



April 12, 2013

Federal Credit Union Ownership of Fixed Assets

EXECUTIVE SUMMARY

The National Credit Union Administration (“NCUA”) issued a proposed rule amending its regulation governing the ownership of fixed assets by federal credit unions (“FCU”). The fixed assets rule authorizes an FCU to purchase, hold and dispose of property incidental to its operations. An FCU can only invest in property that it intends to use to for credit union business or supports credit union operations. The proposed rule does not make any substantive changes to the current fixed assets rule. According to the NCUA, “the amendments only clarify the regulation improving its organization, structure and ease of use.” The proposed rule does reorganize the rule, adds several definitions and provides additional explanation on the process of requesting and obtaining waivers from the NCUA.

New Definitions

The proposal adds two definitions to the rule’s definition section. These are definitions for “unimproved land or unimproved real property” and “partially occupy.”

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.

Unimproved land or unimproved real property means:

- (1) raw land or land without development, significant buildings, structures, or site preparation;
- (2) land that has never had improvements;
- (3) land that was improved at one time but has functionally reverted to its unimproved state; or
- (4) land that has been improved, but the improvements serve no purpose for the federal credit union’s planned use of the property and are of little

The definition for unimproved land or unimproved real property should give credit unions clarity and flexibility when determining if land is considered unimproved land or unimproved real property. The current rule does not contain a definition but NCUA states that the agency uses a “common definition” of unimproved land, which is raw land or land without development, significant building, structures or site preparation. NCUA stated in a 2009 legal opinion that land with improvements that are valueless to an FCU, a barn for example, can be treated as unimproved if an FCU can demonstrate that it intends to demolish or treat the improvements as useless or valueless. The new definition incorporates this legal opinion into the fixed assets rule. This should allow credit unions more flexibility in considering property unimproved for the purposes of this rule.

NCUA added a definition of “partially occupy” to help clarify the requirements for the required use and occupation of fixed assets. The requirement to partially occupy is relevant for the use of unimproved land or when an FCU acquires improved premises for future expansion. A credit union can temporarily satisfy the fixed assets requirements when “partially occupying” a premises with intent for full occupation or use in the future.

The partially occupy definition requires credit unions to occupy a meaningful portion of a premise consistent with its usage plan and to derive practical utility from the occupied portion. It must show sufficient evidence of a plan for full occupation. An FCU must partially occupy improved premises within three years and within six years for unimproved land.

Waiver Process

Several provisions in the fixed assets rule are subject to waiver. The proposed rule does not add any provisions eligible for waivers but it does clarify the waiver process by detailing NCUA obligations when a waiver is requested. The proposal also clarifies the waiver process by using language referring consistently to “waiver” throughout the entire proposed rule.

Each provision subject to waiver now describes: (1) the FCU’s obligation when requesting a waiver; (2) NCUA’s obligation in reviewing the waiver request; and (3) any other applicable conditions for waiver. The proposal also states that regional directors will approve waivers based on “safety and soundness” considerations. This standard is not part of the current rule. There does not appear to be an avenue to appeal waiver determinations.

The provisions eligible for waiver remain:

- Aggregate investment limit
- Partial occupation requirements
- Requirements to dispose of abandoned premises
- Prohibition on certain transactions

CUNA seeks input from credit unions on the specific topics:

- Should NCUA add additional definitions to the fixed asset rule?
- Should NCUA add a waiver appeals process?
- Should? Does the proposal make any additional changes not mentioned by the NCUA?

We also welcome additional comments on the proposal.

NCUA is accepting public comments until May 20, 2013; please send any comments to CUNA by May 15, 2013.

Please send comments to CUNA Assistant General Counsel [Lance Noggle](#) by May 15, 2013. Click [here](#) to access the proposed rule in the Federal Register.