

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AE39

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NCUA Board (Board) proposes to amend its regulation governing federal credit union (FCU) ownership of fixed assets to provide regulatory relief and to help FCUs better manage their fixed assets. The proposed rule provides greater flexibility to FCUs by removing the waiver requirement for FCUs to exceed the five percent aggregate limit on investments in fixed assets. An FCU that chooses to exceed the five percent aggregate limit may do so without prior NCUA approval, provided it implements a fixed assets management (FAM) program that demonstrates appropriate pre-acquisition analysis to ensure the FCU can afford any impact on earnings and net worth levels. An FCU's FAM program is subject to supervisory scrutiny and must provide for close ongoing oversight of fixed assets levels and their effect on the financial performance of the FCU. It must also include a written policy that sets an FCU board-

established limit on the aggregate amount of the FCU's fixed assets. In addition, the proposal simplifies the partial occupancy requirement for premises acquired for future expansion.

DATES: Comments must be received on or before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.
Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Notice of Proposed Rulemaking for Part 701, FCU Ownership of Fixed Assets” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540, or Jacob McCall, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518-6360.

SUPPLEMENTARY INFORMATION:

I. Background

II. Summary of the Proposed Rule

III. Regulatory Procedures

I. Background

The Federal Credit Union Act (FCU Act) authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations.¹ NCUA’s fixed assets rule interprets and

¹ 12 U.S.C. 1757(4).

implements this provision of the FCU Act.² NCUA's current fixed assets rule: (1) limits FCU investments in fixed assets; (2) establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and (3) prohibits certain transactions.³ Under the current rule, fixed assets are defined as premises, furniture, fixtures, and equipment, including any office, branch office, suboffice, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.⁴

A. Why is NCUA Proposing This Rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing regulations to make their programs more effective and less burdensome.⁵ Additionally, the Board has a policy of continually reviewing NCUA's regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." To carry out this policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA reviewed its fixed assets rule as part of this process. As a result of that review, in March 2013, the Board issued proposed amendments to the fixed assets rule to make it easier for FCUs to understand it.⁶ The proposed amendments did not make any

² 12 CFR §701.36.

³ Id.

⁴ 12 CFR §701.36(c).

⁵ E.O. 13579 (July 11, 2011).

⁶ 78 FR 17136 (Mar. 20, 2013).

substantive changes to the regulatory requirements. Rather, they only clarified the rule and improved its overall organization, structure, and readability.

The March 2013 proposal was published with a 60-day public comment period. In response to the Board's request for feedback, several commenters offered suggestions for substantive changes to the regulatory requirements in the fixed assets rule. For example, a number of commenters urged the Board to consider increasing or eliminating the aggregate limit on fixed assets, or to allow FCUs to establish their own written policies to set limits on their investments in fixed assets. One commenter suggested that, as an alternative to the aggregate cap, certain FCUs should have the option to submit periodic fixed assets management plans to NCUA. Several commenters also recommended changes to NCUA's current waiver process. In addition, one commenter suggested that the Board should extend the time frames for partially occupying improved premises and unimproved premises acquired for future expansion, which under the current rule, are three years and six years, respectively. These comments, however, were beyond the scope and intent of the March 2013 proposal, which only reorganized and clarified the rule. Therefore, the Board was prevented by the provisions of the Administrative Procedure Act from making such substantive changes at that time.⁷ Accordingly, in September 2013, the Board adopted the March 2013 proposed rule as final without change except for one minor modification.⁸ In finalizing the rule, however, the Board indicated it would take those substantive comments into consideration if it considered making substantive changes to NCUA's fixed assets rule in the future.

⁷ 5 U.S.C. 553.

⁸ 78 FR 57250 (Sept. 18, 2013).

The Board has determined that making the referenced substantive amendments to the fixed assets rule will allow FCUs more flexibility in managing their fixed assets, while maintaining NCUA's ability to supervise FCUs' management of fixed assets in order to protect safety and soundness. This proposed rule reflects these substantive amendments. The Board also believes this proposal is consistent with the spirit of Executive Order 13579.

B. How Would the Proposed Rule Change the Current Rule?

The Board proposes to provide regulatory relief to FCUs by: (1) allowing FCUs to exceed the current five percent aggregate limit on fixed assets, without prior NCUA approval, provided FCUs do so safely and soundly by establishing their own FAM policies and programs; and (2) simplifying the partial occupancy requirement for premises acquired for future expansion. The proposed rule also eliminates or streamlines certain aspects of the fixed assets waiver requirements in various circumstances.

II. Summary of the Proposed Rule

A. FCU investments in fixed assets above five percent of shares and retained earnings.

Section 701.36(c) of the current rule establishes an aggregate limit on investments in fixed assets for FCUs with \$1,000,000 or more in assets.⁹ For an FCU meeting this threshold asset amount,

⁹ This proposed rule does not amend the \$1,000,000 asset threshold. Thus, FCUs under \$1,000,000, which are currently exempt from the regulatory limit on aggregate investments in fixed assets, will be also exempt from the proposed FAM requirements. The Board, however, emphasizes that investments in fixed assets by FCUs under

the aggregate of all its investments in fixed assets is limited to five percent of its shares and retained earnings, unless NCUA grants a waiver establishing a higher limit.¹⁰

In the past few years, and most recently in response to the March 2013 proposed rule, FCUs have asked the Board to consider increasing or eliminating the current five percent aggregate limit on fixed assets, or to allow FCUs to establish their own written policies to set limits on their investments in fixed assets.¹¹ Some credit unions have mentioned that the limit is too low for FCUs to effectively manage their investments in fixed assets and to achieve growth. They have argued that a higher limit is necessary to allow FCUs adequate flexibility in acquiring fixed assets to serve their members' needs.

The Board has long stated that the purpose of the fixed assets rule is to provide control on the risk of excess or speculative acquisition of fixed assets.¹² In explaining the need for the aggregate limit on fixed assets, the Board noted in 1978 that “[i]t is the aggregate amount invested in non-income producing assets that is of critical importance.”¹³ Past experience has shown that excessive levels of non-income producing assets may lead to financial difficulties. While the Board continues to believe that the five percent aggregate limit functions as a reasonable benchmark for safety and soundness, the Board recognizes that some relief in this

\$1,000,000 are, and will continue to be, subject to supervisory review. FCUs exempt from FAM program requirements must invest in fixed assets safely and soundly.

¹⁰ 12 CFR §701.36(c).

¹¹ See, e.g., 75 FR 66295, 66297 (Oct. 28, 2010); 78 FR 57250, 57250 (Sept. 18, 2013).

¹² See 43 FR 26317, 26317 (June 19, 1978) (“This regulation is intended to ensure that the officials of FCUs’ have considered all relevant factors prior to committing large sums of members’ funds to the acquisition of fixed assets.”); 49 FR 50365, 50366 (Dec. 28, 1984) (“The intent of the regulation is to prevent, or at least curb, excessive investments in fixed assets and the related costs and expenses that may be beyond the financial capability of the credit union.”); 54 FR 18466, 18467 (May 1, 1989) (“[T]he purpose of the regulation is to provide some control on the potential risk of excess investment and/or commitment to invest substantial sums in fixed assets.”).

¹³ 43 FR 58176, 58177 (Dec. 13, 1978).

regard should be provided to ensure FCUs can accomplish their growth strategies and provide the services their members demand. Accordingly, the Board proposes to allow FCUs the discretion to exceed the five percent aggregate limit, without the need for a waiver, provided they implement a FAM program that provides appropriate pre-acquisition analysis to ensure the FCU can afford any impact on its earnings and net worth levels, and they maintain close ongoing oversight of how fixed assets levels are affecting the financial performance of the FCU.

An FCU's FAM program, at a minimum, must include three elements: (1) a written board policy; (2) board oversight; and (3) ongoing internal controls. These elements are discussed in more detail below. The proposed rule eliminates the current waiver process for FCUs that wish to exceed the five percent aggregate limit, but an FCU's actions in this regard are subject to supervisory scrutiny.¹⁴

Written board policy

An FCU's board-approved written FAM policy must establish a reasonable limit on the aggregate amount of the FCU's total investments in fixed assets. The policy and the board-established aggregate limit must demonstrate adequate consideration for preserving the FCU's earnings and net worth. NCUA will consider policies which represent a threat to earnings and net worth unsafe and unsound. The policy must be consistent with the FCU's overall strategic plan, risk tolerance, and financial condition. The policy must also state actions and authorities

¹⁴ The Board notes that the majority of FCU requests for waiver of the five percent aggregate limit are approved by NCUA. In 2013, for example, 54 percent of waiver requests for all parts of §701.36 were for a waiver of the aggregate limit. Of those, 88 percent were approved by NCUA.

required for exceptions to policy, limits, and authorizations. An FCU may adopt a separate FAM policy or it may incorporate a FAM policy into an existing asset liability management or other risk management policy. In any case, however, the policy must be written and approved by the FCU's board of directors.

FCU board oversight

An FCU that wishes to make an investment in fixed assets that would exceed, in the aggregate, five percent of its shares and retained earnings must obtain prior approval from its board of directors. Any board resolution, either approving the investment or disapproving the investment, at a minimum, must clearly document the board's analysis of the FCU's purpose for the investment. This analysis must demonstrate, for example, the board's full consideration of whether the investment in fixed assets represents a routine replacement, a necessary investment or purchase in the normal course of business, or an effort to expand the FCU's services. The degree and detail of the board's analysis must be commensurate with the FCU's stated purpose for the investment. The FAM may include a delegated authority to the CEO or operational management to make acquisitions of equipment within board specified limits, which would relieve the board of a requirement to approve each individual purchase of equipment.

The board resolution must also reflect its analysis of the FCU's pro-forma balance sheet and income statement projections, as well as its sensitivity to material assumptions. This analysis must be supported by reasonable growth projections that are consistent with contemporary observed trends.

For investments in real property, the board must consider the future marketability of the premises should it decide to dispose of the asset in the future, including reasonable recovery expectations based on the location of the premises and other relevant factors. The board must consider similar factors for any other unique or special-purpose fixed assets.

The board must annually review the FCU's FAM program and update it as necessary. If the board determines that no changes to the FAM program are necessary, it must appropriately document that determination.

Internal controls

An FCU with an aggregate investment in fixed assets that exceeds five percent of its shares and retained earnings must establish, as a part of its FAM program, strong internal controls to effectively monitor and measure its investments in fixed assets. These controls must be ongoing and appropriate to the total amount of the FCU's fixed assets investments. Internal controls must include, for example, periodic physical inventories of the FCU's fixed assets.

Overall, an FCU's FAM program must demonstrate adequate protections to the FCU's net worth and earnings, or it will be considered unsafe and unsound. An FCU with an unsafe and unsound FAM program or that does not comply with its FAM program may be subject to supervisory action, including prohibition of additional investments in fixed assets or divestiture of fixed assets.

Grandfathering

Should this rule become finalized as proposed, FCUs with an existing waiver of the five percent aggregate limit on fixed assets will be grandfathered at the approved limit and may continue to rely on the waiver until its expiration. The Board emphasizes, however, an FCU with an existing waiver will be required to implement a FAM program prior to making any future investment in fixed assets which exceeds the amount approved. Moreover, if, subsequent to the effective date of a final rule, the level of the FCU's investments in fixed assets falls below the regulatory five percent limit, the waiver will cease and the FCU will be required to implement a FAM program prior to making any future investment in fixed assets which exceeds five percent of its shares and retained earnings.

B. Partial occupancy of premises acquired for future expansion.

The Board 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.¹⁵

Under the current rule, if an FCU acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation.¹⁶ There is no set time period within which an FCU must achieve full occupation, giving FCUs significant leeway and flexibility in managing real

¹⁵ 12 CFR §701.36(d)(2).

¹⁶ 12 CFR §701.36(d)(1).

property acquired for future use. An FCU, however, may not hold (or lease to unrelated third parties) real property indefinitely without fully occupying the premises.¹⁷ The rule requires an FCU to show that it will fully occupy the premises within a reasonable time, and consistent with its usage plan, by requiring the FCU's partial occupancy of the premises within a time period set by the rule. Specifically, for improved premises acquired for future expansion, an FCU is currently permitted up to three years from the date it obtains the property to meet the partial occupancy requirement, unless NCUA grants a waiver. If the premises are unimproved land or unimproved real property, however, the time period is extended to six years from the date of acquisition.¹⁸ As noted above, in response to the March 2013 proposal, one commenter suggested that the Board extend the time frames for the partial occupation requirement.

The Board proposes to 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. This extends the current time period for improved premises by two years. This reduces the current time period for unimproved land or unimproved real property by one year, but the Board believes that five years is sufficient time to meet this requirement even for raw land. The Board notes that

¹⁷ Section 107(4) of the FCU Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, an FCU may only invest in property it intends to use to transact credit union business or in property that supports its internal operations or member services. There is no authority for an FCU to invest in real estate for speculative purposes or to otherwise engage in real estate activities that do not support its purpose of providing financial services to its members.

¹⁸ 12 CFR §701.36(d)(2); see also 12 CFR §701.36(b) (“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.”)

the proposed five-year time frame is consistent with requirements for real estate acquired by banks for future expansion.¹⁹

The proposed rule retains the current waiver process for FCUs that require additional time to partially occupy premises acquired for future expansion. The Board, however, proposes to streamline one aspect of the current waiver process. Currently, an FCU must submit its request for a waiver from the partial occupancy requirement within 30 months after the property is acquired. The Board, however, understands that in some circumstances it may be difficult for FCUs to satisfy this requirement, particularly in the unimproved land context as construction-related delays are difficult to anticipate and could occur after the 30 months have expired. Accordingly, the Board proposes to eliminate the 30-month requirement for partial occupancy waiver requests and allow FCUs to apply for a waiver beyond that time frame as appropriate.

Request for comment on full occupancy of premises acquired for future expansion

As discussed above, the current rule does not set a specific time period within which an FCU must achieve full occupation of premises acquired for future expansion. However, partial occupancy of the premises is required within five years (as proposed) and must be sufficient to show, among other things, that the FCU will fully occupy the premises within a reasonable time and consistent with its plan for the premises. This proposal does not amend the full occupancy provision of the current rule, but the Board welcomes public comment on this aspect of the fixed assets rule.

¹⁹ See 12 CFR §34.84.

C. NCUA's supervisory review.

Should this rule become finalized as proposed, when NCUA examines an FCU with fixed assets in excess of five percent of its shares and retained earnings, NCUA will evaluate whether or not the FCU's FAM program is sound. This analysis will be similar to that conducted during the current waiver process, but will instead become part of the routine examination of the FCU.

NCUA's supervisory review of an FCU's FAM program may include the following considerations:

- To determine if an FCU has established a reasonable policy limit on the aggregate amount of its fixed assets, NCUA will evaluate the impact on earnings and net worth levels. High levels of non-earning assets may lower income and increase operating expenses (such as depreciation and maintenance expenses). Reduced earnings, in turn, can jeopardize the FCU's ability to establish or maintain sound net worth levels. FCUs are not in compliance with the provisions of this rule if they cannot demonstrate that operating at higher levels of fixed assets to expand the FCU's services does not pose a material reduction to the FCU's ability to establish or maintain sound net worth levels. Minor acquisitions of equipment in the normal course of business will not result in supervisory scrutiny even for FCUs that exceed the five percent aggregate limit, unless the FCU is otherwise experiencing significant earnings problems.

- The FCU’s FAM policy must be consistent with the FCU’s overall strategic plan, risk tolerance, and financial condition. The FCU’s policy and associated financial projections and board resolutions must also document sensitivity to material assumptions. This analysis must be supported by reasonable growth projections that are consistent with contemporary observed growth trends.
- NCUA will consider it unsafe and unsound if an FCU’s investments in unique or special-purpose real property with very limited marketability result in it operating at fixed assets levels above the five percent aggregate limit.

If an FCU does not meet the requirements of the rule, fails to comply with its FAM program, or has an unsafe program or levels of fixed assets, NCUA may, in the discretion of the appropriate Regional Director,²⁰ prohibit an FCU from making any further fixed assets acquisitions and require the FCU to reduce fixed assets levels if doing so would not pose a safety and soundness concern.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily

²⁰ “Regional Director” means the representative of the Administration in the designated geographical area in which the office of the FCU is located or, for FCUs with \$10 billion or more in assets, the Director of the Office of National Examinations and Supervision. 12 CFR §700.2.

those under \$50,000,000 in assets). This proposed rule would provide regulatory relief to help FCUs better manage their investments in fixed assets. NCUA has determined this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.²¹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA recognizes that this proposed rule requires FCUs to comply with certain requirements that constitute an information collection within the meaning of the PRA. Under this rule, FCUs that wish to exceed the five percent aggregate limit on investments in fixed assets may do so provided they implement a FAM program which includes a written policy. However, the proposed amendments would also relieve FCUs from the current requirement to obtain a waiver to exceed the five percent aggregate limit on investments in fixed assets.

According to NCUA records, in 2013, there were 259 FCUs subject to the fixed assets rule with a fixed assets ratio above five percent. Of those, 83 requests sought a waiver of the five percent aggregate limit in 2013. For purposes of this analysis, based on 2013 experience, NCUA believes it is reasonable to estimate 83 FCUs will be required to draft a fixed assets policy each year in lieu of creating a waiver request, and an average of 176 FCUs (259 minus the 83 which would be drafting a policy) would have a requirement to review a fixed asset policy each year.

²¹ 44 U.S.C. 3507(d); 5 CFR part 1320.

Accordingly, information collection obligations imposed by the proposed rule are analyzed below:

Estimate of initial burden for implementing written fixed assets policy.

Number of FCUs requesting a waiver of the 5% limit in 2013:	83
Frequency for creating fixed asset policy:	Annual
Initial hour burden:	24
83 FCUs x 24 hours = 1,992 hours initial burden	

Estimate of ongoing burden to maintain written fixed assets policy.

FCUs needing to review/update existing fixed asset policies:	176
Frequency for reviewing fixed asset policy:	Annual
Review hour burden:	2
176 FCUs x 2 hours = 352 hours annual burden	

However, the proposed amendments would also relieve FCUs from the current requirement to request a waiver if the FCU exceeds the five percent aggregate limit on fixed assets. NCUA estimates the reduced burden by eliminating the waiver requirement will more than offset the annual burden imposed by implementing and maintaining a fixed assets policy. The research and documentation required under the current regulation is substantially the same as the proposed regulation (both require approximately 24 hours). Under both the current and proposed regulations, FCUs are required to project future fixed asset ratios resulting from the fixed asset purchases, evaluate the changes to balance sheet and income projections and demonstrate prudence in securing the asset at a reasonable cost. These activities would be substantially unchanged through the proposed revision, with the exception that the final document of record

will be a policy instead of a waiver request. In addition, the current regulation also requires the FCU to draft a waiver request memo which would be used to submit the waiver for NCUA's consideration. This effort, which is estimated to create 4 hours burden, would no longer be required under the proposed regulation.

Estimate the reduced burden by eliminating the waiver requirement.

Estimated FCUs which will no longer be required to prepare a

waiver request and file a waiver request: 83

Frequency of waiver request: Annual

Reduced hour burden: 4

83 FCUs x 4 hours = 332 hours annual reduced burden

In accordance with the requirements of the PRA, NCUA intends to obtain a modification of its OMB Control Number, 3133-0040, to support these changes. NCUA is submitting a copy of the proposed rule to OMB, along with an application for a modification of the OMB Control Number.

The PRA and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The Board invites comment on: (1) whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428
Fax No. 703-837-2861
E-mail: OCIOOPRA@ncua.gov

OMB Contact: Office of Management and Budget
ATTN: Desk Officer for the National Credit Union Administration
Office of Information and Regulatory Affairs
Washington, DC 20503

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. Because the fixed assets regulation applies only to federal credit unions, this proposed rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. As such, NCUA has determined that

this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.²²

List of Subjects

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on July 31, 2014.

Gerard Poliquin
Secretary of the Board

For the reasons stated above, NCUA proposes to amend 12 CFR §701.36 as follows:

²² Public Law 105-277, 112 Stat. 2681 (1998).

PART 701 — ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109-351, 120 Stat. 1966.

2. Revise §701.36(c) to read as follows:

§701.36 Federal credit union ownership of fixed assets.

* * * * *

(c) Limits on Investment in Fixed Assets.

If a federal credit union has \$1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares and retained earnings, unless it has implemented an effective fixed assets management (FAM) program, and the federal credit union's board of directors has analyzed and determined that the investment in fixed assets in excess of the five percent limit is appropriate, safe and sound, and supported by its FAM program. An aggregate investment in fixed assets that exceeds five percent of a federal credit union's shares and retained earnings is generally considered unsafe and unsound and requires a sufficiently robust FAM program to mitigate supervisory concerns. A federal credit union that

does not meet the requirements of this paragraph or fails to comply with its FAM program may, in the discretion of the Regional Director, be subject to the full extent of NCUA's supervisory authority, including prohibition of any additional investments in fixed assets or divestiture of fixed assets. A federal credit union's FAM program must be annually reviewed by its board of directors and include the following:

(1) Written board policy. The federal credit union's board of directors must adopt a written FAM policy, which, at a minimum, must:

- (i) Establish a prudent limit on the aggregate amount of the federal credit union's investments in fixed assets;
- (ii) Demonstrate adequate consideration for preserving the federal credit union's earnings and net worth; and
- (iii) Demonstrate consistency with the federal credit union's overall strategic plan, risk tolerance, and financial condition.

(2) Board oversight. Except for minor acquisitions of equipment in the normal course of business, the federal credit union must obtain approval from its board of directors prior to making an investment in fixed assets that would exceed, in the aggregate, five percent of its shares and retained earnings. A board resolution approving or disapproving the investment, at a minimum, must reflect:

- (i) The board's analysis of the purpose for the investment;

- (ii) The board's analysis, supported by reasonable growth assumptions, of the federal credit union's pro-forma balance sheet and income statement projections; and
- (iii) For an investment in real property, the board's consideration of the future marketability of the premises, in the event the federal credit union needs or wants to sell the premises in the future.

(3) Internal controls. The federal credit union must establish ongoing internal controls to monitor and measure its investments in fixed assets.

3. Revise §701.36(d) to read as follows:

(d) * * *

(1) * * *

(2) If a federal credit union acquires premises for future expansion, including unimproved land or unimproved real property, it must partially occupy them within a reasonable period, but no later than five years after the date of acquisition. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

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