



**National Association
of Federal Credit Unions**

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NAFCU | Your Direct Connection to Advocacy, Education & Compliance

June 24, 2016

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

RE: FCU Occupancy, Planning, and Disposal of Acquired and Abandoned Premises; Incidental Powers; RIN 3133-AE54

Dear Mr. Poliquin:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing to you regarding the agency's proposed rule to amend the regulation governing federal credit union (FCU) occupancy, planning, and disposal of acquired and abandoned premises (formerly known as the fixed assets rule), and the regulation regarding incidental powers. *See* 81 FR 24738 (April 27, 2016). NAFCU and our members strongly support this proposed rule, and believe the agency must continue to modernize its rules to better meet the operational and business planning needs of FCUs.

General Comments

Currently, FCUs are required to plan for and eventually achieve full occupancy of any acquired premises. However, as NAFCU stated in our letter last year when the agency first considered revising the occupancy rule to reflect a principles-based approach, many of our members have been unreasonably restricted by this current provision. We explained our belief that the Federal Credit Union Act (FCU Act) provides for additional flexibility to address certain circumstances that FCUs currently face. In particular, we contended that the FCU Act does not expressly or specifically mandate full occupancy of FCU premises.

In response to our and other industry stakeholder comments, the Board is proposing to eliminate from the current occupancy rule the requirement that an FCU must plan for, and eventually achieve, full occupancy of its premises. The proposed rules would permit an FCU to partially occupy acquired premises on a permanent basis, so long as certain

conditions are met, and to lease or sell excess capacity of its facilities as an incidental power.

The Board has made this proposal, in part, to liberalize NCUA's occupancy rules, and reflects the interpretation of the FCU Act that NAFCU has advocated for. We are, therefore, appreciative that the agency has proposed this rule that would grant credit unions the capacity to do what they believe is in the best interest of their members. However, NAFCU has a few recommendations that would make this proposal more robust.

First, NAFCU urges NCUA to ensure that in the final rule, the definition of what constitutes a controlling interest in a credit union service organization is clear. While 51 percent is clearly a controlling interest, lesser percentages could be controlling interests as well. NAFCU supports credit unions having as much flexibility as possible in providing this relief.

Additionally, NAFCU encourages the agency to extend the period of time by which a FCU must occupy the property, from six-years to ten. While NAFCU recognizes the agency's objective to curb real property speculation, many of our members operate in areas that require longer timeframes in order to comply with local regulations, such as landlord-tenant laws or zoning codes, and the waiver process proves to be too cumbersome. For example, if a FCU acquires real estate that contains an already existing tenant with a multi-year lease, local laws may restrict the FCU's ability to break the lease in order to come into compliance with the 50 percent occupancy threshold.

Moreover, economic conditions might create exigent circumstances where a prudent FCU would delay development of previously acquired property. Such was the situation that many FCUs found themselves in during the financial crisis when safety and soundness concerns warranted delaying development past the six-year threshold. It would be very burdensome for a FCU to comply with an arbitrary six-year timeframe despite practical or legal reasons to delay 50 percent occupation.

Finally, NAFCU recommends that the agency permit facility common areas and other shared fixtures and utilities to count toward the 50 percent partial occupancy requirement under the proposed rule. There are many instances, particularly in mixed-use buildings located in urban areas, where new construction projects are required to include "shared space." The agency should not penalize FCUs that occupy buildings with shared space and common utilities.

We look forward to continuing to work with NCUA to address more ways that the agency can streamline and refine existing regulations in order to more effectively grow and support the dynamic credit union industry. Should you have any questions or would like to discuss these issues further, please do not hesitate to contact me at memancipator@nafcu.org or (703) 842-2249.

Sincerely,

National Credit Union Administration
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Michael Emancipator
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