



Robert J. Entringer
Commissioner

Aaron K. Webb
Assistant Commissioner

I. Lise Kruse
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000
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April 1, 2016

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

Dear Board:

Thank you for this opportunity to comment on the Overhead Transfer Rate (OTR) and Federal Credit Union (FCU) Operating Fee Schedule Methodology. Since these are interrelated topics, this comment letter will serve as comment for both the OTR and the FCU Operating Fee Schedule Methodology. As the regulator of North Dakota State Chartered Credit Unions, the Department is concerned with what appears to be a systematic effort to consolidate authority over the safety and soundness of financial institutions. We recognize and respect your role as insurer of deposits and ask that you afford us that same level of respect as the chartering agency for North Dakota credit unions as well as our legally mandated role to regulate and ensure the safety and soundness of the institutions we charter. We also encourage you to respect a credit union's choice to be state or federally chartered, and not indirectly subsidize the federal charter through the OTR at the expense of all credit unions, including state chartered credit unions.

Weaknesses within the Methodology

The OTR request for comment outlines the efforts NCUA has employed to support the mechanics of the methodology. Statistics and third party audits of these mechanics have been utilized to try and support this model. Unfortunately, the assumption that all safety and soundness related rules and activities are solely insurance related is not well supported and intrinsically flawed. The result of this flawed assumption is a methodology with results that defy reason and distort the true cost to examine a federal credit union.

It appears, through the mapping of procedures and regulations, virtually all safety and soundness related examination costs are assumed to be an insurance related cost. No consideration is afforded to these costs as also a chartering related expense, and no attempt is made to allocate these costs between both the insurance and chartering function. This is a critical flaw within the assumption of the methodology.

The assumption that all safety and soundness related costs are only a cost of insurance is inconsistent with the congressional intent, the application used by states and other federal regulators, and even the application outlined within the historic context of your own regulations. Congress has long made clear safety and soundness was also a responsibility of the chartering authority, including the requirements within the Credit Union Membership Access Act (CUMAA) which requires NCUA to consult with the State Supervisory Authority (SSA) regarding prompt corrective action and member business lending (both safety and soundness provisions). Within North Dakota statutes and rules, safety and soundness concerns are thoroughly addressed. These rules include, in part, member business loans, prompt corrective action, audits, and a general safety and soundness provision. These rules are actively enforced, and most findings, exceptions, and enforcement actions issued by the Department, as a function of our role as the chartering regulator, relate to safety and soundness concerns.

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Safety and soundness is clearly an obligation of the chartering entity and the Office of the Comptroller of the Currency (OCC) is a good example of a Federal Agency with only chartering authority. This agency has a very active safety and soundness examination program, and defines safety and soundness within its mission as noted in footnote 10 of your OTR Request for Comment. Much of their expenditures are used for safety and soundness; these same expenditures have been classified as solely insurance related costs by NCUA. If these costs were only insurance related, the OCC would not incur these expenses since FDIC has the role of insurer. NCUA has actually used OCC safety and soundness material in reference in NCUA guidance and rule, including reference to the OCC's Credit Risk Handbook. If safety and soundness were not a role of the chartering entity, why would the OCC include safety and soundness in its mission statement, and publish the safety and soundness material referenced by the NCUA?

Within your OTR Request for Comment, the reasoning appears at times to conflict with itself. On one hand, recognizing other chartering authorities such as the OCC which has clearly defined safety and soundness as part of their mission, then later within your Request for Comment, the OTR methodology assigns all safety and soundness costs solely to the insurance function.

It is noted that NCUA relies upon the work of State Supervisory Authorities (SSA) where possible to meet its obligation to monitor for safety and soundness as envisioned by congress and noted in footnote 12 of the Request for Comment. This is again an area where the Request for Comment appears to conflict with itself. As noted above, the mapping of expenses indicates that no safety and soundness related costs are allocated to the chartering function. If safety and soundness were solely an insurance activity, there would not be any safety and soundness related work product from the SSA to rely upon. The publication appears to conflict with itself noting your reliance upon SSA safety and soundness work as the chartering entity, then by assigning all safety and soundness costs for federal credit union examinations as insurance related. If safety and soundness work product exists from the SSA, then examination safety and soundness work product and expenses must also exist as part of the chartering function of federal credit unions.

The assumption within the OTR methodology that certain safety and soundness examination expenses pertain only to the insurance function conflicts with the framework of other NCUA regulations. The business loan rule, NCUA Part 723, is possibly the best example of this; the restrictions within this rule relate mostly to safety and soundness concerns. The rule has a long history of allowing for state specific regulations to replace the NCUA rule. If business loans were solely a function of insurance safety and soundness related concerns, and did not have chartering safety and soundness implications, why would past and current rules allow states to adopt their own business loan regulations? The business loan rule in particular appears to recognize that both the chartering and insurance function bear responsibility for the safety and soundness risk. Costs associated with the examination of this risk need to be allocated equally to the insurance and chartering costs associated with federal credit union examinations.

There is irony in the OTR methodology's attempts to clearly map out certain regulations as cleanly and clearly insurance function versus chartering function, without entertaining the notion certain regulations function under both. NCUA's regulations themselves are not even designed to cleanly or clearly map out the applicability between insurance and chartering regulations, much less address the question of safety and soundness as an insurance or a chartering function. NCUA, despite many requests over many years to separate the two sets of rules into distinct sections, continues to blend insurance related rules with chartering related rules. The end result continues to be confusion for the industry, consumers, and even state and federal examiners as to which rules apply to which credit unions. It is in this tangled web of regulations that OTR Examiner Time Surveys have been employed. It is highly unlikely under the current