

June 13, 2016

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

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

Dear Mr. Poliquin:

The National Credit Union Administration (NCUA) Board (the Board) is proposing to amend its regulation governing federal credit union (FCU) occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers.

The proposal eliminates a requirement in the current occupancy rule that an FCU must plan for, and eventually achieve, full occupancy of acquired premises.

The proposal generally retains the current regulatory timeframes for partial occupancy. However, the proposed rule amends 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 by a combination of 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 proposal also amends the excess capacity provision in NCUA’s incidental powers rule to clarify that an FCU may lease or sell excess capacity in its facilities, but it need not anticipate that such excess capacity will be fully occupied by the FCU in the future. However, the sale or lease of excess capacity in equipment or services, including employee-sharing and data processing for third parties, continues to be limited to circumstances where an FCU reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members.

Position

The Federal Credit Union Act (FCUA) provides that a credit union may purchase, hold, and dispose of property necessary or incidental to its operations.¹

However, the Board has noted that retaining a piece of property whose only purpose is to provide office space to other entities is clearly not necessary or incidental to the Federal credit union’s operations. Further, investing in, or holding, property with the intent of realizing a profit from appreciation at a future sale is also outside the powers of an FCU.

The Board also believes that an FCU should be expected to reasonably occupy a premise. “[W]ithout a reasonable occupancy requirement, there is little to inhibit an FCU from: (1) Speculating on real property with the sole intent of realizing a profit from its future sale; (2) acting as

¹ Section 107(4) of the FCUA.

a property developer or full-time landlord; or (3) otherwise venturing into real estate activities that are beyond the scope of its authority under Section 107(4).”

In other words, partial occupancy is needed to fulfill the reasonable occupancy requirement. Unfortunately, the current definition of partially occupy lacks specificity.² The proposed new definition of partially occupy is an improvement as it provides needed clarity and sets clear expectations, as it imposes a numeric threshold that must be obtained.

Therefore, I support the Board’s modification of 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 by a combination of 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). I also agree with the Board that third-party vendors or CUSOs in which the FCU does not maintain a controlling interest should not count towards the fifty percent partial occupancy requirement.

However, I oppose the Board’s decision to eliminate the current occupancy requirement that an FCU must plan for and eventually achieve full occupancy of acquired premises. Eliminating the requirement that an FCU eventually fully occupy acquired space would allow an FCU to venture into real estate activities that are beyond the scope of the FCUA. The proposal would allow an FCU to engage in real estate development or real estate management – activities that are not incidental power.

In addition, the leasing of excess space will allow an FCU to derive income from activities that are unrelated to an FCU’s tax exempt purpose. But unlike other tax-exempt businesses, FCUs are exempt from unrelated business income taxes. While the Board does not set tax policy, the Board does have the ability to limit the expansion of FCUs into unrelated activities and limit the loss of federal tax receipts, given the unsustainable fiscal outlook of the United States.

Conclusion

In conclusion, the Board should adopt the proposed partial occupancy requirement. However, the Board should retain the current requirement that an FCU must plan for and eventually achieve full occupancy of acquired premises.

Sincerely,

Keith Leggett

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² 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