Credit Union National Association
CUNA

WASHINGTON, D.C.

99 M Street SE
Suite 300
Washington, D.C. 20003-3799

Phone: 202-638-5777
Fax: 202-638-7734

October 23, 2020

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

Re: Fees Paid by Federal Credit Unions; RIN 3133–AF24

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing in response to the National Credit Union Administration's (NCUA) proposed rulemaking on Fees Paid by Federal Credit Unions (FCU). The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

Proposed Rulemaking

Determination of Assets to Calculate Operating Fees

To cover expenses related to NCUA's tasks, the agency adopts an annual budget in the fall of each year. The FCU Act provides two primary sources to fund the budget:

1) Requisitions from the National Credit Union Share Insurance Fund (NCUSIF); and
2) Operating fees charged against FCUs.[1]

The NCUA uses an allocation formula, the Overhead Transfer Rate (OTR), to determine the amount of the budget that it will requisition from the NCUSIF. Remaining amounts needed to fund the annual budget are charged to FCUs in the form of operating fees.

Section 701.6(a) of NCUA's regulations provides that FCUs must pay NCUA an annual operating fee based on the credit union's total assets.[2] The NCUA calculates an FCU's operating fee by multiplying the dollar amount of its total assets by a percentage set by the NCUA based on asset tiers after considering the expenses of the NCUA and the ability of FCUs to pay the fee. The term "total assets" for purposes of the operating fee includes

[1] 12 U.S.C. § 1755(a).
[2] 12 C.F.R. § 701.6(a).

all assets, with certain exclusions, reported on an FCU's Call Report as of December 31 of the previous fiscal year.

Operating fee payments are due from FCUs in April each year, and the NCUA prepares invoices using reported assets from the prior year's December Call Report. In order to provide clarity to FCUs about their operating fee charges for the upcoming year, the NCUA typically approves the budget and sets the associated operating fee rates in November of the year before the operating fee is billed. Because the budget and operating fee rates are approved before December Call Report data is available, the NCUA Chief Financial Officer uses projected FCU asset growth to set the operating fee rates. Therefore, if actual total assets reported in December Call Reports are below the projected asset growth used for setting the operating fee rates, NCUA will collect less in operating fee revenue than it requires to fund the budget. Conversely, if total assets reported in December Call Reports are greater than projected growth, NCUA may collect more than is required.

The proposal would amend § 701.6(a) to use the average of FCUs' four most-recently reported quarterly assets to calculate operating fees and to make conforming amendments to the regulatory text to ensure this same approach is applied to merged and recently converted FCUs. The NCUA is proposing to use an average of total assets because it believes that doing so will reduce the effect of seasonal fluctuation in the total assets of FCUs, and will provide more certainty to FCUs about their operating fee charges for the forthcoming year.

In particular, the proposal would amend § 701.6(a) to provide that the operating fee shall be based on the average of total assets of each FCU based on data reported in the preceding four Call Reports. Specifically, when determining the operating fee rate and the invoice amounts due, the NCUA will use the average of FCUs' four most-recent Call Reports available at the time the agency approves the budget for the forthcoming year.

We support the proposed change to a four-quarter average of reported assets in calculating the operating fee. We agree with the agency that this change will address seasonality and provide greater certainty of upcoming operating fees. Further, this change would reduce the risk that the NCUA will collect less in operating fee revenue than it requires if actual assets reported in FCUs' December Call Reports are below the asset growth assumption used to set the operating fee rates in the budget.

While we support the proposed change to a four-quarter average, we ask the NCUA to regularly review this change and its impact to ensure it does not cause any unintended consequences, such as a significant and/or inaccurate change in the annual operating fee.

Exclusion of PPP Loans from Total Assets

Currently, an FCU must report the value of all of its loans under the Small Business Administration's Paycheck Protection Program (PPP) in its Call Reports, whether the FCU originated the loans, purchased them in the secondary market, or has pledged them to the Federal Reserve Board's (FRB) Liquidity Facility. The value of PPP loans reported in Call Reports could therefore increase the total asset amounts NCUA uses to compute the annual operating fees due. The agency is concerned that without a change to NCUA's current operating fee regulation, an FCU's PPP loans may subject the FCU to a higher operating fee, and this may impose a burden for participation in this program, or a disincentive to participate now that the program has been extended. As the PPP serves an important public purpose, the NCUA believes PPP loans warrant exclusion from total assets when determining operating fees to avoid these harms.

The NCUA finds that an increase in an FCU's assets based on PPP loans—regardless of whether they are pledged to the PPP Liquidity Facility—poses no undue risk to the credit union's capital strength. Additionally, given the short-term and low-fee nature of PPP loans, FCUs that report increased total assets as a result of them are unlikely to have a corresponding increase in their ability to pay a higher assessment. Furthermore, excluding PPP loans from operating fee assessments makes the program more affordable to the participants and avoids imposing a burden based on participation in a program designed to provide an important public benefit. Accordingly, based on this statutory analysis and application, this proposed rule has a broader scope of exclusion than the NCUA's April 27, 2020, interim final rule on PPP loans.[3]

The proposed rule would amend § 701.6(a) by excluding PPP loans from the FCU's total assets for purposes of calculating its operating fee. In particular, the proposal would amend § 701.6(a) to provide that the operating fee shall be based on the total assets of each FCU, less loans made under the SBA's PPP.

We support the proposed exclusion of PPP loans from an FCU's total assets for purposes of calculating its operating fee. This change should help ensure that FCUs interested in making PPP loans do not bear greater financial burdens for doing so. We agree with excluding PPP loans from the calculation of total assets even if the PPP loans are not pledged to the FRB's PPP Liquidity Facility because PPP loans pose no undue risk to the FCU's capital strength. Further, as noted by the NCUA, excluding all reported PPP loans when determining total assets also ensures FCUs that do not pledge their PPP loans to the FRB are treated consistently with those FCUs that do. Absent such consistent treatment, FCUs that do not pledge their PPP loans to the FRB would bear a larger relative cost burden of the operating fee compared to those FCUs that do pledge their PPP loans.

In addition to excluding PPP loans from an FCU's total assets for purposes of calculating its operating fee, due to the possibility of additional economic stimulus through similar programs, the proposal would incorporate a general statement in the regulation that contemplates the NCUA's exclusion of loans made under programs similar to the PPP from total assets when calculating operating fees. We support this proposed provision, as we agree it would provide the NCUA with flexibility to consider excluding assets related

[3] The interim final rule amended the NCUA's capital adequacy regulation to provide that covered PPP loans receive a zero percent risk weight. The interim final rule also provided that if the covered loan is pledged as collateral for a nonrecourse loan that is provided as part of the FRB's PPP Lending Facility, the covered loan can be excluded from a credit union's calculation of total assets for the purposes of calculating its net worth ratio. 85 Fed. Reg. 23,212 (Apr. 27, 2020).

to future programs that may develop on short notice, particularly in cases where including such assets may create a disincentive for FCUs to participate.

Conclusion

On behalf of America's credit unions and their 120 million members, thank you for considering our comments regarding the proposed rulemaking on Fees Paid by FCUs. If you have questions about our comments, please do not hesitate to contact me.

Sincerely,

Luke Martone
Senior Director of Advocacy & Counsel