

June 27, 2016

Gerard S. Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, Virginia 22314-3428

RE: Comments on Notice of Proposed Rulemaking for Parts 701 and 721, Federal Credit Unions Occupancy, Planning, and Disposal of Acquires and Abandoned Premises; Incidental Powers; Federal Register vol. 81, No. 81 pg. 24738, April 27, 2016

Dear Mr. Poliquin:

The National Credit Union Administration (NCUA) has requested comments on a proposal that would amend its regulations governing federal credit union (FCU) occupancy, planning and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. The American Bankers Association<sup>1</sup> (ABA) is opposed to this proposal and urges that it be withdrawn.

The proposal represents a significant departure from the Board's previous interpretation of the Federal Credit Union Act. As the NCUA Board stated in 2004, "[f]ederal credit unions are chartered for the purpose of providing financial services to their members and it is not permissible for them to engage in real estate activities that do not support that purpose."<sup>2</sup>

In contradiction to the Board's previous interpretation of the Federal Credit Union Act, this proposal eliminates the requirement that an FCU must plan for, and eventually achieve full occupancy of acquired property. Instead, the proposal would require an FCU to only partially occupy each of its acquired real property, including unimproved property, within six years from the date of its acquisition. The proposal defines partial occupancy to mean occupation and use, on a full-time basis, of at least fifty percent of each of the premises by the FCU, or the FCU and a credit union service organization in which the FCU has a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).

This proposal will incentivize FCUs to maximize non-mission related income from leasing out its properties. The leasing of unoccupied space is neither necessary nor incidental to the operation of an FCU, and furthermore, is inconsistent with the limited scope of credit union operations envisioned by Congress. There are already egregious examples of credit unions building extravagant headquarters buildings. For example, one Washington, D.C.-area credit

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<sup>1</sup> The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$15 trillion banking industry and its 2 million employees. Learn more at [aba.com](http://aba.com).

<sup>2</sup> 69 Federal Register 58041, September 29, 2004.

union recently purchased a \$164 million headquarters building in one of the priciest commercial corridors in America—Tysons Corner. This property, already partially leased by a major consulting firm, contains adjacent land where a second, roughly 190,000-square-foot building could be developed. This rule would provide an incentive and enable purely speculative development of this land.

This rule is especially egregious when the tax policy implications are considered. Income from leasing property represents unrelated business income. Federal credit unions are not subject to Unrelated Business Income Taxes (UBIT), and therefore face an incentive to maximize leasing income by occupying the minimum amount of space required by its regulator and leasing the remaining area. This is a clear abuse of the credit union industry's tax exempt status—commercial buildings will be permanently taken off the tax rolls. ABA is well aware that congressional action is needed to address the application of UBIT to FCUs, but believes it is the Board's affirmative obligation to the American taxpayers to limit income from unrelated business sources by FCUs.

Furthermore, making speculative investments in real property can lead to safety and soundness problems. As the Board noted, making speculative investments in real property increases an FCU's exposure to market factors unrelated to financial services. As well, managing unoccupied real property or commercial leases creates operational risk exposures which are significantly different from those related to managing authorized financial services permissible for FCUs. ABA believes it is the Board's responsibility to ensure FCUs abide to the chartered purpose of providing financial services to their members, and not engage in activities that do not support this purpose. In addition, the Board should provide guidance on how it will ensure that FCUs do not invest in real estate for speculative purposes or to otherwise engage in real estate activities that do not generally support its purposes of providing financial services to its members.

This proposal will result in an expansion of not only the authorities granted to federal credit unions — beyond the intent of Congress — but also the special tax treatment the credit union industry receives at the expense of every taxpaying American citizen, while not in any way improving the industry's ability to provide financial services to its members. For these reasons, the ABA is opposed to this proposal and urges that it be withdrawn.

ABA appreciated the opportunity to share its views and would be happy to discuss any of them further at your convenience. If you have any questions, please contact Brittany Kleinpaste at (202)663-5356 (e-mail: [bkleinpaste@aba.com](mailto:bkleinpaste@aba.com)).

Sincerely,



Brittany Kleinpaste  
Director of Economic & Policy Research  
Office of the Chief Economist