

June 23, 2016

Mr. Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

Re: 12 CFR Parts 701 and 721 Federal Credit Union Occupancy, Planning and Disposal of Acquired and Abandoned Premises; Incidental Powers

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing regarding the National Credit Union Administration's (NCUA) proposed occupancy, planning and disposal of acquired and abandoned premises rule. The Credit Union National Association (CUNA) represents America's credit unions and their more than 100 million members.

We support this proposed rule, which would eliminate the current rule's requirement that federal credit unions (FCU) eventually achieve full occupancy of premises and define partial occupancy to mean use of at least fifty percent of a credit union's premises. To make this regulatory change, NCUA reinterprets Section 107(4) of the Federal Credit Union Act in a way that allows credit unions greater flexibility in their ownership and use of fixed assets. The agency should be commended for considering public comments and marketplace realities with this rulemaking, as the current Section 107(4) interpretation can impose hardships on credit unions that cannot fully occupy their premises.

### ***Partial Occupancy***

The proposed rule would redefine partial occupancy to mean the "occupation and use, on a full-time basis, of at least fifty percent of each of the premises by the federal credit union, or the federal credit union and a credit union service organization in which the federal credit union has a controlling interest..." This definition eliminates the requirement to plan for full occupancy (usage plan) and the need to show that an FCU will fully occupy the premises. Instead, it requires that at least fifty percent of FCU premises must be occupied and used on a full-time basis.

The fifty percent partial occupancy requirement allows credit unions the flexibility to own or lease space where they might not have the ability, based on need or law, to occupy an entire space. This allows credit unions greater flexibility to own and lease premises, which allow FCUs to purchase for long-term needs without having to consider the current full occupancy requirement.

The proposed rule would delete section 701.36(c)(1), which requires that an FCU that acquires premises for future expansion and does not fully occupy them within one year must have a board resolution in place by the end of that year detailing plans for full occupancy. This requirement is no longer necessary as credit unions would no longer be required to fully occupy premises. Nonetheless, we support NCUA for not putting in place a similar requirement for FCUs to demonstrate partial occupancy.

### ***Waivers and Six-Year Occupancy Requirement***

In prior comment letters to NCUA, CUNA has asked the agency to consider removing the time requirement for occupancy or using a 10-year occupancy requirement. This flexibility is important for the ownership of raw land or the use of other property that a credit union might acquire through a merger or other means. Raw land is acquired for long-term expansion and may require longer than six years to develop.

The six-year occupancy requirement became even more limiting for raw or vacant land ownership when NCUA added the requirement that occupancy be “relative to the scope of the usage plan” to the 2013 fixed assets final rule. Before this language was added, credit unions could meet partial occupancy requirements by deploying an ATM on vacant land purchased for a future branch expansion. The proposed rule would eliminate the relative-to-the-scope requirement, which CUNA supports. In a final rule, however, the agency should clarify whether limited use of vacant land would meet partial occupancy requirements.

We continue to request that NCUA remove the occupancy requirement and handle property speculation concerns for unused property through the supervision requirements with safety and soundness being the primary driving force for review. If a time requirement is necessary, then we ask the agency to consider increasing it to 10 years, which would allow credit unions a much longer window to meet partial occupancy requirements.

NCUA could also address these concerns through the waiver process. The current and proposed rules allow waivers for partial occupancy based on safety and soundness. The requirement could be amended to require agency staff to grant waivers upon request from the partial occupancy requirement unless there are specific safety and soundness concerns. We understand the agency is concerned that long term ownership of land and premises without use could lead to speculation, but we think there are compelling reasons to allow credit unions more leeway to own property as long as the credit unions are not speculating and there are no safety and soundness concerns.

### ***Incidental Powers***

The proposed regulation removes the requirement from the incidental powers rule that excess capacity in FCU facilities must eventually be fully occupied. We support this change as it allows credit unions to lease unused space indefinitely. This allows credit unions to enter into standard leasing arrangements with tenants, which might not be possible under the current requirements that full occupancy or use be achieved.

## **Conclusion**

We appreciate NCUA's efforts to provide meaningful and ongoing regulatory relief for credit unions. Meaningful regulatory relief is a top priority for CUNA and our member credit unions, as allocating resources to regulatory compliance diverts resources from financial services to members. This proposed rule does provide meaningful regulatory relief for FCUs by giving additional flexibility for the use of credit union-owned fixed assets by not requiring full occupancy and allowing more flexibility in leasing and renting unused space.

Thank you for the opportunity to express our views. If you have any questions about our comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "J. Lance Noggle".

J. Lance Noggle  
Senior Director of Advocacy and Counsel