



Comment Call (15-5) NCUA: Federal Credit Union Ownership of Fixed Assets

Impact: Federally Chartered Credit Unions

Relevant Department: CEO/CFO/COO

Priority Level: *Medium*

Background

The Federal Credit Union Act (FCU Act) authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. NCUA's current fixed assets rule: (1) limits FCU investments in fixed assets; (2) establishes occupancy, planning and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions. Under the current rule, fixed assets are defined as premises, furniture, fixtures and equipment, including any office, branch office, sub office, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals and heating and cooling equipment.

In 2012 the NCUA, as part of its annual regulatory review process, reviewed the fixed asset proposal but did not make substantive changes. As such, in 2014 the NCUA Board issued a proposed rule to provide regulatory relief to FCUs and to allow FCUs greater autonomy in managing their fixed assets. In response to comments received during the 2014 comment process, the NCUA Board has issued a new proposal with improvements that were not part of the 2014 fixed asset proposal, which was not adopted.

The proposal can be found [here](#).

Comments must be received on or before April 29, 2015.

Summary and Request for Comment

Based on comments received on the 2014 proposal the NCUA Board is proposing the following:

- Eliminate the 5% aggregate limit on investments in fixed assets that is currently in place for FCUs with \$1,000,000 or more in assets.
- Remove the waiver provisions regarding the aggregate limit
- Establish a single six-year time period for partial occupancy of such premises and discontinue the 30-month requirement for partial occupancy waiver requests.

Fixed Asset Ownership Cap

A Federal Credit Union's ability to afford a given level of fixed assets depends on a variety of factors, including its level of net worth and earnings, its operational efficiency, and risks to its future earnings and growth inherent in the balance sheet and strategic plan. If an FCU has an elevated level of fixed assets, NCUA will maintain close oversight to ensure it conducts prudent planning and analysis with respect to fixed asset acquisitions, can afford any such acquisitions, and properly manages any ongoing risk to its earnings and capital. If the proposal is finalized in its current form the NCUA will issue updated supervisory guidance to examiners that will be shared with FUCs addressing the supervisory expectations.

Partial Occupancy of Premises

Under the current rule, if an FCU acquires premises for future expansion and does not fully occupy the premises within one year, the FCU must have a board resolution in place by the end of that year with definitive plans for full occupation. The current rule does not set a specific time period for full occupancy by an FCU of premises that were acquired for future expansion, but does have some other occupancy requirements. These include;

- An FCU must partially occupy the premises within a reasonable period, but no later than three years after the date of acquisition.
- If the premises are unimproved land or unimproved real property, the three-year partial occupation requirement is extended to six years.

The 2014 proposal would have required partial occupancy within five years, and the occupancy must be sufficient to show that the FCU will fully occupy the premises within a reasonable time. The five year time period would also apply to unimproved land. The 2014 proposal was an improvement for partial occupancy of improved land but reduced the time for unimproved land by one year.

The 2015 proposal would change the partial occupancy requirement to six years for unimproved and improved land, maintaining the current timeframe for unimproved land.

Partial Occupancy Waiver

The 2014 proposed rule would have retained the current waiver process for FCUs that require additional time to partially occupy premises acquired for future expansion. The current rule requires that an FCU apply for a waiver within 30 months. The 2014 proposal eliminates the 30-month requirement for partial occupancy waiver requests, allowing waivers to be requested at any time. The 2015 rule would retain the 2014 proposal's relaxed requirement.

The 2014 and 2015 proposed rules do not amend the requirement for full occupancy of premises acquired for future expansion.

State Chartered Credit Unions

This rule could have an impact on state chartered credit unions through a state's parity or "wild card" provision. These provisions could allow a state regulator to apply NCUA's requirements to state chartered credit unions.

Comments

Because the proposed amendments are intended to grant regulatory relief to FCUs, the Board is inviting comments on all issues discussed in this proposal including the following:

Do you support the elimination of the 5% fixed assets cap?

Would you like to see the waiver option retained as an option for pre-approval of a fixed asset acquisition?

NCUA states that it will provide guidance at a later date. Guidance is very important and can make much difference in how the requirements in the proposal are applied. Do you think that NCUA should allow comments on proposed guidance?

The proposal does not amend NCUA's full occupancy requirements of premises that were acquired for future expansion. Should NCUA modify this aspect of the rule? What changes to this requirement should the agency make?

Are there any other areas of the fixed assets rule that you would like to see updated?

Comment Letters

Comments should be identified by RIN 3133-AE39, by any of the following methods.

Please submit a mailed Comment Letter to:

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

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments

NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments

Email: Address to regcomments@ncua.gov. Include "[Your name] Comments on Notice of Proposed Rulemaking for Part 701, FCU Ownership of Fixed Assets" in the e-mail subject line.

Fax: (703) 518-6319. Use the subject line described above for e-mail.

