3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

October 3, 2022

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: RIN 3064–ZA33. Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

Dear Melane Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to you regarding the proposed policy statement on prudent commercial real estate (CRE) loan accommodations and workouts with request for comment (Proposed Statement) jointly issued by the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency, the Department of the Treasury, and the Federal Deposit Insurance Corporation (collectively, the agencies). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 133 million consumers with personal and small business financial services products. NAFCU and its members appreciate the agencies working to clarify supervisory expectations relevant to CRE loan accommodations and workouts. However, the agencies' replacing their 2009 guidance poses meaningful risks for the credit union system, particularly the smallest institutions. If the agencies adopt any version of the Proposed Statement, NAFCU urges the NCUA to simultaneously issue a Letter to Credit Unions affirming that NCUA examiners shall not criticize credit unions for engaging in prudent CRE loan accommodations and workouts that do not neatly mirror the agencies' adopted examples.

General Comments

NAFCU members share that the Federal Financial Institutions Examination Council's (FFIEC) Policy Statement on Prudent Commercial Real Estate Loan Workouts issued in October 2009 (2009 Statement) has been generally useful for both NCUA examiners and credit unions. CRE loan workout scenarios analyzed in the 2009 Statement helped clarify key supervisory expectations at a time when credit unions were helping member business borrowers navigate the Great Recession's economic aftershocks. Similarly, the 2009 Statement's value was clear throughout the COVID-19 pandemic and remains clear as many member business borrowers struggle to resolve protracted supply chain and labor market issues during a period of uncommonly high inflation. Nonetheless, NAFCU strongly agrees with the agencies that the 2009 Statement should be modernized.

At a minimum, any version of the Proposed Statement that the agencies ultimately adopt should reflect the NCUA's promulgation of the current expected credit losses (CECL) methodology as well as more broadly applicable changes to generally accepted accounting principles (GAAP).

Equally important, however, is that the NCUA ensure the agencies avoid repeating the most obvious defect of the 2009 Statement – failing to consider all the myriad ways credit unions can prudently serve member business borrowers facing financial challenges.

Preserving Credit Union Discretion

Despite the 2009 Statement's Appendix 1 spanning a range of CRE loan workout scenarios, the FFIEC completely failed, as the agencies recognize in the Proposed Statement, to address less time- and cost-intensive, shorter-term CRE loan accommodation strategies that are more often in the best interests of both borrowers and lenders. The agencies' inclusion and analysis of nearly a dozen CRE loan accommodation scenarios in the Proposed Statement is a step toward ensuring credit unions can more often provide member business borrowers well-tailored financial flexibility without fear of subsequently being criticized by an NCUA examiner. However, more is needed directly from the NCUA.

Credit unions help member business borrowers identify, quantify, and navigate financial challenges in ways that less closely connected lenders simply cannot. For example, many of the roughly 5,000 credit unions in the United States serve farms and related non-farm member businesses in rural communities underserved or not served at all by for-profit banks. While neither the 2009 Statement nor the Proposed Statement are intended to address loans secured by farmland, the agencies' examples in both statements bear directly on credit unions' CRE loans to non-farm member businesses. When financial challenges at local farms inevitably translate into financial challenges for a non-farm CRE loan borrower, a lender's capacity to timely and prudently help a non-farm CRE loan borrower is defined primarily by its ability to accurately and efficiently assess the strengths and weaknesses of closely-related local farms.

An out-of-town, for-profit bank, with a limited understanding of the local economy and an eye to its own bottom line, may be unable or unwilling to help a struggling non-farm CRE loan borrower. Most rural credit unions, on the other hand, serve and are owned by a diversity of members, including farms and non-farm member businesses. Because credit unions have an intimate understanding of both individual member businesses and their larger communities and are operated on a not-for-profit basis, credit unions can tailor prudent CRE loan accommodations and workout options to member business borrowers' unique strengths and financial challenges.

Letter to Credit Unions

The NCUA's highlighting in Letter to Credit Unions 10-CU-07 that the 2009 Statement's examples are "provided for illustrative purposes only" conspicuously recognized and reinforced, for the benefit of both NCUA examiners and credit unions, that credit unions can prudently help member business borrowers in ways that may not neatly mirror the 2009 Statement's examples. Though the Proposed Statement, like the 2009 Statement, indicates that "examples in this Appendix are provided for illustrative purposes only […]", there is significant concern that the agencies' adopting the Proposed Statement or some variation of it will erode the principles-based standard established in the 2009 Statement and supported by Letter to Credit Unions 10-CU-07.

First, any version of the Proposed Statement adopted by the agencies will supersede the 2009 Statement. In turn, the value of Letter to Credit Unions 10-CU-07 will wane because of its direct tie to the 2009 Statement. Second, the agencies developed the Proposed Statement, in large part, to update and expand the 2009 Statement's examples to include analysis of CRE loan accommodation scenarios the FFIEC previously failed to consider. From the Proposed Statement's expanded set of examples, NCUA examiners, credit unions, or both may draw the negative inference that CRE loan accommodation and workout strategies not considered in the Proposed Statement are less likely to be deemed prudent.

Therefore, if the agencies adopt any version of the Proposed Statement, the NCUA should issue a Letter to Credit Unions substantially similar to Letter to Credit Unions 10-CU-07 to avoid inadvertently discouraging credit unions from more fully serving their member business borrowers facing navigable financial challenges.

Conclusion

NAFCU and its members appreciate the agencies' efforts to modernize the 2009 Statement, and NAFCU strongly encourages the NCUA, if the agencies adopt any version of the Proposed Statement, to simultaneously issue a Letter to Credit Unions affirming that NCUA examiners shall not criticize credit unions for engaging in prudent CRE loan accommodations and workouts that do not neatly mirror the agencies' adopted examples. Should you have any questions or require additional information, please contact me at dbaker@nafcu.org.

Sincerely,

Dale Ross Baker

Dale Ross Baker
Regulatory Affairs Counsel