America's Credit Unions

August 21, 2024

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Comments on NCUA's Review Under the Economic Growth and Regulatory Paperwork Reduction Act (Docket ID NCUA–2024–0014)

Dear Ms. Conyers-Ausbrooks:

On behalf of America's Credit Unions, we are writing in response to the National Credit Union Administration's (NCUA) voluntary review as contemplated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[1] We appreciate the agency's willingness to undergo such a comprehensive review and look forward to working with the NCUA to address the specific issues discussed below. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide.

Applications and Reporting

FCU chartering, Field of Membership modifications, and conversions [701.1; Appendix B to Part 701]

The Federal Credit Union Act (FCU Act) states that when adding a select group to a multiple common bond credit union's field of membership, the credit union must be "within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union."[2] In the past, the NCUA has interpreted this language to refer to close geographic proximity meaning that the group is within the service area, a 25-mile radius, of one of the credit union's service facilities. Because geographic proximity has historically been a reflection of the time, distance, and effort necessary to access the full-range of credit union products and services prior to the primacy of electronic and mobile banking, this interpretation ensured that credit union products and services were actually accessible to the communities within a credit union's field of membership at one time. However, new technology and changes in consumer behavior have altered the relationship between geography and proximity significantly, particularly in the context of financial services, and it is appropriate and necessary for the NCUA to reconsider its interpretation in light of these developments.

[1] 89 Fed. Reg. 45,602 (May 23, 2024).
[2] 12 U.S.C. § 1759(f)(1)(B).

The NCUA should consider updating the definition of service area to include “facilities that are accessible to groups within the FOM through online services.” The NCUA should also revise the definition of “service facility” to include an online internet channel or mobile application that otherwise meets the definitions of a service facility, meaning it is capable of accepting shares and loan applications, or disbursing loan proceeds.

Online and mobile banking is the primary method that a majority of consumers use to access their accounts. In the Federal Reserve’s 2022 Survey of Consumer Finances, 85 percent of surveyed families reported using online banking services in the last twelve months.[3] Industry research also indicates that digital banking services have become an embedded and common platform for consumer payments.[4] At the same time, the number of total physical bank branch locations has decreased substantially; banks have closed 19,301 net branches since 2012.

It is time for the NCUA to recognize that the world has changed and that most consumers find equal, if not greater convenience, when obtaining financial products and services through a digital platform. Failure to account for such change will hinder the mission of federal credit unions to serve their communities and invest capital in technologies that are convenient and useful. By contrast, a requirement to establish physical services facilities imposes an arbitrary limit on credit union growth and perpetuates outdated assumptions about the importance of physical branches, which are often regarded as symbolically important but not generally thought of as practically more useful.[5]

It is critical that the NCUA meaningfully incentivize and facilitate credit union investment in mobile and online technologies. These technologies are absolutely crucial to credit unions’ ability to compete in the digital market. Without them, the credit union industry will continue to consolidate, and the value of the federal credit union charter will deteriorate. The first federal credit unions to fall victim to these market forces will be those least able to balance the limitations on their own growth against the cost of these technological investments, such as low income and minority depository institution credit unions. The long-term survival of federal credit unions hinges on their ability to invest in these technologies. The NCUA should seek opportunities to advance credit union investment in these technologies, not discredit their value.

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[3] Board of Governors of the Federal Reserve System, Changes in U.S. Family Finances from 2019 to 2022 - Evidence from the Survey of Consumer Finances (Oct. 2023), https://www.federalreserve.gov/publications/files/scf23.pdf.

[4] McKinsey & Company, “Consumer digital payments: Already mainstream, increasingly embedded, still evolving” (Oct. 20, 2023) (describing results of consulting firm’s annual survey reporting that for the first time, more than 90 percent of U.S. consumers surveyed in August 2023 reported using some form of digital payment over the course of a year), https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/consumer-digital-payments-already-mainstream-increasingly-embedded-still-evolving.

[5] *See* Accenture, Global Banking Consumer Study, 13 (finding that most surveyed consumers like seeing a branch in their community because it *projected* stability and availability) (Mar. 2023), https://www.accenture.com/content/dam/accenture/final/industry/banking/document/Accenture-Banking-Consumer-Study.pdf.

Additionally, the NCUA should not signal (as it has in its most recent Annual Performance Plan) that an arbitrary 25-mile radius for assessing reasonable proximity to a service facility might serve to limit approvals of applications to serve underserved areas. In 2023, the NCUA's Annual Performance Plan indicated that CURE would seek to approve at least 25 Underserved Areas expansions in accordance with regulation and agency policy.[6] In 2024, that performance metric changed to 15 expansions with the added stipulation that applications "have intended offices or service facilities located no more than 25 miles from any point within the area, or have offices or service facilities reasonably accessible to low-income individuals, and that increase consumer access to affordable financial products."[7] The NCUA should not link performance targets related to the processing of underserved area applications to an outdated and non-codified metric for determining service facility proximity.

FCU bylaws [701.2; Appendix A to Part 701]

Following enactment of the Credit Union Governance Modernization Act (CUGMA) in 2022, the NCUA updated Part 701 to reflect enhanced member expulsion authority.[8] While much of the regulatory changes came directly from CUGMA, there are several aspects of *Article XIV, Expulsion and Withdrawal* that we believe can be improved.

Expulsion Vote and Notice of Pending Expulsion

Article XIV provides that if an FCU's board of directors votes to expel a member, the member must be notified of the pending expulsion, along with the reason for such expulsion. The notice must include sufficient detail for the member to understand why he or she is being subject to expulsion so that the member has a meaningful opportunity to present his or her case against expulsion and an opportunity to respond to the FCU's concerns in a requested hearing.

We appreciate the significance of potential expulsion and, therefore, agree with ensuring the affected member has sufficient information to adequately prepare for an expulsion hearing. However, given concern that an examiner could interpret such language more broadly than the FCU, we ask the NCUA to modify the language as follows: "The notice must include sufficient detail ~~for the member to understand~~ to inform the member on why he or she is being subject to expulsion so that the member has a meaningful opportunity to present his or her case against expulsion and an opportunity to respond to the FCU's concerns in a requested hearing."[9] This inherently subjective language not only makes adherence to this requirement difficult, if not impossible, but greatly increases the likelihood of confusion and/or disagreement between examiner and FCU regarding sufficiency of the notice.

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[6] *See* NCUA, Annual Performance Plan, 21 (2023), https://ncua.gov/files/agenda-items/2023-annual-performance-plan-20230126.pdf.
[7] NCUA, Annual Performance Plan, 19 (2024), https://ncua.gov/files/agenda-items/2024-annual-performance-plan-20240118.pdf.
[8] 88 Fed. Reg. 48,055 (July 26, 2023).
[9] 12 C.F.R. Appendix A to Part 701 - Federal Credit Union Bylaws.

Prior Written Notification to Member

The updated bylaws provide that for a repeated non-substantial violation of the membership agreement the FCU must have provided written notice to the member at least one time prior to the notice of expulsion, and the member must have repeated the violation after having been notified of the violation. Further, there is a two-year limit on the amount of time that may occur between non-substantial repeated violations to qualify as grounds for expulsion.

We disagree with limiting the amount of time between non-substantial repeated violations that qualify as grounds for expulsion. Such a provision is unnecessary given the ample notice requirement included in the updated bylaws, which ensures the member is aware of the violation that could result in expulsion if it is repeated. Further, CUGMA does not include such a limitation. As such, we believe non-substantial repeated violations should be grounds for expulsion regardless of the time between such violations.

Board Vote on Member Expulsion

As provided in CUGMA, in situations where a member requests a hearing regarding expulsion, following such hearing the board of directors of the FCU must vote "in a timely manner" regarding whether to expel the member. As provided in the updated bylaws, such a vote must occur within 30 days of the hearing.

We ask the NCUA to extend this timeframe to 90 days following the hearing. We believe 90 days should provide the board with enough time to hold a vote while also ensuring the member has certainty regarding expulsion within a reasonable amount of time. Thirty days may provide an insufficient amount of time for a board to hold a vote, particularly depending on when during the year such an event occurs, given quarterly and fiscal year-end obligations as well as holidays.

<u>Financial, statistical, and other reports [741.6]</u>

Earlier this year, the NCUA finalized changes to the Call Report to require credit unions with over $1 billion in assets to report income related to overdraft fees and non-sufficient funds (NSF) fees. As we have shared on numerous occasions,[10] we strongly disagree with the mandatory reporting of such information.

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[10] America's Credit Unions Letter to NCUA Office of General Counsel (June 28, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/06/CL-NCUA-RFC-2024-Regulatory-Review_final.pdf; America's Credit Unions Letter to NCUA Board (Apr. 19, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/04/Letter-to-NCUA-Board-Nondisclosure-of-Call-Report-Data-4.19.2024.pdf; America's Credit Unions Letter to NCUA OGC (Mar. 21, 2024), https://www.americascreditunions.org/wpcontent/uploads/2024/04/Letter-Requesting-LoL-and-Nondisclosure-of-Call-Report-Data-re-OD-and-NSFFees.pdf; and America's Credit Unions Letter to NCUA Chairman Harper on Transparency Regarding Call Report Changes (Feb. 28, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/02/ACU-Letter-to-NCUACall-Report-Changes-2.28.2024.pdf.

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Aside from concerns regarding the manner in which such changes were adopted,[11] we continue to have significant concerns with legal and reputational risks that credit unions may encounter. While we recognize that such information is now being reported and is generally available to the public, such concerns about the impact of this disclosure remain. As such, we urge the NCUA to reevaluate its position and consider whether revising its current approach (*i.e.*, pausing public disclosure, while possibly continuing to require reporting) may be appropriate.

Powers and Activities

Loans to members and lines of credit to members [701.21]

Credit Applications and Overdrafts (§ 701.21(c)(3))

This section provides that an FCU can advance money to a member to cover an account deficit without having a credit application on file if the credit union has a written overdraft policy.[12] This written overdraft policy must: (1) set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; (2) establish a time limit *not to exceed 45 calendar days* for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; (3) limit the dollar amount of overdrafts the credit union will honor per member; and (4) establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.[13]

The NCUA Board has an outstanding proposal to amend the requirements for a written overdraft policy.[14] Specifically, the proposed rule would modify the requirement that the written overdraft policy establish a time limit not to exceed 45 calendar days for a member to cure each overdraft. Instead, the proposal would remove the prescriptive 45-day limit and replace it with a requirement that the written policy establish a specific time limit that is both "reasonable and applicable to all members."[15] However, it should be noted that the amended overdraft policy would still require the FCU to "establish a specific time limit" to cure the overdraft but that time limit *may* exceed 45 days.

Overdraft protection protects a consumer purchasing goods and services, permitting the transaction to process, in situations when the payment exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer has opted-in to these services as part of their account agreement. Credit unions offer overdraft programs as a convenience and

[11] For such changes to the Call Report, we urge the agency to utilize the notice and comment process under the Administrative Procedure Act (APA), even in instances where strict adherence to the APA may not be required under 5 U.S.C. §§ 551–559. The full notice and comment process provides greater opportunity for the industry and the public at large to review and provide input regarding changes impacting credit unions.
[12] 12 C.F.R. § 701.21(c)(3).
[13] *Id.*
[14] 86 Fed. Reg. 3,876 (Jan. 15, 2021).
[15] *Id.* at 3,878.

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accommodation to meet consumer demand, and members that choose to opt in often do so because they value the peace-of-mind these services provide.

In February 2005, the NCUA joined the Federal Reserve Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency in publishing guidance on overdraft protection programs in response to concerns about aspects of the growing marketing, disclosure, and implementation of overdraft services.[16] In the joint guidance, the banking agencies stated that overdraft balances should be charged off when they are considered to be uncollectible but no later than 60 days from the date of the overdraft.[17] The NCUA's pending proposal would address the inconsistency between the current 45-day limit imposed on FCUs for curing an overdraft and interagency guidance that suggests a maximum of 60 days before an overdraft is charged off. In effect, the NCUA's current requirement has created an arbitrary ceiling and, after adopting the proposed rule, credit unions would be allowed to align their overdraft policies with the 2005 interagency guidance, if they deem such a change to be appropriate. We support the agency adopting changes to its rules and regulations that encourage and permit the flexibility to adopt policies based on the needs of a credit union's membership. As such, we urge the NCUA to adopt the proposed rule, which has been pending since it was first issued for comments in December 2020.

Maturity (§ 701.21(c)(4))

This section generally limits the maturity of a loan to a member to 15 years.[18] However, subsection (c)(4)(ii) provides several exceptions to the 15-year maturity limit. These exceptions include, "As specified in the law, regulations or program under which a loan is secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal government, a State government or any agency of either, as provided in paragraph (e) of this section."[19] Further, subsection (e) states as follows: "Insured, guaranteed, and advance commitment loans. Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal government, a State government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided."

Similarly, the member business lending (MBL) rule provides that for commercial loans made through a government agency program that "insures repayment, guarantees repayment, or

[16] Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 9,127 (Feb. 24, 2005).
[17] Consistent with U.S. generally accepted accounting principles (GAAP), overdraft balances should generally be charged off when considered uncollectible. This will remain the case even after the adoption of the proposed change.
[18] 12 C.F.R. § 701.21(c)(4)(i).
[19] 12 C.F.R. § 701.21(c)(4)(ii)(A).

provides an advance commitment to purchase the loan in full" the FCU may comply with less restrictive requirements provided in that program.[20]

While Fannie Mae and Freddie Mac are under the conservatorship of the Federal Housing Finance Agency (FHFA), the NCUA has taken the position that government-sponsored enterprises (GSEs) are not "government agencies."[21] We ask the NCUA to reconsider its determination in 2005 that GSEs are not "government agencies." The mere fact that the NCUA's legal opinion letter on this topic was issued a decade and a half ago is reason enough to revisit the issue. Further, as noted, the GSEs have been under conservatorship of the federal government for well over a decade with no specific anticipated end-date. While it is true that GSE loans do pose a risk regarding repurchase, this risk is also present regarding Federal Housing Administration (FHA) loans.[22] Therefore, we ask the NCUA to reverse its determination and conclude that the GSEs are "government agencies" for the purposes of these rules. Doing so should then allow business loans with an advance commitment from Freddie Mac or Fannie Mae to be exempt from the MBL definition; it should also exclude mortgages guaranteed, insured, or purchased by the GSEs from the maturity limits in section 701.21(e).

Loan Interest Rates (§ 701.21(c)(7))

This section generally provides that an FCU may not extend credit to members at rates exceeding 15 percent.[23] However, the NCUA Board is authorized to establish a temporary higher maximum rate, given certain conditions are present.[24] In particular, the Board can raise the limit if "it determines money market interest rates have risen over the preceding six-month period and prevailing interest rate levels threaten the safety and soundness of individual federal credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth."[25] Most recently, in July of this year, the Board determined it was appropriate to extend (for the maximum 18-month term) the increased interest rate cap of 18 percent.

Given the current interest rate environment, we believe it is appropriate for the NCUA to review this section with an eye toward avoiding elevated risk not only to the safety and soundness of individual FCUs but to the collective credit union industry at large. In particular, we reiterate

[20] 12 C.F.R. § 723.1(c)(2).
[21] *See* NCUA legal opinion letter 05-0514, which provides in part: "You have asked if a business purpose loan is exempt from the MBL definition under 12 C.F.R. § 723.1(b)(4) if either [Freddie Mac] or [Fannie Mae] has made an advance commitment to purchase the loan in full. No, a business loan with an advance commitment from Freddie Mac or Fannie Mae is not exempt from the MBL definition because neither entity is a *government agency*." *Emphasis added.*
[22] 24 C.F.R. § 201.54(e) and (h).
[23] 12 C.F.R. § 701.21(c)(7)(i).
[24] 12 C.F.R. § 701.21(c)(7)(ii)(A).
[25] *Id.*

our call for the NCUA to pursue a floating permissible interest rate ceiling equal to a 15 percent or greater spread above the Prime Rate.[26]

There is no reasonable fixed permissible interest rate ceiling the NCUA could establish that would permanently resolve the issues unnecessarily imposed on FCUs and their communities by the FCU Act's arbitrarily low 15 percent rate. The NCUA Board can permanently resolve these issues only by establishing a floating permissible interest rate ceiling. Rather than maintain the nearly four decades long trend of approving the 18 percent interest rate, adopting a floating interest rate ceiling would enable FCUs to more fairly and fully serve their communities in every interest rate environment throughout economic cycles. The NCUA's Office of General Counsel should review the permissibility of a floating interest rate ceiling equal to 15 percent or greater spread above the Prime Rate.

Member Business Loans; Commercial Lending [723]

Part 723 establishes the policies and program responsibilities that federally insured credit unions must adopt and implement to ensure a safe and sound commercial lending program. This Part also incorporates the statutory limit on the total amount of member business loans that a credit union can make.

Credit unions have evolved as small business lenders over the past two decades and current NCUA regulations are outdated in their underwriting requirements for small dollar business loans. We urge the NCUA to recognize that credit unions, and small business borrowers, now more than ever, have a need for flexibility in underwriting small dollar business loans. Specifically, we again[27] request that the NCUA amend section 723.2 to raise the threshold for net aggregate business loans that are excluded from the definition of a "commercial loan," and thereby its stringent underwriting requirements, from $50,000 to $250,000.[28] America's Credit Unions hopes that you will work with us to recognize the current economic landscape and the need for increased small business lending by providing credit unions with this much needed flexibility.

General investment and deposit activities [703, Subpart A]

This Part interprets and implements several sections of the FCU Act that list those securities, deposits, and other obligations in which an FCU may and may not invest. Part 703 identifies certain investments and deposit activities permissible under the FCU Act and prescribes

[26] Credit Union National Association Letter to the NCUA re Floating Interest Rate Cap (July 17, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/07/ACU-Letter-to-NCUA-Floating-Interest-Rate-Ceiling-July-2024.pdf.
[27] National Association of Federally-Insured Credit Unions Letter to the NCUA re Commercial Loans Under Part 723 (Jan. 17, 2023), https://www.nafcu.org/system/files/files/1.17.23%20Letter%20to%20NCUA%20re%20Commercial%20Loan%20Threshold.pdf.
[28] 12 C.F.R. § 723.2.

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regulations governing those investments and deposit activities on the basis of safety and soundness concerns.

America's Credit Unions supports expansion of credit unions' investment authority. Overall, the NCUA has adopted a prescriptive approach in much of the regulation within Part 703. As such, similar to the changes to the NCUA's derivatives rule in Subpart B,[29] we ask the agency to remove unnecessary restrictions not mandated in the FCU Act and adopt a principles-based approach throughout Part 703, including subpart A. To be competitive in today's financial services marketplace credit unions should be permitted to invest in a broad range of investment alternatives, subject to the decision-making control of their boards of directors.

Earlier this year, together with the National Association of Credit Union Service Organizations (NACUSO), America's Credit Unions sent a letter to the NCUA Board requesting its support in enhancing credit union opportunities to engage with and invest in innovative technology solutions and fintech companies.[30] The NCUA should revise its investment regulations in Part 703 to allow for additional investment in fintech companies outside of the existing authorities and limitations for investments through credit union service organizations (CUSOs) under Part 712.

Part 703 outlines several permissible investment activities and permissible investments for federal credit unions.[31] These investments cover a variety of investment instruments, ranging from those issued by institutions described in section 107(8) of the FCU Act[32] to commercial mortgage related securities.[33]

The FCU Act already limits the types of investments in shares, stocks, or obligations of any organization to those that provide permissible services related to the routine operations of credit unions. A variety of fintech services (*e.g.*, digital accounts, automated underwriting, artificial intelligence and machine learning in data processing and inputs) could fall squarely within this category of "routine operations" and should therefore be clearly authorized by the Board as a permissible investment. The NCUA should clarify this specific interpretation of FCU Act section 107(7) in Part 703 by creating a new section 703.21. It is critical to codify that this investment authority goes beyond the current permissible investments available through CUSOs.

The CUSO regulations permit investments in CUSOs that provide financial technology, but the CUSO must primarily serve credit unions,[34] which only offers a limited addressable market in which to operate, restricting the CUSO's ability to attain scale and meaningful growth. Credit

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[29] 86 Fed. Reg. 28,241 (May 26, 2021).
[30] Letter to NCUA on Expanding Credit Union Innovation Opportunities and Investment in Fintech (Jan. 19, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/01/ACU-and-NACUSO-Letter-to-NCUA-Fintech-Investment.pdf.
[31] *See* 12 C.F.R. § 703.14.
[32] *See* § 703.14(f).
[33] *See* § 703.14(j).
[34] See 12 CFR § 712.1(d).

union investments in CUSOs are also limited to an aggregate one percent of paid-in and unimpaired capital and surplus as of the last calendar year-end financial report.[35] As a result, many fintech companies may be uninterested in becoming a CUSO in order to serve the credit union industry.

Permissible investments in fintech companies should contain their own one percent limitation, in addition to permissible CUSO investments, for each individual credit union investment because limiting all investments into fintech services to only those offered through CUSOs severely restricts a credit union's options and ability to engage with companies that have the scale, resources, and ability to impact the markets for these services. Investments into fintech companies should be a distinct category of permissible investments in Part 703 as they are not subject to the CUSO limitations in section 712.1(d) of "primarily providing products or services to credit unions or credit union members" so that credit unions are able to work with companies that offer innovative solutions to meet the needs of their members and to share in the growth of that company, further benefitting members.

FCU occupancy and disposal of acquired and abandoned premises [701.36]

Section 701.36 addresses an FCU's ability to purchase, hold, and dispose of property necessary or incidental to its operations. Specifically, this section establishes occupancy and disposal requirements for acquired and abandoned premises.[36]

Consistent with a request of America's Credit Unions' legacy organizations,[37] we ask the NCUA to recognize the need that credit unions have for flexibility in the occupancy and use of their premises. Specifically, the NCUA should amend section 701.36 to reduce the requirement that credit unions occupy and use at least 50 percent of their premises, and instead require 25 percent occupancy and use.

Given the tremendous shifts in the hybrid and remote work posture of entities across the country following the pandemic and the pressures on commercial real estate, especially office space, the NCUA should reevaluate its occupancy requirements. Section 701.36 imposes an unnecessary hardship on FCUs and hampers growth potential through increased lease income and member service strategies, as well as increases safety and soundness risks. Reducing the occupancy requirement from 50 percent to 25 percent is a reasonable and warranted response to conditions currently facing the credit union industry.

Accordingly, we urge the agency to reduce the 50 percent partial occupancy requirement from section 701.36 to a 25 percent partial occupancy requirement. Easing this restriction would allow

[35] See § 712.2(a).
[36] 12 C.F.R. § 701.36(c).
[37] Letter from National Association of Federally-Insured Credit Unions (July 15, 2022), https://www.nafcu.org/system/files/files/7.15.2022%20Letter%20to%20NCUA%20re%20Occupancy%20Rule%20Amendment.pdf.

FCUs to stay competitive with other financial institutions in the current environment, which demands that institutions be able to provide their members with improvements, such as new products, services, and locations, and adopt new technologies in a timely fashion.

If the NCUA were to reduce the requirement that FCUs must occupy and use at least 50 percent of their premises to 25 percent, credit unions would benefit from much needed flexibility. FCUs that occupied 50 percent of their premises prior to the pandemic but have since seen a reduction in in-person workers would be able to lease unused portions of their premises and save precious credit union dollars. FCUs that wish to expand into new premises but are limited in their search to those buildings or spaces that are of a size which they can expect to occupy and use at least half would have greater flexibility in their search. And FCUs that wish to open premises in mixed-use developments in urban areas that require shared common areas and other shared fixtures and utilities would have increased ability to do so.

Given adjusted expectations for working conditions, credit unions, like many, if not most, other service providers, continue to see a remote and hybrid work posture for many employees. In fact, according to the latest Bureau of Labor Statistics data,[38] we have seen an increase in hybrid and fully remote workers over the last year, showing an increase from July 2023 to July 2024 in hybrid workers from 9.3 percent to 11.5 percent, and an increase in remote workers from 10.6 percent to 11.4 percent during this same period. More importantly, this increase is even more pronounced for workers in the "finance and insurance" field, showing an increase in hybrid workers from 22.0 percent to 26.1 percent and 30.7 percent to 31.5 percent for fully remote workers. These statistics clearly support reducing the occupancy requirement from 50 percent to 25 percent.

Designation of low-income status [701.34]

This section addresses the criteria the NCUA uses to determine whether a credit union qualifies as low-income and describes the process by which the designation is obtained. The low-income designation gives qualifying credit unions real regulatory relief, in the form of exemptions from the FCU Act's limitations on accepting non-members' deposits and member business loan limits, and in the form of access to supplemental capital. We appreciate the NCUA's efforts to identify credit unions that qualify for the low-income designation and to work with credit unions who reach out regarding the designation.

We encourage the NCUA to exercise its full statutory authority when making such designations and to adopt other approaches for credit unions to qualify as low-income. This could include a narrative application to explain why a credit union qualifies as low-income without the accompanying statistical analysis. We ask the NCUA to provide increased transparency in the form of greater information and resources to credit unions to help them prove their qualifications for the low-income designation. Lastly, we ask the NCUA to review the criteria

[38] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, https://www.bls.gov/cps/telework.htm#data.

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included in subsection (a)(2) to assess whether it might be appropriate to adjust the current threshold. Currently, "low-income members are those members whose family income is 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater, or those members who earn 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater." The NCUA should examine the potential benefit to credit unions—and their members—that would result from a decrease in the current threshold for qualifying as a low-income credit union.

Charitable contributions and donations; charitable donation accounts [721.3(b)]

Section 721.3(b) addresses charitable donation accounts (CDA), as permissible under the NCUA's incidental powers regulation.[39] A CDA is a hybrid charitable and investment vehicle that a credit union may fund as a means to provide charitable contributions and donations to qualified charities. Per the regulation, a "qualified charity" is limited to those organizations included in section 501(c)(3) of the Internal Revenue Code (IRC).

In November 2023, the NCUA Board amended[40] the CDA section of the NCUA's regulation to add "war veterans' organizations" under section 501(c)(19) of the IRC[41] to the definition of a "qualified charity" that a FCU may contribute to using a CDA. America's Credit Unions strongly supported this change, as we believe the attributes of veterans' organizations, as included in section 501(c)(19), are aligned with the purposes of the CDA rule.

Consistent with previous remarks of America's Credit Unions' legacy organizations,[42] we ask the NCUA to consider going even further in expanding the definition of a "qualified charity." While section 501(c)(3) entities are, by title and definition, charitable organizations, there may be other entities—including those that are non-profit and charitable—outside of section 501(c)(3) that could be included as a "qualified charity." According to the NCUA, because the CDA rule permits FCUs to purchase investments that would otherwise be impermissible, "it is necessary to limit the use of CDA funds to making charitable contributions or donations to organizations that are both non-profit and charitable in nature."[43] While it is of course necessary for FCU investments to be permissible under the FCU Act, we note that the "qualified charity" definition in section 721.3 of the NCUA's regulations implements the broad incidental powers language of the FCU Act.[44] We do not disagree with the notion that CDA funds should be used to make charitable contributions or donations to non-profit, charitable organizations. However, we ask the NCUA to be cautious as to not needlessly exclude certain entities from the "qualified charity" definition.

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[39] 12 C.F.R. § 721.3.
[40] 88 Fed. Reg. 80,950 (Nov. 21, 2023).
[41] 26 U.S.C. § 501(c)(19).
[42] Letter from Credit Union National Association (July 25, 2023), https://downloads.regulations.gov/NCUA-2023-0043-0004/attachment_1.pdf.
[43] 88 Fed. Reg. 34,792 (May 31, 2023).
[44] 12 U.S.C. § 1757(17).

Similar to IRC section 501(c)(19), there are several other subsections that also include a prohibition from earnings going to any private shareholder or individual. Other 501(c) organizations that may qualify under the NCUA's "qualified charity" criteria that it might consider include:

- 501(c)(4) - Civic Leagues, Social Welfare Organizations, and Local Associations of Employees;
- 501(c)(6) - Business Leagues, Chambers of Commerce, and Real Estate Boards;
- 501(c)(7) - Social and Recreational Clubs; and
- 501(c)(29) - Qualified Nonprofit Health Insurance Issuers.

The NCUA should consider whether each of the above organizations should also be considered a permissible "qualified charity" for purposes of the CDA rule. We ask the NCUA to take a broad view of organizations, whether under 501(c) of the IRC or otherwise, that could qualify as a "qualified charity."

Conclusion

America's Credit Unions appreciates the opportunity to comment on the RFC regarding the NCUA's voluntary review as contemplated by EGRPRA. We look forward to providing additional input in response to the remaining portions of the agency's EGRPRA review. Should you have any questions or require any additional information, please contact Luke Martone, Regulatory Advocacy Senior Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,

Luke Martone
Regulatory Advocacy Senior Counsel