

May 20, 2013

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

**RE: Comments on Notice of Proposed Rulemaking for Part 701,
FCU Ownership of Fixed Assets**

VIA ELECTRONIC MAIL: www.regulations.gov

Dear Ms. Jackson,

The Michigan Credit Union League (MCUL), the statewide trade association representing 98% of the credit unions located in Michigan and their 4.5 million members appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposal for comment on amendments governing federal credit union (FCU) ownership of fixed assets.

The Federal Credit Union Act (Act), Part 701.36 addresses the FCU ownership of fixed assets. The Act indicates that a FCU with \$1,000,000 or more in assets may not invest in any fixed assets if the investment would cause the aggregate of all such investments to exceed five percent of the credit union's shares and retained earnings. We appreciate the NCUA Board making revisions to clarify the waiver process, adding several new definitions and making revisions to the rule easier to understand for FCUs without imposing new requirements.

The MCUL supports the addition of definitions for "unimproved land or unimproved real property" and "partially occupy" which will help credit unions to comply with the legal opinions the NCUA has previously provided. The proposed change consolidates and streamlines the interpretation of the regulation, providing a small measure of regulatory relief to the credit union community.

The NCUA acknowledges in their request for comment that the "current waiver process, in general, is uneven and, in some circumstances, overly burdensome to the practical needs of some FCUs." Although the MCUL appreciates the intent of the NCUA to clarify the waiver process, the NCUA should provide further clarification on the "safety and soundness" review conducted by the Regional Director and more comprehensive content

requirements for the actual waiver request – as well, the NCUA should consider additional exemption options and less stringent requirements for the waiver process. If the NCUA's intent is to eliminate redundancies, having a credit union go through the waiver process if they have already demonstrated to be "safe and sound" through an examination process appears to be just that.

Prior to the NCUA rescinding the RegFlex exemption, credit unions that received CAMEL 1 and 2 ratings for two consecutive examination schedules and were considered to have either "strong performance and risk management practices that consistently provide[d] for safe and sound operations" or "reflect[ed] satisfactory performance and risk management practices that consistently provide[d] for safe and sound operations" were exempt from the 5% fixed asset cap. In the proposed rule and request for comment, the NCUA indicates that the Regional Director's decision to approve or disapprove a waiver request will be based on "safety and soundness" considerations for all submitted waivers. The MCUL believes that a more unified approach, based on set standards such as those found in the CAMEL rating process, will be more beneficial and will remove speculation on bias throughout the waiver process. The MCUL believes that further clarification surrounding a determination on a waiver request is necessary and will be relevant for credit unions when pursuing the waiver process. At a minimum, the decision making process that the Regional Director is utilizing, and guidance on how it differentiates from the analysis of an examiner, should be made available to credit unions to assist them in determining what to consider in moving forward with their waiver process.

Absent further clarification and justification, the MCUL urges the agency to consider increasing the current 5% aggregate limitation in the investment of fixed assets in the final rule. With the fixed asset ratio based on fluid factors, such as the amount of shares and retained earnings, and the purchase of fixed assets, credit unions need flexibility to make their own investment decisions consistent with their business plan and growth objectives. The same consideration is necessary for other thresholds the NCUA imposes in the fixed asset rule, such as the six year time frame to partially occupy unimproved property acquired for future expansion. Credit unions that are forward thinking and purchasing unimproved property to accommodate for long-term, future expansion as part of their strategic planning process at a price and location that are optimal, should be granted that flexibility.

Finally, the MCUL strongly believes that a Regional Director's option of non-response to a waiver request should be eliminated, as proposed. The MCUL encourages the NCUA to consider the impact on credit unions that are awaiting a response to a request and delaying plans accordingly. The

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MCUL would also encourage the NCUA to consider an expedited waiver option to assist credit unions under certain time constraints.

Conclusion

The MCUL commends the NCUA's continuous review of its regulations to "update, clarify and simplify and eliminate redundant and unnecessary provisions." In the current regulatory environment, this is essential as credit unions continue to struggle with an overwhelming and ever-growing compliance burden. However, in order to effectively revise the fixed asset rule to eliminate redundant and unnecessary provisions consistent with the NCUA's intent, the agency should consider additional changes to the waiver process akin to exemptions rescinded under the RegFlex rule.

Additionally, without further clarification of the "safety and soundness" review conducted by the Regional Director in the waiver process, there will be inconsistency and redundancy between the examiner's safety and soundness review and the review conducted under the waiver process as proposed in the fixed asset rule. The CAMEL rating system was adopted by the NCUA as "an internal rating system used for evaluating the soundness of credit unions on a uniform basis". Under the proposed rule, the NCUA appears to be moving away from this "uniform" standard and the MCUL strongly urges further clarification as discussed herein.

The MCUL appreciates the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "DA", with a stylized flourish extending to the right.

Dave Adams
Chief Executive Officer