National Association of Federal Credit Unions
3138 10th Street North • Arlington, VA 22201-2149
(703) 522-4770 • (800) 336-4644 • Fax (703) 524-1082
www.nafcu.org • nafcu@nafcu.org

December 1, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Regulatory Flexibility Regarding Ownership of Fixed Assets

Dear Ms. Rupp:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the request for comments by the National Credit Union Administration (NCUA) regarding its Notice of Proposed Rulemaking (Proposed Rule) to amend its regulations pertaining to FCUs that qualify for the Regulatory Flexibility Program (Reg Flex).

Federal credit unions are statutorily authorized to purchase, hold and dispose of property necessary or incidental to their operations. NCUA's regulations on fixed assets, however, provide limits on fixed asset investments, establish occupancy and other requirements for acquired and other abandoned premises, and prohibit certain transactions. Where acquired premises are not fully occupied within one year, the credit union's Board of Directors must produce a resolution with plans for full occupation and make those plans available to NCUA upon request. In addition, the premises must be partially occupied within three years, unless the FCU obtains a waiver. Reg Flex FCUs are not exempted from the three-year partial occupancy requirement.

Under the proposed rule, Reg Flex FCUs would be granted relief from the partial occupancy requirement. Specifically, a Reg Flex FCU that acquires unimproved land would not be required to partially occupy the property for six years. Thereafter, the credit union must partially occupy the property unless it obtains a waiver from NCUA.

NAFCU strongly supports the proposed rule to provide relief to Reg Flex FCUs when they acquire unimproved land. Reg Flex FCUs have proven track records in ensuring that their financial health is intact. We believe providing these entities additional flexibility in their investment capacity and reducing their regulatory burden is a sound decision.

As NCUA is likely aware, carrying out improvements on unimproved property is often a challenging order. It often requires a credit union to comply with federal, state and local regulations, ranging from acquiring environmental impact statements to obtaining zoning approvals and highway access permits. In addition, circumstances that are beyond the credit union's control can arise. These include unforeseeable changes to market conditions, which may make it cost-prohibitive or impractical to make necessary improvements to partially occupy premises within three years. Depending on current economic conditions, improvements could be an inefficient use of credit union resources. Challenges might also arise with respect to zoning issues or building moratoriums. Considering the complicated nature of improvements, we strongly support the extension of the time a Reg Flex FCU would have before having to partially occupy the property.

While we support the proposed rule, we do not believe it is adequately comprehensive. Specifically, we believe that Reg Flex FCUs should be afforded greater flexibility related to the time by which they must occupy certain *improved* premises. Improved premises pose their own set of challenges that make compliance with the three year partial occupancy requirement extremely difficult. Oftentimes, acquiring improved land is the most cost-effective solution available. For example, a credit union may find that acquiring a building that requires significant renovations would be less costly, and ultimately more practical, to allow it to provide better service to its members at lower cost. Or, as some credit unions have found, acquiring an existing building used as another financial institution's branch is far more cost-effective than developing unimproved land. In these cases, the credit union is often required agree to not open a branch at the site for a specified period, often exceeding three years and usually for five years.

We believe that the scenarios described above, as well others, justify additional regulatory relief. As we have stated on numerous occasions before, NCUA should embrace a risk-based approach to regulation. We believe that expanding the proposed extension for partial occupancy to include the situation where a Reg Flex FCU acquires improved premises would progress NCUA in the direction of a risk based regulatory regime.

NAFCU appreciates this opportunity to share its comments on this proposed rule. Should you have any questions or require additional information please call me at (703) 522-4770 or (800) 336-4644 ext. 268.

Sincerely,

Tessema Tefferi
Associate Director of Regulatory Affairs