



May 16, 2013

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

RIN 3133-AE05

Dear Ms. Rupp:

On behalf of the Credit Union Association of New York, I would like to comment on the NCUA's proposed amendments to 12 CFR 701.36 (The Fixed Assets Rule) to clarify existing obligations of federal credit unions purchasing property. As the Board correctly notes in proposing these changes, the existing regulation often confuses credit unions when they are planning for their infrastructure needs. Much of this confusion could be eliminated with clarification of the existing regulations. The Association is generally supportive of this regulation, as well as other steps taken by NCUA to minimize the regulatory burden imposed on credit unions. The comments and concerns expressed below reflect feedback from our member credit unions regarding potential improvements that could be made to this proposal.

One of the primary aims of the proposed regulatory amendments is to make it easier for credit unions to apply for waivers from fixed asset restrictions. We believe the proposed waiver clarifications would be improved if all waiver requests were deemed approved if not acted on by a Regional Director within 45 days. Currently, if a Regional Director does not act on a federal credit union's request to exceed the 5-percent fixed asset cap request within 45 days, the credit union may proceed with its proposed investment at the higher level. In contrast, when a federal credit union seeks a waiver from the requirement that it dispose of abandoned property within four years, or to lease property for which it needs Director approval because of a potential conflict of interest, no time limit is placed on the Regional Director's consideration of these requests. Forty-five days is more than adequate time for a Regional Director to consider a properly submitted waiver request. No credit union should have to put off important investment decisions for an indefinite period of time.

As currently written, the proposal would codify the definition of unimproved land as including "land that has been improved, but the improvements serve no purpose for the intended use of the property and are of little value relative to the project." In the spirit of making the regulations as "user-friendly" as possible, this definition should be further refined by removing the clause that the improvements be "of little value relative to the project."

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This language is redundant, as the definition already ensures that the property serves no purpose for the credit union. It also invites confusion as to when land is of “little value” to a credit union.

Similarly, we believe the agency’s proposed definition of property which is “partially occupied” could also be improved. Specifically, the definition requires that a credit union is “deriving practical utility” from occupying a portion of the property, and proposed subdivision 3 also requires that such occupation be “sufficient” to show “that it will fully occupy the property in question.” This is another definitional redundancy that produces more confusion than clarification. Therefore, we recommend that subdivision 3 be eliminated. Credit unions are already required to have a plan to fully occupy property, and the definition already requires credit unions to be making use of the property in question. Requiring that a credit union somehow demonstrate, via its occupation of such property, that use is “sufficient”, is both unnecessary and undefinable in a way that fails to provide credit unions clear guidance.

The NCUA also requested suggested improvements to the fixed asset requirements beyond those proposed in the regulation. One of our credit unions suggested that the utility of the 5-percent fixed asset rule be reconsidered. While it is entirely appropriate for there to be a limit on the amount of assets that any financial institution can devote to its office resources the point raised by the credit union merits consideration. When the 5-percent fixed asset rule was originally promulgated, fixed asset cost were much cheaper and easier to predict. For example, there was no commercial use of the Internet, and credit unions could operate without integrating technology into their workplaces. Given the increasing importance of fixed assets—not only to a credit unions physical infrastructure, but also to the services it provides to its members—a 5-percent cap (even one that can be waived on a case-by-case basis) is outdated.

I hope this feedback is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive.

William J. Mellin
President/CEO
Credit Union Association of New York