



National Association
of Federal Credit Unions
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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

April 29, 2015

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

RE: Comments on Proposed Rulemaking for Federal Credit Unions' Ownership
of Fixed Assets

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the proposed rulemaking on federal credit union ownership of fixed assets. 80 FR 16595 (Mar. 30, 2015). As NAFCU and our members have consistently maintained, we believe that the agency must modernize the current fixed asset rule to better meet the operational and business planning needs of federal credit unions (FCUs). NAFCU supported NCUA's July 2014 proposal to revise its fixed asset rule, and we commend the agency for re-proposing this regulation with even more relief for credit unions. NAFCU appreciates NCUA's initiative in this rulemaking to provide meaningful regulatory relief to FCUs and we appreciate the opportunity to provide comments on this proposal.

Removal of NCUA approval to exceed the five percent aggregate limit

Section 701.36(c) of NCUA's current fixed assets rule limits FCU investments to five percent of its shares and retained earnings. NCUA's proposed rule would remove this limitation and will instead allow NCUA to oversee FCU investments in fixed assets through the supervisory process, and evaluate the investments on a case-by-case basis. NAFCU and our members support the removal of this unnecessary regulatory limitation on FCUs.

As NCUA implements a program on evaluating federal credit union ownership of fixed assets, however, NAFCU requests that the agency provide clear guidance to clarify how examiners will evaluate FCU ownership in fixed assets. In particular, NAFCU recommends that NCUA publish guidance in conjunction with a Final Regulation that clearly articulates the criteria that an examiner will use to determine if the credit union's fixed asset investments are safe and sound.

Partial occupancy of premises acquired for future expansion

The proposal would also change the occupancy requirements of NCUA's fixed asset rule under Section 701.36(d). Specifically, the proposed amendments would establish a single time period for partial occupancy of any premises acquired for future expansion. The proposal would permit FCUs up to six years from the date of acquisition to meet the partial occupancy requirement, regardless of whether the premises are improved or unimproved property. While NAFCU appreciates NCUA's efforts to simplify the partial occupancy requirements of the current rule, we continue to hear from our members that the NCUA's occupancy requirements inhibit long-term planning among safe and sound FCUs.

NAFCU believes NCUA has the statutory authority to provide greater flexibility in the partial occupancy requirements of the fixed assets rule. Section 107(4) of the *Federal Credit Union Act* (FCU Act) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. *See* 12 U.S.C. § 1757(4). While NAFCU recognizes that the FCU Act prohibits an FCU from "engag[ing] in real estate activities that do not support the purpose [of providing financial services to their members]," we note that the statute does not prescribe specific occupancy requirements for permissible real estate holdings. *See* 69 FR 58039, 58041 (Sept. 29, 2004).

Traditionally, NCUA has interpreted this statutory language to mandate full occupancy within specified time period. NAFCU and our members believe this interpretation is unnecessarily restrictive, as the FCU Act includes no express occupancy mandate on real estate that supports the purpose of providing financial services to credit union members. Accordingly, we urge the agency to remove the occupancy requirements from the fixed assets rule. Removing these restrictions would allow FCUs to stay competitive with other financial institutions in the current environment, which demands that institutions be able to provide their members with improvements, such as new products, services and locations, in a timely fashion. While NAFCU acknowledges that partial utilization within six years and a plan to fully utilize assets within a certain amount of time may be appropriate in some instances, we firmly contend that it should not be mandated by regulation.

Alternatively, NAFCU and our members believe that NCUA has the statutory authority to expand the scope of the partial occupancy definition, in order to provide meaningful relief from unnecessary regulatory burden. Currently, NCUA's fixed asset rule does not allow an FCU to meet its partial occupancy requirements by leasing the property. *See* 12 C.F.R. § 701.36(d)(2). NAFCU believes the FCU Act allows an FCU to lease capacity in its fixed assets to a third party so long as the FCU can demonstrate that it is doing so to better provide financial services for its members and that it is not simply investing in real estate for speculative purposes. Under the definition of partial occupancy, an FCU that chooses to lease the premises and the lease is "consistent with the [FCUs] usage plan for the premises," can do so as long as the FCU is "deriving practical utility from the occupied portion." *See* 12 C.F.R. § 701.36(b). As such, the definition of partial occupancy in the statute should allow the FCU flexibility in the usage of the property within a reasonable time and within the relative scope of the future plan. This includes a plan to lease the

premises as a part of its plan to occupy the premises within a reasonable time after it has been acquired. NAFCU believes that the final rule should, at the very least, clarify that FCUs have the flexibility to make their occupancy plans strategically based on their own business models rather than stringent regulatory constraints.

Removal of the 30-month time limit for waiver approval

Finally, the proposal would eliminate the requirement under Section 701.36(d)(2) to apply for a waiver from the partial occupancy rules within 30 months of property acquisition and instead allow FCUs to apply for a waiver at any time as appropriate. NAFCU and our members support this amendment because the current time frame does not allow FCUs the necessary flexibility to react to unanticipated business developments. A number of NAFCU members have experienced delays in developing property that are beyond their control. Sometimes these delays occur outside of the current 30-month time frame. Because the current regulation does not allow an FCU to apply for a waiver outside of this time frame, these FCUs are left with no viable options. This regulatory limitation causes greater hardship for the credit union already facing a business set-back in the development of their unimproved property. NAFCU urges the NCUA Board to move quickly on this measure in order to provide regulatory relief to FCUs as soon as possible.

Conclusion

NAFCU applauds NCUA's willingness to amend its fixed asset rules to provide the requisite relief for the credit union industry. While we strongly support this proposal, NAFCU and our members encourage the agency to address the recommendations outlined above, as we believe these suggestions will achieve true regulatory relief for credit unions.

NAFCU appreciates the opportunity to share our thoughts on the proposed amendments to the agency's fixed asset rules. We look forward to continuing to work with NCUA to address more ways that the agency can streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. Should you have any questions or would like to discuss these issues further, please feel free to contact me at ksubramanian@nafcu.org or (703) 842-2212.

Sincerely,



Kavitha Subramanian
Regulatory Affairs Counsel