The Wisconsin Credit Union League

One League, One Focus - Your Success!

Submitted via email: *boardcomments@ncua.gov*

April 25, 2016

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Arlington, VA 22314-3428

Re: Requests for Comment Regarding Overhead Transfer Rate Methodology & Operating Fee Schedule Methodology

Dear Mr. Poliquin:

On behalf of Wisconsin's credit unions® and their 2.75 million members, the Wisconsin Credit Union League is pleased to respond to the National Credit Union Administration's (NCUA's) requests for comments regarding two interrelated issues: The NCUA's overhead transfer rate (OTR) methodology and its annual operating fees schedule methodology for federal credit unions (FCUs).

The OTR and the FCU operating fees are the two primary methods of funding the NCUA's operating budget:

- The NCUA uses the OTR methodology to determine what portion of its budget will be requisitioned from the National Credit Union Share Insurance Funds (NCUSIF). Those funds may *only* be used to cover expenses incurred in carrying out the NCUA's share insurance responsibilities under Title II of the Federal Credit Union Act (FCUA).

- The NCUA uses the FCU operating fee schedule methodology to determine the aggregate operating fees charged to FCUs. Title I of the FCUA requires these annual fees, which make up most of the remainder of the NCUA budget.

The OTR allocation formula is the NCUA's tool for determining which expenses are insurance-related – meaning that they can be allocated to the NCUSIF, rather than being collected through FCU operating fees.

The proper allocation of expenses to the NCUSIF is of concern to Wisconsin's 153 credit unions. All of them are federally insured through NCUSIF – since Wisconsin law does not allow for private share insurance – and all but three of them are state-chartered. It is important to each of them that NCUA fairly allocate its budget between FCUs and FISCUs, not unduly favoring or burdening either charter type. However, we have seen a worrisome trend recently. For 14 years prior to 2000, the OTR was 50% – meaning that half of the NCUA's budget was requisitioned from the NCUSIF and the other half from FCU operating fees. As federal charters have declined and operating fee revenues have followed suit, the OTR has grown from 50% to 73.1% for 2016.

This imbalanced allocation has a discriminatory impact on FISCUs that pay into the insurance fund. Essentially, the shift subsidizes FCUs at the expense of FISCUs. While this certainly cannot be the NCUA's intention, it remains troubling, given the financial squeeze all credit unions feel in the current environment of low interest rates and growing regulatory burdens. The imbalance also threatens the dual chartering system. By shifting supervisory costs to the insurance fund, the NCUA uses FISCUs to subsidize agency responsibilities. Thus state and federal charters compete on costs – with the federal charter enjoying an artificial reduction in its costs.

The OTR methodology described in the NCUA's requests for comment will only worsen this imbalance. That's because the NCUA's OTR methods treat virtually all costs connected to safety and soundness as "insurance-related." Its definition of insurance-related costs subsumes all "examination or supervision contact procedures [that] address safety and soundness." Essentially, this approach shifts charges to the NCUSIF for *all* safety and soundness functions (other than those related to consumer protection).

The idea that all safety and soundness costs are insurance-related only, not tied to the NCUA's chartering and supervision responsibilities, contradicts the FCUA and its legislative history. When Congress created the NCUA in 1970 (via Public Law 91-206), it charged the agency with chartering, supervising and examining FCUs. Implicit in that legislation is an obligation to ensure that FCUs operate safely and soundly. Later that year, Congress separately created the NCUSIF (via Public Law 91-460), making the NCUA responsible for managing of share insurance to cover member accounts in FCUs and FISCUs. Nothing in Public Law 91-460 shifted the NCUA's obligations for safety and soundness to the NCUSIF. Instead, it was clear that Congress envisioned two roles for the agency – as the administrator of the NCUSIF and as the regulator and supervisor of FCUs. Under Title I of the FCUA, the agency should conduct safety and soundness examinations of FCUs as part of its charter supervision duties. Under Title II, the NCUA should then rely on those examinations for its insurance responsibilities. (In fact, Congress directed the NCUA to structure examinations so that they may be used by NCUSIF under 12 U.S.C. §1783 of the FCUA, and instructed NCUSIF to rely on state regulatory examinations by the maximum extent feasible, under 12 U.S.C. §1782.)

Despite the clarity of the FCUA, the NCUA's OTR methodology would all but ignore the agency's mission to ensure safety and soundness, treating that duty as almost entirely an insurance-related function that the NCUSIF must fund. This approach renders Title I of the FCUA mere surplusage. Instead, the NCUA – as a chartering authority – must recognize that it has safety and soundness obligations of its own. Its role is not confined to protecting the insurance fund, and it should not use "safety and soundness" as a catchall to make the NCUSIF its primary funding source. Instead, we urge the NCUA to adopt OTR methodologies that reflect the agency's dual role. Ideally, we believe that the NCUA budget should be funded 50-50 from the OTR and from FCU operating fees, as it was for many years.

Furthermore, we believe that in setting the OTR and processing fees, the NCUA must act transparently, to avoid even the appearance that its allocation process could be unfair. To help accomplish this, the NCUA board, not staff, should manage the OTR. In addition, the NCUA board can, and should, continue to provide notice and allow public comment before amending the OTR methodology. (The National Association of State Credit Union Supervisors explained why the OTR is subject to federal notice and comment requirements in its 2015 legal study, and we will not belabor the reasons here.)

Finally, we want to point out that the NCUA can keep its costs down – and thus the overall impact of the OTR – if it examines fewer state credit unions and instead works more closely with state regulators to leverage the efficiencies of the dual examination system. Both the FCUA and the NCUA's own rules (§741.1) direct it to utilize other examinations to the maximum extent feasible, but Wisconsin's state-chartered credit unions (like credit unions nationwide) see significant overlap of state and federal examinations. The NCUA can, and should, do much more to rely on state examiners' work. This would benefit credit unions and reduce both the OTR and operating fee.

In closing, we believe that the OTR methodologies described in the request for comment artificially inflate the costs to the NCUSIF, thus 1) shifting costs to the NCUSIF and unfairly discriminating against federally insured, state-chartered credit unions (FISCUs) and 2) indirectly subsidizing FCUs at the expense of FISCUs. We urge the NCUA to modify its OTR methodologies as necessary to avoid these results and to make those methodologies as transparent as possible going forward.

Thank you.

Sincerely,

Paul

Paul Guttormsson
Legal Counsel
The Wisconsin Credit Union League