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September 5, 2023

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

Re: Request for Comments Regarding National Credit Union Administration Operating Fee Schedule Methodology; Docket Number NCUA-2023-0072

Dear Ms. Conyers-Ausbrooks:

On behalf of America's credit unions, we are writing to the National Credit Union Administration (NCUA) on its request for comments (RFC) regarding the Operating Fee Schedule Methodology. The Credit Union National Association (CUNA) represents America's credit unions and their more than 135 million members.

The NCUA is seeking input on changes to the methodology it uses to determine how it apportions operating fees charged to federal credit unions (FCU).¹ The NCUA uses operating fees to fund part of the agency's annual budget. The NCUA is proposing to change the exemption threshold below which FCUs are not required to pay the operating fee and to establish a process to update the exemption threshold in future years based on the credit union system's annual asset growth.

We appreciate the NCUA's current review of the operating fee regulations, as well as recent changes intended to make the process—related to the operating fee schedule methodology and the overhead transfer rate (OTR)—more transparent. We have long advocated for full transparency and open communication regarding both the operating fee schedule methodology and 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 FCU over a federally insured state-chartered credit union (FISCU) or a FISCU over a FCU.² We represent the

¹ 88 Fed. Reg. 43,149 (July 6, 2023).

² 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."

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.³

Methodology for Determining the Aggregate Operating Fee Amount

The FCU Act provides two primary sources to fund the agency’s budget: (1) requisitions from the National Credit Union Share Insurance Fund (NCUSIF), referred to as the OTR; and (2) operating fees charged to FCUs.

The total annual budget is adjusted by the OTR share, interest income, and other adjustments. This results in the net budget subject to the operating fee and payable by both natural person and corporate FCUs. The natural person FCU operating fees are determined by deducting the corporate FCU operating fees from the total budget operating fee requirements.

Operating Fee Schedule & Methodology

The current fee schedule for natural person FCUs uses three asset tiers. A different assessment rate is applied to each tier, and the threshold for each tier is adjusted annually to reflect the growth of the credit union system. There are two steps used to determine adjustments to the operating fee schedule for the upcoming year: (1) updating the prior-year asset tier thresholds using the computed rate of FCU asset growth; and (2) updating the prior-year assessment rates for each asset tier by determining the average assessment rate adjustment.

Threshold for Exemption From Paying an Operating Fee

Currently, FCUs with average assets of \$1 million or less during the preceding four calendar quarters are exempt from paying an operating fee. This threshold has been in place since 2012. To account for the growth in the credit union system since then, the NCUA is proposing to increase the exemption threshold to \$2 million and to adjust the threshold annually in future years by the computed rate of asset growth in the credit union system. This inflationary adjustment would be included in the operating fee calculation presented in the annual draft NCUA budget. The NCUA would adjust the exemption threshold by the percentage by which average quarterly assets reported for the credit union system for the most-current four quarters have increased compared to the previous four quarters. We support the proposed change to adjust the threshold annually based on system growth. This is a sensible change that would streamline the process of updating the threshold and ultimately result in a more appropriate threshold (based on system assets).

We also support increasing the exemption threshold, as we agree with the agency that it should exempt the smallest natural person credit unions from paying the operating fee based on those institutions’ limited resources.

³ 12 U.S.C. § 1751.

A doubling of the threshold from \$1 million to \$2 million is a step in the right direction. However, we ask the agency to go even further by considering exempting FCUs up to \$5 million in assets from paying an operating fee. While the amount of the operating fee collected by FCUs between \$1 million (or \$2 million as proposed) and \$5 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 urge the NCUA to increase the threshold from \$1 million to \$5 million. The FCU Act establishes that FCUs with less than \$10 million in assets do not have to apply U.S. generally accepted accounting principles (GAAP); this is also the level below which a credit union could still be considered “new” under the FCU Act’s prompt corrective action provisions.⁴ However, we recognize that during the June Board meeting staff noted that the impact in terms of FCUs that would be exempted from an increase to \$2 million is more in line with the impact of the \$1 million exemption threshold when it was first implemented than would be a threshold of \$10 million. As such, we believe an exemption threshold of \$5 million is a reasonable increase that should provide a modest measure of relief to the smallest FCUs. Further, exempting FCUs up to \$5 million should not have a significant impact on the operating fees paid by FCUs in the aggregate.

With continuing, accelerating consolidation of smaller credit unions, it is even more important to pursue sensible adjustments to rules, regulations, and/or fees to stave off needless elimination of these critical providers of financial services. We believe \$5 million is an appropriate threshold in regard to paying the operating fee. Thus, we urge the NCUA to adopt a final rule as soon as practicable to implement such an increase to the exemption threshold.

Other Aspects of the Operating Fee Methodology

The current operating fee schedule is regressive; that is, credit unions with a larger amount of total assets pay a lower marginal rate on those assets above the threshold levels for the lower tiers. Given growth and consolidation in the credit union system, we appreciate the NCUA looking into whether such an approach is an equitable method for allocating the operating fee.

The RFC notes several alternative approaches to the operating fee structure. For example, the NCUA could adopt a single, flat-rate operating fee for all credit unions with total assets that exceed a standard exemption threshold. Overall, a flat-rate operating fee could shift fees away from relatively smaller credit unions to relatively larger ones, making the operating fee schedule less regressive. While this could result in a less regressive fee schedule, it is difficult to opine on the appropriateness of such an approach without details on the threshold and rates contemplated, as well as accompanying data.

⁴ 12 U.S. Code § 1790d(b)(2)(B)(iii)(II).

Another possible approach considered by the agency to achieve a less regressive fee schedule is to increase the rates for the second and third tiers on the schedule. Again, while this could likely have the intended effect of making the fee less regressive, without data on this possible change it is difficult, if not impossible, to accurately assess the likely impact.

Thus, we ask the agency to repropose this aspect of the RFC, including specific adjustments to the tiers and what those changes will mean in terms of fees paid by all FCUs. Whether moving to a flat-rate fee with an established exemption threshold (beyond \$2 million) or increasing the second and third tiers, it is important that the fee distribution be fair, while being mindful of certain credit unions' inability to cover such fees, namely those of smallest asset size. Again, for the health of the entire credit union system, it is critical that credit unions of all asset sizes have the ability to serve their members.

Regardless of any changes the agency may pursue, we believe the NCUA should commit to offsetting any increase in the operating fee paid by all FCUs or those within certain asset classes by a proportionate reduction in the agency's budget. Since the operating fee is used to fund the agency's budget, rather than simply shifting which size credit unions cover these costs the NCUA should reduce its expenses to reflect real savings to all credit unions. The NCUA should address these cost-savings in a subsequent RFC or notice of proposed rulemaking, as well as the agency's draft budget for 2024.

NCUA's Diversity Self-Assessment

The NCUA provides credit unions an annual voluntary diversity self-assessment.⁵ 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.⁶ We believe a possible discount to the operating fee for participating FCUs 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

⁵ NCUA Annual Voluntary Credit Union Diversity Self-Assessment, *available at* <https://cudiversity.ncua.gov>.

⁶ As addressed in a 2020 RFC, the NCUA contemplated a discount to the operating fee for participating FCUs. 85 Fed. Reg. 53,854 (Aug. 31, 2020).

streamlined version of the assessment that is more appropriate for credit unions, particularly those with less complex operations and/or limited staff.

Conclusion

On behalf of America's credit unions and their more than 135 million members, thank you for considering our comments regarding the operating fee schedule methodology. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743 or LMartone@cuna.coop.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive style with a long horizontal stroke at the end.

Luke Martone
Senior Director of Advocacy & Counsel