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October 30, 2020

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

Re: Overhead Transfer Rate Methodology and Operating Fee Schedule Methodology

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing in response to the National Credit Union Administration's (NCUA) request for comment on the Overhead Transfer Rate (OTR) Methodology and Operating Fee Schedule Methodology. The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members.

CUNA thanks the NCUA for reviewing the OTR and making the process simpler and more transparent. We have long advocated for full transparency and open communication regarding the OTR with the credit union community. We recognize that the agency is not required to adhere to the notice and comment requirement of the Administrative Procedure Act when contemplating and ultimately adopting changes to the operating fee and OTR methodologies.

It is not our intent, nor should it be that of the NCUA, to benefit a federal credit union (FCU) over a federally insured state-chartered credit union (FISCU) or a FISCU over a FCU.¹ As you know, CUNA is the largest credit union trade association, representing the bulk of both federal and state-chartered credit unions. Our goal is to ensure a fair distribution of the charges for the supervision of credit unions—consistent with the FCU Act—for all credit unions regardless of charter type.²

CUNA has consistently opposed any overhead transfer of agency expenses to the National Credit Union Share Insurance Fund (NCUSIF) that is not for legitimate, substantiated "insurance-related" costs, consistent with fairness to state and federal credit unions and

¹ 12 U.S.C. § 1790 states: "It is not the purpose of this subchapter to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this subchapter to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this subchapter."

² 12 U.S.C. § 1751.

the FCU Act.³ We believe the proposed changes represent an approach that will maintain fair and consistent assessments.

Request for Comment on the Operating Fee Methodology

Treatment of Capital Budget

In recent years, the NCUA Office of the Chief Financial Officer has worked to improve the agency's financial management processes and modified its practices to align with contemporary federal financial management standards. These changes are intended to allow the agency to manage its cash flow more effectively and record appropriately on its books the contractual commitments it makes, particularly for complex and multi-year capital projects.

As a result of these modifications, the NCUA clarified in the 2018 budget how non-cash transactions, such as the estimated value of employees' earned but unused annual leave and projected depreciation expenses for capital assets, would be treated from a budgetary perspective. Specifically, such amounts would no longer be included in annual budgets presented to the NCUA as they result in no expenditure tied to the recognition of an expense under U.S. generally accepted accounting principles (GAAP). Since that time, the calculation for the operating fee has also excluded such items when determining the allocation of the annual budget between the share paid through the OTR and the share paid through the operating fee.

Currently, the NCUA initially funds its planned capital projects budget entirely through operating fees assessed on FCUs. Under the existing methodology, the NCUSIF reimburses the operating fund for capital projects at the OTR and over several years according to depreciation schedules, which are non-cash transactions.

The proposal would clarify that for the purpose of calculating the operating fee, the budget for capital projects would be included within the total annual budget subject to the OTR. According to the agency, this approach would ensure that the cost of new capital acquisitions is borne equitably between FCUs and FISCUs *at the time such acquisitions are made* and is consistent with the 2018 change that excluded other non-cash expenses from the budget. Including capital project budgets in the total annual amount subject to the OTR at the point of acquisition effectively accelerates OTR reimbursements for capital project spending to the point at which such expenditures occur.

We agree with the NCUA that this change would also increase consistency with the current OTR methodology, which generally requires that a proportionate share of expenses not exclusively related to the regulation of FCUs be borne in part by the NCUSIF. The approach taken in the proposal appears reasonable, as it seems to be a more equitable and consistent methodology.

³ See 12 U.S.C. § 1783(a).

Treatment of Miscellaneous Revenues

Miscellaneous revenues include revenues from the production and sale of NCUA reports and publications, rent collected from other federal agencies that share NCUA facilities, and parking fee revenues. The NCUA's miscellaneous revenues vary from year to year but are typically around \$1,000,000. Currently, miscellaneous revenues collected by the NCUA reduce operating fees charged to FCUs.

The NCUA proposes to clarify that for the purpose of calculating the operating fee, projected miscellaneous revenues will be included within the total annual budget subject to the OTR.

We agree that this approach is consistent with the proposed change to the treatment of capital project budgets. Further, we agree that this better reflects the equitable distribution of the agency's net expenses between FCUs and FISCUs.

Annual Inflationary Updates to Operating Fee Schedule Asset Tier Thresholds

The NCUA has separately proposed amending its rule at 12 CFR 701.6 for determining total assets used as the basis for calculating the operating fee due from any FCU.⁴ Under the proposed rule, total assets would be calculated as the average of total assets reported on an FCU's previous four Call Reports.

The NCUA proposes changing its approach for adjusting the rate tier thresholds. Specifically, for purposes of determining the annual adjustment to the rate tier thresholds, the NCUA proposes comparing the average of total system assets reported in Call Reports for the four quarters available at the time it approves the budget to the average of total system assets in Call Reports for the four quarters of the respective previous years. In this way, the tier thresholds shown on the operating fee schedule would be increased each year based on the same reporting data that will be used for computing individual FCU invoice amounts.

We support this proposed change, as it would maintain consistency between the total assets used for billing the operating fee to an individual FCU and the asset thresholds used for determining the rate tier into which each FCU falls. In addition, in response to the separate notice of proposed rulemaking, CUNA filed a letter in support of the proposed change to a four-quarter average of reported assets in calculating the operating fee, as we believe doing so will address seasonality and provide greater certainty of upcoming operating fees.⁵

⁴ 85 Fed. Reg. 53,708 (Aug. 31, 2020).

⁵ CUNA Comment Letter to NCUA re Fees Paid by FCUs (Oct. 23, 2020), *available at* www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls,_Letters_and_Testimonies/2020/Comment_Letters/CL%20-%20NCUA%20-%20NPR%20-%20Fees%20Paid%20by%20FCUs_final.pdf.

Operating Fee Asset Threshold

Currently, the NCUA does not assess an operating fee to FCUs with assets less than \$1 million. This level was most recently adjusted in 2012 for the 2013 assessment. In the past, the NCUA has accounted for the ability of small FCUs to pay the fees by exempting those under this threshold from paying any fee.

We believe the current threshold of less than \$1 million—which has not been adjusted for inflation and is not in line with system-wide growth—is insufficient. While the amount of the operating fee collected by credit unions between \$1 million and \$10 million is relatively small in the aggregate, it accounts for real dollars that are diverted from serving the members of the nation’s smallest FCUs—a great many of which serve financially fragile consumers on the lowest rungs of the economic ladder.

Thus, we encourage the NCUA to consider increasing the threshold from less than \$1 million to less than \$10 million. As the agency noted, the FCU Act establishes that FCUs with less than \$10,000,000 in assets do not have to apply GAAP,⁶ and this is also the level below which a credit union could still be considered “new” under the FCU Act’s prompt corrective action provisions.⁷

Diversity Self-Assessment

The NCUA provides credit unions an annual voluntary diversity self-assessment.⁸ The assessment is designed to help credit unions assess existing diversity and inclusion policies and practices, and identify opportunities to implement best practices in diversity and inclusion.

We appreciate the agency’s efforts to encourage participation in the assessment, including through a possible discount to the operating fee for FCUs. We believe such an approach may yield greater results in terms of credit union participation in the assessment. However, if the NCUA pursues a discount, in keeping with the theme of equality and fairness, it is imperative that a corresponding discount be available for FISCUs that participate in the assessment. We leave it to the agency to determine the logistics of such a discount, but working directly with the state supervisory authorities would seem to be a logical approach.

It is important that the assessment remains voluntary for credit unions. While credit unions’ diversity and inclusion are of critical importance, the reality is that staff and other resource constraints make it difficult for smaller credit unions to complete tasks outside of those necessary to maintain operations. Additionally, since the NCUA’s assessment is the same as the assessment for the largest banks, the agency should consider creating a streamlined version of the assessment that is more appropriate for credit unions, particularly those with less complex operations and/or limited staff. Further, while the

⁶ 12 U.S.C. § 1782(a)(6)(C)(iii).

⁷ 12 U.S.C. § 1790d(o)(4)(B).

⁸ NCUA Annual Voluntary Credit Union Diversity Self-Assessment, *available at* <https://cudiversity.ncua.gov>.

agency has stated it will not publicly identify the results of a particular credit union, since there may be a concern of retaliation if a credit union fails to achieve a certain benchmark, the agency should consider methods to de-identify the credit union upon submission of an assessment.

In addition to a possible discount, the NCUA may consider public recognition of those credit unions that participate in the assessment. CUNA is willing and able to assist the NCUA in communicating to credit unions the importance of providing sufficient data to assess the diversity and inclusion policies and practices of the industry.

Conclusion

On behalf of America's credit unions and their 120 million members, thank you for considering our comments regarding the OTR and operating fee methodologies. If you have questions about our comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive style with a large initial "L" and "M".

Luke Martone
Senior Director of Advocacy & Counsel