

April 29, 2015

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

Re: Comments on Notice of Proposed Rulemaking for Part 701, FCU Ownership of Fixed Assets

Dear Mr. Poliquin:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments regarding the National Credit Union Administration (NCUA) Board's proposed changes to its Ownership of Fixed Assets rule. By way of background, CUNA is the national trade association for America's state and federally chartered credit unions. CUNA represents approximately 90% of America's 6,500 credit unions and their 102 million memberships.

We appreciate NCUA's efforts to provide meaningful and ongoing regulatory relief for credit unions. Meaningful regulatory relief is a top priority for CUNA and our member credit unions, as resources dedicated to regulatory compliance divert resources from financial services to members.

On its face, this proposal would appear to reduce regulatory burden. However, it is impossible to assess whether this proposed rule will meaningfully reduce credit unions' regulatory burden, because the supervisory guidance for fixed assets has not been published in conjunction with the proposal. Further, while the proposed rule's single six-year time period for partial occupancy of such premises and discounting the 30-month requirement for partial occupancy waiver requests would simplify current requirements, we note with disappointment that many of our other recommended amendments were not included in the proposal.

Five Percent Fixed Assets Ownership Limitation

The rule as proposed would appear to provide credit unions with regulatory relief from NCUA's five percent fixed assets ownership limit. Nonetheless, there is no way for us to be sure credit unions will see real regulatory relief until NCUA releases its fixed assets supervisory guidance.

Last week, Larry Fazio, Director of NCUA's Office of Examination and Insurance, testified before the House Financial Institutions and Consumer Credit Subcommittee that this proposed rule would "move oversight of federal credit union fixed-assets ownership from

regulation to the supervisory process.”¹ CUNA supports removing oversight of fixed assets from the regulation and the supervisory process, not simply shifting the same or a similar requirement from regulation to the supervisory process without any real change.

We feel that the supervisory guidance for fixed assets should have been published in conjunction with the proposed rule; and, we note that there is precedence for this: in 2011, NCUA’s proposal on Interest Rate Risk contained guidance as an appendix to the proposed rule.² This is the approach that should have been taken for the fixed assets proposal to ensure that stakeholders had the opportunity to perform a thorough analysis of the overall impact of the removal of the five percent fixed assets ownership limitation from the current regulation.

CUNA requests that the Board re-issue for comments a fixed assets proposal that includes the proposed supervisory guidance.

Occupancy Requirements

Although the six-year period for partial occupancy is an improvement, the rule should provide that credit unions be responsible for determining the time needed to reach full or partial occupancy of a property. The time limitations for determining when credit unions must achieve partial occupancy should be removed, and the regulation should simply provide that credit union boards determine the appropriate, reasonable timetable for full occupancy. If NCUA determines it cannot provide that flexibility, then we support allowing federal credit unions up to ten years before requiring partial occupancy be reached as we stated in our October 10, 2014 comment letter.

We continue to advocate that NCUA provide credit unions a “de minimis ownership exception” under which land that is not valued at more than a certain percentage (e.g. three percent) of a credit union’s shares and retained earnings could avoid the restrictions regarding occupancy. This would allow credit unions to own land or other premises for long-term use without unnecessary occupancy constraints.

We also request that the Board revise the definition of partial occupancy to allow any reasonable use of land or premises by a credit union that is related to its operations as a not-for-profit financial cooperative. The 2013 fixed assets amendments reduced credit unions’ ability to meet partial occupancy requirements by requiring that such occupancy be “relative to the scope of the usage plan” instead of related to “when the credit union is using some part of the space on a full-time basis,” as under the pre-2013 rule. This change meant that credit unions cannot, for example, meet the partial occupancy requirement by deploying an ATM on vacant land purchased for a future branch expansion, because NCUA does not consider the ATM use to be consistent with the future usage plan. We urge that the final rule correct this situation.

¹ Testimony of Larry Fazio, Director, Office of Examination and Insurance, National Credit Union Administration, before the House Financial Institutions and Consumer Credit Subcommittee “Hearing on Examining Regulatory Burdens – Regulator Perspectives” April 23, 2015.

² See 76 FR 16570 (March 24, 2011).

Small Credit Union Exemption

We suggest that NCUA review the small credit union exemption from the ownership of fixed assets. The fixed assets rule does not apply to credit unions with less than \$1 million in assets. NCUA has not adjusted the exemption amount in a number of years. An increase in the exemption threshold would provide regulatory relief without creating safety and soundness concerns.

Conclusion

We commend the agency's efforts to look for opportunities to provide regulatory relief to credit unions. Unfortunately, we cannot support this proposal, because important supervisory guidance was not provided so that CUNA and other stakeholders could thoroughly analyze the impact of the proposal. Furthermore, the Board should reconsider several of the suggestions included in CUNA's initial comment letter, which are restated above. The amendments we have recommended in this letter as well as our previous letter are not prohibited by the Federal Credit Union Act and will not undermine safety and soundness in any way. Most importantly, CUNA's suggestions will help NCUA achieve real regulatory relief by providing reasonable but meaningful latitude to federal credit unions in managing their fixed assets.

Thank you for the opportunity to express our views. If you have any questions about our comments, please do not hesitate to contact me.

Sincerely,



J. Lance Noggle
Senior Director of Advocacy and Counsel