



MISSOURI CREDIT UNION ASSOCIATION

May 20, 2013

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street, Alexandria, Virginia 22314-3428
regcomments@ncua.gov

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

Dear Ms. Rupp:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on the National Credit Union Administration's (NCUA's) proposed rule amending its regulation governing the ownership of fixed assets by federal credit unions (FCUs). The fixed assets rule authorizes an FCU to purchase, hold and dispose of property incidental to its operations. An FCU can only invest in property that it intends to use to for credit union business or supports credit union operations. The proposed rule does not make any substantive changes to the current fixed assets rule. According to the NCUA, "the amendments only clarify the regulation improving its organization, structure and ease of use." The proposed rule does reorganize the rule, adds several definitions and provides additional explanation on the process of requesting and obtaining waivers from the NCUA.

Definitions – Partially Occupy

The proposal adds two definitions to the rule's definition section. *Partially occupy* means occupation, on a full-time basis, of a portion of the premises that is:

- (1) consistent with the federal credit union's usage plan for the premises;
- (2) significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan; and
- (3) sufficient to show that the federal credit union will fully occupy the premises within a reasonable time.

MCUA feels the definition for "partially occupy" is confusing and uses several undefined terms, such as "meaningful" to describe the percentage of premises that a credit union must occupy to meet the definition of "partially occupy." NCUA should establish minimum requirements using percentages of use or occupancy and allow the waiver process to be used when a credit union does not meet the minimum. For example, a credit union that occupies at least 51 percent of a premise at a given time should meet the requirements for "partially occupy." Any less occupation should be subject to a waiver request.

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Definitions – Unimproved Land

MCUA agrees with the proposed definition of *Unimproved land or unimproved real property* meaning:

- (1) raw land or land without development, significant buildings, structures, or site preparation;
- (2) land that has never had improvements;
- (3) land that was improved at one time but has functionally reverted to its unimproved state; or
- (4) land that has been improved, but the improvements serve no purpose for the federal credit union's planned use of the property.

Limits on the Ownership of Fixed Assets

The limit on fixed assets is not statutory but was set by NCUA through its rule making process. With the demise of RegFlex, federal credit unions' only avenue for relief from the cap is to seek a waiver. MCUA thinks NCUA should eliminate the cap from the rule. We suggest that NCUA could establish requirements that credit unions have written policies that set parameters on the credit union's use and ownership of fixed assets that are appropriate for that credit union. Such policies and their implementation would be subject to examiner review. Also to address supervisory concerns, NCUA could require CAMEL 1 and 2 rated credit unions to file with the agency fixed asset management plans and report periodically on the execution of the plan.

If NCUA is going to retain the fixed assets cap, we urge the agency to consider increasing the cap, which arbitrarily limits a federal credit union's ability to manage fixed assets. We believe the waiver process is cumbersome and inefficient. With RegFlex, federal credit unions had flexibility to purchase equipment and real estate based on the business decisions of each federal credit union's management and board of directors.

Waiver Request

In the fixed assets rule, the NCUA does not provide the criteria used to determine whether to grant a waiver request. The proposal does state the waiver requests will be based on safety and soundness considerations, but this is a highly subjective standard that gives too much discretion to NCUA's staff. We support giving regional directors discretion to approve waiver requests if minimum criteria are not met; however, the minimum criteria should be part of the rule or guidance required by the rule.

The NCUA could also use the blanket waiver concept to give credit unions additional flexibility. In addition, we also urge the NCUA to consider adding an appeal process to denied waiver requests. An appeals process would help ensure that waiver requests are treated in a fair and impartial manner while holding decision makers accountable for their decisions.

As always, we appreciate the opportunity to respond to this notice of proposed rulemaking. We will be happy to respond to any questions regarding these comments.

Sincerely,



Don Cohenour
President