Cooperative Credit Union Association
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April 26, 2016

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

Cooperative Credit Union Association, Inc. Comments on Overhead Transfer Rate Methodology

Cooperative Credit Union Association, Inc. Comments on Operating Fee Schedule Methodology

BY EMAIL ONLY

Dear Secretary Poliquin:

On behalf of the member credit unions of the Cooperative Credit Union Association, Inc. ("Association"), please accept this letter relative to the National Credit Union Administration's ("NCUA") request for comments on two important issues: the Overhead Transfer Rate ("OTR") Methodology and the Operating Fee Schedule Methodology. This comment letter will address both pending issues. The Association is the tri-state trade association representing credit unions located in the states of Massachusetts, New Hampshire and Rhode Island, serving approximately 170 credit unions which further serve approximately 2.6 million consumer members, and operating as part of the Credit Union National Association.

The Association begins by noting the NCUA's recent commitment to regulatory relief and transparency. The agency has remained open to credit union suggestions on reducing the regulatory burden, providing flexibility to credit unions, and eliminating unfair or outdated regulations, all within the bounds of safety and soundness.

Without question, the Association welcomes the Board's voluntary decision to open the OTR and Operating Fee Schedule to public comment. The Association has long advocated for the NCUA to be more transparent regarding its calculation of the OTR. A public comment period represents the first of many necessary steps to remain transparent on this issue. It is strongly urged that the NCUA permanently adopts a regular cycle of review as well as advance notice and comment prior to amending or changing the OTR methodology in the future.

The OTR is at an all-time high level. As a mechanism by NCUA to fund itself by transferring money from the share insurance fund that is contributed by both state and federal charters, the OTR level is very important to the entire credit union system. The Association notes that over 70% of the total budget of NCUA is derived from share insurance fund assessments through the OTR. The OTR has increased from 52% in 2009, to 73.1% in 2016, a 21% increase. This increase reflects the bigger issue of the ever-growing NCUA budget in the face of shrinking budgets maintained by other regulators.

In preparation for the development of the present comment letter and to foster a local consensus, the Association conducted a survey of all credit union members in order to assess the impact the OTR and Operating Fee Schedule has on our local credit unions. Nearly all respondents indicated that the OTR is a substantive issue that credit unions should be concerned about. The theme of respondents' answers focused on the lack of transparency in the current process, despite the significant impact on both state and federal chartered credit unions and their own budgeting process.

I. Necessity of an OTR and Operating Fee Comment Period and Public Hearing

Member credit unions are of the position that decisions regarding the methodology behind the OTR and the Operating Fee Schedule should at the very least be within the purview of the NCUA Board only. In addition, the methodologies should be subject to a public hearing and comment period.

The NCUA Board should retain rulemaking authority over the OTR. Currently, NCUA has delegated the authority to set the OTR to its staff, and the OTR will be published only after it is already final. All respondents believed that a Board-mandated rulemaking period must be completed prior to the setting of the OTR. Any changes to the OTR should be subject to a board action so that the discussion is conducted at a board meeting or hearing and on the public record.

A common criticism amongst our local credit unions relative to this issue concerns the idea that credit unions are subject to oversight and accountability for all budgeting, expenses, and actions in examinations and elsewhere. It is the belief of our member credit unions that the NCUA should be required to control and account for its expenses in as similar a manner as possible. As credit unions have a vested interested in what the NCUA spends and how it operates, it should remain accountable and as transparent as possible, through the use of public hearings and comment periods. Such accountability will only further a better working relationship between the NCUA and its regulated entities.

The Association notes and supports Board Member J. Mark McWatters' comments made at a recent Board meeting acknowledging the OTR as an example of non-sensitive information that should be subject to public comment. The Association is in agreement with him that the NCUA should prioritize their explanation to the entities they supervise, incorporate reasonable public comment into final deliberations, and ensure that it is abundantly clear as to why the OTR is set at a certain level.

Based on industry input during this current comment period, the Association urges the NCUA to establish a methodology and parameters now that reflect transparency, public comment and concern, which will serve as a benchmark to be reviewed on an annual basis.

The Association notes that the NCUA voluntarily participates in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") process. The formal EGRPRA process is mandated on a decennial basis. NCUA organizes its regulatory review as similarly to other banking agencies as possible, while maintaining credit union regulatory differences. It typically announces notice of EGRPRA review on a limited number of regulations at a time, in order to decentralize review on its broad range of regulations on an ongoing basis.

The Association raises this issue for two reasons. First, while the NCUA is not subject to EGRPRA, it voluntarily submits itself to the EGRPRA process in order to be consistent with other federal regulators, to increase transparency, to amend its regulations to reflect the comments received, and to keep its regulations relevant and timely. In essence, it elevates the credibility and posture of the NCUA while building industry and public confidence. The NCUA has stated that it will not subject OTR and the Operating Fee Schedule to public notice and comment because the OTR is not subject to the federal Administrative Procedure Act. The Association strongly requests that, as the NCUA has adopted the EGRPRA review in its discretion, the agency should consider the benefits in transparency and accountability it will gain by opening the OTR to public comment. It will ensure that all stakeholders are afforded the opportunity to review the methodology for fairness, better understand the methodology, and ensure that the methodology and its related definitions are appropriately related to the NCUSIF.

Secondly, the Association suggests that if not reviewed on a yearly basis, that at the very least the OTR and Operating Fee Schedule methodology could be incorporated into the NCUA's regular regulatory review through EGRPRA, with the inclusion of the OTR and Operating Fee Schedule in the an EGRPRA notice on a rotating, dedicated basis, such as every three years.

II. Definition of OTR "Insurance-Related" Activities Too Broad

After enactment of Title II and establishment of the NCUSIF in the Federal Credit Union Act, the Board established an allocation formula, referred to as the Overhead Transfer Rate, to determine the amount of the Operating Budget that it would requisition from the NCUSIF for insurance-related expenses. Over time, the Board has refined the OTR process to attempt to ensure an equitable allocation of costs between NCUA's dual roles of insurer, referred to as insurance related activities, and regulator that charters federal credit unions, referred to as non-insurance related activities.

NCUA's current methodology determines the OTR using the results of an examiner time survey ("ETS"). The ETS captures the time NCUA spends examining and supervising federal credit unions, carrying out its dual mission as insurer of federally-insured credit unions, and the chartering authority for federal credit unions. The OTR methodology also factors in:

- The value to the NCUSIF of the insurance-related work performed by state supervisory authorities ("SSAs");
- The cost of NCUA resources and programs with different allocation factors from the examination and supervision program;
- The distribution of insured shares between federally-chartered and federally-insured, state-chartered credit unions; and
- Operational costs charged directly to the NCUSIF.

The OTR is one of two mechanisms funding the NCUA's Operating Budget. The OTR is funded by both federal credit unions and federal-insured, state-chartered credit unions. The overhead transfer of agency expenses to the NCUSIF must be legitimate "insurance-related" costs, consistent with fairness to state and federal credit unions.

The Association is committed to the equal treatment of charters, and strongly supports the dual-chartering system. A robust and strong dual-chartering system benefits both credit unions and most importantly, consumers. The Association represents the full and complete interests of both federally-chartered credit unions and state-chartered credit unions, and does not support beneficial treatment of one charter over the other. On the contrary, the Association is committed to the fair distribution of costs for the supervision of credit unions.

However, the Association notes that past practice reveals that the OTR methodology has lowered the operating fees for federally-chartered credit unions while increasing the OTR for state-chartered credit unions. The OTR has been increasing since 2000, after remaining at a constant 50% for 14 years. In contrast, operating fees have declined over recent years. A reasonable inference from such a record is that the NCUA's definition of insurance-related costs as procedures addressing safety and soundness issues is too broad. The definition appears to equate insurance-related activities with safety and soundness, when the two concepts are uniquely different. Lack of clarity blurs the line that the NCUA has clearly stated must be drawn between itself as a regulator and itself as an insurer. The NCUA's definition and application of "insurance-related costs" shifts charges to the NCUSIF, and therefore to both federally-chartered credit unions and state-chartered credit unions, for all safety and soundness functions. In reality, a reallocation of the safety and soundness function should be conducted and attributed to the NCUA's role as regulator and Title I responsibilities, resulting in a more realistic and fair assessment to federally-chartered credit unions for direct work performed. The Association believes that such shift in costs to state-chartered credit unions creates industry confusion and adversely impacts the viability of the state charter.

While a decline in the OTR may result an increase in the Operating Fee, and therefore increased costs to federal credit unions, such a result is necessitated by the clear distinctions between Title I and Title II of the Federal Credit Union Act and the NCUA's role as regulator and insurer. It is the clear language of the law that funding of the OTR and funding of Operating Fees are to operate distinctly. The Association strives for equity and fairness between the charters and believes that any possible realignment of costs reflects this goal.

Most importantly, the Association does not believe that the OTR calculation and Operating Fee processes only represent cost transfers or increases. The Association expressly requests that the NCUA provide the public policy rationale that underlies OTR increases so that a more clear understanding of the budget impact for both federally-chartered and federally-insured state chartered credit unions is the result.

III. Increased Reliance on State Supervisory Authorities

The Association urges the NCUA to more fully rely on and seek further efficiencies from its relationship with state supervisory authorities ("SSAs"). The dual-examination system necessitates a close relationship between the NCUA and SSAs. The Association acknowledges and supports the longstanding, positive, working relationship of all credit union regulators within Region I. There is, however, a significant overlap in state and federal share insurance examinations. The NCUA presently receives a detailed assessment of the financial and operational conditions of federally-insured, state-chartered credit unions through the sharing of examination reports, coordinated examinations and off-site monitoring. This is further supplemented by the national, regional and local dialogue sessions engaged in by all credit union regulators throughout the year.

The Association notes that the credit union regulators in Massachusetts, New Hampshire and Rhode Island each regulate other financial service providers and strive to administer a high quality, risk based, system of supervision. Moreover, many state regulators, such as Massachusetts, have undergone the rigorous process and obtained accreditation from both the National Association of State Credit Union Supervisors and the Conference of State Bank Supervisors. Finally, each of the credit union regulators supervising Association members receive regular training, education and other resources directly from the NCUA.

The Association urges the NCUA increase its confidence in the local regulatory scheme to which it contributes and often drives, and to increase reliance on the agreed upon reports and efficient procedures established between the agency and local SSAs. The NCUA is strongly encouraged to rely upon state supervisory agencies to the fullest extent possible, and account for the efficiencies the joint examination process affords the NCUA. By doing so, the Association believes that the NCUA may further reduce both the OTR and the Operating Fee.

In addition, as you are aware, the Association reminds the NCUA of its unwavering support for a return to the 18-month extended exam cycle. It should be noted that returning to an extended exam cycle, under appropriate parameters and in coordination with a deeper relationship with local SSAs, is an important tool readily available to the NCUA which may lower the OTR as appropriate.

IV. Conclusion

The Association encourages the NCUA to continue to seek credit union input on the OTR and Operating Fee Schedule methodology. Credit unions deserve a regulatory and supervisory environment that will allow them to best serve their members, which includes input into the way costs are budgeted and allocated.

Thank you for your consideration of these views. The Association appreciates the opportunity to provide input and I remain available to address any questions or concerns at 732.865.4641 that you or your staff may have at your convenience.

Sincerely,

Paul C. Gentile
President/CEO

PCG/mabc/kb