



OHIO CREDIT  
UNION LEAGUE

Oct. 10, 2014

Mr. Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Re: Federal Credit Union Ownership of Fixed Assets  
12 CFR Part 701  
RIN 3133-AE39

Dear Mr. Poliquin:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) Proposed Rule on Federal Credit Union Ownership of Fixed Assets.

OCUL is a state trade association and advocates on behalf of Ohio's 333 federal- and state-chartered credit unions, serving 2.8 million members. The comments reflected in this letter represent the recommendations and suggestions that OCUL believes would be in the best interest of Ohio credit unions.

OCUL applauds NCUA's addition of flexibility to allow the boards of directors and management of federal credit unions (FCUs) to determine an appropriate level and management of fixed assets by removing the waiver process for exceeding the cap of 5% investment in fixed assets when the FCU has an approved fixed asset management (FAM) policy in place. NCUA also proposes to change its standards regarding partial occupancy of real estate by the FCU.

OCUL urges NCUA to extend the concept of allowing federal credit union boards to determine appropriate levels of risk in other areas, promoting the use of programs similar to the FAM policy outlined in this proposal. However, there are some concerns with certain aspects of the agency's proposal, which are outlined below.

### **Removal of the Waiver Process for Exceeding the 5% Cap**

NCUA proposes to remove the current waiver process for an FCU to exceed the cap of 5% of shares and retained earnings as an investment in fixed assets in cases where the FCU has an FAM in place. The FAM would have to include a written fixed assets management policy, strong oversight by the FCU's board of directors, and internal controls. For FCUs using the FAM process, NCUA would review the plan as part of the annual supervisory examination, rather than a review conducted when a waiver is requested. NCUA also proposes to issue guidance regarding an effective FAM.



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10 W. Broad St., Suite 1100, Columbus, Ohio 43215  
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OCUL approves NCUA's flexibility in allowing FCUs to develop their own programs to manage the risk of a higher concentration of net worth in fixed assets, and notes that the proposal has a strong resemblance to standards previously included in Reg Flex. FCUs are not cookie-cutter institutions, and standards should be as flexible as possible to allow the FCU to tailor its asset-liability management in ways that fit the needs of the FCU's members.

OCUL further applauds NCUA's proposal to issue written guidance in this area. Without written standards in place, evaluation of programs such as the FAM policy can become very subjective, according to the regulatory examiner's appetite for risk, substituting for the judgment of the FCU's board of directors. However, because this area will remain somewhat subjective, no matter how flexibility any guidance is drafted, OCUL urges NCUA to publish its proposed guidance for public comment prior to finalizing it.

One concern in this area is the requirement that an FCU's board consider future marketability of a property as part of the decision to exceed the 5% cap. OCUL observes that in many cases, an FCU will acquire real estate in areas where real property values are depressed because in their mission to serve the underserved, an FCU determines a service center in the area is necessary. NCUA must remain mindful that there are strategic considerations beyond factors such as marketability that go into a decision to acquire such fixed assets.

### **Partial Occupancy**

NCUA also proposes to clarify the provision in the fixed assets rule that requires an FCU to partially occupy property acquired for future expansion within a time period set by the rule. The amount of time allowed before full occupancy varies based on a set number of situations outlined in the rule, including whether the land is improved or unimproved. NCUA would simplify this aspect of the fixed assets rule by establishing a single time period for partial occupancy of *any* premises acquired for future expansion. The proposed rule would permit FCUs up to five years from the date of acquisition to meet the partial occupancy requirement, regardless of whether the premises are improved or unimproved property. No set time limit is proposed for requiring full occupancy. The current waiver process is retained for this portion of the rule.

OCUL approves of the concept of implementing a single standard for partial occupancy; however, we are concerned that the time frame of five years might be too short. Given the land development cycle, which has grown longer due to regulatory requirements and economic uncertainty, there are definitely situations in which it is in the best interests of the credit union and its membership to acquire unimproved land in anticipation of the need to establish services in a particular geographic area. The rule should allow additional time to achieve partial occupancy in the case of unimproved land, perhaps increasing this to as much as 10 years.

OCUL further suggests that NCUA include an evaluation of partial occupancy as an indicator of future full occupancy be included in the FAM that can be developed by an FCU as provided in the sections of the rule that would allow the developed FAM to replace the current waiver process for exceeding the 5% cap on fixed assets. Establishing partial occupancy as a step to full occupancy is inherent in fixed asset management in regard to real property and should be included in planning

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developed by the FCU's board. By including this in the FAM to be reviewed as part of the annual examination process, the need for a waiver process is eliminated.

### **Conclusion**

OCUL applauds NCUA's willing to add flexibility to the management of fixed assets by FCUs. The concept of a FAM that is developed by the board of the FCU, the parties most familiar with the future strategic direction of the FCU, is a concept that hopefully will be added to other areas currently subject to a waiver process by NCUA.

However, OCUL urges NCUA to publish its written guidance in this area for public comment prior to finalizing its procedures for reviewing the FAMs in order for FCUs to have the opportunity to shape the guidance to best meet the needs of credit unions and their members.

Finally, OCUL urges NCUA to reconsider some of its proposal regarding partial occupancy as an indicator of future full occupancy. The difference in the development cycle of unimproved land versus that for improved land is significant enough to recognize in the final rule by allowing a longer time frame for partial occupancy for unimproved land.

The Ohio Credit Union League appreciates the opportunity to provide comments on the NCUA's proposed rule modifying its rules for Federal Credit Union Ownership of Fixed Assets, and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact me at (800) 486-2917 or [jkozowski@ohiocul.org](mailto:jkozowski@ohiocul.org).

Sincerely,



John F. Kozlowski  
General Counsel



Carole McCallister  
Manager, Regulation & Information

cc: Barry Shaner, OCUL Chair  
OCUL Board of Directors  
OCUL Government Affairs Committee  
Paul Mercer, OCUL President