

## Bulletin CU-16-3



**TO: All Tennessee State-Chartered Credit Unions**

**SUBJECT: Fixed Assets**

**DATE: May 2, 2016**

Rule 0180-9-1-.02(2) of the Tennessee Department of Financial Institutions (attached) provides that no Tennessee state chartered credit union shall purchase fixed assets or enter into a contract for the purchase of fixed assets if the aggregate of all such investments exceeds five percent (5%) of assets without the prior approval of the Commissioner. Previously, NCUA Rule 701.36 had a similar limitation except that a waiver was required before a credit union could invest in fixed assets that exceeded five percent (5%) of its shares and retained earnings. The NCUA recently amended its Rule 701.36 (attached) and removed the requirement for a waiver. Therefore, subject to any limitations imposed by any regulatory or enforcement actions, federally chartered credit unions no longer have to request a waiver to make an investment in fixed assets that exceeds five percent (5%) of its shares and retained earnings.

As you may know, Tennessee law has a "wild card" provision that will allow any Tennessee state chartered credit union to exercise any power or engage in any activity that it could exercise or engage in if it were a federally chartered credit union, subject to the regulation by the Commissioner for safety and soundness (Tenn. Code. Ann. § 45-4-501(9)). The Department will apply the "wild card" to allow state-chartered credit unions to exceed the five percent (5%) cap on the purchase of fixed assets without obtaining the Commissioner's prior approval regardless of the provisions found in Rule 0180-9-1-.02(2) of the Department of Financial Institutions.

HOWEVER, due to safety and soundness concerns, any credit union that is subject to an enforcement action such as a Written Agreement, Letter of Understanding, Document of Resolution, etc. that limits a credit union's investment in fixed assets, must seek the Commissioner's prior approval in accordance with the terms of the enforcement action as well as the provisions of Rule 0180-9-1-.02(2) of the Department of Financial Institutions.

Under the amended NCUA Rule 701.36, NCUA examiners will examine fixed assets during their examinations of federal credit unions to determine if there are any safety and soundness concerns. Department examiners (along with NCUA examiners on joint exams) will also review fixed assets during the examination of Tennessee state chartered credit unions to ensure compliance with NCUA

Rule 701.36 and to determine if there are any safety and soundness concerns. Documentation including but not limited to: Strategic Planning and Budget forecasting regarding fixed asset projections are essential in this review.

A concern the Department has with the NCUA amended Rule 701.36 is that the NCUA and Department examiners will be reviewing fixed asset purchases after they have taken place. Any safety and soundness concerns revealed during an examination may result in consequences including without limitation a decrease in CAMEL ratings or a document of resolution with corrective actions.

To address this concern, any Tennessee state-chartered credit union may (but is not obligated to) request that the Department perform a safety and soundness review prior to a purchase of fixed assets that would exceed five percent (5%) of assets. This approach allows those Tennessee state-chartered credit unions who want to rely upon the "wild card" to exceed the five percent (5%) cap on fixed assets without the Commissioner's prior approval, to either (i) without any consultation with the Department, exercise their business judgment to proceed and to assume the risk that safety and soundness concerns could be raised by examiners after the fact or (ii) consult with the Department prior to the purchase to assess potential safety and soundness concerns prior to proceeding with the purchase.

Should any Tennessee state-chartered credit union want the Department to review a proposed fixed asset purchase that would exceed five percent (5%) of assets prior to the investment, it should send its request via email to Anthony B. Rogers, Sr., Chief Administrator at [anthony.rogers@tn.gov](mailto:anthony.rogers@tn.gov) or via mail to the following address:

Tennessee Department of Financial Institutions  
312 Rosa L. Parks Blvd, 26<sup>th</sup> floor  
Nashville, TN 37243

Questions regarding this Bulletin should be addressed to Anthony B. Rogers, Sr., Chief Administrator, Credit Union Division at (931) 980-6427 or Tina G. Miller, Deputy Commissioner at (615) 532-1030.

  
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Greg Gonzales, Commissioner