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April 28, 2015

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

RE: Comments on Fixed Assets Rule, RIN 3133-AE39

Dear Mr. Poliquin:

The Pennsylvania Credit Union Association (PCUA) appreciates the opportunity to comment on the National Credit Union Administrationõs (NCUA) proposed fixed assets rule 12 CFR Part 701, which will increase a federal credit unionõs (FCU) flexibility in the management and ownership of fixed assets. PCUA is a statewide advocacy organization which represents a majority of the credit unions located in the Commonwealth of Pennsylvania.

PCUA consulted with its Regulatory Review Committee and State Credit Union Advisory Committee (the Committees) in order to provide comments on the proposal. The Committees consist of credit union CEOs and senior management staff. Members of the Committees also represent credit unions of all asset sizes. The comments contained in this letter reflect the input of the Committees and PCUA staff.

Pursuant to this latest proposal Part 701.36 of the NCUA Rules and Regulations would be amended to eliminate the current five-percent aggregate limit on investments in fixed assets for federal credit unions with assets of at least $1 million. In addition, the proposed rule:

- Eliminates provisions in the current rule regarding waivers from the aggregate limit;
- Simplifies the partial occupancy requirements by establishing a, single, six-year, period and removes the thirty-month requirement for partial occupancy waiver requests; and
- The oversight of federal credit union ownership of fixed assets will be addressed by supervision and guidance as opposed to a bright-line rule.

<u>Aggregate Limit on Fixed Assets</u>

We support the elimination of the five-percent aggregate limit. Removal of the cap is a significant reform providing FCUs with flexibility to meet their business or operational needs and the needs of members. The elimination of the cap poses no safety and soundness issues. FCUs will temper investments in fixed assets in conjunction with their level of net worth, earnings, and plans for growth.

<u>Supervision of Fixed Assets</u>

NCUA proposes to monitor credit union investments in fixed assets through supervision and guidance. This approach is rational, particularly, because investments in fixed assets present little risk in terms of safety and soundness. Therefore, it is also appropriate to establish some limits on NCUAôs supervisory discretion and the content of any future guidance. Where a credit union maintains a well-capitalized net worth ratio, maintains positive earnings, and produces a sound business plan, NCUA or state regulators should not intervene or second-guess a credit unionôs ownership of fixed assets. Any guidance developed by the NCUA regarding fixed assets should set relevant metrics and when a credit union demonstrates that it operates within those metrics, it should not experience any supervisory comments or enforcement measures. Relevant metrics might include a minimum capital level, return on assets, net, long-term assets ratio, and the credit unionôs business plan.

Credit unions need to be confident that once they prepare their plans for investments in and utilization of fixed assets in conjunction with any guidance coming from NCUA, they will be free to execute. The consequences of findings in an examination report or elements of a Document of Resolution can have a significant (in some instances, a negative) impact on a credit union. Accordingly, the final rule should include a robust appeals process for review of examination findings, informal supervisory actions, and formal enforcement measures. A credit union should have recourse to an independent panel or administrative law judge. Any ruling should be supported by findings of facts and conclusions of law. The ruling should constitute final agency action that can be appealed to the federal court system.

Future Premises, Occupancy

NCUA proposes to amend section 701.36(d)(2) of its rules and regulations to permit an FCU to partially occupy premises for future expansion, including unimproved real property, within a reasonable period, but no later than six years after the date of acquisition. The proposal explains that NCUA may waive the six-year period and provides direction on obtaining a waiver. We appreciate the additional flexibility regarding partial occupancy of premises. The Committees indicated that, in their experience, six years might be too short a window for occupancy. Issues such as site preparation, zoning, and similar matters impact occupancy. Establishing a longer period of time for partial occupancy would reduce the need for waivers and would recognize disruptions that can occur in connection with future premises.

Conclusion

Overall, we support NCUAôs proposed changes to the fixed asset rule. The elimination of the 5% aggregate limit provides flexibility for FCUs in terms of managing operational needs. Oversight of investments in fixed assets by supervision and guidance is reasonable provided that outside limits are imposed on the agencyôs discretion to regulate these matters. An appeals process is necessary to provide a meaningful avenue for redress of supervisory issues. We support the six-year partial occupancy rule but note that it would be prudent to extend that length of time and eliminate resort to waivers.

Very truly yours,

PENNSYLVANIA CREDIT UNION ASSOCIATION

Richard T Wargo

Richard T. Wargo, Jr., Esq.
Executive Vice President/General Counsel

cc: P. Conway, President & CEO
PCUA Board of Directors
Regulatory Review Committee
State Credit Union Advisory Committee