



**Via e-mail to [regcomments@ncua.gov](mailto:regcomments@ncua.gov).**

October 10, 2014

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

Re: Comments on Notice of Proposed Rulemaking for Part 701, FCU  
Ownership of Fixed Assets

Dear Mr. Poliquin:

We are pleased to provide our comments on the NCUA's proposed amendments to the Federal Credit Union Ownership of Fixed Assets rule, 12 CFR 701.36. The Illinois Credit Union League represents 290 credit unions in Illinois, including 77 federal credit unions.

The proposed rule would not eliminate the current limit on fixed assets of five percent of shares and retained earnings. It would remove prior approval requirements and the need for a waiver prior to a specific purchase if the five percent limit would be exceeded. In place of those provisions, a credit union would be required to develop a fixed assets management (FAM) program before exceeding the five percent threshold and maintain the FAM as long as the threshold is exceeded. The FAM program would be reviewed at each examination and the NCUA states that if an FCU fails to comply with its FAM program, or has an unsafe FAM program or levels of fixed assets, the Regional Director could 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.<sup>1</sup>

We believe the NCUA issued the proposed amendments with the intent of providing additional operational flexibility to federal credit unions with respect to fixed assets. We believe, however, that substantially greater flexibility could be achieved without jeopardizing federal credit unions' safety and soundness.

### **The Aggregate Limit of Five Percent of Shares and Retained Earnings Should be Removed.**

The Federal Credit Union Act ("FCU Act") does not impose a limit on the ownership of fixed assets. The current five percent of shares and retained earnings was set by NCUA through its rule making process. Fixed assets have not presented material safety and soundness issues for the credit union system.

Given the FCU Act's flexibility regarding fixed assets, we believe that the five percent limit should be removed from the rule. The board of directors of federal credit unions should be allowed to adopt a written policy that establishes reasonable parameters on a credit union's use and ownership of fixed assets that are appropriate for that credit union without having to adopt a specific FAM program.<sup>2</sup>

A credit union's management of fixed assets in accordance with its written policy would be subject to review by examiners. If a credit union exceeds its internal parameters the credit union should be expected to bring its assets into conformance with its internal threshold within a reasonable time. However, this matter should be addressed through the examination process, rather than regulatory restrictions.

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<sup>1</sup> II.C. of the Supplementary Information accompanying the proposed rule, 79 F.R. 46731 (August 11, 2014).

<sup>2</sup> We believe that management of fixed assets should not be subject to regulatory requirements to produce and maintain a specific management plan or program, such as the FAM. The proposed FAM requirements would needlessly complicate acquisition of fixed assets over the five percent threshold and the requirement for board approval of each acquisition could deter credit unions from making needed acquisitions.

### **Regulatory Flexibility Program (RegFlex).**

For a number of years prior to 2010, the NCUA allowed federal credit unions designated as a RegFlex credit union by the NCUA to exceed the five percent limit without prior NCUA approval and without additional regulatory requirements. The RegFlex designation was provided to well-capitalized credit unions with a CAMEL rating of 1 or 2 and stable management.

We note that the bank regulators continue to provide well capitalized banks with a CAMEL rating of 1 or 2 with substantially greater flexibility in investing in fixed assets. We do not believe that the NCUA had adequate grounds for ending the RegFlex program with respect to the fixed asset rule. If the NCUA refuses to remove the five percent limit it should reinstate the RegFlex provisions to the fixed asset rule.

### **Time Benchmarks for Property Acquired for Future Use Should be Determined by FCU's Boards.**

The current rule has three time requirements for property acquired for future use.

Full Occupancy (one year). While there is no requirement for full occupancy of premises by an FCU, the current NCUA rule requires the board of a federal credit union that does not fully occupy premises within one year after the acquisition of the premises to adopt a resolution by the end of the year addressing its plans for full occupancy.

Partial Occupancy (three or six years). The current rule requires partial occupancy of improved real property within three years of acquisition; and partial occupancy of unimproved land or unimproved real property within six years of acquisition. Credit unions may request a waiver of the partial occupancy requirement.

The proposed amendments would not change the one-year requirement but would increase the required time for partial occupancy of improved property from three years to five years but reduce<sup>3</sup> the required time for partial occupancy of unimproved property from six years to five years.

We would prefer these restrictions to be removed so that credit unions can set their own time limits on reaching full or partial occupancy of property acquired for future

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<sup>3</sup> We strongly believe that the time limit for partial occupancy of unimproved real estate should be increased rather than reduced.

use. If, however, the NCUA will not provide such flexibility, we believe the partial occupancy requirement should be ten years.

Deminimus exception from occupancy requirements. The NCUA should also consider adding a *deminimus* exception from the occupancy requirements for property that does not exceed 3% of shares and net earnings.

#### Definition of Partial Occupancy

A 2013 amendment to the fixed asset rule substantially changed the definition of partial occupancy (in spite of the NCUA's claim that the amendments did not make any substantive changes).

Prior to the amendment the rule stated that "premises are partially-occupied when the credit union is using some part of the space on a full time basis." The 2013 amendment changed the definition to—

*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 change imposed substantial and unnecessary complications and restrictions without any justification provided by the NCUA. The previous definition is a succinct and correct description of partial occupancy and should be reinstated.

#### Leasing Real Estate.

Federal credit unions should be allowed to lease and sublease real estate as necessary. It is preferable to allow credit unions to maximize such assets rather than not making acquisitions or underutilizing space to comply with occupancy requirements.

### **The FAM Program.**

As stated earlier we believe that rather than the imposition of a separate written fixed assets management program, the NCUA should allow the overall size limit on total fixed assets that is appropriate for a credit union and the amount of time for partial occupancy or use of property to be reflected in a credit union's board minutes, policies and strategic plans.

If, however, the NCUA proceeds to require a FAM, we do not think an annual review of the FAM program is necessary. This requirement is not present under the current waiver process and its usefulness in helping credit unions to manage their fixed assets has not been demonstrated.

### **Property with Limited Marketability.**

The Supplementary Information states,

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.

This requirement would appear to apply even if a credit union has a FAM allowing for fixed asset levels greater than 5%. It is very possible that a property's marketability could decline due to economic conditions outside the credit union's control.

The automatic "unsafe and unsound" determination is draconian and we believe that the NCUA must provide guidance to credit unions and examiners on review of fixed assets based on marketability. If the decline in the marketability is due to general economic malaise, the "unsafe and unsound" determination would only add to the credit union's burden.

### **Small Credit Union Exemption**

Small credit unions with assets less than \$1 million are exempt from the fixed asset rule.

The Regulatory Flexibility Act requires regulators to analyze the economic impact a proposed rule may have on small entities. The NCUA has increased the asset size for credit unions considered to be small credit unions for purposes of the

Regulatory Flexibility Act from \$1 million in 1981, to \$10 million in 2003, and to \$50 million in 2013.

We believe the NCUA should update the fixed asset exemption from “less than \$1 million” to “less than \$50 million.”

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We appreciate the opportunity to respond to the NCUA’s proposed amendments to its fixed assets rule. We believe the changes we have suggested will provide meaningful relief to credit unions without compromising credit union safety and soundness.

Please contact me at 630 983-3411 if you have any questions.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

By: Cornelius O’Mahoney  
Compliance Consultant