

September 15, 2009

Mr. Thayne Shaffer, Vice President and Controller
America First Federal Credit Union
P.O. Box 9199
Ogden, UT 84409

Re: Unimproved Land as a Fixed Asset.

Dear Mr. Shaffer:

You have asked if NCUA's recent regulatory amendment that requires a federal credit union (FCU) occupy unimproved land acquired for future expansion within six years applies to all unimproved land or only to land acquired on or after April 27, 2009, the amendment's effective date. The amendment provides FCUs with more time than under the old rule and applies to all unimproved land regardless of acquisition date. You also have asked if land with existing structures an FCU intends to demolish may be treated as unimproved land for occupancy requirement purposes. Yes, it may but only under limited conditions.

In March 2009, NCUA amended its fixed asset rule and regulatory flexibility program (RegFlex) with respect to the time an FCU has to occupy newly acquired premises. 74 Fed. Reg. 13,082 (March 26, 2009); 12 C.F.R. §§701.36, 742.4. Before that amendment, when an FCU acquired unimproved land for future expansion and did not fully occupy the completed premises within one year, the FCU was required to partially occupy the completed premises within three years or obtain a waiver. The amendment increased the three years to six years for RegFlex eligible FCUs. NCUA recognizes many real estate transactions are complex, time consuming, and can involve a host of issues an FCU must address before it is ready to occupy newly acquired premises. This is especially true with respect to unimproved land because of the accompanying environmental and construction-related issues.

The six-year period applies to unimproved land purchased before the rule's effective date, and it does not "restart the clock" on those properties by tacking on an additional six years. Rather, in that context, the time elapsed since the land was purchased is subtracted from the six-year period to determine the remaining time. For example, unimproved land purchased two years before the effective date of the rule would have a maximum of four years remaining before it must be occupied. The calculation is to subtract the two years the FCU already has held the land from the maximum six-year period leaving four years. This application of the rule provides an FCU with more time before it must occupy unimproved land purchased before the rule's effective date than it otherwise would have had under the old rule.

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In granting the additional flexibility the six-year period affords, NCUA limited that extension to unimproved land only. NCUA believes allowing FCUs six years to hold improved land would be tantamount to authorizing otherwise impermissible real estate speculation. 74 Fed. Reg. 13,082, 13,083 (March 26, 2009). Accordingly, we are hesitant to interpret the definition of "unimproved land" too broadly. We recognize, however, a piece of land may have improvements so useless or valueless to the FCU so as to be the functional equivalent of unimproved land. For example, an FCU purchases a piece of land for a future branch building that happens to have a decrepit barn on it. In those instances, we believe it is appropriate to treat that kind of property as unimproved for purposes of the six-year occupancy requirement. To receive this treatment, however, an FCU must demonstrate through records generated or in existence at the time of purchase that the FCU intends to demolish the improvements or otherwise treat the improvements as useless or valueless. An FCU may satisfy this records requirement with a board of directors' resolution or by noting its intent as part of the FCU's plan to develop and occupy the property as required by §701.36(b). 12 C.F.R. §701.36(b).

Please feel free to contact Staff Attorney Frank Kressman or me with any additional questions or if we can be of further assistance.

Sincerely,

/S/

Sheila A. Albin
Associate General Counsel

OGC/FSK:bhs
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