



June 27, 2016

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

*Sent via email to
regcomments@ncua.gov*

RE: RIN 3133-AE54; Comments on Notice of Proposed Rulemaking for Parts 701 and 721, FCU Occupancy, Planning, and Disposal of Acquired and Abandoned Premises; Incidental Powers

Dear Mr. Poliquin,

The Credit Union Association of the Dakotas (CUAD) appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding notice of proposed rulemaking for Parts 701 and 721, FCU occupancy, planning, and disposal of acquired and abandoned premises and incidental powers. To provide a brief background, the Credit Union Association of the Dakotas represents sixty-seven state and federally chartered credit unions in the states of North Dakota and South Dakota, whose assets total over \$6 billion and who have more than 450,000 members.

CUAD fully supports and applauds the NCUA for continuing to take steps to reduce the regulatory burden on Federal credit unions (FCU). Through this proposed rule, the NCUA plans to eliminate the requirement that an FCU must plan for and achieve full occupancy of its premises. By eliminating this unnecessary requirement, it will allow credit unions to accomplish their growth strategies, open up options for cost efficient office space and not hinder a credit union from providing the services their members seek.

The NCUA proposes to amend the definition of “partially occupy.” Under the current regulation, “partially occupy” means, “occupation, on a full-time basis, of a portion of the premises that is: (1) Consistent with the federal credit union's usage plan for the premises; (2) Significant enough that the federal credit union is deriving practical utility from the occupied portion, relative to the scope of the usage plan; and (3) Sufficient to show that the federal credit union will fully occupy the premises within a reasonable time.” *12 CFR 701.36(b)* As proposed, “partially occupy” would be amended to mean, “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 in accordance with Generally Accepted Accounting Principles (GAAP).” *81 FR 24742*

The Federal Credit Union Act (FCU Act) §1757(4) provides that a Federal credit union shall have power “to purchase, hold, and dispose of property necessary or incidental to its operations.” The FCU Act does not set a threshold for what portion of the property must be occupied.

It is the position of CUAD that the threshold of at “least fifty percent of each premises” be removed. There are many small towns in rural America, such as North and South Dakota, where there are limited options for office space. Some credit unions have had to purchase spaces larger than what they needed because that was the only option in that particular town. CUAD believes it is distinguishable when the credit union is purchasing or leasing a space with the intent to keep a branch open to serve a small town versus purchasing space with the intent to lease it to other businesses. As an alternative to CUAD’s proposed removal of the threshold, CUAD suggests that the fifty percent threshold be reduced to no more than twenty-five percent.

CUAD supports the portion of the definition that the FCU and a credit union service organization (CUSO) may partially occupy a space to meet a threshold requirement, if one were to be required. However, CUAD urges the NCUA to remove the requirement that the FCU have a “controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).” The FCU and CUSO should be able to occupy a space regardless of the amount of ownership interest a FCU has in the CUSO.

The NCUA explains that the, “occupancy of FCU premises with third-party vendors or CUSOs in which the FCU does not maintain a controlling interest will not count towards the fifty percent partial occupancy requirement because these entities operate at the direction of other owners and may not be obligated to primarily support the FCU that acquired the premises or to primarily serve that FCU’s members.” *81 FR 24741* CUSOs are a beneficial, and in some cases a much needed way for FCUs to collaborate and find ways to reduce costs and risks. Even if the FCU does not have a controlling interest in the CUSO that CUSO can support the FCU and/or the FCU’s members.

NCUA itself best described CUSOs in its CUSO final rule published in the Federal Register on December 3, 2013, when it said “CUSOs provide significant value to the credit union industry by acting as a collaborative means to share risk, manage costs, and deliver services to credit union members. With their unique collaborative business model, CUSOs foster cooperation and shared innovation for credit unions to achieve economies of scale, retain expertise, and better serve their members. Thus, the NCUA Board (the Board) recognizes that CUSOs benefit both credit unions and credit union members.” *78 FR 72538, December 3, 2013.*



If the NCUA were to define “partially occupy” as the “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, then CUAD requests the NCUA remove the requirement that the FCU have a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).

CUAD appreciates the NCUA’s safety and soundness concerns. The NCUA warns that, “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.” *81 FR 24740* However, in some situations it makes better business sense to purchase or lease a space, that while larger than what is needed, the purchase of an existing building is cheaper than building a new structure.

Thank you again for taking steps to reduce the unnecessary and overly burdensome regulations on federal credit unions by eliminating the requirement that an FCU must plan for and achieve full occupancy of its premises. CUAD urges the NCUA to amend its proposed definition of “partially occupy” to remove the fifty percent requirement and to provide more flexibility for the entities partially occupying the space with the FCU. Making these additional amendments will further reduce the regulatory burden on FCUs and allow FCUs to have the option to obtain cost-effective office space necessary to serve its members, continue to grow, and remain competitive with other financial institutions.

Thank you for this opportunity to share our comments and concerns.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Olson".

Jeffrey Olson
CEO/President

A handwritten signature in black ink that reads "Amy Kleinschmit".

Amy Kleinschmit
VP of Compliance