the amount of grant, the State Director will notify the Loan Official of the State Director's determination and authorize the Loan Official to prepare and execute Form AD–622. The Loan Official will forward the original to the applicant, a copy to the State Director, and a copy to the case file.

8. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

* * * * *

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. A notice of the availability of funds (NOFA) for off-farm facilities will be announced annually in the **Federal Register**, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

9. Exhibit A–1 to subpart D is amended by revising the introductory paragraph of section I.B. and paragraph I.B.3 to read as follows:

Exhibit A–1 to Subpart D—Information to be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. *Information to be submitted with SF 424.2 (for preapplication submission).*

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

Dated: October 22, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–28995 Filed 10–28–98; 8:45 am]

BILLING CODE 3410–XV–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) requests public comment on development of a system of ''prompt corrective action'' to be taken by NCUA when a federally-insured credit union becomes undercapitalized. A new provision of the Federal Credit Union Act, as added by the Credit Union Membership Access Act, requires the NCUA Board to adopt, by regulation, a system of prompt corrective action indexed to each of five capital categories which the new provision establishes for federally-insured credit unions. Much of the system of prompt corrective action either is already prescribed by the new provision itself or is required to be comparable with the system Congress established for other federally-insured financial institutions in 1991. However, Congress has left to NCUA the responsibility to develop implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions. Information and comments from interested parties on these specific components will assist NCUA in carrying out its mandate to implement a system of prompt corrective action.

DATES: Comments must be received on or before January 27, 1999.

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. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6362; or Steven W. Widerman, Trial Attorney, Office of General Counsel, at the above address or telephone (703) 518–6557.

SUPPLEMENTARY INFORMATION:

A. Background

On August 7, 1998, Congress enacted the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105–219, 112 Stat. 913 (1998). Section 103 of CUMAA added a new section 216 to the Federal Credit Union Act (FCUA), to be codified as 12 U.S.C. 1790d. New section 216(b)(1) requires the NCUA Board to adopt by regulation a system of ''prompt corrective action'' to be taken by NCUA when a federally-insured ''natural person'' credit union becomes undercapitalized. Congress requires NCUA's system of prompt corrective action to be ''comparable'' to the system it prescribed for the other federally-insured financial institutions in 1991 under section 38 of the Federal Deposit Insurance Act (FDIA § 38), 12 U.S.C. 1831o, as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act, Pub. L. No. 102–242, 105 Stat. 2236 (1991).

Many of the regulations that will comprise NCUA's system of prompt corrective action are not open to substantive discretion in rulemaking. Section 216 (c) through (i) itself prescribes the substance of much of NCUA's system of prompt corrective action. To satisfy the requirement of ''comparability'' with FDIA § 38, NCUA's regulations will generally parallel those adopted by the other Federal banking agencies pursuant to FDIA § 38,[1] to the extent such regulations are applicable to credit unions. However, Congress has left to NCUA the responsibility for originating implementing regulations for certain components of the system of prompt corrective action which are unique to credit unions and, thus, were not addressed in FDIA § 38. New § 216 (b)(2) and (d). The components on which NCUA seeks comment are:

1. The definition of a ''complex'' credit union;

2. The design of a ''risk-based net worth requirement'' to apply to ''complex'' credit unions;

3. The design of an alternative system of prompt corrective action for ''new'' credit unions (defined as less than 10 years old and having less than $10 million in assets); and

4. The criteria for an acceptable Net Worth Restoration Plan for under-capitalized credit unions.

[1] The Federal banking agencies consist of the Federal Reserve Board, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision. New § 216(o)(1) incorporating 12 U.S.C. 1813(z). Their Joint Final Rule establishing a system of prompt corrective action pursuant to FDIA § 38 is published at 57 FR 44886 (Sept. 29, 1992).

New § 216 (b)(2)(d) and (f)(5). NCUA seeks comment on these components. An opportunity to address all of the components of prompt corrective action will be provided in 1999 when NCUA issues proposed rules for comment.

B. Timetable

Congress has set a timetable for NCUA to propose for comment, and to finally adopt, implementing regulations for section 216. For all implementing regulations except those regarding the ''risk-based net worth requirement'' for ''complex'' credit unions, NCUA is required to propose rules no later than May 26, 1999, and to adopt final rules no later than February 7, 2000, which would become effective August 7, 2000. CUMAA § 301 (d)(1) and (e)(1).

A different timetable applies to implementing regulations for a single component of the prompt corrective action—the ''risk-based net worth requirement'' for ''complex'' credit unions. Congress requires NCUA to precede its proposed and final implementing rules with an Advance Notice of Proposed Rulemaking (ANPR) soliciting public comment on the ''risk-based net worth requirement'' only, to be published no later than February 3, 1999. CUMAA § 301(d)(2)(A). To fulfill that requirement, NCUA publishes this ANPR soliciting public comment not only on the ''risk-based net worth requirement'' for ''complex'' credit unions, but also on other components of prompt corrective action, unique to credit unions, for which Congress has directed NCUA to originate implementing regulations. No date is prescribed for proposing rules on the ''risk-based net worth requirement,'' but NCUA is required to adopt final rules no later than August 7, 2000, which would become effective January 1, 2001. CUMAA § 301 (d)(2)(B) and (e)(2).

Broad public input addressing these components will assist the NCUA Board in tailoring a system of prompt corrective action that is workable, fair and effective in light of the cooperative character of credit unions. *See* S. Rep. No. 193, 105th Cong., 2d Sess. 14 (1998) (S. Rep.).

C. Framework of Section 216

Like FDIA § 38, new section 216(c) establishes a framework of five capital categories based on the ratio of a credit union's net worth.[2] New section 216(e) through (i) then mandates specific prompt corrective actions indexed to each of the lower four categories. Most such actions impose progressively more stringent restrictions and requirements on credit unions; others permit or require NCUA to take administrative action, including conservatorship and liquidation.

1. *Well Capitalized.* A credit union is ''well capitalized'' if it has a net worth ratio of 7% or greater and, if it meets the definition of a ''complex'' credit union, also satisfies an additional ''risk-based net worth requirement.'' New § 216(c)(1)(A). A ''well capitalized'' credit union is not subject to any type of prompt corrective action under section 216.

2. *Adequately Capitalized.* A credit union is ''adequately capitalized'' if it has a net worth ratio of 6% or greater and, if it meets the definition of a ''complex'' credit union, also satisfies an additional ''risk-based net worth requirement.'' New § 216(c)(1)(B). To improve capital, an ''adequately capitalized'' credit union must annually set aside as net worth an amount equal to at least 0.4% of its total assets. New § 216(e). This is the only prompt corrective action required of a credit union that is ''adequately capitalized'' but not ''well capitalized.''

3. *Undercapitalized.* A credit union is ''undercapitalized'' if it has a net worth ratio of less than 6% or, if it meets the definition of a ''complex'' credit union, fails to satisfy an additional ''risk-based net worth requirement.'' New § 216(c)(1)(C). In addition to annually setting aside as net worth an amount equal to at least 0.4% of its total assets, an ''undercapitalized'' credit union also must timely submit and implement a Net Worth Restoration Plan which is accepted by the NCUA Board; must not allow its average total assets to increase unless and at a rate permitted by its Plan; and cannot increase the total amount of member business loans outstanding at any one time. New § 216(f)(1) and (g).

4. *Significantly Undercapitalized.* A credit union is ''significantly undercapitalized'' if it has a net worth ratio of less than 4%. However, a credit union which has a net worth ratio of between 4% and 4.99%, and otherwise would be ''undercapitalized,'' will instead be classified ''significantly undercapitalized'' if it has failed to timely submit or implement a Net Worth Restoration Plan acceptable to the NCUA Board (see infra section E.4.). New § 216(c)(1)(D). A ''significantly undercapitalized'' credit union is subject to all of the same prompt corrective actions as one which is ''undercapitalized.'' But in addition, NCUA is given the discretion to conserve or liquidate that credit union if it finds no reasonable prospect that it will become ''adequately capitalized.'' New §§ 206(h)(1)(F) and 207(a)(3)(A)(i) as added by CUMAA § 301(b)(1)(A)(iii) and (b)(2)(B).

5. *Critically Undercapitalized.* A credit union is ''critically undercapitalized'' if it has a net worth ratio of less than 2%. New § 216(c)(1)(E). A ''critically undercapitalized'' credit union is subject to all of the same prompt corrective actions as one which is ''significantly undercapitalized'' except that NCUA may now conserve or liquidate that credit union regardless whether there is a reasonable prospect that it will become ''adequately capitalized.'' New §§ 206(h)(1)(G) and 207(a)(3)(A)(ii) as added by CUMAA § 301(b)(1)(A)(iii) and (b)(2)(B). In addition, a ''critically undercapitalized'' credit union is subject to a timetable that, absent improvement in capital, leads to mandatory conservatorship or liquidation. Within 90 days of becoming ''critically undercapitalized,'' NCUA must either conserve or liquidate that credit union or ''take such other action . . . [that] would better achieve the purpose of [section 216], after documenting why the action would better achieve that purpose.'' New § 216(i)(1). NCUA's determination to take ''such other action'' in lieu of conservatorship or liquidation expires in 180 days. If that determination is not renewed, the credit union must be conserved or liquidated. New § 216(i)(2). If, after two renewals (*i.e.*, 18 months after first becoming ''critically undercapitalized''), the credit union remains ''critically underapitalized,'' on average, for a full calendar quarter, NCUA must liquidate unless the credit union (i) has been complying with a Net Worth Restoration Plan since the date it was approved; (ii) has positive net income or a sustainable upward trend in earnings; and (iii) is viable and not expected to fail. New § 216(i)(3).

D. Required Comparability With FDIA Section 38

1. Comparability

New section 216 is modeled on section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o. Beginning in 1992, that provision mandated a system of prompt corrective

[2] ''Net worth ratio'' is defined as the ratio of a credit union's net worth to its total assets. New § 216(o)(3). The ''net worth'' of a credit union (other than a low-income credit union) is defined as its retained earnings balance as determined under GAAP. New § 216(o)(2)(A). Under GAAP, retained earnings consists of undivided earnings, statutory reserves, and other appropriations as defined by management or regulatory authorities. AICPA, *Audit & Accounting Guide: Audits of Credit Unions* at § 11.01 (1998).

action to apply to all FDIC-insured depository institutions. The purpose of prompt corrective action for federally-insured credit unions is to resolve problems at the least possible long-term loss to the National Credit Union Share Insurance Fund (the Fund). New § 216(a)(1). To carry out that purpose, Congress requires the NCUA Board to adopt regulations establishing a system of prompt corrective action that, in addition to being consistent with section 216, is ''comparable to section 38 of the Federal Deposit Insurance Act.'' [3] New 216(b)(1)(A); S. Rep. at 12; H.R. Rep. No. 472, 105th Cong., 2d Sess. 23 (1998) (H.R. Rep. at 23).

''Comparable '' is defined as ''parallel in substance (though not necessarily identical in detail) and equivalent in rigor.'' S. Rep. at 12. NCUA interprets this to mean that its implementing regulations for section 216 should parallel those adopted by the Federal banking agencies to implement FDIA § 38, to the extent the latter regulations apply to credit unions. Conversely, NCUA's regulations will exclude prompt corrective actions under FDIA § 38 which are inapplicable to credit unions, such as requiring the sale of stock or subordinated debt to recapitalize or undergo a merger or acquisition, prohibiting the acceptance of deposits from correspondent institutions, requiring a bank holding company to obtain approval before making a capital distribution, and requiring divestiture of an institution. See U.S. Dept. of Treasury, *Credit Unions* (Washington, D.C. 1997) at 76 (Treasury Rep.).

NCUA invites commenters to identify the prompt corrective actions under FDIA § 38 which they believe do not apply to credit unions and should be excluded from NCUA's implementing regulations, as well as to address the components of prompt corrective action under section 216 which have no analog in FDIA § 38.

2. Report to Congress

To the extent that NCUA's prompt corrective action regulations are not parallel with an applicable provision of FDIA § 38, the NCUA Board is required to report that difference to Congress. The report to Congress must ''specifically explain . . . how the regulations differ from [FDIA § 38], and the reasons for those differences.'' [4] CUMAA § 301(f); S. Rep. at 19; H.R. Rep. at 23. The report to Congress must be submitted either when the NCUA Board proposes its regulations for all but the ''risk-based net worth requirement'' (on or before May 26, 1999), or when it finally adopts such regulations (on or before February 7, 2000).

E. Components of Prompt Corrective Action Unique to Credit Unions

1. Definition of a ''Complex'' Credit Union

To be classified either ''well capitalized'' or ''adequately capitalized,'' a credit union that is deemed ''complex'' must satisfy a prescribed ''risk-based net worth requirement'' in addition to the corresponding statutory net worth ratio. New § 216(c)(1)(A)(ii) and (B)(ii). Similarly, a credit union that is deemed ''complex'' will be classified as ''undercapitalized'' if it fails to meet a prescribed ''risk-based net worth requirement,'' regardless whether it meets the corresponding statutory net worth ratio. New § 216(c)(1)(C)(ii). To set up this ''gateway'' for imposing the ''risk-based net worth requirement,'' new section 216 requires the NCUA Board to define a ''complex'' credit union ''based on the portfolios of assets and liabilities of credit unions.'' New § 216(d)(1).

FDIA § 38 gives no guidance in defining a ''complex'' credit union because it draws no distinction between ordinary and complex depository institutions; indeed, a ''risk-based capital requirement'' applies to all such institutions in all but the ''critically undercapitalized'' category. Joint Final Rule, 57 FR 44870 (Sept. 28, 1992). NCUA believes that the definition of a ''complex'' credit union should incorporate objective, risk-related numerical standards, derived from a credit union's balance sheet. This would serve the interests of uniformity and efficiency in two ways. First, credit unions would not be subject to unequal treatment as a result of subjective ''complexity'' determinations by NCUA and State credit union supervisors. Second, credit unions would be able to determine for themselves where they stand with respect to being deemed ''complex'' or not.

NCUA encourages commenters to address possible criteria for defining a credit union as ''complex'' according to the risk level of its portfolio of assets and liabilities. The following might be considered examples of such criteria:

(i) *Investments.* Whether the credit union's securities portfolio is subject to NCUA's 300 basis point ''shock test'' required when the sum of the fair value of ''certain fixed and variable rate securities'' [5] the credit union holds exceeds its net capital, 12 CFR 703.90(b)–(c);

(ii) *Lending.* Whether the credit union's portfolio exceeds a certain threshold ratio of fixed-rate real estate mortgages;

(iii) *Borrowing.* Whether the credit union has exceeded a certain threshold ratio of borrowed funds; and

(iv) *CAMEL Components.* Whether the ''Capital'' and/or ''Asset'' components of the credit union's CAMEL rating are rated ''4'' or ''5.''

2. ''Risk-based Net Worth Requirements''

For each of the top three capital categories—''well capitalized,'' ''adequately capitalized'' and ''undercapitalized''—the NCUA Board is required to establish a separate ''risk-based net worth requirement'' that applies to credit unions that are deemed ''complex.'' New § 216(d)(1); compare 12 U.S.C. 1831o(c)(1)(A). The ''risk-based net worth requirement'' must ''take account of any material risks against which the [6% net worth ratio required to be ''adequately capitalized''] may not provide adequate protection.'' New § 216(d)(2). To this end, NCUA will consider whether a credit union having a 6% net worth ratio is adequately protected against interest rate risk, market risks, credit risk, risks posed by contingent liabilities, and other relevant risks. S. Rep. at 14. The design of the risk-based net worth requirement will reflect a reasoned judgment about the actual risks involved. *Id.*

FDIA § 38 required the Federal banking agencies to develop a ''risk-based capital requirement'' to include among the ''relevant capital measures'' used to classify insured institutions among the five capital categories. 12 U.S.C. 1831o(c)(1). To fulfill that requirement, the Federal banking agencies adopted two separate measures which are independent of the ''leverage ratio'' (the equivalent of ''net worth ratio'')—the ''ratio of total capital to risk-weighted assets'' and the ''ratio of

[3] To this end, in developing regulations to implement new section 216, the NCUA Board is required to consult with the Secretary of the Treasury, the other Federal banking agencies (which apply prompt corrective action under FDIA § 38), and State officials having jurisdiction over State-chartered, federally-insured credit unions. CUMAA § 301(c).

[4] The Report to Congress also must explain how NCUA's regulations take into account the cooperative character of credit unions, i.e., that credit unions are not-for-profit cooperatives that do not issue stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers. New § 216(b)(1)(B).

[5] Such securities are defined as having embedded options; or remaining maturities greater than three years; or coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index. 12 CFR 703.90(b).

Tier 1 capital to risk-weighted assets.'' [6] 57 FR at 44870.

NCUA is considering a ''risk-based net worth requirement'' that consists of a basis points (b.p.) add-on to the existing statutory net worth ratio for each of the ''well capitalized,'' ''adequately capitalized'' and ''undercapitalized'' categories. The amount of the add-on would not necessarily be the same for each category. For example, a uniform 100 b.p. increase in the net worth ratio for each category would be reflected as follows. An otherwise ''well capitalized'' credit union (having a net worth ratio of 7% or greater) that is deemed ''complex'' would be required to achieve a net worth ratio of 8% or greater (7% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'') to be classified ''well capitalized.'' An otherwise ''adequately capitalized'' credit union (having a net worth ratio of 6% or greater) that is deemed ''complex'' would be required to achieve a net worth ratio of 7% or greater (6% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'') to be classified ''adequately capitalized.'' Conversely, an otherwise ''undercapitalized'' credit union (having a net worth ratio of less than 6%) that is deemed ''complex'' still would be ''undercapitalized'' unless it achieved a net worth ratio of 7% (6% statutory net worth ratio + 100 b.p. ''risk-based net worth requirement'').

NCUA invites comment on the concept of supplementing applicable statutory net worth ratios, on the notion of establishing risk-weighted ratios that are independent of the statutory net worth ratios, as well as alternative designs for a ''risk-based net worth requirement.''

3. Alternative Rules for ''New'' Credit Unions

For ''new'' credit unions, the NCUA Board is required to prescribe an alternative system of prompt corrective action to apply in lieu of the system prescribed by section 216 for existing credit unions. New § 216(b)(2)(A); see also Treasury Rep. at 79. The alternative system of prompt corrective action for ''new'' credit unions must be designed to:

(i) Carry out the purpose of section 216, i.e., to solve problems at the least possible long-term loss to the Fund;

(ii) Recognize that new credit unions initially have no net worth, and give them reasonable time to accumulate net worth;

(iii) Create incentives for new credit unions to become adequately capitalized by the time they either have been in operation for more than 10 years or have more than $10 million in total assets;

(iv) Impose appropriate restrictions and requirements on new credit unions that do not make sufficient progress toward becoming adequately capitalized; and

(v) Prevent evasion of the purpose of section 216 (e.g., an existing credit union merges with a smaller, new credit union and classifies itself as a ''new'' credit union to avoid the requirements of section 216).

New § 216(b)(2)(B).

Section 216(o)(4) defines a ''new'' credit union as having been in operation for less than 10 years and having $10 million or less in total assets. This is a significant expansion of the definition in section 116 of the FCUA, which CUMAA repeals. CUMAA § 301(g)(3). Section 116 defined a ''new'' credit union as having been in operation less than 4 years or having assets of less than $500,000. 12 U.S.C. 1762(a)(2).

Under section 116, a ''new'' credit union was required to set aside 10% of gross income until its regular reserve (i.e., capital) reached 7.5% of total outstanding loans and risk assets, and thereafter to set aside 5% of gross income until the regular reserve reached 10% of total outstanding loans and risk assets. Id.; see also 12 CFR 702.2(a); U.S. Dept. of Treasury, *Modernizing The Financial System* (Washington, D.C. 1991) at XIII–3. Under section 216(e), existing credit unions that are less than ''well capitalized'' ordinarily are required to annually set aside as net worth an amount equal to at least 0.4% of total assets until attaining a net worth ratio of 7%.[7] The conceptual distinction between old section 116 and new section 216 is that under the former the reserve transfer was calculated as a percentage of gross income, under the latter it is calculated as a percentage of total assets.

NCUA proposes to establish a graduated timetable to allow ''new'' credit unions to build capital toward the statutory net worth level for each capital category. NCUA solicits comment on whether to adopt the same approach as section 216 now mandates for improving the capital of existing credit unions—requiring a ''new'' credit union to annually set aside as net worth a certain percentage total assets. New § 216(e). The percentage of the annual transfer to net worth might be reduced progressively as the ''new'' credit union attains a higher capital category.

4. Net Worth Restoration Plan

Any credit union which is ''undercapitalized'', ''significantly undercapitalized'' or ''critically undercapitalized'' must, among other prompt corrective actions, submit an acceptable Net Worth Restoration Plan (the Plan) to the NCUA Board. New § 216(f)(1). The Plan is required to be submitted within a reasonable time prescribed by the NCUA Board, which must act expeditiously to decide whether the Plan is acceptable. New § 216(f)(3). The NCUA Board may accept a Plan only if it determines that the Plan ''is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union.'' New § 216(f)(5). Apart from this standard, the NCUA Board needs to establish criteria for credit unions to rely upon in preparing a Plan that will be ''acceptable.''

FDIA § 38 requires an undercapitalized institution to submit a ''capital restoration plan'' (capital plan) which specifies:

(i) Steps the institution will take to become ''adequately capitalized'';

(ii) The levels of capital the institution expects to attain in each year that the plan is in effect;

(iii) How the institution will comply with the prompt corrective action restrictions and requirements imposed under FDIA § 38; and

(iv) The types and levels of activities in which the institution will engage.

12 U.S.C. 1831o(e)(2)(B)(i). To be accepted, a capital plan must meet the following statutory criteria:

(i) Contain the statutorily-required information described above;

(ii) Be based on realistic assumptions and be likely to succeed in restoring the institution's capital; and

(iii) Would not appreciably increase risk (including credit risk, interest rate risk, and other types of risk) to which the institution is exposed.

12 U.S.C. 1831o(e)(2)(C)(i). Although FDIA § 38 authorized the Federal banking agencies to adopt regulations requiring a capital plan to include additional information, the agencies declined to do so. 57 FR at 44878.

Section 216(f)(5) prescribes for a Net Worth Restoration Plan only one of FDIA § 38's criteria—that the Plan be based on realistic assumptions and be likely to succeed in

[6] The total risk-based capital ration is set at 500 basis points above the leverage ration for the ''well capitalized'' category, and at 400 basis points above the leverage ratio for the ''adequately capitalized'' and ''undercapitalized categories. The Tier-1 risk-based capital ratio is set at 100 basis points above the leverage ratio for the ''well capitalized'' category, and at the same level as the leverage ratio for the ''adequately capitalized'' and ''undercapitalized'' categories. 57 FR at 44867.

[7] Section 216(e)(2)(A) gives the NCUA Board the authority to adjust the amount of the 0.4% reserve transfer, on a case-by-case basis, if necessary to avoid a significant redemption of shares and to further the purpose of section 216.

restoring a credit union's capital. NCUA seeks comment on whether to add, by regulation, all or a combination of some of the other FDIA § 38 content prerequisites and acceptability criteria enumerated above, and on the time frame for submitting and implementing a Net Worth Restoration Plan. In addition, NCUA welcomes input on this model generally, as well as on alternative and/or additional content prerequisites and acceptability requirements for credit union Net Worth Restoration Plans.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–28875 Filed 10–28–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA is proposing to incorporate into its regulations the agency's longstanding interpretation that federal credit unions (FCUs) are authorized, within limits, to make charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations. NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations.

DATES: Comments must be received on or before January 27, 1999.

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. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone:

(703) 518–6540.

SUPPLEMENTARY INFORMATION:

NCUA has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statements (IRPS) 87–2, Developing and Reviewing Government Regulations. As part of this regulatory review program, NCUA also reviews its IRPS to determine their current effectiveness.

NCUA issued IRPS 79–6 to clarify its position on FCUs making charitable contributions and donations. 44 FR 56691 (October 2, 1979). In IRPS 79–6, NCUA acknowledged the benefits associated with FCUs making charitable contributions and donations. Also, NCUA stated that the making of charitable contributions and donations is an activity incidental to an FCU's business within the scope of powers set forth in the Federal Credit Union Act. 12 U.S.C. 1757(17).

As a result of the review of IRPS 79–6, NCUA seeks to increase regulatory effectiveness by making it easier for FCUs to locate applicable rules regarding the making of charitable contributions and donations. Accordingly, NCUA is proposing to add a new § 701.25 that will incorporate the policies of IRPS 79–6 into NCUA regulations. This new rule will be located in part 701 so it will be in the same place as other regulatory provisions regarding the organization and operations of FCUs. The language of the new rule is somewhat different from that of the IRPS, but the rationale and limitations are the same.

This proposal addresses charitable contributions and donations only and does not include political contributions and donations of FCUs, which are governed by the Federal Election Campaign Act (2 U.S.C. 441b). Additionally, all charitable contributions and donations by FCUs must be made in accordance with applicable Federal Credit Union Bylaws including those addressing conflicts of interest and FCU board of directors meetings. FCU Bylaws Art. XIX, § 4 and Art. VIII, § 8. Finally, NCUA intends that an FCU's board of directors, if it chooses, can establish a budget for charitable contributions and donations and authorize an executive committee of directors or appropriate FCU senior officials to disburse those funds in accordance with the proposal.

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 (primarily those under $1 million in assets). The NCUA has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

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

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposal only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for purposes of Executive Order 12612.

List of Subjects in 12 CFR Part 701

Charitable contributions, Credit unions.

By the National Credit Union Administration Board on October 22, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR part 701 be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Part 701 is amended by adding § 701.25 to read as follows:

§ 701.25 Charitable contributions and donations.

(a) A federal credit union may make charitable contributions and/or donate funds only to:

(1) An organization that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code and is located in or conducts its activities in a community in which the federal credit union has a principal place of business; or

(2) An organization that is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code