



October 10, 2014

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

RE: Notice of Proposed Rulemaking for Part 701, FCU Ownership of Fixed Assets; RIN 3133-AE39.

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) with regard to the proposed amendments to Part 701, Federal Credit Union Ownership of Fixed Assets. To provide a brief background, the Credit Union Association of the Dakotas represents sixty-eight state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$5.7 billion and who have more than 430,000 members.

CUAD applauds the NCUA's intent to reduce regulatory burden on federal credit unions (FCU). Reducing regulatory burden on credit unions will allow them to operate more efficiently and effectively thus allowing them to better serve their members and the communities in which they operate. While the proposed rule to amend Part 701 Federal Credit Union Ownership of Fixed Assets is a step toward reducing regulatory burden, CUAD believes that more can be done to improve the proposed rule and further reduce regulatory burden while maintaining safety and soundness in credit unions.

The Federal Credit Union Act (FCU Act) §1757(4) provides that a Federal credit union shall have power "to purchase, hold, and dispose of property necessary or incidental to its operations." The FCU Act does not include any statutory limitations on fixed assets or arbitrary timeframes in which property must be occupied. Therefore, the NCUA has the power to provide more flexibility to credit unions.

Under current regulations, "if a federal credit union has \$1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares and retained earnings.



NCUA may waive this aggregate limit.” *12 CFR 701.36(c)*. In regard to the proposed rule, NCUA proposes to replace the waiver process for FCUs seeking to exceed the five percent aggregate limit with a requirement for the FCU to implement an “effective fixed assets management (FAM) program.” CUAD absolutely supports the removal of the waiver process for FCUs seeking to exceed the aggregate limit, however, CUAD believes that NCUA should and can provide more flexibility to FCUs.

CUAD urges that with regard to proposed 701.36(c) that the NCUA completely remove the aggregate limitation of five percent (5%) and eliminate any proposed requirements that the credit union implement a fixed assets management program. This aggregate limitation is not statutorily mandated by Congress. Eliminating this unnecessary threshold will better allow FCUs to “accomplish their growth strategies and provide the services their members demand.” *79 FR 46729, August 11, 2014*. Alternatively, CUAD advocates that the aggregate limitation of five percent be increased at least to twenty percent (20%) before a FCU would be subject to supervisory scrutiny.

As noted above, the proposed rule would remove the waiver process and replace it with the requirement that the FCU seeking to exceed the aggregate limit (which CUAD strongly urges the NCUA to remove), that the FCU “implemented an effective fixed assets management (FAM) program, and the federal credit union’s board of directors has analyzed and determined that the investment in fixed assets in excess of the five percent limit is appropriate, safe and sound, and supported by its FAM program.” *79 FR 46732, August 11, 2014*. It is the position of CUAD that such a meticulous FAM program is unnecessary and overly burdensome. FCUs do have a duty to manage their fixed assets properly, but the level and analysis that is proposed by the NCUA to be included in the FAM program is beyond what is required under current rules in seeking a waiver.

The proposed rule further requires, that the FAM program include a written board policy, board oversight and internal controls. With regard to the requirement for Board oversight, the proposed rule would require that, “Except for minor acquisitions of equipment in the normal course of business, the federal credit union must obtain approval from its board of directors prior to making an investment in fixed assets that would exceed, in the aggregate, five percent of its shares and retained earnings. A board resolution approving or disapproving the investment, at a minimum, must reflect: (i) The board’s analysis of the purpose for the investment; (ii) The board’s analysis, supported by reasonable growth assumptions, of the federal credit union’s pro-forma balance sheet and income statement projections; and (iii) For an investment in real property, the board’s consideration of the future marketability of the premises, in the event the federal credit union needs or wants to sell the premises in the future.” *79 FR 46732, August 11, 2014*.

It is the position of CUAD that the FAM program as proposed is unnecessary, would not reduce the regulatory burden and therefore should not be adopted. If the NCUA does pursue a version of a FAM program, the provision “(iii) For an investment in real property, the board’s consideration of the future marketability of the premises, in the event the federal credit union needs or wants to



sell the premises in the future” should be eliminated. Credit unions seek to acquire real property to better serve its members, however, not all members are located in areas where real property may be desirable and therefore its future marketability may be minimal. For example, credit unions located in rural areas, like North and South Dakota, may seek to bring services, such as an ATM or virtual branches, to members in very remote locations. In the discussion of the proposed rule, it is noted that “NCUA will consider it unsafe and unsound if an FCU’s investments in unique or special-purpose real property with very limited marketability result in it operating at fixed assets levels above the five percent aggregate limit.” *79 FR 46731, August 11, 2014*. The benefit that their members will receive by the credit union bringing additional services to these areas should not be extinguished by a regulatory requirement that the real property have a certain level of future marketability.

The proposed rule would also threatens that “A federal credit union that does not meet the requirements of this paragraph or fails to comply with its FAM program may, in the discretion of the Regional Director, be subject to the full extent of NCUA’s supervisory authority, including prohibition of any additional investments in fixed assets or divestiture of fixed assets.” *79 FR 46732, August 11, 2014*. It is the position of CUAD that the FAM program should not be adopted. However, if the NCUA does adopt a version of the FAM program there should a method to cure any deficiencies in a FCUs FAM program and also that any recourse taken by the NCUA should be carefully applied as prohibiting additional investment in fixed assets or divestiture of fixed assets may be more detrimental to the credit union and its membership than exceeding the aggregate limit.

The proposed rule would also amend 12 CFR 701.36(d)(2) to provide that “if a federal credit union acquires premises for future expansion, including unimproved land or unimproved real property, it must partially occupy them within a reasonable period, but no later than five years after the date of acquisition.” *79 FR 46732, August 11, 2014*. This change would establish a single time period for partial occupancy of any premises acquired for future expansion. It is the position of CUAD that more flexibility should, and can, be given to FCUs and that an arbitrary time limit for occupancy (partial or full) should NOT be imposed on FCUs. Through a credit union’s strategic planning, land and/or building purchases are made in advance of their actual use. Sometimes these decisions are made when the opportunity presents itself and/or the price is right. Many factors may arise that could delay or change a credit union’s plans for expansion. The credit union’s management and board of directors are in the best position to make decisions regarding the full or partial occupancy of property. If it is NCUA’s true intent to provide flexibility to allow FCUs to “accomplish their growth strategies and provide the services their members demand,” *79 FR 46729, August 11, 2014*, then the NCUA should remove this arbitrary timeframe from its rules and regulations.



While it is CUAD's position that there should not be a time limit in place for partial occupancy of unimproved land or unimproved real property, the proposed rule would eliminate the 30-month requirement for partial occupancy waiver requests and allow a FCU more flexibility to submit waiver requests from the partial occupancy requirement. If a final rule contains a time limit for partial occupancy, CUAD does support the removal of the requirement to make requests within 30-month after the property is acquired.

CUAD supports the NCUA efforts to reduce the regulatory burden on Federal Credit Unions and believes that NCUA is taking steps in the right direction to achieve its goals. CUAD also understands the important role that NCUA has been tasked with to ensure the safety and soundness of credit unions. However with regard to Part 701, Federal Credit Union Ownership of Fixed Assets, CUAD believes that more can be done to further help credit unions operate in a more efficient and effective manner that will not jeopardize the safety and soundness of the credit union.

Thank you for this opportunity to share our thoughts and concerns.

Respectfully,

A handwritten signature in black ink that reads 'Robbie Thompson'.

Robbie Thompson
CEO/President

A handwritten signature in black ink that reads 'Amy Kleinschmit'.

Amy Kleinschmit
VP of Compliance