June 27, 2016

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on NCUA's Occupancy Rule

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 350 credit unions and their more than 10 million members/consumers. The Leagues welcome the opportunity to provide comments to the NCUA on the proposed amendments to the occupancy rule.

We applaud the NCUA for their ongoing Regulatory Modernization efforts and for proposing additional regulatory relief in the area of fixed assets. The Leagues fully support the proposed changes that will eliminate the full occupancy and related planning requirements in the rule. These changes will provide Federal Credit Unions (FCUs) with significant relief and allow them to better to serve their members.

Occupancy Rule

Under the current rule, if an FCU acquires premises for future expansion and does not fully occupy them within one year, it must have an FCU board resolution in place by the end of that year with definitive plans for full occupation. The rule does not set a specific time period to achieve full occupation of premises acquired for future expansion. However, partial occupancy of the premises is required within a reasonable period, but no later than six years after the date of acquisition, regardless of whether the premises are improved or unimproved. Partial occupancy must be sufficient to show, among other things, that the FCU will fully occupy the premises within a reasonable time and consistent with its plan for the premises.

<u>Full Occupancy</u>

The Federal Credit Union Act (FCU Act), section 107(4) authorizes an FCU to purchase, hold, and dispose of property *necessary or incidental to its operations*. As the NCUA Board noted in the preamble, full occupancy is not expressly or specifically mandated by the statute. The Leagues have heard from many credit unions that have been unable to access desirable commercial space due to the full occupancy requirement. For these reasons, the Leagues whole-heartedly support the proposal to eliminate the requirement to plan for and eventually achieve fully occupancy of the premises.

Partial Occupancy

The NCUA Board believes the requirement for an FCU to partially occupy its acquired premises within a specified timeframe is intended to function as a reasonable safeguard against speculative real estate investments or other real estate activities that are not permitted under the FCU Act.

The proposed rule retains the timing requirement of six years for partial occupancy; however, the proposal modifies the definition of “partially occupy” to mean “occupation and use, on a full-time basis, of at least fifty percent of the premises by the FCU, or the FCU and a credit union service organization (CUSO) in which the FCU has a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).” The Leagues support the proposed definition as it removes references to planning for full occupancy and it provides greater clarity for FCUs.

The proposed rule retains the requirement that an FCU partially occupy all premises acquired, including unimproved land and unimproved real property, within six years. The Leagues submit that acquisition of unimproved land and unimproved real property may take longer than six years to develop. In addition, premises acquired through mergers may take long term planning to achieve 50 percent occupancy. We recommend that the six year time frame requirement be extended to 10 years.

Waivers

The proposed rule retains the ability for an FCU to seek a waiver of the partial occupancy requirement from their Regional Director. The Leagues thank the NCUA Board for retaining the waiver process. We also submit that while the proposed definition of “partial occupancy” provides greater clarity, the need for occupation and use of at least 50 percent is a prescriptive rule in a time where the NCUA has been leaning towards more reasonable and principle-based rulemakings. We strongly urge the NCUA to use that reasonableness when evaluating waiver requests for FCUs who may not meet the partial occupancy prescriptive standard within the given timeframe and for those who may determine at a later time that reducing their occupancy makes the most economic sense and is in the best interest of their members. The NCUA, while considering safety and soundness concerns of waiver requests, should also evaluate the requests based on the unique needs of each FCU, considering their strategic plan, development, branch footprint, and economic sense.

Conclusion

The Leagues fully support the proposed changes that will eliminate the full occupancy and related planning requirements in the rule. The proposed rule provides more flexibility and will allow FCUs better access to commercial premises and provide convenient access to their members. We recommend the NCUA extend the partial occupancy time frame to ten years, and we urge the NCUA to evaluate partial occupancy waiver requests individually with principles-based reasoning.

We thank the NCUA for proposing additional regulatory relief in the area of fixed assets and for considering our views.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CUNA, CCUL