CREDIT UNION DEPARTMENT

Harold E. Feeney
Commissioner

Robert W. Etheridge
Deputy Commissioner

April 13, 2016

Sent electronically to: boardcomments@ncua.gov

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

Dear Mr. Poliquin:

This letter is in response to the request for comment issued by the National Credit Union Administration (NCUA) with respect to the methodology used to determine the Overhead Transfer Rate (OTR). More specifically, NCUA is seeking input on the allocation formula that is used to determine which expenses are properly characterized as insurance related and charged to the National Credit Union Share Insurance Fund (NCUSIF) rather than collected through annual Operating Fees levied on federal credit unions.

The Department and the NCUA have long enjoyed a mutually respectful relationship driven by the realization that the Department and the NCUA are equally autonomous government agencies which, from their own vantage points, are best able to interpret statutes that their respective legislative bodies have instructed them to administer as well as determine the appropriate overall level of budget expenditures for their respective agency.

It is that sensitivity which has led the Department to be very selective about the comments it is filing with the NCUA in response to this published request; however, the Department believes that a strong argument can be made that the funds in the NCUSIF are not being managed in an equitable manner consistent with the spirit and intent of the Federal Credit Union Act (FCUA).

Following our review of the published OTR methodologies and processes, it would appear that NCUA purports to have virtually no safety and soundness responsibilities for the federal credit unions it charters. The asserted notion that all safety and soundness related costs are only insurance-related costs is not supported by a plain reading of the FCUA and is inherently implausible. Additionally, such an interpretation artificially inflates the costs to the NCUSIF.

In 1970 when Congress approved and the President signed Public Law 91-206 (12 U.S.C. §§ 1781 – 1790) creating the NCUA as an independent agency, it was abundantly clear that the agency was charged with chartering, supervising, and examining federal credit unions. Although Congress did not specifically prescribe a mission for the NCUA, embedded within the provisions of the Legislation creating the agency was an obligation on the part of NCUA to ensure that federal credit unions operate in a safe and sound manner and comply with applicable laws. Another important aspect of this Legislation was that the establishment of the new independent agency would not cost the taxpayers a single penny nor result in any appropriations by Congress, since all of the operating cost of the agency would be borne by fees and assessments paid by federal credit unions.

Later, in 1970 Public Law 91-460 was also enacted, which created the NCUSIF and imposed an additional responsibility on NCUA to manage a program of deposit insurance for member accounts in federal credit unions and state-chartered credit unions which applied and qualified for insurance. The primary purpose of the new Fund was to insure the deposit of credit union members at insured credit unions, protect those depositors of insured credit unions and ultimately handle the resolution of any insured credit union that fails. No provisions in the Legislation implied or could be construed to supplant or transfer NCUA's responsibilities for the safety and soundness of federal credit unions to the NCUSIF. In fact, Congress created a new organizational component within the FCUA to more clearly differentiate the duties and responsibilities of the NCUA in its dual roles as the regulator and supervisor of federal credit unions and as administrator of the NCUSIF. Congress has also made clear that safety and soundness is also a responsibility of the chartering authority, including state chartering authorities. Thus, all safety and sound costs related to federal credit union examinations cannot be insurance related.

Although the FCUA specifically distinguishes the two separate roles being performed by NCUA, Congress seems to have envisioned a combined structure within NCUA to provide cost saving efficiencies. Contrary to the current OTR methodologies and processes, however, those efficiencies were designed to be accruing to the benefit of the NCUSIF and not NCUA as the regulator and supervisor of federal credit unions. In a deliberate act by Congress to preserve the resources of the NCUSIF, Congress not only directed NCUA to structure its regulatory examinations so they may be used by the NCUSIF (12 U.S.C. §1783), it also instructed the NCUSIF to rely on state regulatory examinations to the maximum extent feasible (12 U.S.C. §1782). A plain reading of the provisions of the FCUA seems to denote an intent for NCUSIF to be a supplement, not the primary source of funding for the NCUA budget.

As a result, it is the contention of this Department that the OTR methodologies are incompatible with the spirit and intent of the FCUA and result in the inequitable treatment of federally insured state chartered credit unions. We encourage NCUA to carefully consider modifying the methodology to ensure it does not inadvertently discriminate in any manner against state chartered credit unions by indirectly subsidizing federal credit unions.

Thank you for the opportunity to comment. If you have any questions about this letter please contact us.

Sincerely,

Harold E. Feeney
Commissioner

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