

## National Credit Union Administration

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account will be subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

8. *Prompt Corrective Action.* Under certain net worth classifications (see 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be), the NCUA Board may prohibit [name of credit union] from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest will continue to accrue under the terms of the account to the extent permitted by law.

ACKNOWLEDGED AND AGREED TO this  
\_\_\_\_\_ day of [month and year] by:

\_\_\_\_\_  
[name of investor's official]  
[title of official]  
[name of investor]  
[address and phone number of investor]  
[investor's tax identification number]

\_\_\_\_\_  
[name of credit union official]  
[title of official]

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996; 64 FR 72270, Dec. 27, 1999; 65 FR 21131, Apr. 20, 2000; 71 FR 4238, Jan. 26, 2006; 73 FR 71912, Nov. 26, 2008; 75 FR 7342, Feb. 19, 2010; 75 FR 47172, Aug. 5, 2010; 75 FR 57843, Sept. 23, 2010; 76 FR 36979, June 24, 2011; 76 FR 80227, Dec. 23, 2011; 78 FR 4032, Jan. 18, 2013]

### § 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral.

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

### § 701.36 Federal credit union ownership of fixed assets.

(a) *Scope.* (1) Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision and it:

(i) Limits investments in fixed assets;

(ii) Establishes occupancy, planning, and disposal requirements for acquired and abandoned premises; and

(iii) Prohibits certain transactions.

(2) This section applies only to federal credit unions.

(b) *Definitions.* For purposes of this section:

*Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose. It also means real property originally acquired for future credit union expansion but no longer intended for that purpose.

*Fixed assets* means premises and furniture, fixtures, and equipment.

*Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

*Immediate family member* means a spouse or other family member living in the same household.

*Investments in fixed assets* means:

(1) Any investment in improved or unimproved real property which a federal credit union is using, or intends to use, as premises;

(2) Any leasehold improvement on premises;

(3) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; or

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(4) Any investment in furniture, fixtures, and equipment.

*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.

*Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the federal credit union transacts or will transact business.

*Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by the federal credit union's management or NCUA.

*Senior management employee* means the federal credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer. For example, these individuals typically hold the title of President or Treasurer/Manager, Assistant President, Vice President or Assistant Treasurer/Manager, and Comptroller.

*Shares* means regular shares, share drafts, share certificates, or other savings.

*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.

(c) *Limits on investment in fixed assets.* If a federal credit union has \$1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares

and retained earnings. NCUA may waive this aggregate limit.

(1) To seek a waiver, a federal credit union must submit a written request to its Regional Office. The request must:

(i) Describe the proposed investment;

(ii) Indicate the approximate aggregate amount of fixed assets the federal credit union would hold after the investment (as a percentage of shares and retained earnings); and

(iii) Fully explain why the federal credit union needs the waiver.

(2) The Regional Director will inform the federal credit union, in writing, of the date its request was received and of any additional documentation needed.

(3) Within 45 days of the receipt of the federal credit union's waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(4) If a waiver is approved, the Regional Director will set an alternative limit on the federal credit union's aggregate investments in fixed assets, either as a dollar limit or as a percentage of its shares and retained earnings. Unless the Regional Director specifies otherwise, the federal credit union's future investments in fixed assets must not exceed an additional one percent of its shares and retained earnings over the amount approved.

(5) If the Regional Director does not respond in writing within the timeframe specified in paragraph (c)(3) of this section, the federal credit union may proceed with its proposed investment. However, the federal credit union's investment in fixed assets, and any such future investments, must not exceed the aggregate limit it requested.

(d) *Premises not currently used to transact credit union business.* (1) If a federal credit union acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the federal credit union (or the federal credit union and a credit

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union service organization or a vendor) uses the entire space on a full-time basis. Credit union service organizations and vendors must use the space primarily to support the federal credit union or to serve the federal credit union's members. The federal credit union must make its plans for full occupation available to NCUA upon request.

(2) If a federal credit union acquires premises for future expansion, it must partially occupy them within a reasonable period, but no later than three years after the date of acquisition. If the premises are unimproved land or unimproved real property, however, the three-year partial occupation requirement is extended to six years. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office within 30 months after the property is acquired and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. The federal credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the federal credit union must publicly advertise the property for sale. The federal credit union must complete the sale within five years of abandonment, unless NCUA waives this requirement. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(e) *Prohibited transactions.* (1) A federal credit union must not acquire, or lease for one year or longer, premises

from any of the following, unless NCUA waives this prohibition:

(i) A member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual;

(ii) A corporation in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is an officer or director, or has a stock interest of 10 percent or more; or

(iii) A partnership, limited liability company, or other entity in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) A federal credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in investments in fixed assets, unless the federal credit union's board of directors determines the employee's involvement is not a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this section must be conducted at arm's length and in the interest of the federal credit union.

(4) To seek a waiver from any of the prohibitions in this paragraph (e), a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. Within 45 days of the receipt of the waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving its request. The Regional Director's decision will be based on safety and soundness considerations and a determination as to whether a conflict of interest exists.

[78 FR 57252, Sept. 18, 2013]