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December 1, 2008

Ms. Mary Rupp
Secretary of the Board
National Credit Union Association
1775 Duke Street
Alexandria, VA 22314-3428

Re: National Credit Union Administration; 12 CFR Parts 701 and 742;
Regulatory Flexibility Regarding Ownership of Fixed Assets; 73 Federal Register
57013, October 1, 2008

Dear Ms. Rupp:

The National Credit Union Administration (NCUA) Board is proposing to amend its Regulatory Flexibility (RegFlex) program. Currently qualifying federal credit unions (FCU) are required to take partial occupancy of premises within three years. NCUA proposes to lengthen the partial occupancy requirement to six years when a qualifying FCU acquires unimproved land. The American Bankers Association (ABA) objects to this change because there is already a waiver available that allows an FCU to file for an extension beyond the three-year requirement under the RegFlex program.

ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.6 trillion in assets and employ over 2 million men and women.

Background

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.¹ Generally, an FCU may only invest in property it intends to use to transact credit union business, that is, to support its internal operations or serve its members.² NCUA's fixed asset rule limits an FCU's investment in fixed assets and imposes requirements on the planning for, use of, and disposal of real property acquired for future expansion.³

FCUs that qualify for the RegFlex program are exempt from the 5 percent fixed asset limitation. NCUA proposes to expand the partial occupancy requirement from

¹ 12 U.S.C. 1757(4)

² 12 CFR 721.3(d)

³ 12 CFR 701.36

three to six years when a qualifying FCU acquires unimproved land.⁴ The Board noted in the proposal that when an FCU is acquiring unimproved land the partial occupancy requirement is more difficult to satisfy than if the FCU were purchasing premises with an existing branch building. Therefore, the proposal is intended to address the concerns of “some FCUs [that] take the position that the fixed asset rule’s three-year partial occupancy requirement, even with a waiver option, is burdensome and an unnecessary level of oversight for RegFlex FCUs that have demonstrated sustained superior performance.”

ABA’s Position

The requirement for partial occupancy within the current three years is to ensure that FCUs are not engaged in an impermissible activity, but also to limit any safety and soundness concerns tied with real estate investment. ABA recognizes that unexpected events associated with acquiring unimproved land could delay occupancy. However, ABA believes the proposed rule is counter to preventing abuse and could enable an FCU to make impermissible real estate investments.

Moreover, another consequence of relaxing the partial occupancy requirement is that FCUs can derive non-mission related income for leasing out the property. FCUs are not subject to Unrelated Business Income Taxes. Clearly, extending the occupancy requirement will allow FCUs more time to maximize unrelated business income.

NCUA already provides a viable option to request a waiver which can delay partial occupancy beyond the three-year limitation and the NCUA should continue to assure that there is adequate justification for any extension. An FCU may request a waiver within 30 months after the property is acquired. Therefore, a credit union has an adequate opportunity to request an extension through the RegFlex program, without extending the deadline for partial occupancy. Under no circumstance should this extension be open-ended or exceed what is prudent for occupancy of this property.

Please feel free to contact the undersigned or Keith Leggett (202-663-5506), if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mako T. Parker". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mako T. Parker

⁴ 12 CFR 701.36(c), part 742