provide their personal liability or guarantee on MBLs unless the credit union receives a waiver from its regional office. 12 CFR 723.7(b). The Board has approved six state rules that do not require guarantees by principals and NCUA's regional offices have approved numerous waivers allowing credit unions to make MBLs without requiring principal guarantees. The Board also notes that the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not require national banks and savings associations to obtain a principal's guarantee before extending credit to a business. The Board recognizes that some credit unions lend to cooperative entities with hundreds of members, making it impractical to obtain personal guarantees from every principal. Credit unions may still require loan applicants to provide principal guarantees as a risk-reducing business practice.

Finally, the Board proposes to amend this section to permit credit unions to make unsecured MBL loans, in addition to credit card line of credit programs offered to nonnatural person members, subject to certain limits. Under the current rule, all MBLs must be secured by collateral in accordance with the

rule's loan-to-value ratios, except for nonnatural person member credit cards. 12 CFR 723.7(a), (c). The Board has approved four state rules that permit credit unions with a net worth of at least 7% to make other unsecured MBLs under various conditions.

Under the proposal, a credit union may make unsecured MBLs if: (1) The credit union is ''well-capitalized'' as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of $100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The Board also proposes that the rule permit a credit union to apply for waivers from the unsecured loans to one borrower limitation and the aggregate unsecured loan limitation under this section. In connection with adding these provisions to § 723.10 on waivers, § 723.10 has been reorganized and revised to make it easier to follow.

Reserves for Classified Loans, Sections 723.14 and 723.15

The Board proposes to delete and reserve §§ 723.14 and 723.15, which address classification of loans for losses and reserving requirements. The Board recently adopted the Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 02–3). 67 FR 37445, May 29, 2002. IRPS 02–3 supercedes the current regulatory provisions.

IRPS 02–3 provides federally insured credit unions guidance on the design and implementation of ALLL methodologies and supporting documentation practices consistent with existing GAAP. NCUA requires all credit unions to follow GAAP with regard to loan loss estimates to meet the requirements of full and fair disclosure. 12 CFR 702.402(d)(1). IRPS 02–3 recognizes that credit unions should adopt methodologies and documentation practices appropriate for their size and complexity. Federally insured credit unions should follow IRPS 02–3 to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses, regardless of loan type. These sections in the MBL rule about loan loss reserves are no longer applicable.

Standard Risk-Based Net Worth Component for MBLs

The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702. For purposes of PCA, one of the eight risk portfolios used to calculate an applicable risk-based net worth (RBNW) requirement consists of a credit union's balance of outstanding MBLs. 12 CFR 702.104(b). The standard RBNW component presently divides the portfolio of MBLs by a single threshold—12.25% of total assets. The amount of MBLs less than or equal to that threshold is risk-weighted at 6%; the amount in excess of the threshold is risk-weighted at 14%. 12 CFR 702.106(b). To recognize finer increments of risk, an alternative RBNW component is available that divides MBLs by fixed and variable-rate and then categorizes them by remaining maturity among a set of four, corresponding risk-weighting buckets. 12 CFR 702.107(b). *See* Appendix D in rule text below. The difference in interest rate risk between variable-rate and fixed-rate MBLs is reflected in the two-percentage point risk-weighting discount that the alternative component generally gives the former compared with the latter.

Among other factors, credit unions' loss experience with MBLs since part 702 was first enacted warrants reconsidering the risk-weighting schedule of the standard RBNW component. First, contrary to expectations, the loss history of MBLs has remained remarkably consistent at 0.1% net charge-offs since 1998. Second, compared to the standard component for long-term real estate loans, 12 CFR 702.106(a), the risk-weighting for MBLs arguably climbs too prematurely and too dramatically. According to December 2001 Call Report data, more than half of all MBLs are real estate loans. In view of this fact, the disparity in risk of loss is insufficient to justify triggering the 14% risk weighting at 12.25% of total assets in the case of MBLs, but at 25% of assets in the case of long-term real estate loans. Commercial real estate is typically more volatile in price than residential real estate. In addition, if the member backs the loan with his or her primary residence, the loan is not an MBL. Third, it is widely recognized that default risk and interest rate risk generally increase as maturity increases, all other factors being constant. But field staff experience indicates that credit union MBLs generally are relatively short-term, maturing in 5 years or less, thereby limiting exposure to these risks, as demonstrated by MBLs' low loss history in recent years. While both real estate loans and MBLs trigger a 14% risk weighting at 25% of assets under this proposal, the risks being addressed are somewhat different. The purpose of this risk weighting for real estate loans is primarily to target interest rate risk, whereas the target for MBLs is credit risk. Finally, recent research indicates that credit union MBLs carry less risk, on average, than do analogous commercial bank loans, which are risk-weighted at a uniform 8% regardless of percentage of total assets. 12 U.S.C. 325, Pt. 3, App A. *See* David M. Smith & Stephen A. Woodbury, *Differences in Bank and Credit Union Capital Needs* (Filene Research Institute 2001). Therefore, risk-weighting a middle range of the balance of MBLs at less than 14% would not present a material risk to the NCUSIF. On balance, these factors justify moderating the upward slope of the risk-weighting schedule for MBLs.

Accordingly, the Board proposes to expand the standard component to three tiers divided by a 15% and a 25% threshold, respectively. The bottom tier, risk-weighted at 6%, would consist of the amount of MBLs less than or equal to 15% of total assets. The middle tier, risk-weighted at 8%, would consist of the amount of MBLs greater than 15%, but less than or equal to 25%, of total assets. The top tier, risk-weighted at 14%, would consist of the amount of MBLs in excess of 25% of total assets. This is set out in line (b) in Table 3 and Appendix A in rule text below.

CUSO Business Loan Origination, Section 712.5

The Board proposes to add business loan origination to the CUSO regulation's list of permissible activities. 12 CFR 712.5. The Board believes that by authorizing CUSOs to engage in business loan origination, CUSOs will better serve credit union members by offering loans to members that their credit unions may be unable to grant. CUSOs are a good vehicle for these loans because the MBL rule and safe and sound underwriting practices require specialized lending experience.

The MBL rule requires credit unions to use the services of an individual with at least two years direct experience with the type of loans the credit union offers. 12 CFR 723.5. The rule permits a credit union to use the services of a CUSO with the appropriate lending experience to meet this requirement. *Id.* As the Board noted in 1998, a credit union ''using the CUSO for back office business loan functions can use the CUSO's staff to fulfill its obligations to

have an experienced lender on [its] staff. * * * In other words, [credit unions] are permitted to leverage their members business loan expertise with CUSO business loan personnel.'' 63 FR 10743, 10752, Mar. 3, 1998. The MBL and CUSO rules, therefore, have allowed CUSOs to engage in the mechanics of business loan origination for several years.

Business loans require specialized lending staff, experienced in the due diligence and underwriting standards necessary for originating good loans. Many credit unions do not have the lending personnel on staff with the experience required to make a variety of MBLs and may not find it prudent to outsource this expertise. By authorizing CUSOs to originate business loans, credit unions can benefit from economies of scale by pooling their investments into a business lending CUSO, thus affording their small business members access to MBLs that may otherwise be unavailable through the credit union or other lenders. The Board notes, however, that credit unions cannot circumvent the intent of the statutory limitations placed on credit unions under CUMAA by purchasing an unreasonable amount of MBL participation interest from their CUSOs. As the Board notes above, in order for a participating credit union to exclude participation interests it has purchased, including those from a credit union organization as defined in § 701.22(a)(4), the purchase must be a *bona fide* transaction to fulfill a business purpose.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The proposed amendments to the member business loan rule relax some of the rule's existing standards or clarify current requirements. In addition, most small credit unions do not grant member business loans. The NCUA Board, therefore, has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory 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 liberalizes current requirements and standards applicable to all federally insured credit unions and 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 the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

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).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 712

Credit, Credit unions.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 27, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR chapter VII as set forth below:

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. Amend § 702.106 as follows:

a. Revise paragraph (b) to read as set forth below; and

b. Revise Table 4 following paragraph (h) to read as set forth below:

§ 702.106 Standard calculation of risk-based net worth requirement.

* * * * *

(a) * * *

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to fifteen percent (15%) of total assets;

(2) Eight percent (8%) of the amount of member business loans outstanding greater than fifteen percent (15%), but less than or equal to twenty-five percent (25%), of total assets; and

(3) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

* * * * *

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(a) Long-term real estate loans	0 to 25.00%	.06
	over 25.00%	.14
(b) MBLs outstanding	0 to 15.00%	.06
	>15.00% to 25.00%	.08
	over 25.00%	.14

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT—Continued

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(c) Investments (by weighted-average life):	0 to 1 year	.03
	>1 year to 3 years	.06
	>3 years to 10 years	.12
	>10 years	.20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets).	(1.00)

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement.

3. Revise Appendix A to Subpart A of Part 702 to read as follows:

APPENDIX A.—EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, § 702.106

[Example calculation in bold]

Risk portfolio	Dollar balance	Amount as percent of quarter-end total assets	Risk weighting	Amount times risk weighting (percent)	Standard component (percent)
Quarter-end total assets	**200,000,000**	**100.0000**			
(a) Long-term real estate loans	**60,000,000**	**30.0000=**			**2.20**
Threshold amount: 0 to 25%		**25.0000**	.06	**1.5000**	
Excess amount: over 25%		**5.0000**	.14	**0.7000**	
(b) MBLs outstanding	**35,000,000**	**17.5000**			**1.10**
Threshold amount: 0 to 15%		**15.0000**	.06	**0.9000**	
Intermediate tier: 15% to 25%		**2,5000**	.08	**0.2000**	
Excess amount: over 25%		**0.0**	.14	**0.0**	
(c) Investments	**50,000,000=**	**25.0000=**			**1.51**
Weighted-average life:					
0 to 1 year	**24,000,000**	**12.0000**	.03	**0.3600**	
>1 year to 3 years	**15,000,000**	**7.5000**	.06	**0.4500**	
>3 years to 10 years	**10,000,000**	**5.0000**	.12	**0.6000**	
>10 years	**1,000,000**	**0.5000**	.20	**0.1000**	
(d) Low-risk assets	**4,000,000**	**2.0000**	.00		**0**
Sum of risk portfolios (a) through (d) above	**149,000,000**	**74.5.000**			
(e) Average-risk assets	**51,000,000**	**25.5000** [a]	.06		**1.53**
(f) Loans sold with recourse	**40,000,000**	**20.0000**	.06		**1.20**
(g) Unused MBL commitments	**5,000,000**	**2.5000**	.06		**0.15**
(h) Allowance	**2,040,000.00** [b]	**1.0200**	(1.00)		**(1.02)**
Sum of standard components: RBNW requirement [c]					**6.67**

[a] *The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).*

[b] *The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.*

[c] *A credit union is classified ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.*

4. Revise Appendix D to Subpart A of Part 702 to read as follows:

APPENDIX D—EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, § 702.107(B)

[Example calculation in bold]

Remaining maturity	**Dollar balance of MBLs by remaining maturity**	**Percent of total assets by remaining maturity**	Alternative risk weighting	**Alternative component (percent)**
Fixed-rate MLBs 0 to 3 years	**6,000,000**	**3.0000**	.06	**0.1800**
> 3 years to 5 years	**4,000,000**	**2.0000**	.09	**0.1800**
> 5 years to 7 years	**2,000,000**	**1.0000**	.12	**0.1200**
> 7 years to 12 years	**0**	**0.0000**	.14	**0.0000**
> 12 years	**0**	**0.0000**	.16	**0.0000**
Variable-rate MBLs 0 to 3 years	**17,000,000**	**8.5000**	.06	**0.5100**
> 3 years to 5 years	**4,000,000**	**2.0000**	.08	**0.1600**
> 5 years to 7 years	**2,000,000**	**1.0000**	.10	**0.1000**
> 7 years to 12 years	**0**	**0.0000**	.12	**0.0000**
>12 years	**0**	**0.0000**	.14	**0.0000**
Sum of above equals Alternative component*	.....	.....	.....	**1.25**

*Substitute for standard component if lower.

5. Revise Appendix H to Subpart A of Part 702 to read as follows:

APPENDIX H.—EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS

[Example calculation in bold]

Risk portfolio	Standard component	In percent	
		Alternative component	Lower of standard or alternative component
(a) Long-term real estate loans	**2.20**	**2.85**	**2.20**
(b) MBLs outstanding	**1.10**	**1.25**	**1.10**
(c) Investments	**1.51**	**1.37**	**1.37**
(f) Loans sold with recourse	**1.20**	**1.03**	**1.03**
(d) Low-risk assets	.....	.....	**[1] 0**
(e) Average-risk assets	.....	.....	**[1] 1.53**
(g) Unused MBL commitments	.....	.....	**[1] 0.15**
(h) Allowance	.....	.....	**[1] (1.02)**
RBNW requirement [2] Compare to Net Worth Ratio	.....	.....	**[1] 6.53**

[1] Standard components.
[2] A credit union is ''undercapitalized'' if its net worth ration is less than its applicable RBNW requirement.

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

7. Amend § 704.7 paragraph (e)(2) by revising the sentence as follows:

§ 704.7 Lending.

* * * * *

(e) * * *

(2) Corporate CUSOs are not subject to part 723 of this chapter.

* * * * *

8. Amend § 704.11 by removing paragraph (b)(4).

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

9. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

10. In § 712.5, redesignate paragraphs (c) to (q) as paragraphs (d) to (r) and add new paragraph (c) to read as follows:

(c) Business loan origination;

PART 723—MEMBER BUSINESS LOANS

11. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

12. Amend § 723.1 as follows:

a. Add the phrase ''the outstanding member business loan balances are'' after the word ''when'' in paragraph (b)(3);

b. Add paragraphs (c) and (d).

§ 723.1 What is a member business loan?

* * * * *

(c) *Loans to credit unions and credit union service organizations.* This part does not apply to loans made by federal credit unions to credit unions and credit union service organizations. This part does not apply to loans made by a federally insured, state-chartered credit union to credit unions and credit union service organizations if the credit union's state supervisory authority determines that state law grants independent authority to lend to these entities.

(d) *Loan participations.* Any interest obtained in participation loans is excluded from a purchasing credit union's aggregate member business loan limit, but the purchasing credit union must otherwise comply, as if it had originated the loan, with both the requirements of this part and the risk-weighting standards under part 702 of this chapter.

13. Amend § 723.3 by revising paragraph (a) and paragraph (b) to read as follows:

§ 723.3 What are the requirements for construction and development lending?

* * * * *

(a) The aggregate of the outstanding member business loan balances for all construction and development loans must not exceed 15% of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property.

(b) The borrower must have a minimum of 25% equity interest in the project being financed, except that this requirement shall not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property. Instead, the collateral requirements of § 723.7 shall apply; and

* * * * *

§ 723.5 [Amended]

14. Amend § 723.5 as follows:

a. Add the following sentence after the word ''in'':

The experience should provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage.

b. Add the following sentence after the word ''parties'':

Any third-party used by a credit union to meet the requirements of this section must be independent from the transaction and may not benefit from the making of the loan or the sale of a participation interest which the third-party is hired to review, except to the extent of providing a service to the credit union.

§ 723.6 [Amended]

15. Amend § 723.6 as follows:

a. Add the phrase ''secured and unsecured'' before the word ''business'' in paragraph (c);

b. Add ''§ 723.7(b)(2) and'' after the words ''subject to'' in paragraph (e);

c. Add the phrase ''consistent with appropriate underwriting and due diligence standards, which also addresses the need for periodic financial statements, credit reports, and other data when necessary to analyze future lines of credit, such as, borrower's history and experience, balance sheet, cash flow analysis, income statements, tax data, environmental impact assessment, and comparison with industry averages, depending upon the loan purpose'' after the word ''loan'' in paragraph (g);

d. Remove paragraphs (h) and (i) and redesignate paragraphs (j) to (m) as (h) to (k).

16. Amend § 723.7 by revising paragraph (a) and paragraph (b), and by adding paragraph (d) to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (b), (c), and (d), must be secured by collateral as follows:

(1) The minimum loan-to-value ratio for all liens must not exceed 80% unless the value in excess of 80% is covered through private mortgage insurance or equivalent type of insurance, or insured, guaranteed, or subject to advance commitment to purchase by an agency of the federal government, an agency of a state or any of its political subdivisions, but in no case may the ratio exceed 95%;

(2) A borrower may not substitute any insurance, guarantee, or advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state for the collateral requirements of this paragraph.

(b) You may make unsecured member business loans under the following conditions:

(1) You are well-capitalized as defined by § 702.102(a)(1) of this chapter;

(2) The aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of $100,000 or 2.5% of your net worth; and

(3) The aggregate of all unsecured outstanding member business loans does not exceed 10% of your net worth.

* * * * *

(d) Federally insured credit unions may make vehicle loans under this part without complying with the loan-to-value ratios in this section, provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle.

17. Amend § 723.8 by adding the words ''loan balances'' after the word ''business'' and removing the word ''loans (including any unfunded commitments).''

18. Remove and reserve § 723.9.

19. Revise § 723.10 to read as follows:

§ 723.10 What waivers are available?

You may seek a waiver for a category of loans in any of the following areas:

(a) Appraisal requirements under § 722.3;

(b) Aggregate construction and development loans limits under § 723.3(a);

(c) Minimum borrower equity requirements for construction and development loans under § 723.3(b);

(d) Loan-to-value ratio requirements for business loans under § 723.7(a);

(e) Maximum unsecured business loans to one member or group of associated members under § 723.7(b)(2);

(f) Maximum aggregate unsecured member business loan limit under § 723.7(b)(3); and

(g) Maximum aggregate outstanding member business loan balance to any one member or group of associated members under § 723.8.

20. Remove and reserve § 723.14.

21. Remove and reserve § 723.15.

22. Revise the first sentence of § 723.16 as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

The aggregate limit on a credit union's outstanding member business loan balances, excluding any interest obtained in participation loans, is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. * * *

23. Add the following definition to § 723.21:

§ 723.21 Definitions.

* * * * *

Outstanding Member Business Loan Balance means the outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such

state, or sold as a participation interest without recourse.

[FR Doc. 03–8040 Filed 4–3–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

Draft Proposed Changes to 14 CFR 25.1329 and Draft Advisory Circular 25.1329

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Aviation Rulemaking Advisory Committee (ARAC) recommendations.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of the ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft Advisory Circular 25.1329 for potential use, upon request, in the certification of applicable aircraft systems. The said ARAC recommendations have not yet been adopted by the FAA.

DATES: The FAA received the ARAC submittal on March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Bartley, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2889; fax (425) 227–1320; e-mail: *Gregg.Bartley@faa.gov.*

SUPPLEMENTARY INFORMATION: *Reference:* FAA policy memorandum 00–113–1034 ''Use of ARAC (Aviation Rulemaking Advisory Committee) Recommended Rulemaking not yet formally adopted by the FAA, as a basis for equivalent level of safety or exemption to part 25.''

This policy memorandum describes a standardized, streamlined approach for the use of draft FAA/JAA harmonized regulations as a basis for an equivalent level of safety finding or an exemption to part 25. It may be found on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/document/final/aracesf/index.htm.*

Background

After a multi-year review of the current 25.1329 rule and AC 25.1329–1A, the ARAC submitted to the FAA their recommendations for a rule amendment and revised advisory materials in March 2002. The ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft AC 25.1329 are available on the Internet at the following address: *http://www1.faa.gov/avr/arm/aracflightguide recommendation.cfm?nav=6.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The procedure for using ARAC-recommended rules that are not yet adopted by the FAA is described in the FAA policy memorandum 00–113–1034 referenced above. The memorandum describes the process for requesting an equivalent safety finding, as well as petitioning for an exemption.

Issued in Renton, Washington, on March 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7666 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect the integral fuel tank wing ribs for cracks and the top and bottom wing skins for distortion and repair before further flight, and accomplish a fuel tank ventilating system installation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 12, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–12-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–12–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each