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National Association of Federal Credit Unions | www.nafcu.org

October 10, 2014

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

RE: Proposed Rule Regarding Federal Credit Union 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 regarding the National Credit Union Administration's (NCUA) proposed rule to amend the agency's fixed asset regulation. *See* 79 Fed. Reg. 46727 (August 11, 2014).

General Comments

NAFCU appreciates NCUA's initiative in this rulemaking. NAFCU has long advocated for the elimination of the waiver requirement for federal credit unions (FCUs) to exceed the five percent aggregate limit on investments in fixed assets. As the agency recognizes, FCUs should be allowed to independently manage their investments in fixed assets in order to accomplish their growth strategies and provide the services that their members demand. Thus, NAFCU and our members welcome this proposal as an important step to improving the fixed assets rule. While NAFCU generally supports the proposed amendments, we believe that certain adjustments are necessary to provide the requisite clarity and relief that NCUA is attempting to achieve through the proposal.

Removal of Waiver Requirement

The proposal would relieve FCUs from the current requirement to obtain a waiver to exceed the five percent aggregate limit on investments in fixed assets. Instead, under this proposal, FCUs that wish to exceed the five percent aggregate limit may do so, without prior NCUA approval, provided they implement a Fixed Assets Management (FAM) program.

NAFCU strongly supports this aspect of the proposal. Having long advocated that the fixed assets cap is wholly arbitrary, NAFCU welcomes the proposal's effort to provide greater flexibility to FCUs for determining whether investing in particular fixed assets is in the best

interest of their members. NAFCU has supported this change as part of our "Dirty Dozen" list of regulations to eliminate or amend and we have advocated for it in previous communications to the agency.

As NAFCU outlined in its "Dirty Dozen" list of regulations to eliminate or amend, we continue to hear from our members that the current requirement to obtain a waiver is far too restrictive, and often prevents them from expanding the resources and services they provide to their memberships. NAFCU believes it is vital that FCUs have the ability to invest in the resources that have a direct impact on serving their membership. Investments in fixed assets are made to improve services to members, including making such services more accessible and readily available. Having to wait over 45 days for a waiver to be approved by NCUA is not workable in our current environment. Accordingly, NAFCU and our members welcome the proposal's effort to allow FCUs the discretion to exceed the five percent aggregate limit, without prior NCUA approval, provided they do so safely and soundly by establishing their own FAM policies.

FAM Program

In order to exceed the five percent aggregate limit without a waiver from NCUA, the proposal would require that an FCU implement a FAM program. A FAM program must include a written board policy, board oversight, and ongoing internal controls. Through its FAM program, an FCU must demonstrate appropriate pre-acquisition analysis that ensures the FCU can afford any impact on its earnings and net worth levels, and that it maintains close ongoing oversight of how fixed assets levels are affecting its financial performance. In particular, the written FAM policy requirements of the proposal would require a FCU Board to devote significant consideration to setting its investment limit in order to ensure the preservation of its earnings and net worth. Also, the board oversight requirements would require any FCU that wishes to make an investment in fixed assets that would exceed, in the aggregate, five percent of its shares and retained earnings to obtain prior approval from its board of directors.

NAFCU supports allowing FCUs to establish their own written policies that set the parameters for their ownership and use of fixed assets. We believe this proposed mechanism is a much more effective means of supervising FCUs' safe and sound management of fixed assets. To be competitive in today's environment, FCUs, like all financial institutions, must be prepared to invest in the technologies and resources that consumers are demanding. The demands on each FCU, however, vary based on its unique field of membership. An FCU, therefore, needs the flexibility to establish its individual limit on fixed assets that will allow credit unions to provide the unique services its members demand and to accomplish its individualized growth strategies. NAFCU and our members believe the FAM requirements of the proposal will allow FCUs to effectively manage their fixed assets according to their own specific strategic plans, risk tolerances and financial conditions.

Exemption for Minor Acquisitions

The proposal notes that the FAM may include a delegated authority to the CEO or operational management to make acquisitions of equipment within board specified limits. Further, the

preamble section of the proposal explains that minor acquisitions of equipment in the normal course of business will be exempt from supervisory scrutiny. NAFCU believes that the delegation and exemption authorities are crucial for providing the flexibility FCUs need, and the regulatory relief that they desire. NAFCU and our members appreciate the agency's efforts to streamline this part of the FAM process.

At the July 2014, NCUA Board meeting, during which this proposal was approved, Chairman Matz asked NCUA staff to draft guidance, which will be released concurrently with a final rule, to further define the "minor acquisitions" that are exempt from review. As part of its request for comment, NCUA has requested comments on what minor purchases and acquisitions should be exempted from review.

NAFCU suggests that NCUA exempt acquisitions of desktop technologies, such as computer monitors, printers, faxes, scanners copiers and telephones. Additionally, NAFCU suggests that the agency exempt upgrading or renewing existing desktop software. For example, an FCU that uses Microsoft Office or an automated marking platform should not have to seek board approval to upgrade to a newer or higher version. These acquisitions are routine business decisions that have historically been within the purview of FCU management. While there are some technological purchases, such as changing an FCU's core processor, that are major expenses and warrant FCU board review, desktop hardware and softwares are traditionally less expensive purchases incurred in an FCU's normal course of business. Thus, NAFCU and our members believe it is appropriate to define purchases of desktop technology and software as "minor acquisitions" that are included in those that are exempt from supervisory scrutiny.

Additionally, NAFCU suggests that NCUA exempt acquisitions of Automated Teller Machines (ATMs). Like desktop technology and software acquisitions, ATM purchases are routine business decisions that have historically been within the purview of FCU management. Further, ATMs not only make services more accessible and readily available to members, but they also serve as a potential source of revenue for the credit union. As such, ATM purchases do not pose a safety and soundness concern because they will increase FCU shares and retained earnings, thus lowering the percentage of FCU's investment in fixed assets. Because ATM purchases do not impact a FCU's safety and soundness, NAFCU and our members believe it is appropriate to also define purchases of ATMs as "minor acquisitions" that are included in those that are exempt from supervisory scrutiny.

Partial Occupancy Requirements

The proposal would establish a single time period for partial occupancy of any premises acquired for future expansion. Under the current rule, if an FCU acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. The rule requires an FCU to show that it will fully occupy the premises within a reasonable time by requiring the FCU's partial occupancy of the premises within a time period set by the rule. Specifically, for improved premises acquired for future expansion, an FCU is currently permitted up to three years from the date it obtains the property to meet the partial occupancy requirement, unless NCUA grants a

waiver. And for unimproved land or unimproved real property, an FCU has six years from the date of acquisition.

The proposal would permit FCUs up to five years from the date of acquisition to meet the partial occupancy requirement, regardless of whether the premises are improved or unimproved property. The proposal would also eliminate the requirement to apply for a waiver from the partial occupancy rules within 30 months of property acquisition. Instead, the proposal would allow FCUs to apply for a waiver at any time as appropriate.

While NAFCU appreciates NCUA's efforts to simplify the partial occupancy requirements of the fixed assets rule, we continue to hear from our members that the rule's occupancy requirements inhibit long-term planning among safe and sound FCUs. FCUs that exceed their space limitations after time are often left with costly alternatives in order to expand their operations. Furthermore, FCUs are sometimes unable to purchase space in the location of their choosing and can incur excessive costs to obtain a specific amount of space due to the rule's occupancy restrictions.

NAFCU believes NCUA should 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 five 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 required by regulation. Instead, NAFCU believes that FCUs should have the discretion to make their occupancy or disposition decisions strategically based on temporal circumstances and conditions. NAFCU recognizes the risks that fixed assets pose to an FCU's overall financial condition, but we believe FCUs should be allowed to address these risks in the development and implementation of their FAM. Therefore, NAFCU encourages NCUA to revise the fixed assets regulation to remove the occupancy requirements.

Conclusion

NAFCU appreciates the opportunity to provide comments on this proposal. We look forward to continuing to work with NCUA to address ways that the agency could 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 by telephone at (703) 842-2244 or by e-mail at mcoleman@nafcu.org, or Alicia Nealon, NAFCU's Regulatory Affairs Counsel at anealon@nafcu.org or (703) 842-2266.

Sincerely,



Michael Coleman
Director of Regulatory Affairs