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April 25, 2016

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

Re: *Comments on OTR Methodology, 81 Fed. Reg. 4803*

Dear Secretary Poliquin:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to comment on the National Credit Union Administration's (NCUA) methodology for determining the Overhead Transfer Rate (OTR), one of two primary sources of funding for the operation of the NCUA. PCUA is a state-wide advocacy organization that represents a majority of the credit unions located on the Commonwealth of Pennsylvania.

PCUA is a strong advocate of the dual chartering system. A robust state system fosters healthy competition and the generation of good ideas for the betterment of credit unions. In that same vein, cooperation between NCUA and state regulators, such as the Pennsylvania Department of Banking and Securities, provides efficiency in connection with the supervision of federally insured, state-chartered credit unions (FISCUs). PCUA also appreciates that NCUA is unique among financial institution regulators. NCUA is the primary supervisory authority for federal credit unions (FCUs) and insurer of FCUs and FISCUs. All of these attributes of the regulatory and supervisory system for credit unions require the appropriate allocation of resources, making it essential to derive an appropriate methodology for setting the OTR.

NCUA has released the OTR for notice and comment for the first time in the agency's history. We applaud this move. We maintain that the Administrative Procedure Act requires NCUA to provide notice and accept comment on the OTR. 5 U.S.C. § 551(4). In addition to the mandates of the APA, accepting comments on the OTR demonstrates transparency with regard to the allocation of NCUA's resources. In the proposal, NCUA stated that the Federal Credit Union Act (FCUA) give the Board broad discretion in determining the OTR. 81 Fed. Reg. 4804. PCUA's goal in filing these comments is to ensure NCUA exercises reasonable discretion in establishing the OTR consistent with the FCUA and the legitimate interests of the dual chartering system.

The first step in determining the methodology for the OTR is a legal analysis of NCUA's authority to tap the resources of the National Credit Union Share Insurance Fund (NCUSIF). The issue is whether any of NCUA's functions pursuant to Title I of the FCUA are appropriately deemed as insurance-related, carrying out the purposes of Title II of the FCUA.

Section 203 of the FCUA states, "There is hereby created in the Treasury, of the United States, a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions, and for such administrative and other expenses incurred in carrying out the purposes of this subchapter as it may deem proper. 12 U.S.C. § 1783(a). emphasis added.

Section 203 clearly limits NCUA's discretion regarding the allocation of the OTR to carrying out the purposes of Title II. NCUA admits as much in the proposal where it states, "First, expenses funded from the NCUSIF must carry out the purposes of Title II of the FCU Act, which relate to share insurance." 81 Fed. Reg. 4804. Accordingly, the relevant legal determination is what NCUA powers and functions are appropriately defined as carrying out the purposes of Title II.

We believe that NCUA runs afoul of the FCUA where it determines that powers or activities conferred on federal credit unions under Title I are insurance related and included in the OTR. The statute is sufficiently clear that Title I and Title II are separate and distinct. The powers and activities of an FCU are not merely safety and soundness standards. They also reflect a public policy decision regarding what activities enable a credit union to remain viable and meet the credit and depository needs of its members. When supervising an FCU for compliance with the provisions in Title I, NCUA's role is similar to that of a primary state regulator or the Comptroller of the Currency when examining or supervising a national bank. It is exercising a policing function to ensure viability and fitness for members who are entrusting their savings to the FCU. We agree that limits on a credit union's powers and activities serve a safety and soundness function. We disagree that all safety and soundness functions performed by NCUA are insurance related. Therefore, we must disagree with NCUA's OTR methodology to the extent it includes chartering and compliance activities conducted pursuant to Title I and NCUA's role as the primary regulator of FCUs.

Consequently, NCUA's mapping of regulations that it deems as insurance-regulatory related must be redrawn. Part 701.15 through 701.37 should be considered non-insurance related as those provisions consist of matters such as lending authority, deposit activities, low-income designation and similar attributes or privileges of having a federal charter. 12 CFR Parts 701.15-37. Parts 703, 712, 714, 722, 723, and 749 should also be deemed non-insurance related. 12 C.F.R. Part 703, 712, 714, 722, 723, 749. NCUA ensures compliance with these provisions in its role as a primary regulator, not insurer. The outside limits imposed on the activities enumerated in those regulations protect the NCUSIF. However, without those powers, an FCU cannot effectively meet the needs of its membership.

NCUA maps Part 704, Corporate Credit Unions, as insurance-regulatory related. We disagree. Just like a natural-person credit union, a corporate credit union must be provided with adequate powers and activities to meet the needs of its members. NCUA is the primary regulator of federal corporate credit unions ensuring such entities operate consistently with Part 704 for the benefit of the member credit unions. NCUA's mission in this case is not solely insurance related. Assigning all of a corporate credit union's powers, Title I functions, to the insurance-related category is contrary to the FCUA.

Changes to the Current Calculation

NCUA presents substantial amounts of data and assumptions in support of the OTR methodology. Using its current standards for what functions or regulations are insurance related or non-insurance related, NCUA attempts to justify the OTR through calculations of hours spent on the various supervisory functions. Analysis of time devoted to certain functions can be a rational manner to assess costs or expenses related to the activity. However, as we articulated above, establishing OTR is first a legal determination. Hours spent by NCUA staff are irrelevant unless the legal analysis of what activities appropriately fall within the OTR is correct. If NCUA will continue to set the OTR based on staff time, that time must be consistent with remapping the regulations consistent with our commentary here.

SSA Imputed Value

The OTR methodology includes the "SSA Imputed Value" a sum intended to reflect the value of examinations by state supervisory authorities to the NCUSIF. We agree that the OTR methodology should account for the work done by state regulators. The manner in which NCUA handles the SSA Imputed Value requires adjustment.

The purpose of the OTR methodology is to determine what part of NCUA's budget is spent on administering Title II of the FCUA. In part, NCUA calculates the costs of administering Title II through the examiner time survey, mapping of its regulations, and dividing the percentage of insured shares in FCUs and FISCUs. One necessary adjustment is the NCUA's adding back of the SSA Imputed Value into its budgeted expenses. NCUA explains that it determines the cost of providing NCUSIF insurance to the federally insured credit union system. See 81 Fed. Reg. 4818. But its adjustment of the SSA Imputed Value undercuts the benefit of the time and money that state regulators save the NCUA. The methodology could be greatly simplified by calculations, already at NCUA's disposal, that demonstrate savings derived by the work of state regulators resulting in a specific sum of money for administration of the NCUSIF.

We disagree with NCUA's allocation of share insurance costs between the state and federal system based on the percentage of insured shares. Pennsylvania has sixty (60) state-chartered credit unions compared to three hundred forty (340) federal credit unions. Pennsylvania's state-chartered credit unions make up fifteen percent (15%) of the total credit unions in the Commonwealth. Reliance on percentages of insured shares inflates the size of the state system in Pennsylvania. Further, NCUA regulates individual credit unions, not insured shares. The supervision conducted by Pennsylvania's state regulator saves NCUA significant time and resources. Again, the more appropriate measure of those costs is the time devoted by personnel examining/supervising individual credit unions.

Alternative Approaches, More Equitable OTR

Developing a methodology that captures every cost or every hour of examination time is a demanding task. The more complicated calculations that are applied to the methodology create more uncertainty surrounding whether the OTR is equitable to the federal and state systems. NCUA might adopt a simple OTR of fifty percent (50%) of its annual operating budget. This approach would be consistent with our comments about separating chartering and compliance activities from NCUA's Title II responsibilities. A 50% OTR is readily understandable by all concerned parties.

Conclusions

Establishing the OTR is an exercise of the NCUA Board's discretion. However, an exercise of that discretion is limited by the FCUA and an appropriate legal determination of what NCUA functions are chartering and compliance related and what functions are truly share-insurance related. The language of the FCUA is clear in that regard and NCUA can readily separate its functions as a primary regulatory (chartering and compliance) and its responsibilities as insurer (Title II). The OTR methodology and allocation of costs should be calculated in accordance with such legal determinations. Examination and personnel time should be reapportioned consistent with the segregation of Title I and Title II responsibilities as outlined in these comments.

The SSA Imputed Value is valuable and should be factored into the OTR. It should be adjusted, however, based on a time and materials value resulting in a specific sum of money that NCUA saves as a result of supervisory activities conducted by state regulators. Accordingly, apportioning these costs based on percentages of insured shares held by FCUs versus FISCUs overstates the extent of the size and scope of the state system, resulting in an OTR rate that prejudices state-chartered credit unions.

After additional review of NCUA's responsibilities pursuant to Title I and Title II of the FCUA, adopting a simple 50% OTR may result in a much more equitable use of the NCUSIF's resources for all concerned parties.

Sincerely,

PENNSYLVANIA CREDIT UNION ASSOCIATION



Richard T. Wargo, Jr., Esq.
Executive Vice President/General Counsel

RTW:llb

cc: P. Conway
Association Board
Regulatory Review Committee
State Credit Union Advisory Committee