Missouri Credit Union Association

October 10, 2014

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

RE: Don Cohenour – Comments on FCU Ownership of Fixed Assets Proposed Rulemaking; Part 701

Dear Mr. Poliquin:

On behalf of the 1.3 million credit union members, the Missouri Credit Union Association (MCUA) would like to take this opportunity to express our views on the proposed changes to its Ownership of Fixed Assets rule.

MCUA believes NCUA has more leeway than the proposal indicates, and credit unions should have more flexibility to integrate the use of fixed assets into their overall strategic plans and management than the proposal would provide. Our letter urges a number of recommendations that will not jeopardize credit union safety and soundness but will provide more relief to federal credit unions in managing their fixed assets.

MCUA Urges NCUA to Eliminate the Five Percent Aggregate Limit

The Federal Credit Union Act (Act) authorizes federal credit unions to purchase, hold, and dispose of property necessary or incidental to credit union operations. The Act is silent on any additional provisions regarding fixed assets and does not include any limits on the ownership or use of fixed assets by federal credit unions. NCUA has interpreted the Act to limit the fixed assets that a federal credit union may hold to five percent of its shares and retained earnings and has established occupancy, planning, and disposal requirements for acquired and abandoned premises.

In 2013, NCUA adopted technical revisions to the fixed assets regulation. Prior to the termination of the Regulatory Flexibility Program (RegFlex), federal credit unions with a RegFlex designation could exceed the five percent aggregate limits on the ownership of fixed assets without prior NCUA approval. RegFlex credit unions also had more flexibility in managing the use of buildings and raw land. Absent complete removal of the five percent limit, we supported the RegFlex Program's approach, but we continue to urge that the five percent limit be eliminated altogether.

The proposed rule would not eliminate the five percent ownership limit. 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 through the examination process.

While there are positive aspects of this approach particularly regarding prior approval, the additional requirements that the proposal would impose after assets are acquired would increase federal credit unions' compliance responsibilities and costs, mitigating any additional flexibility gained from the proposal.

Fixed asset requirements for national banks appear to be minimal, particularly since banks that are CAMEL 1 or 2 and do not exceed 150% of their capital and surplus may simply provide an after the fact notice of their investments. As provided in the Office of the Comptroller's directives on investment in bank premises:

> Generally, a bank need not obtain OCC's prior approval to invest in: (1) bank premises; (2) the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank; or (3) loans to or on the security of the stock of any such corporation. However, prior approval is required if the aggregate of all such investments and loans, together with any indebtedness incurred by any such corporation that is an affiliate (see Glossary) of the bank, exceeds the amount of the bank's capital stock. The OCC's approval for a specified amount remains valid up to that amount until the OCC notifies the bank otherwise.
> The bank will file with the appropriate supervisory office, unless the investment in bank premises is combined with a corporate application for another transaction. (See Procedures section of this booklet for specific guidance.) Also a bank that meets certain criteria as discussed below may file an after-the-fact notice with the appropriate supervisory office rather than obtain prior approval.
>
> After-the-Fact Notice
> In certain instances, a bank that wishes to invest an amount in excess of its capital stock in its bank premises may proceed without seeking prior OCC approval. A bank that has a composite CAMELS 1 or 2 rating may notify the appropriate supervisory office in writing within 30 days following any transaction that increases its aggregate bank premises investment to an amount that is in excess of its capital stock, but is not more than 150 percent of its capital and surplus. The bank must be well capitalized as defined at 12 CFR 6.4(b)(1) and continue to be well capitalized, after the investment or loan is made to qualify for the after-the-fact notice process. The bank must include in its notice a description of the bank's investment or loan.
>
> A bank must notify the OCC each time a purchase raises the bank premises investment above the capital stock amount but is within the 150 percent safe harbor amount.

Credit unions, which are more risk averse than banks, should be allowed even more flexibility than what is afforded national banks in this area and the five percent limit should be removed.

Management and other issues relating to fixed assets have not presented material safety and soundness issues for the credit union system, further supporting additional flexibility for credit unions. NCUA material loss reviews for four credit unions liquidated in 2009 and the three subsequent years mention fixed assets. However, a careful reading of those reviews demonstrates that no credit union failed solely because of or even largely due to its mismanagement of fixed assets.

Because there is flexibility under the Act and fixed assets do not present material safety and soundness concerns, we urge NCUA to be as flexible as possible in its approach to regulation in this area.

Rather than adopting the proposed system, MCUA urges the agency to adopt a simpler approach that would remove the five percent limit from the rule altogether and allow federal credit union boards to set reasonable limits for themselves, without having to adopt a specific FAM program, which we do not agree is necessary. Credit unions should be expected to manage their fixed assets and be allowed to set appropriate limits that will be supervised by their boards and management, subject to review by examiners as part of the overall financial management and performance of a credit union.

If a credit union exceeds its limits or the ownership of fixed assets adversely impacts a credit union's management or operations, 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 under regulatory limits.

If NCUA determines that the five percent threshold should remain, we urge the agency to develop a workable appeals process so that credit unions will be able to pursue concerns in the event that NCUA staff rejects an investment after it is made that exceeds the five percent threshold. Under the current rule, there is little danger of exceeding the five percent threshold because permission is required before acquiring fixed assets exceeding the threshold. An appeals process would ensure that credit unions have the opportunity defend a business decision to exceed the ownership threshold.

Key Time Benchmarks Should be Set by Credit Union Boards

Under NCUA's current rule, if a federal credit union acquires property for future expansion and does not fully occupy the premises within one year, the credit union must have a board resolution by the end of that year addressing its plans for full occupancy. This would not change under the new proposal and there would continue to be no specific time period for full occupancy of premises acquired for future expansion.

The current rule does set a time frame for partial occupancy, which is three years from the date of acquisition or six years from that date if the premises are unimproved land or unimproved real property. The proposal would change those time requirements relative to partial occupancy to five years for each category.

In general, just as we support allowing credit unions to set their own numerical limits on fixed assets, we also support allowing credit unions the ability to determine how long they need to reach full or partial occupancy of property. In that connection, we urge that the time limitations on when credit unions must achieve partial occupancy be removed and the regulation simply provide that credit union boards will determine the appropriate, reasonable timetable for full occupancy. If NCUA determines it cannot provide that flexibility, then we support allowing federal credit unions up to ten years before partial occupancy must be reached.

In any event, we do not agree that the occupancy requirement for unimproved land should be reduced from six to five years. More time is important for credit unions in planning for the use of unimproved real estate. We also urge NCUA to consider a "de minimis ownership exception" under which land that is not valued at more than 3%, for example, of a credit union's shares and retained earnings could avoid the restrictions regarding occupancy. This would allow credit unions to own land or other premises for long-term use without occupancy constraints.

We also request that the Board revise the definition of partial occupancy to allow any reasonable use of land or premises by a credit union that is related to its operations as a not for profit financial cooperative. The 2013 fixed assets amendments reduced credit unions' ability to meet partial occupancy requirements by requiring that such occupancy be "relative to the scope of the usage plan" instead of related to "when the credit union is using some part of the space on a full-time basis" as under the previous rule. This change meant that credit unions cannot, for example, meet the partial occupancy requirement by deploying an ATM on vacant land purchased for a future branch expansion because NCUA does not consider that the ATM use is consistent with future usage plan and the scope of the usage plan. We urge that the final rule correct this situation. We support the proposed elimination of the 30-month timeframe for a partial occupancy waiver request, which will add flexibility for federal credit unions when planning for future needs.

We also urge NCUA to allow federal credit unions to lease and sublease real estate as necessary and permanently if needed. Restrictive occupancy and use requirements reduce access to commercial space and limit a credit union's ability to acquire space in the most cost effective manner. There are a number of reasons a credit union would want or need to lease or sublease property, which include zoning, retail requirements and other use requirements. Credit unions should be allowed to maximize long-term assets instead of avoiding reasonable acquisitions or underutilizing space to ensure compliance with occupancy requirements.

Fixed Assets Management Should Rest with Credit Unions, but Without the Need for a FAM Program

Management of fixed assets should be part of a credit union's overall management and not subject to regulatory requirements to produce and maintain a specific management plan or program, such as the FAM. The formalized requirements NCUA is proposing would complicate any acquisition of fixed assets over the five percent threshold and would deter credit unions from making such acquisitions that would not normally require credit union board level permission. A more reasonable approach is to allow credit union boards to reflect overall size limit on total fixed assets that is appropriate for their credit union as well as the reasonable amount of time the credit union needs regarding occupancy or use of property in their minutes, policies and strategic plans. If NCUA proceeds to require a FAM, we do not think an annual review of the program is necessary. This requirement would create another step that is not

present under the current waiver process and its usefulness in helping credit unions to manage their fixed assets has not been demonstrated.

Small Credit Union Exemption

The fixed assets rule does not apply to credit unions with less than $1 million in assets. NCUA has not adjusted the exemption amount in quite some time. NCUA has amended its definition of small credit union several times over the last few decades to reflect the asset growth of credit unions and inflation. For the purpose of the Regulatory Flexibility Act NCUA defined small credit unions as $1 million in assets in 1981. In 2003, this was changed to $10 million and was updated again in 2013 to $50 million. We recommend that the Board update the fixed asset exemption to $50 million and that the thresholds for compliance be tied to the definition of small credit union to reflect any future increases when the definition of small credit union is updated.

Internal Controls

The current fixed assets rule does not have a specific internal controls requirement and we do not support one for the revised fixed assets rule. Internal controls that monitor and measure fixed assets investments should be determined by credit union management, subject to examiner review during the routine examination process but not subject to specific regulatory requirements.

Grandfathering

We support NCUA's grandfathering of previously approved waivers, without requiring any of the new requirements necessary to exceed the five percent limitation to apply to those credit unions that have already been granted a waiver.

Supervisory Review

We encourage NCUA to provide guidance and make publicly available all criteria used by examiners to evaluate the management of fixed assets. More specifically, in the supplementary information to the proposal NCUA indicates that examiners will provide additional scrutiny to properties that have "limited marketability" without fully explaining what is meant by the use of this term or addressing the latitude that examiners would have in evaluating marketability of a fixed asset and on what basis. NCUA should provide guidance to credit unions and examiners on the review of fixed assets on the basis of marketability.

As always, we appreciate the opportunity to respond to these proposed changes. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour

Don Cohenour
President

St. Louis
2055 Craigshire Road, Suite 200
St. Louis, Missouri 63146-4009

Kansas City
1828 Swift Avenue, Suite 100
North Kansas City, Missouri 64116-3629

Jefferson City
223 Madison Street
Jefferson City, Missouri 65101-3202

1.800.392.3074 • www.mcua.org