America's Credit Unions

February 20, 2024

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Request for Comment Regarding Overhead Transfer Rate Methodology (Docket ID NCUA–2023–0142)

Dear Ms. Conyers-Ausbrooks:

On behalf of America's Credit Unions, we are writing in response to the National Credit Union Administration's (NCUA) request for comment (RFC) regarding the overhead transfer rate (OTR) methodology.[1] America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide.

We recognize that the agency is not required to adhere to the notice and comment requirement of the Administrative Procedure Act[2] when contemplating and ultimately adopting changes to the operating fee and OTR methodologies. We very much appreciate the NCUA issuing this RFC on the OTR, which includes additional detail regarding the methodology intended to make the process more transparent. America's Credit Unions advocates for full transparency and open communication regarding both the operating fee schedule methodology and the OTR methodology with the credit union industry.

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 vice-versa. Given that America's Credit Unions represents 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.

The NCUA is requesting comments on the methodology used to determine the OTR, which is applied to the agency's operating budget, to determine the portion of the budget that is funded from the National Credit Union Share Insurance Fund (SIF). We appreciate the opportunity to weigh in on the OTR given its significance to federal and state-chartered credit unions insured by the SIF. While the additional language included in this notice and RFC do not constitute changes in the actual OTR methodology, we offer below suggestions for the agency to further enhance transparency as it relates to funding the NCUA's operating budget.

[1] 88 Fed. Reg. 88,131 (Dec. 20, 2023).
[2] 5 U.S.C. §§ 551–559.

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NCUA Should Ensure Accuracy of OTR Categories

The FCU Act authorizes the NCUA to expend funds from the SIF for administrative and other expenses related to federal share insurance.[3] An overhead transfer from the SIF covers the expenses associated with insurance-related functions of NCUA's operations. We have consistently opposed any overhead transfer of agency expenses from the SIF that are not for legitimate, substantiated insurance-related costs, consistent with fairness to state and federal credit unions and the FCU Act.

In 2017, the NCUA adopted the current OTR methodology,[4] which assigns a percentage share of work to insurance costs in the following four categories of activities:

1) <u>50% insurance-related:</u> Time spent examining and supervising FCUs.
2) <u>100% insurance-related:</u> Time and costs the NCUA spends supervising or evaluating the risks posed by FISCUs or other entities the NCUA does not charter or regulate (*e.g.*, third-party vendors (TPV) and credit union service organizations (CUSO)).
3) <u>0% insurance-related:</u> Time and costs related to the NCUA's role granting federal charters and as enforcer of consumer protection and other non-insurance-based laws governing the operation of credit unions.
4) <u>100% insurance-related:</u> Time and costs related to the NCUA's role in administering federal share insurance and the SIF.

The RFC includes additional information intended to help credit unions better understand the four categories used in the OTR calculation and to provide added transparency. The RFC provides greater detail on what each of these categories include, as well as the agency's rationale for determining the percentage that is insurance related for each category. We appreciate the effort by the agency to address a complex area to provide needed clarity. We agree with the additional clarity provided for categories three and four, which spell out why the agency has decided to assign a zero and 100 percent allocation, respectively. However, we offer the following suggestions related to categories one and two.

Category 1 - Examination and supervision of FCUs (50% allocation): Overall, we agree with the 50 percent allocation for this category, as it relates to time spent examining and supervising FCUs. Prior to this RFC, the NCUA included additional detail regarding category one in a single footnote.[5] The footnote, while intended to provide clarity, has instead been a source of confusion.

Specifically, the footnote draws a comparison between (1) the agency's insurance function and prudential regulatory function for FCUs and (2) the alternating examinations the Federal

[3] 12 U.S.C. § 1783.
[4] 82 Fed. Reg. 29,935 (June 30, 2017).
[5] OTR Summary provided by the Office of Examination and Insurance to the NCUA Board (Dec. 14, 2023), https://ncua.gov/files/publications/budget/overhead-transfer-rate-summary-2024.pdf.

Deposit Insurance Corporation (FDIC) and state regulators conduct for insured state-chartered banks.[6] Such language is confusing and clearly not the intent of the agency. To address this, the RFC clarifies that the statement's intent was to reflect the NCUA's dual role on each examination (that of regulator and that of insurer), not to imply that the NCUA alternates examinations with the state regulatory agencies like the FDIC. Further, the RFC provides that, for example, the NCUA evaluates the safety and soundness impact of FCU-operational decisions along with the FCUs' operating condition, assessing the impact of these decisions to the FCU individually as well as to the SIF.[7]

This is a straightforward clarification to the language included in the footnote to category one. As such, we believe it would be appropriate—and most beneficial—to include the clarification along with the OTR summary as provided annually by the NCUA Office of Examination and Insurance.

Category 2 - Supervision and evaluation of risks from FISCUs and third-party vendors/credit union service organizations (100% allocation): We question the 100 percent allocation for this category related to the time and costs the NCUA spends supervising and evaluating the risks posed by FISCUs or other entities the NCUA does not charter or regulate, such as TPVs and CUSOs.

Given the NCUA is the insurer of FISCUs, we believe 100 percent allocation of time and resources spent supervising FISCUs related to insurance activities is appropriate. However, the appropriateness of including TPVs and CUSOs in this category—which, as noted, has a 100 percent allocation—is less clear. The challenge is that this category includes FISCUs and TPVs/CUSOs. The NCUA's insurance related activities as applied to FISCUs should be 100 percent, as such is the purpose behind the OTR. This allocation relates to "insurance related activities," which, by definition, generally excludes time spent by the NCUA outside of the safety and soundness context.

It is clear that TPVs and CUSOs present a degree of risk to the SIF. As such, it is appropriate that the OTR reflect the percentage time and resources the NCUA devotes toward TPVs and CUSOs. However, it is necessary that this be limited in scope to the NCUA's involvement in "insurance

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[6] The footnote as it appears in the OTR Summary states that: "The 50 percent allocation mathematically emulates an examination and supervision program design where NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within NCUA. It reflects an equal sharing of supervisory responsibilities between NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator."

[7] *Supra* note 1 at 88,132.

related activities." As America's Credit Unions and others[8] have noted in the past, allocating the NCUA's work related to stand-alone review of TPVs and CUSOs as solely related to the SIF is inconsistent with the principles of the OTR methodology. The NCUA does not, and in our view, should not, have unlimited statutory supervisory authority over CUSOs and other TPVs. The NCUA has regulatory and supervisory concerns with TPVs and CUSOs that are "not primarily safety and soundness issues and of de minimis concern" to the SIF.[9]

Therefore, we ask the NCUA to consider whether including TPVs and CUSOs together with FISCUs for purposes of determining the OTR methodology is appropriate. Alternatively, if the NCUA believes it is necessary to categorize TPVs and CUSOs together with FISCUs, we ask the agency to consider whether a 100 percent allocation for the category is appropriate.

Review and Solicitation of Feedback on the OTR Methodology

We urge the agency to utilize all appropriate avenues in soliciting input on the OTR methodology (and operating fee schedule methodology). Given its importance, credit unions must continue to have the opportunity to provide comments on the OTR generally as well as specific to the methodology as it is used to determine the amount transferred from the SIF for purposes of funding the agency's budget. As such, the NCUA should continue to publish a dedicated notice requesting comment on the OTR methodology every three years, as was determined by the NCUA Board in 2017. This provides the industry the best opportunity to provide focused feedback specific to the methodology itself.

In addition, we believe it is appropriate for the agency to include as part of the NCUA's Office of General Counsel's rolling one-third regulatory review process the opportunity for input on the OTR more generally. Lastly, and potentially most importantly, it is critical that the NCUA explicitly solicit input on the OTR methodology in conjunction with the agency's annual budget review process. The OTR is necessary to fund the NCUA's operating budget. Thus, it is vital that the Board review the OTR methodology contemporaneously with its review of the agency's proposed budget each year.

Regardless of the schedule and manner in which the NCUA solicits feedback, it is crucial that the agency seek public comment through the *Federal Register* whenever the Board contemplates even seemingly minor changes to the OTR methodology.

Conclusion

America's Credit Unions appreciates the opportunity to comment on the RFC regarding the OTR methodology. We continue to advocate for enhanced transparency and clarity on issues of

[8] *See* Prepared Remarks of National Association of State Credit Union Supervisors President & CEO Lucy Ito re 2021 Budget Briefing of the NCUA Board (Dec. 2, 2020), https://downloads.regulations.gov/NCUA-2020-0116-0009/content.pdf.
[9] *Id.* at 5.

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significant importance to credit unions. The additional information pertaining to the OTR methodology is helpful. Should you have any questions or require any additional information, please contact Luke Martone, Senior Director of Advocacy & Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,

Luke Martone
Senior Director of Advocacy & Counsel

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