

AUGUST 28, 2020



ISSUE BRIEF

Defense Credit Union Leases

BACKGROUND

For decades credit unions have received nominal cost leases on military installations in recognition of the services they provide both the base and the men and women stationed there. In the 1990s, Congress required the Department of Defense (DoD) to get fair-market value for leased land and space, but by 2000, the National Defense Authorization Act (NDAA) allowed DoD to consider in-kind payments in those calculations. Credit unions stepped up and worked with base commanders to quantify the value they were delivering in exchange for continuation of their nominal leases.

Then, after a years-long series of discussions with DoD, months of debate and several hearings before Congress, an amendment to the *Federal Credit Union Act* (FCU Act) was passed as part of *The Financial Services Regulatory Relief Act of 2006* (P.L. 109-351) to clarify that DoD has the *discretionary* authority to lease space on military bases at a nominal rate to credit unions provided that they meet certain statutory and regulatory requirements regarding the provision of financial services in the on-base facility (12 U.S.C. § 1770). It is important to note that while DoD has chosen to afford space on military bases at a nominal rate to credit unions, they are not required to do so. DoD, like many others, recognizes the value that credit unions bring to our men and women in uniform, in good times and bad.

Although bankers claim that they are required to pay rent on military bases at a fair market value cost, the reality is that banks also already have an avenue to pursue nominal cost leases via 10 U.S.C. § 2667. The *Floyd D. Spence National Defense Authorization Act For Fiscal Year 2001* (P.L. 106-398) gave DoD the authority to accept “in-kind consideration” for leases on military property, including “provision of such other services relating to activities that will occur on the leased property that the Secretary concerned considers appropriate.” If military banks were to work with DoD as credit unions have over the years, in-kind consideration could be accepted with respect to a bank lease. Prior to the enactment of the aforementioned amendment to the FCU Act, credit unions also pursued nominal leases via this same provision in 10 U.S.C. § 2667.

LEGISLATIVE DEVELOPMENTS

In 2019, the FY 2020 Senate NDAA included language from the Chairman’s Mark that would have essentially required that the DoD treat large mega-banks, such as Bank of America and Wells Fargo, the same as a military installation’s local not-for-profit

defense credit union when it comes to rent on military bases. The House version of the FY 2020 NDAA did not contain such language, and the Senate language was objected to in a bipartisan fashion by House conferees and was ultimately dropped and not included in the final version of the FY 2020 NDAA that became law.

In 2020, the Senate version of the FY 2021 NDAA, S. 4049, once again contains this language in Section 2885. The House version of the legislation, H.R. 6395, the *William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021*, does not contain this language. The House and Senate will need to work out their differences in a conference committee this fall to come up with a final bill.

Section 2885 of the Senate FY 2021 NDAA could essentially require that the DoD treat large mega-banks, such as Wells Fargo and Bank of America, the same as a military installation's local not-for-profit defense credit union when it comes to rent on military bases. Both banks have a long track record of not only billions in profits, but also fines for consumer abuses. Although NAFCU recognizes the important role both credit unions and banks can play for our men and women in the military in the provision of traditional financial services and in protecting our troops from predatory lenders, we remain concerned that Section 2885's intent to tie the fate of banks on the lease issue to credit unions and their good work misses the mark, and would ultimately disadvantage credit unions. It is important to note that DoD has not requested this change. Rather than granting nominal leases to banks and credit unions, the DoD could very well decide to stop granting nominal leases altogether. We do not want to subject the ability of defense credit unions to serve their members to the political winds surrounding big bank consumer abuses.

OUTLOOK AND ASK

The House and Senate will need to conference this fall to work on the differences on the two versions of the FY 2021 NDAA. We ask Congress to once again reject this misguided provision and ensure that Section 2885 of the Senate FY 2021 NDAA (S. 4049) is not included in the final bill. Community banks already have an avenue to work with DoD to achieve nominal money leases without threatening the credit union and DoD relationship. We urge them to pursue that avenue.