

**Supporting Statement for Paperwork Reduction Act Submissions
3133 - 0040
Federal Credit Union Ownership of Fixed Assets (12 C.F.R. 701.36)
July 2013**

A. Justification

11. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

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Section 107(4) of the Federal Credit Union Act states in part that a federal credit union (FCU) shall have the power to purchase, hold, and dispose of property necessary or incidental to its operations. Section 701.36, The National Credit Union Administration's (NCUA's) fixed asset rule, implements this statute and includes an information collection approved under control number 3133-0040. There are five parts to the collection associated with this rule.

a. *Waiver of five percent limitation.* The fixed asset rule requires all FCUs having aggregate assets of \$1 million or more to seek written approval of NCUA for any investment in fixed assets that would cause its fixed assets to exceed 5 percent of shares and retained earnings. The rule requires FCUs to submit documentation in support of any request for approval, and this part of the information collection requirement is submitted for approval. This rule becomes operative only when FCUs decide to invest in fixed assets. The intent of the regulation is to prevent, or at least to curb, excess investments in fixed assets and the related costs and expenses that may be beyond the financial capability of the credit union. Statistics indicate a correlation between high fixed asset investments and difficulty in achieving positive earnings.

b. *Plan for full occupation of premises.* The fixed asset rule requires FCUs that acquire realty for future expansion but fail to fully occupy that realty within a year must have a plan in place for future occupation. This rule becomes operative only when FCUs decide to acquire real estate and not occupy it within the stated period of time. This part of the information collection requirement is submitted for approval. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold and lease realty indefinitely for unauthorized purposes.

c. *Waiver of requirement for partial occupation.* The fixed asset rule requires FCUs that acquire realty for future expansion but fail to at least partially occupy it within three years, or within six years for unimproved real property, to obtain a waiver from NCUA. This rule becomes operative only when FCUs decide to acquire real estate and not partially occupy it within the stated period of time. This part of the information requirement is submitted for approval. The Federal

Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold and lease realty indefinitely for unauthorized purposes.

d. *Waiver of requirement to dispose of abandoned property.* The fixed asset rule requires FCUs that abandon property and fail to complete the sale of the property within 5 years of abandonment to seek written approval from NCUA. This rule becomes operative only when FCUs decide to abandon property and not complete the sale of the abandoned property within the stated period. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold property indefinitely for unauthorized purposes.

e. *Waiver of prohibited transaction.* The fixed asset rule requires FCUs to obtain written approval from NCUA before acquiring or leasing, for one year or longer, realty from prohibited parties. This rule becomes operative only when FCUs decide to acquire real estate from a prohibited party. This part of the information requirement is submitted for approval. The Federal Credit Union Act does not permit FCUs to own real estate for purposes other than for providing financial services to members. This part of the information collection is necessary to ensure FCUs do not hold or lease realty for unauthorized purposes.

32. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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a. *Waiver of five percent limitation.* NCUA staff reviews the information filed by the FCU to determine if the proposed investment in fixed assets would adversely affect the financial soundness of the FCU. Without this reporting requirement, the NCUA would not become aware of excessive investment in fixed assets until after the FCU had made irrevocable commitments. In such cases, the process of extracting the FCU from excessive commitments is often impossible or impracticable. Over investment in fixed assets that impairs the financial condition of the FCU also has an adverse effect on the stability of the NCUA Share Insurance Fund. The Fund insures share accounts in FCUs up to \$250,000 per member.

b. *Plan for full occupation of premises.* On occasion, FCUs may hold and lease real estate for purposes unrelated to providing financial services to members. This is not a legal activity for FCUs when done indefinitely. This provision is necessary to ensure FCUs are moving towards occupying or disposing of realty they own.

c. *Waiver of requirement for partial occupation.* On occasion, FCUs may hold and lease real estate for purposes unrelated to providing financial services to members. This is not a legal activity for FCUs when done indefinitely. The requirement to request and obtain a waiver is necessary to ensure FCUs are moving towards occupying or disposing of realty they own. NCUA staff reviews the information filed by the FCU to determine if it has a good reason for not occupying the realty in a timely manner.

d. *Waiver of requirement to dispose of abandoned property.* On occasion, FCUs may hold real estate for purposes unrelated to providing financial services to members. This is not a legal activity for FCUs when done indefinitely. The requirement to request and obtain a waiver is necessary to ensure FCUs are moving toward disposing of realty they own once it has been declared abandoned. NCUA staff reviews the information filed by the FCU to determine if it has good reason for not disposing of the abandoned realty in a timely manner.

e. *Waiver of prohibited transaction.* On occasion, FCUs may invest in realty through an acquisition or lease, for one year or longer, from a prohibited party. This is not a legal activity for FCUs. The requirement to obtain prior written approval to invest in such realty is necessary to ensure such transactions are performed at arm's length and in the interest of the credit union. NCUA staff review the information filed by the FCU to determine if it has good reason for investing in realty from a prohibited party.

53. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

a. *Waiver of five percent limitation.* The NCUA has access to electronically produced financial data that minimizes the information collection requirement. Also, the FCU may submit waiver information to NCUA electronically.

b. *Plan for full occupation of premises.* The FCU must explain its plans for full occupation. It may support its plans with reference to financial data already available to NCUA.

c. *Waiver of requirement for partial occupation.* The FCU must explain why it cannot partially occupy the property within three years. It may support its explanation with reference to financial data already available to NCUA. Also, the FCU may submit waiver information to NCUA electronically.

d. *Waiver of requirement to dispose of abandoned property.* The FCU must explain why it cannot dispose of abandoned property within five years. It may support its explanation with reference to financial data already available to NCUA. In addition, the FCU may submit waiver information to NCUA electronically.

e. *Waiver of prohibited transaction.* The FCU must explain its plans for investing in realty with a prohibited party. The FCU may submit waiver information to NCUA electronically.

64. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information required for consideration of a waiver of the regulatory limitations is unique to this regulatory requirement and is not duplicated in any other submission by respondents to the agency nor otherwise available to the agency. The agency, therefore, does not otherwise have this information or similar information on which to base a determination of a waiver of the regulatory limitations.

75. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

a. *Waiver of five percent limitation.* This part of the collection has minimal impact. It does not apply to credit unions with less than \$1 million in assets.

b. *Plan for full occupation of premises.* This part of the collection has minimal impact. Small credit unions are unlikely to acquire premises without occupying the premises at the same time or shortly after acquisition.

c. *Waiver of requirement for partial occupation.* This part of the collection has minimal impact. Small credit unions are unlikely to acquire premises without occupying the premises at the same time or shortly after acquisition.

d. *Waiver of requirement to dispose of abandoned property.* This part of the collection has minimal impact. Small credit unions are unlikely to abandon property without disposing of it at the same time or shortly after abandonment.

e. *Waiver of prohibited transaction.* Small credit unions, like all other FCUs, can avail themselves of the waiver.

96. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

- a. *Waiver of five percent limitation.* There is potential financial harm to both the FCU and to the NCUA, as described in 1a, above.
- b. *Plan for full occupation of premises.* The FCU may engage in illegal activity.
- c. *Waiver of requirement for partial occupation.* The FCU may engage in illegal activity.
- d. *Waiver of requirement to dispose of abandoned property.* The FCU may engage in illegal activity.
- e. *Waiver of prohibited transaction.* The FCU may engage in illegal activity.

107. Explain any special circumstances that would cause an information collection to be conducted in a manner:

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12* requiring respondents to report information to the agency more often than quarterly;

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14None.

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16* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

None.

*** requiring respondents to submit more than an original and two copies of any document;**

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18None.

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20* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

a. *Waiver of five percent limitation.* The FCU must retain the supporting information only for so long as it relies on the waiver.

b. *Plan for full occupation of premises.* The FCU must retain the plan for only so long as it does not fully occupy the premises.

c. *Waiver of requirement for partial occupation.* The FCU must retain the supporting information for only so long as it does not obtain partial occupation.

d. *Waiver of requirement to dispose of abandoned property.* The FCU must retain the supporting information for only so long as it holds abandoned property.

e. *Waiver of prohibited transaction.* The FCU must retain the supporting information for only so long as it invests in realty from a prohibited party.

21* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

Not applicable.

22* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

Not applicable.

23* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

Not applicable.

*** requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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The NCUA will take appropriate steps to protect from public release any confidential financial information, such as business plans, that are exempt from release under the Freedom of Information Act.

258. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB.

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Notice of the proposed information collection was published with a 60-day comment period in the Federal Register on July 29, 2013 (78 FR 45571). NCUA did not receive any comments regarding the collection.

279. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no decision to provide payment or gift to respondents.

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2910. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to respondents.

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3111. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive nature are involved.

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3312. Provide estimates of the hour burden of the collection of information. The statement should:

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35* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

36* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

NCUA estimates the reporting and recordkeeping burden for this collection of information to be about 2,830 hours, calculated as follows:

IC 1. *Waiver of five percent limitation.* NCUA estimates the annual burden for preparation of an application for waivers to the limitation on investments in fixed assets as follows:

Respondents		150
Responses	x	1
Hours per respondent	x	15
Annual reporting burden		2250

The 15 hours per respondent is further broken down as follows:

Preparation of financial projections: 10 hours.

Preparation of statement of justification: 4 hours.

Miscellaneous: 1 hour.

IC 2. *Plan for full occupation of premises.* NCUA estimates the annual burden associated with preparation of definitive plans for full occupation in connection with fixed assets acquired for future expansion but not fully occupied after one year as follows:

Respondents		15
Responses	x	1
Hours per respondent	x	15
Annual reporting burden		225

The 15 hours per respondent is further broken down as follows:

Preparation of financial projections: 10 hours.

Drafting of plan: 4 hours.

Miscellaneous: 1 hour.

IC 3. *Waiver of requirement for partial occupation.* NCUA estimates the annual burden associated with seeking NCUA approval for plans not to partially occupy the property within 3 years, or 6 years for unimproved real property, as follows:

Respondents		15
Responses	x	1
Hours per respondent	x	15
Annual reporting burden		225

The 15 hours per respondent is further broken down as follows:

Preparation of financial projections: 10 hours.

Drafting of plan: 4 hours.

Miscellaneous: 1 hour.

IC 4. *Waiver of requirement to dispose of abandoned property.* NCUA estimates the annual burden associated with seeking NCUA approval for plans to hold an abandoned property for more than 5 years as follows:

Respondents		10
Responses	x	1
Hours per respondent	x	10
Annual reporting burden		100

The 10 hours per respondent is further broken down as follows:

Preparation of financial related to abandoned property: 5 hours.

Drafting of plan to support holding of abandoned property: 4 hours.

Miscellaneous: 1 hour.

IC 5. *Waiver of prohibited transaction.* NCUA estimates the annual burden associated with seeking approval to invest in property from a prohibited party as follows:

Respondents		3
Responses	x	1
Hours per respondent	x	10
Annual reporting burden		30

The 10 hours per respondent is further broken down as follows:

Preparation of financials: 5 hours.

Drafting of plan to support transaction is at arm's length: 4 hours.

Miscellaneous: 1 hour.

Total annual burden hours = 2,830.

37* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

IC 1. *Waiver of five percent limitation.* NCUA estimates that annualized cost to respondents at about \$71,010, calculated by multiplying 2250 hours times an average credit union staff hourly wage rate of \$31.56 (obtained from Call Report data).

IC 2. *Plan for full occupation of premises.* NCUA does not believe that FCUs will incur any additional operational costs as a result of the requirement to plan for occupation of premises. It is the NCUA's view that this type of planning should be an integral part of an FCU's operations regardless of the regulatory requirement. Accordingly, this part of the information collection does not constitute any additional financial burden.

IC 3. *Waiver of requirement for partial occupation.* NCUA estimates that annualized cost to respondents at about \$7,101, calculated by multiplying 225 hours times an average credit union staff hourly wage rate of \$31.56 (obtained from Call Report data).

IC 4. *Waiver of requirement to dispose of abandoned property.* NCUA estimates that annualized cost to respondents at about \$3,156, calculated by multiplying 100 hours times an average credit union staff hourly wage rate of \$31.56 (obtained from Call Report data).

IC 5. *Waiver for prohibited transactions.* NCUA estimates that annualized cost to respondents at about \$946.80, calculated by multiplying 30 hours times an average credit union staff hourly wage rate of \$31.56 (obtained from Call Report data).

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3913. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

40* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

41* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

1* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

All costs are captured in item 12.

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314. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as

equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

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5The NCUA would likely spend an average of 8 man-hours processing each waiver request and 2 man-hours reviewing that processing. The wage rate is about \$55 an hour. The total NCUA cost for each waiver request is then $193 \times 8 \times \$37$ plus $193 \times 2 \times \$55$, or \$78,358.

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715. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

a. *Waiver of five percent limitation.* There is no significant change, other than the fact that more credit unions are affected since 2010 when the Flexibility Program, and its associated exemption from the five percent limitation, was rescinded.

b. *Plan for full occupation of premises.* There is no significant change. Updated information at renewal revealed an increase in respondents as recorded.

c. *Waiver of requirement for partial occupation.* There is no significant change. Updated information at renewal revealed an increase in respondents as recorded.

d. *Waiver of requirement to dispose of abandoned property.* This part of the collection was not previously identified.

e. *Waiver of prohibited transaction.* This part of the collection was not previously identified.

816. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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10No publication will be made as a result of this regulation.

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1217. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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14NCUA is not seeking approval to not display the expiration date.

1518. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

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17 There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

This collection does not employ statistical methods.