



**National Association
of Federal Credit Unions**

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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

November 20, 2015

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

RE: Comments on Notice of Proposed Rulemaking for Bank Notes (RIN 3133-AE55)

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA) request for comment on the proposed changes to Part 703 of NCUA's Rules and Regulations governing permissible investment activities. *See* 80 FR 63932 (October 22, 2015). NAFCU applauds NCUA for proactively modifying Part 703 and agrees with the rationale behind removing "original" from the maturity requirement for bank note investments.

Maturity Requirement

Federal credit unions (FCUs) may invest in bank notes so long as they constitute deposits permissible under the *Federal Credit Union Act* (FCU Act) and Part 703 of NCUA's Rules & Regulations. Part 703 defines a "bank note" as a "direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences."

The FCU Act grants a FCU the power to "make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the [FCU] does business, or in banks or institutions the accounts of which are insured by the FDIC." Since the FCU Act does not contain an express definition of "deposit," NCUA has traditionally looked to the Federal Reserve Board's Regulation D to interpret this authority. Under Regulation D, a liability of a depository institution is defined as a "deposit" if, 1) it is insured; 2) it is not subordinated to the claims of depositors; and 3) it has a weighted average maturity of less than five years.

In 1997, the NCUA Board first codified “bank notes” as a permissible investment within Part 703. At that time, the Board recognized and adopted the position of two previously-issued legal opinion letters which articulated NCUA’s policy of following Regulation D’s definition of “deposit” and interpreting “weighted average maturity” as being the *original* weighted average maturity. However, contrary to NCUA’s interpretation, Regulation D does not include original maturity as a limiting factor in its definition of “deposit.” The current proposal intends to remove the word “original” to bring Section 703.14(f)(5) into closer alignment with the exact language of Regulation D.

NAFCU has received feedback from multiple credit unions that the “*original*” requirement attached to the “weighted average maturity” limitation has proven to be overly restrictive and detrimental to FCU investment opportunities. As a result, NAFCU supports the proposal because we believe it will provide credit unions with greater flexibility and much-needed regulatory relief.

Additional Recommendations

Since NCUA has adopted a proactive approach to providing credit unions with expanded investment options, NAFCU would like to point out additional amendments to Part 703 the Board should consider. In particular, NAFCU and our member credit unions believe that the agency should allow credit unions to purchase Mortgage Servicing Rights (MSRs).

Under Section 703.16(a) of NCUA’s Rules and Regulations, the purchase of mortgage servicing rights (MSR) as an investment is listed as a prohibited activity. However, the FCU Act does not contain any provision expressly prohibiting the purchase of MSRs as an investment. The MSR restriction is merely the product of NCUA’s own conservative approach to investments. NAFCU and our members strongly encourage NCUA to remove this arbitrary prohibition. At minimum, a federally-insured credit union should not be prohibited from purchasing MSRs from other credit unions.

Many credit unions, especially small credit unions, neither have the capacity nor the resources to perform certain functions. As a result, they often choose to rely on third parties to perform such functions. However, it is undeniably in the best interest of the entire credit union industry if as many of these functions as possible may be performed by other credit unions. This approach would be consistent with the spirit of the credit union cooperative model. For these reasons, NAFCU strongly urges NCUA to remove the prohibition against purchasing MSRs.

Conclusion

NAFCU commends NCUA for its proactive amendment of Part 703. As the agency moves forward, NAFCU encourages NCUA to move quickly on finalization of the proposed change and to thoroughly examine additional ways to expand the investment authority of FCUs.

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NAFCU appreciates the opportunity to share its thoughts on the bank notes proposal. If you have any questions or concerns, please feel free to contact me at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander Monterrubio', with a horizontal line extending to the right.

Alexander Monterrubio
Regulatory Affairs Counsel