

August 29, 2017

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

Dear Sir:

Thank you for the opportunity to add our comments to the current recommendation about the OTR Methodology. We have written a series of blog entries available to our credit union owners and the general public at [www.tellmewhyimwrong.com](http://www.tellmewhyimwrong.com) and have attached them to this comment letter as an addendum. Our initial written comments on the OTR were dated June 12, 2017 and were posted just a few days prior to the June presentation on the revised OTR Methodology presented by staff. These comments of 6/12 are still the pertinent components of our official comment even after hearing and studying the proposed methodology. A synopsis of our position follows.

The current AND the proposed OTR methodology changes BOTH represent a seriously flawed calculation that no longer acts as a fair and equitable measure of NCUA costs to manage the expenses of the NCUSIF for both Federal and State chartered credit unions. More importantly, over time, it has drifted further and further away from the original clear and obvious legislative intent of the FCU Act, Title II.

Further modification of an archaic and failed OTR methodology is no longer an acceptable solution to the current status quo of how NCUA pays itself. It furthers a misplaced and wasteful trend that has NCUA paying for more and more of its ever-growing budget from the earnings of the share insurance fund and has become an invasive element to all other strategic decision making at the agency. Its basic tenets and actions further the arbitrary nature of the methodology and do disservice to all of the federally insured credit unions who expect NCUA to provide improved oversight while lowering the costs of compliance. Both Federal and State chartered CUs expect and should demand that the primary strategic objective should do just that, lower the cost of compliance while increasing and improving the quality of oversight.

What will this require? As we suggest, the board must take action to totally eliminate the current and proposed methodologies and collaboratively develop a new methodology that is both faithful to the FCU Act and to the strategy of lowering the cost of compliance while increasing the quality of regulatory oversight.

How do we accomplish those two clear objectives? Let's first take a look at the pertinent section of Title II if the FCU Act. Sec 1781, b (1).

- 1.) The act allows for the payment to the NCUA any reasonable costs is incurred to determine eligibility for insurance coverage. The legislation states that such payment shall be based upon "reasonable costs".
- 2.) The act states that information gathered in a regulatory examination process shall be derived so that it may be utilized for purposes of the insurance review. This is obviously intended to streamline the examination process in federally chartered CUs, all of whom are also federally insured. This also explains why you can't find any instruction in NCUA Examiner Guidelines that differentiates the process, protocol or evaluation of data between a "regulatory exam" and an "insurance exam." For federally chartered

CUs the clear legislative intent is that the NCUA examination be one in the same, covering both the requirements of Title I and Title II.

- 3.) The act clearly recognizes the existence of a dual chartering model that permits SCCU participation in a Federal Share Insurance Program. It recognizes the regulatory authority of the states and requires that NCUA, in its role as insurer, use state regulatory exams, "to the maximum extent feasible;" to carry out its responsibilities as insurer.

How do we create a new insurance business model and examination process that reinforces the principles of the Act? What will be the benefits of scrapping the current OTR calculation and the measured activities of the agency that have driven it to its current unacceptable state? How will it impact the security and stability of the Share Insurance Fund?

### **A Bold Opportunity for a Regulatory Renaissance**

The months since the departure of Chairman Matz have shown evidence of board leadership which is willing and capable of driving the kind of innovative change that our co-operative model needs and the changing times demands. The agency has promised that we will see a new and more transparent OTR protocol. Unfortunately, all we have seen are modifications that do little to make any difference in what is already a broken tool. We can only hope that this new board grabs the opportunity to be bold, to re-engineer a process that currently ignores history and the clear written intent of the Federal Credit Union Act.

The usual MO of a government agency, seldom or never evaluates the opportunity to go back to the basics of the legislative intent, burn down and gut the current process and start over. Instead the usual, less painful, process is to make less drastic modifications that pacifies the internal pressure to fight change, protects jobs and adds costs to a process that does nothing to realign a regulatory environment that produces *improved oversight at lower costs*.

We support any effort by the current Board and staff to change that typical mindset. We will heartfully support the board if it muscles up the courage and boldness to take such action.

### **Our Immediate Next Steps**

1. Adopt the new process for 2018 only. Sunset the 2018 methodology after one year. Plan to adopt a new methodology no later than June 2018, effective 2019.
2. Immediately appoint a working group comprised of NCUA staff, State regulators, and representatives from NASCUS, NAFCU and CUNA.
3. The working group should adopt the overall strategy of developing a new OTR methodology that will support the broader regulatory objective of simultaneously lowering the cost of compliance and increased the quality of oversight. Specific numerical goals and measurements for accomplishing these two objectives should be incorporated in the NCUA strategic plan and budgets for 2019 and beyond.
4. The working group shall adopt an objective that will define and identify those examination protocols that will allow the NCUA, to the greatest extent possible, faithfully carry out the intent of the FCU Act. This will include an effort to clearly differentiate the process, protocol or evaluation of data between a "regulatory exam" and an "insurance exam." It will also clearly define the circumstances which will require that the "insurance exam" be supplemented by a field exam from the insurer.

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5. Closely co-ordinate the working group findings with the efforts being applied to the ESS and ESM capital investments.

These recommendations are the kind of bold actions that we feel are necessary for the NCUA to show evidence of their intent to truly evaluate their current methods for both the regulatory and insurance components of their charge. It will also go a long way to convincing many credit unions and their members of the agency's commitment to advancing innovation and good stewardship of credit union capital.

Sincerely,

Victor J. Pantea  
Manager of Marketplace Alliances