

April 27, 2016

Mr. Gerald Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke St,
Alexandria, VA 22314

Dear Sir:

On January 15, 2016 I sent to you and the Board, prior to your January meeting, a comment letter asking for a full and transparent release of the details of all steps and decision points within the OTR methodology. I was disappointed to not see some of the information I requested in the Federal Register Request for Comment, dated January 17, 2016. My letter requested what I think are vital conditions of the current methodology and necessary for your constituents to make fully informed suggestions as to how the OTR methodology can and must be modified to comply with the clear intent of Title II of the Federal Credit Union Act. We will proceed with our comments even without that information.

I would like to commend Board Member McWatters, who has encouraged us to not only comment on the OTR but to recommend actions which would modify the OTR methodology so that it more closely aligns with a plain reading of Title II of the Federal Credit Union Act. That is the intent of our comments.

Identification of Current Conditions

- The Federal Credit Union Act, Title II does authorize that the reasonable cost of examination be recovered by NCUA. The Act does authorize the use of examination work product created under the authority of Title I, for purposes of determining safety and soundness, to be used in the case of federally chartered and federally insured credit unions. It also encourages the use of similar examination work product, created by State Supervisory Agencies in their role as legal regulator, for state chartered and federally insured credit unions.
- The Act does not distinguish any difference between the characteristics and components of examinations performed under the authority of Title I for the purposes of determining *safety and soundness* from those examination characteristics and components authorized under Title II for purposes of determining *insurability*.
- The NCUA web site and the Examiner Guide provide no reference to any difference between the examination characteristics or components of a safety and soundness examination and the requirements of an "insurance exam" performed at a federally chartered/federally insured CU by NCUA examiners. Logically, we have the conclusion that the Agency accepts that 100% of those requirements defined in their own Examiner guidelines results in both meeting the standards of "safety and soundness" and "insurability." The subsequent logical result of this line of reasoning is that any State Supervisory Agency who meets or exceeds the standards of the NCUA examination guidelines in performing their legal authority as a regulator has created all of the necessary examination work

product for the NCUA to meet its responsibility under Title II to use such work product “to the maximum extent feasible.” (Section 1781, b (1))

- The NCUA has determined by a process undisclosed in the recent Federal Register request for comment, that 252 of 637 active NCUA regulations are considered to be examination related. NCUA has further determined that as of the October 2, 2013 release of the PwC Analysis of Examination Time Survey that of the 252 rules determined to be examination related, 161 or 64% are considered to be insurance regulatory related.
- The un-redacted version of the 2011 PwC OTR Review noted the lack of transparency in the methods and process used to determine which of the 252 rules worthy of examination time and effort are classified as “regulatory related” or “insurance related”. It also notes that this particular process is at the very basis of the OTR methodology, or as PwC stated “upon which the methodology is fundamentally dependent.”
- There is little evidence that there has ever been any serious effort to attempt to reconcile the safety and soundness examination work-product of SSAs with the information needs of the insurer, NCUA. This is growing in criticality as NCUA continues to add to its list of insurance related examination regulations and the hours allocated to the “insurance-exam” and the insatiable budget requirements of NCUA that are billed to the OTR and unfairly paid by state-chartered CUs
- Given these fundamental flaws in determining the very basis of the OTR we can conclude that what has resulted is a seriously defective methodology that places an unfair burden on federally insured state chartered CUs.
- There is little evidence that NCUA is able to identify any differences between how it fulfills its role as a regulator from that of its role as an insurer.

Actionable Activities to Fix a Broken Methodology

1. Institute a working committee of NCUA staff and SSAs (supported and represented by NASCUS) to define the professional requirements of and differences between a regulatory examination and an insurance examination.
2. Use modified gap analytics to determine identifiable differences between the safety and soundness examination characteristics of NCUA examination guidelines and individual state guidelines.
3. Study, measure and quantify the examination processes of SSAs to attain valid time study to establish new standards by exam function for SSA imputed Value. The same process should be utilized to identify best practices which could be shared between NCUA and SSAs.
4. Determine which of the 161 insurance related rules are sufficiently reviewed by SSAs and for which remote reporting can meet the needs of the insurer. Identify any criteria missing and necessary for insurance review.
5. Vigorously and annually justify the imputed value of SSA activities through time study. Defend any need for the insurer to increase high-overhead participation in the insurance review process.
6. Accurately determine the reallocation of NCUA personnel to regulatory and insurance examination process of federal chartered CUs. Redefine the insurance review process using SSA work product to the maximum extent possible and reduce current overhead assigned to state-chartered review.

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Given the significant increase in the OTR over the last few years and the challenges NCUA faces in being both regulator and insurer, it is vital to the healthy survival of the credit union network and the dual chartering system that this issue be properly addressed and dealt with before the 2017 OTR announcement. Thank you for the opportunity to comment.

Sincerely,

Victor J. Pantea, Manager of Marketplace Alliances
CU* Answers

CC: Chairman Matz
Vice-Chairman Metsger
Board Member McWatters