

August 29, 2017

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

RE: Comments on OTR Methodology

Dear Mr. Gerard Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10 million members.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on their proposed changes to the Overhead Transfer Rate (OTR) methodology.

The Leagues applaud the NCUA for seeking stakeholders' input into improving the OTR methodology. While we generally support the proposed changes, we offer the following comments and recommendations to help ensure a fair allocation of costs to both federally insured state-chartered credit unions (FISCUS) and federal credit unions (FCUs).

Primary Goal

The NCUA notes that the "primary goal" of the proposed changes is to reduce the complexity of the OTR methodology. The proposed changes would also reduce the resources needed to administer the OTR. The Leagues strongly believe the agency's "primary goal" should be to ensure fair and equitable treatment of FISCUS and FCUs in the allocation of insurance-related activities. If the OTR methodology benefits FCUs more than FISCUS, or vice-versa, it weakens the dual chartering system. The Leagues strongly encourage the agency base any decisions first on whether the modifications are a fair and equitable treatment; ease and simplicity for the agency should be a secondary goal.

Safety and Soundness versus Insurability

Title I of the Federal Credit Union Act (Act) – General Provisions provides for examinations, oversight by the Board, and the provision of financial statements, all of which cover "safety and soundness" issues. Those "safety and soundness" issues arising from Title I activities should rightfully be charged under the Operating Fee.

Title II of the Act – Share Insurance requires that federally insured credit unions agree

to pay the reasonable costs of exams necessary to determine insurability and protection of the NCUSIF. In relevant part, Title II states, “Provided, that examinations required under subchapter I of this chapter shall be so conducted that the information derived therefrom may be utilized for share insurance purposes, and examinations conducted by State regulatory agencies shall be utilized by the Board for such purposes to the maximum extent feasible.”

Under a plain reading of the Act, NCUA’s duties as a regulator and supervisor of federal credit unions are different than its duties as the administrator of the NCUSIF. It is also clear that safety and soundness is the responsibility of the chartering authority – whether the NCUA or a state supervisory authority. Accordingly, the safety and soundness costs related to federal credit union exams cannot also be insurance related costs.

Principles-Based Methodology

NCUA’s current methodology to determine the OTR, in place since 2003 and refined in 2013, uses the results of an examiner time survey (ETS). In 2012, the Office of Exam and Insurance (E&I) clarified the application of insurance related and non-insurance related definitions in the ETS, specifically by mapping certain regulations to insurance related. The NCUA made the determination of which rules are insurance or non-insurance related. Additionally, some rules were allocated as solely insurance related.

In response to the NCUA’s 2016 request for comments on the OTR methodology, the Leagues recommended NCUA publish which rules are deemed insurance or non-insurance related, with an explanation for each determination, and that the agency solicit comments on whether the current mapping and classification of these rules are appropriate.

Under the current request for comments, the proposed methodology eliminates the ETS and instead adopts a principles-based methodology. The NCUA proposes to apply the following four underlying principles to the allocation of agency operating costs:

1. Time spent examining and supervising FCUs is allocated as 50 percent insurance related.

The NCUA states the 50 percent allocation mathematically emulates an examination and supervision program design where NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate entities.

The Leagues commend the NCUA for acknowledging their Title I safety and soundness responsibilities for FCUs in this allocation. Regular examinations are the principal method the agency uses to supervise FCUs. While using 50 percent is only an estimation and is not based on in depth analysis, it is easily understandable and in line with the dual functions of NCUA as regulator and insurer. As such, the Leagues can agree to this principle. However, we

strongly encourage the NCUA continue to explore methods that could provide a more meaningful, accurate, and fair allocation for FCU exams, such as the ETS or similar process. In developing an alternative method, we urge the NCUA to obtain an independent review of the data and analysis used to ensure the method is fair, accurate, and equitable.

- 2. All time and costs NCUA spends supervising or evaluating the risks posed by federally insured state-chartered credit unions (FISCUs) or other entities NCUA does not charter or regulate (for example, third-party vendors and credit union service organizations (CUSOs)) is allocated as 100 percent insurance related.** This 100 percent allocation is based on NCUA's statement that their role with respect to FISCUs is only that of insurer; they do not charter nor serve as the FISCU's prudential regulator.

The Leagues agree that NCUA's supervision of FISCUs is 100 percent insurance related. However, we do not agree that supervision of CUSOs and other third-party vendors is 100 percent insurance related. In adopting the final CUSO regulations in December 2013, the agency noted that it is amending the CUSO regulation to "increase transparency and address certain safety and soundness concerns." [1] Further, the agency stated, "The Board is adopting this rule to improve the quality of information about CUSOs and the nature of their activities, in order to identify risks to the credit union industry and protect the NCUSIF." [2] The Leagues recommend the time and costs spent supervising or evaluating CUSOs and other third-party vendors be allocated as 50 percent Title I safety and soundness and 50 percent as Title II insurance related.

- 3. Time and costs related to NCUA's role as charterer and enforcer of consumer protection and other noninsurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.** NCUA resources allocated to these functions are assigned to its role as charterer/prudential regulator. The Leagues agree with this allocation.
- 4. Time and costs related to NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.** These activities include liquidations of credit unions, insured share payouts, other resolution activities, and answering consumer inquiries about insurance coverage. The Leagues agree with this allocation.

OTR Processes

In addition to the proposed changes to the OTR methodology, the Board proposes to formally adopt the following OTR related processes:

- To solicit through the *Federal Register* public comment on the OTR

methodology at least every three years, and whenever NCUA seeks to change the OTR methodology.

- Maintain the staff delegation to administer the OTR methodology, but require public board briefings every year, no later than each December, on the results of the calculation and to post all related materials to NCUA's Website.
- As part of future rulemaking, indicate for any proposed regulation involving the activities and authorities of credit unions whether the regulation is based on Title I (General Provisions/Safety and Soundness), Title II (Share Insurance), and/or Title III (Central Liquidity Facility) of the Act and seek comment on this determination. While the proposed new OTR methodology would no longer rely on mapping of regulations, this will increase clarity regarding the purpose of and authority for any new or updated regulations and preserve future flexibility with respect to any desired changes to the OTR methodology.

The Leagues commend the agency on their commitment to transparency, and we support the proposed processes.

We support the provision that NCUA publish for comments any changes to the OTR methodology. As recommended above, the agency should continue to explore methods that could provide a more meaningful, accurate, and fair allocation for FCU exams. Any change to the allocation method should include an independent review as well as be put forth for comments by the stakeholders.

As noted above, the Leagues recommended in 2016 that the NCUA publish which rules are deemed insurance or non-insurance related, with an explanation for each determination, and provide an opportunity to comment on whether the mapping and classification are appropriate. As such, we fully support the agency's proposal to identify in future rulemakings whether a regulation is based on Title I, Title II, or Title III provisions of the Act. We encourage the agency to take this a step further and also include this information for regulations that come up for review periodically, including under the current Regulatory Reform Agenda [\[3\]](#), the NCUA's annual review of one-third of regulations, and the NCUA's voluntary participation in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) decennial review.

Conclusion

The Leagues generally support the proposed changes with the recommendations noted, and we urge the Board to base any decisions on changes to the OTR methodology first and foremost on the fair and equitable treatment of FISCUS and FCUs.

We thank you for the opportunity to comment on the proposal and for considering our views. If you have any questions regarding our comments, please contact me.

[\[1\]](#) Federal Register 78 FR 72537, Dec. 3, 2013

[\[2\]](#) Federal Register 78 FR 72538, Dec. 3, 2013

[\[3\]](#) Federal Register, 82 FR 39702, dated Aug. 22, 2017; Comments due Nov. 20, 2017

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL