October 10, 2014

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

RE: Comment Letter on NCUA Fixed Assets Proposal; RIN 3133–AE39

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 400 credit union members and the 10 million members. The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on its proposal to amend the Fixed Assets rule.

The Leagues applaud the NCUA for responding to requests for substantive changes made during the previous comment period in March 2013 where technical amendments were proposed. The Leagues support NCUA's efforts to provide regulatory relief to federal credit unions (FCUs) and help FCUs better manage their fixed assets. We do, however, have the following comments and suggestions on how proposal can be improved.

Fixed Assets Management (FAM) Program

The NCUA proposes to allow FCUs to exceed the current five percent aggregate limit on fixed assets, without NCUA approval, provided they do so in a safe and sound manner by establishing their own FAM policies and programs.

The Leagues agree that credit unions should be allowed to manage their own fixed assets investments and should not have to seek NCUA approval before exceeding an arbitrary limit. The limit on fixed assets is not statutory; it was set by NCUA in regulation. The Leagues propose NCUA eliminate the fixed assets limitations from its regulation.

Section 1757(4) of the Federal Credit Union Act (FCU Act) grants FCUs the power *"to purchase, hold, and dispose of property necessary or incidental to it operations."* With this authority, FCUs have a general duty to manage their fixed assets properly and be subject to examiner review for safety and soundness. A formalized and stringent FAM program is not necessary.

The NCUA notes that in 2013 the NCUA approved 88 percent of all requests to waive the aggregate limits. This is indicative that FCUs understand their duty to manage their fixed assets investments. In its desire to provide FCUs with regulatory relief, the NCUA should not create additional compliance burdens such as those proposed in the FAM program.

Board Oversight

Should the NCUA move forward with their proposal to require a FAM program when an FCU exceeds the five percent limit, the Leagues submit the following comments regarding board oversight.

Proposed section 701.36(c)(2) requires credit union board approval prior to making an investment in fixed assets that would exceed the aggregate limit, *except for the minor acquisitions of equipment in the normal course of business.* The Leagues recommend providing a broader scope in line with the definition of fixed assets in Part 701.36(e)(2) and allow the minor acquisitions of furniture, fixtures, and equipment.

Proposed section 701.36(2)(iii) requires the credit union board consider for investments in real property the future marketability of the premises. The Leagues suggest this requirement may be contrary to the needs of the members, particularly for low income credit unions and those serving in underserved areas. The decision to purchase a branch or office location should be guided by the need to provide services to the members. The Leagues recommend this consideration be eliminated from the proposed regulation.

Occupancy

Should the NCUA not eliminate the fixed assets rule, the Leagues submit the following comments regarding occupancy requirements.

Partial Occupancy

The NCUA proposes to establish a single time period of five years for partial occupancy of any premises—improved premises or unimproved land or real property (701.36(d)(2)). The Leagues support extending the occupancy requirement for improved premises from three years to five years; however, we do not agree with reducing the partial occupancy requirement for unimproved land or real property from six years to five years. Reducing the time period by one year is detrimental to credit unions who may be trying to complete improvements. The Leagues believe that reducing an existing time period to simplify the rule is not necessary and is contrary to the NCUA's stated intent to reduce regulatory burden.

Full Occupancy

The NCUA also requests comments on full occupancy. The current rule does not stipulate a specific time period for full occupancy; rather, partial occupancy must occur within five/six years and the FCU must *"fully occupy the premises within a reasonable time and consistent with its plan for the premises."*

The Leagues suggest there are instances when full occupancy (100 percent) is not feasible or in the best interest of the members. We suggest modifying the “full occupancy” requirement with “substantial occupancy” and this be defined as a percent, such as 51 percent. We believe there are instances where it would make sense for a credit union to lease or sublease a portion of premises. For example, when a merger occurs and operations are combined it may leave an existing building with space available, or when it makes financial sense to purchase a property that is ideally located to serve the credit union’s members. The ability to lease or sublease space could result in reduced monthly expenses while providing income.

Conclusion

In conclusion, the Leagues support and applaud NCUA’s efforts to provide regulatory relief to FCUs and help FCUs better manage their fixed assets. The Leagues suggest the best method for doing so is to eliminate the fixed assets rule and allow credit union boards to set their own fixed assets limits, subject to safety and soundness review, and without a burdensome FAM program.

The Leagues support extending the partial occupancy requirement for improved premises from three years to five years; however, we do not agree with reducing the partial occupancy requirement for unimproved land or real property from six years to five years. We also suggest the NCUA modify full occupancy to substantial occupancy and define this as a percentage.

Sincerely,

Diana Dykstra
President/CEO
California and Nevada Credit Union Leagues

cc: CUNA, CCUL