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7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

Overhead Transfer Rate Methodology and Operating Fee Schedule Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: In July 2020, the NCUA Board (Board) invited comment on the methodology used to determine the Overhead Transfer Rate (OTR). The Board also requested comment on proposed changes to the methodology it uses to determine how it apportions operating fees charged to federal credit unions (FCUs). The Board also proposed: clarifying the treatment of capital project budgets when calculating the operating fees; clarifying the treatment of miscellaneous revenues when calculating the operating fees; and modifying the approach for calculating the annual inflationary adjustments to the thresholds for the operating fee rate tiers. This final notice adopts those proposals and responds to comments on these topics as well as other subjects on which the Board sought comment in the notice.

FOR FURTHER INFORMATION CONTACT: James Holm, Supervisory Budget Analyst, Office of the Chief Financial Officer, at (703) 518-6570, Amy Ward or Julie Decker, Risk Officers, Office of Examination and Insurance at (703) 819-1770 or (703) 518-6384.

SUPPLEMENTARY INFORMATION:

In July 2020, the Board issued a notice and request for comment on the OTR and operating fee methodologies.[1] In the notice, the Board detailed the legal background and

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[1] Request for Comment Regarding National Credit Union Administration Overhead Transfer Rate Methodology and Operating Fee Schedule 85 FR 53854 (Aug. 31, 2020).

historical and current practice for both methodologies. The notice also described how each process works within the Board's annual budget process.

The Board applies the OTR to the NCUA's operating budget to determine the portion of the budget that will be funded from the National Credit Union Share Insurance Fund (Share Insurance Fund). The Board described and sought comment on the current OTR methodology.

The Board also described and requested comment on three proposed changes to the methodology it uses to determine how it apportions operating fees charged to federal credit unions (FCUs). The Board uses operating fees to fund part of the NCUA's annual budget. In particular, the Board proposed: (1) clarifying the treatment of capital project budgets when calculating the operating fees; (2) clarifying the treatment of miscellaneous revenues when calculating the operating fees; and (3) modifying the approach for calculating the annual inflationary adjustments to the thresholds for the operating fee rate tiers. The Board also solicited comment on adjusting the asset-size rate tiers in the operating fee scale, increasing the current $1 million asset-size threshold below which an FCU pays no fee, and on incentivizing FCUs and federally insured, state-chartered credit unions (FISCUs) to complete an annual, voluntary diversity survey.

In a separate proposed rule, the Board proposed amending its regulation governing the determination of total assets used as the basis for calculating the operating fee due from any FCU and encouraged public comments on that proposed rule.[2]

The Board received eight comments on the July 2020 notice, three from credit union trade associations, four from credit union leagues, and one from a credit union service organization. The following sections reiterate the background from the July 2020 notice,

[2] Fees Paid by Federal Credit Unions, 85 FR 53708 (Aug. 31, 2020).

respond to the comments, and adopt as proposed three changes to the operating fee methodology for application to the 2020-2021 NCUA budget. The Board will study the remainder of the issues and comments in connection with potential future changes to these practices.

I. Legal Background

The NCUA charters, regulates, and insures deposits in FCUs and insures deposits in state-chartered credit unions that have their shares insured through the Share Insurance Fund. To cover expenses related to its tasks, the Board adopts an annual budget in the fall of each year. The Federal Credit Union Act (FCU Act) provides two primary sources to fund the budget: (1) requisitions from the Share Insurance Fund, referred to as the OTR;[3] and (2) Operating Fees charged to FCUs.[4]

The first budget funding source, the OTR, represents the methodology the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II of the FCU Act. Two statutory provisions directly limit the Board's discretion with respect to the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[5] Second, the NCUA may not fund its entire annual budget through charges to the Share Insurance Fund.[6] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

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[3] *See*, *e.g.*, 12 U.S.C. 1783(a) (making the Share Insurance Fund available "for such administrative and other expenses incurred in carrying out the purpose of [Title II of the FCU Act] as [the Board] may determine to be proper.").
[4] 12 U.S.C. 1755(a) ("In accordance with rules prescribed by the Board, each [FCU] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.") and 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.
[5] 12 U.S.C. 1783(a).
[6] 12 U.S.C. 1755.

With regard to the Operating Fee, the FCU Act requires each FCU to, "in accordance with rules prescribed by the Board, . . . pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed."[7] The fee must "be determined according to a schedule, or schedules, or other method determined by the Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [FCU Act] and to the ability of [FCUs] to pay the fee."[8] The statute requires the Board to, among other things, "determine the periods for which the fee shall be assessed and the date or dates for the payment of the fee or increments thereof."[9]

Accordingly, the FCU Act imposes three requirements on the Board in connection with assessing an operating fee on all FCUs: (1) the fee must be assessed according to a schedule or schedules, or other method that the Board determines to be appropriate, which gives due consideration to NCUA's responsibilities in carrying out the FCU Act and the ability of FCUs to pay the fee; (2) the Board must determine the period for which the fee will be assessed and the due date for payment; and (3) the Board must deposit collected fees into the Treasury to defray the Board's expenses in carrying out the FCU Act. Once collected, Operating Fees, "may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the FCU Act,] including the examination and supervision of [FCUs]."[10]

II. Historical Practice in Determining the Overhead Transfer Rate and Assessing the Operating Fee

[7] 12 U.S.C. 1755(a).
[8] 12 U.S.C. 1755(b).
[9] *Id.*
[10] 12 U.S.C. 1755(d).

Overhead Transfer Rate

The Share Insurance Fund was established by Title II of the FCU Act on October 19, 1970. Section 1783(a) of Title II authorizes the Board to use Share Insurance Funds to pay for "such administrative and other expenses incurred in carrying out the purposes of this title as it may determine to be proper."

In 1973, a Government Accountability Office audit[11] recommended the NCUA adopt a method of allocating costs between the operating fund and the newly formed Share Insurance Fund. Between 1973 and 1980, various cost allocation methods were employed, including direct charges to the Share Insurance Fund for insurance expenses including costs to liquidate or merge credit unions and examiner time spent conducting safety and soundness examinations. Starting in 1981, the OTR ranged between 30 and 34 percent, and stayed in that range through 1984.

From 1985 through 1994, the NCUA conducted annual examiner time surveys (ETS) to determine an appropriate factor for apportioning the agency's total operating expenses. The survey results supported a transfer rate between 50.1 percent and 60.4 percent for insurance related activities; however, the Board maintained the OTR at 50 percent.

Following the 1994 survey, the Board approved surveys that were conducted every three years. Three-year surveys covered fiscal years 1995 through 1997 and fiscal years 1998 through 2000. During that period, the OTR was kept at 50 percent. The Board voted to resume annual ETS in 2000 and expanded the survey to include more examiners. The 2000 survey results supported an OTR of 66.72 percent and, after 15 years of holding the OTR at 50 percent, the Board increased the OTR to 66.72 percent for fiscal year 2001.

[11] Gen. Accounting Off., Examination of Financial Statements of the Nat'l Credit Union Admin. (Sept. 18, 1973), *available at* http://www.gao.gov/assets/210/203181.pdf.

In 2001, the Board hired an independent party, Deloitte & Touche, to assess the OTR process. Deloitte & Touche's review[12] of the OTR process was issued on September 5, 2001 and included several recommendations to improve the OTR process. These recommendations were implemented in 2002.

At the November 20, 2003 Board meeting,[13] the Board adopted a revised, comprehensive methodology for calculating the OTR that was in place until 2017. The methodology used the results of an automated annual ETS process. The following were also factored into the methodology:

- The value to the Share Insurance Fund of the insurance-related work performed by state supervisory authorities (SSAs).
- The cost of the NCUA resources and programs with different allocation factors from the examination and supervision program.
- The distribution of insured shares between FCUs and FISCUs.
- Operational costs charged directly to the Share Insurance Fund.

In 2016, the NCUA published in the *Federal Register* the OTR methodology used to calculate the OTR and requested comments from the public.[14] In conjunction with the 2016 *Federal Register* notice, the Board committed to periodically review the methodologies for calculating both the OTR and the Operating Fee, and to propose changes to the methodologies that would result in more equitable alignment of fees to the resource levels required to supervise and regulate both FCUs and FISCUs.

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[12] https://www.ncua.gov/files/publications/budget/2001DeloitteReportonOTRProcess.pdf
[13] The methodology was refined in 2013.
[14] 81 FR 4804 (Jan. 27, 2016).

In 2017, the NCUA published in the *Federal Register* a request for comment regarding a revised OTR methodology based on the Board's internal assessment and comments received from the 2016 notice.[15] The primary goal of the proposed changes to the OTR methodology at that time was to simplify and streamline the methodology and reduce the resources needed to administer the OTR. The simplified OTR methodology incorporated four key principles in allocating agency operating costs:

Principle 1: 50 percent insurance related - Time spent examining and supervising FCUs.

Principle 2: 100 percent insurance related - All 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 and credit union service organizations).

Principle 3: Zero percent insurance related - Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other noninsurance based laws governing the operation of credit unions, for example, field of membership requirements.

Principle 4: 100 percent insurance related - Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund.

The Board adopted this principles-based OTR methodology in 2017.[16] At that time, the Board committed to subject the four principles, but not the particulars of their application, to

[15] 82 FR 29935 (June 30, 2017).
[16] 82 FR 55644 (Nov.22, 2017).

public comment every three years and in the event it proposes a change to one or more of the principles.

III. Overhead Transfer Rate Methodology

To calculate the OTR, the four principles are applied to the activities and costs of the agency to arrive at the portion of the agency's budget to be charged to the Share Insurance Fund.

Step 1—Workload Program

Annually, the NCUA develops a workload budget based on the NCUA's examination and supervision program to carry out the agency's core mission. The workload budget reflects the time necessary to examine and supervise federally insured credit unions (FICUs), along with other related activities, and therefore the level of NCUA field staff needed to implement the exam program. Applying principles 1, 2, and 3 (those relevant to the workload budget) to the applicable elements of the workload budget results in a composite rate that reflects the portion of the agency's overall insurance related mission program activities.

Step 2—Annual Budget

The annual budget represents the costs of the activities associated with achieving the strategic goals and objectives set forth in the NCUA's Strategic Plan. The annual budget is based on agency priorities and initiatives that drive resulting resource needs and allocations.

Information related to the NCUA's budget process, including details on the Board-approved budgets, is available on the agency's Web site.[17]

The agency achieves its primary mission through the examination and supervision program. The percentage of insurance-related workload hours derived from Step 1 represents the main allocation factor used in Step 2 and is applied to the budgets for the examination and supervision programs to calculate the insurance-related costs of the offices conducting field work (currently the Regions and ONES). A few agency offices have roles distinct enough to warrant their own allocation factors, which are developed by applying the four factors described above to their respective activities. Each of these offices tracks their activities annually to determine their factors. These factors are then applied to the respective offices' budgets to determine their insurance-related costs.

A weighted average allocation factor, calculated by dividing the aggregate insurance-related costs for the field offices conducting the examination and supervision program and the agency offices with their own unique allocation factors by their aggregate total budgets, is applied to the central offices that design or oversee the examination and supervision program or support the agency's overall operations. This factor is then applied to the aggregate budgets for the remaining offices. As such, the proportion of insurance-related activities for these offices corresponds to that of the mission offices. The NCUA's total insurance-related costs are calculated by summing the insurance cost calculated for the field offices, the offices with unique allocations factors, and the insurance cost for all other NCUA offices.

Step 3—Calculate the OTR

[17] https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.

The OTR represents the percentage of the NCUA budget funded by a transfer from the Share Insurance Fund.[18] The OTR is calculated by dividing the total insurance-related costs determined in Step 2 by the NCUA's total annual budget.

IV. Responses to Comments on OTR Methodology

In the July 2020 notice, the Board sought comment on the current OTR methodology. The Board noted that the principles-based OTR methodology has streamlined the process for calculating the OTR and reduced the resources needed to gather the cost center time allocation used in the calculation. In addition, the methodology established some consistency in the calculated OTR each year, seen previously only briefly during the three-year period ended 2013.

The Board also noted that the consistency in the calculation allows for the minor variations in the OTR to be driven by the variables that affect the OTR, not the calculation itself. These variables include, but are not limited to, the normal fluctuations in the workload budget from one calendar year to the next, changes in FICU CAMEL ratings, variation in the number and size of FICUs that meet the annual exam and extended exam eligibility criteria, emerging risk indicators inherent in FICU operational changes, variations in individual state regulator programs, and small fluctuations in the timing of the examinations related to a particular calendar year. This streamlined and simplified approach to calculating the OTR has provided a level trend in the OTR, with only minor fluctuations due to the variables that affect the OTR.

Finally, the Board stated that the current OTR methodology is fair and equitable, more transparent and less complex than prior methodologies, reduces OTR administrative costs as

[18] The percentage of actual expenses funded by the Share Insurance Fund as they are incurred each month.

compared to the prior OTR methodology, and recognizes that safety and soundness is not the sole domain of the NCUA as insurer.

Accordingly, while the Board did not propose changes to the OTR methodology, it invited comments on its OTR methodology. The Board specifically invited comments on the four principles used in the methodology to calculate the OTR discussed in the preceding section.[19]

The Board received eight comments from credit union leagues, trade associations, and CUSOs. Many of the commenters stressed the importance of having an OTR methodology that allocates the agency's operating costs equitably among FCUs and FISCUs, but emphasized that prudent management of NCUA's budget is necessary to reduce costs to credit unions. Overall, the commenters believe apportioning a proportionate share of the capital budget to the NCUSIF is consistent with the 2017 OTR methodology and presents a more equitable treatment of capital expenditures with respect to the OTR and the FCU's operating fees. Commenters who supported the inclusion of the capital budget in the OTR also supported including miscellaneous revenues in the OTR.

GENERAL COMMENTS ON THE OTR METHODOLOGY

Transparency; Fair and Equitable Allocation of Expenses

Commenters appreciated NCUA's transparency in seeking comments on the OTR process and while they acknowledge the conflicting viewpoints among stakeholders throughout the industry, overall, commenters are seeking a fair and equitable means for determining and substantiating insurance-related costs and apportioning these costs among insured credit unions.

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[19] https://www.ncua.gov/files/publications/budget/overhead-transfer-rate-summary-2020.pdf

Commenters hope the furtherance of technology will be beneficial in NCUA's future identification, tracking, and allocation of insurance-related costs among insured credit unions.

OTR Methodology Comments and Responses

There were several comments specific to the allocations used in the OTR methodology and the distinction and differentiation between NCUA's role as a charterer/regulator and that of insurer.

50 Percent Allocation – Examining and Supervising FCUs – Distinction between NCUA's Role as Regulator versus Insurer

One commenter questioned NCUA's assessment of a 50 percent allocation to the insurance-related costs of supervising FCUs when NCUA has not demonstrated publicly that its role as insurer reflects 50 percent of its operating costs. The commenter requested more documentation to substantiate that NCUA's role as insurer truly encompasses 50 percent of its operating costs. One commenter suggested a sensible compromise would be for NCUA to examine FCUs pursuant to Title I of the FCU Act; and the NCUSIF-related time would be based on NCUA's review of those Title I examinations in the same manner as it does for state FISCU examinations, thus providing a clearer distinction between NCUA's role as regulator versus insurer. One commenter questioned NCUA's statement that the 50 percent allocation for FCUs "is consistent with the alternating examinations FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress" because there is no public evidence available to demonstrate that NCUA's supervision process emulates the FDIC's practice of alternating examinations with prudential state banking regulators. Not specific to the OTR calculation, the commenter stated that if NCUA’s practice does emulate a supervision program that differentiates between its insurance function and its prudential regulator function, then it follows that there must be uniqueness or differentiation between the protocols of a regulatory exam and an insurance review.

NCUA Response: The Board still believes the 50 percent allocation is a realistic approximation of the split between NCUA’s roles as regulator and insurer of FCUs. NCUA’s focus with each examination of an FCU is to assess the ongoing safety and soundness of the credit union and to determine if the FCU’s operations pose a risk to the Share Insurance Fund. In instances where an FCU’s financial condition or operations do pose a risk to the Share Insurance Fund, the workload naturally contributes a heavier weight toward NCUA’s role of insurer. On the contrary, in instances where the FCU’s safety and soundness is not a concern to the Share Insurance Fund, NCUA’s insurance-related time spent on these credit unions is lower. The FDIC asserts its primary focus is to protect its insurance fund by ensuring the safety and soundness of the institutions it insures. Like the FDIC, NCUA’s primary focus in its role as insurer is to protect the Share Insurance Fund; but unlike the FDIC, NCUA also has chartering and regulatory authority. Since the NCUA has the dual responsibility of serving as both the primary regulator with chartering authority and insurer of FCUs, attributing equal weights to each of NCUA’s dual roles creates a cost sharing similar in time structure to NCUA employing FDIC’s alternating exam cycle within one regulatory agency.

100 Percent Allocation – Examining and Supervising FISCUs

A commenter stated that if the alternating exam practice that NCUA uses to describe its 50 percent allocation between its role as regulator versus insurer of FCUs is an actual practice and there is no discernable difference between an NCUA regulatory exam and an NCUSIF insurance review, then a state regulatory examination could serve to fulfill the requirements of Title II of the FCU Act, thus reducing budgeted NCUA workload hours for FISCUs and more properly reflecting the distinction between the proper authority of the state regulator and the insurer. One commenter questioned NCUA's 100 percent allocation for third-party vendors and CUSOs. The commenter noted that NCUA does not have supervisory authority of third-party vendors and CUSOs like other federal regulators and state regulators, but NCUA, as chartering authority for FCUs, has an obligation to ensure that FCU CUSOs and other third parties are operating safely and complying with applicable rules and regulations. Thus, NCUA's review of these entities is related to the FCU's examination process and does not necessarily have a direct impact to the NCUSIF unless noncompliance has led to a safety and soundness issue that impacts the Share Insurance Fund.

NCUA Response: The Board has clearly defined NCUA's role with FISCUs and other entities that NCUA does not charter or regulate as 100 percent insurance-related. The alternating exam example is used as a description of NCUA's dual functions of regulator and insurer of FCUs and is not actual practice. NCUA has taken steps in recent history to reduce the workload budget and costs to FISCUs, providing greater responsibility on the State regulator. The Board's adoption of the Exam Flexibility Initiative in 2016 served to lengthen the examination cycle and reduce the frequency with which NCUA participates on FISCU examinations. Likewise, NCUA does not charter or regulate CUSOs or third-party vendors and therefore the NCUA's role is also solely as the insurer. A CUSO and third-party vendor are at times subject to a limited review during a FICU examination. This review generally covers compliance with the CUSO's lending and investing regulatory requirements and a review of the service or function the third party provides the FICU. Examiners may also assess the risk a CUSO or third-party vendor's activities pose to the FICU as part of the FICU examination. This CUSO/third-party vendor-related time is captured in the examination and supervision of an FCU under Principle 1 and a FISCU under Principle 2. The Board has no direct regulatory authority with respect to CUSOs and third-party vendors, and currently there is no support to allocate time specifically designated for CUSO and third-party vendor reviews as anything other than the NCUA's role as insurer.

Zero percent Allocation – NCUA's Role as Charterer and Enforcer of Consumer Protection and Other Noninsurance-based Laws

One commenter questioned the zero percent allocation for consumer protection enforcement, stating that noncompliance with consumer regulations could result in a safety and soundness issue and therefore this function is not entirely unrelated to insurance.

NCUA Response: The Board recognizes the importance of ensuring compliance with consumer protection laws and regulations. As such each full scope examination of a FICU includes a review of the FICUs' compliance with consumer laws and regulations. This review time is allocated to examining and supervising FCUs and FISCUs in Principle 1 and Principle 2, respectively. The zero percent allocation is associated with the non-examination aspect of consumer protection focused on supporting low-income and minority FICUs and all FICUs seeking growth and development in areas of charter conversions and expansions, bylaw amendments, field of membership expansions, and low-income designations. The safety and soundness and risk to the Share Insurance Fund considered in the growth and development areas is a very small portion of NCUA's workload budget and does not warrant an allocation factor.

Other Office Allocation

One commenter requested NCUA to provide more clarity on the unique allocation factors used by certain offices within NCUA's central office. The commenter suggested that rather than relying on weighed allocation factors to determine the OTR, simply calculating how much time each regional and central office spends on insurance-related activities each year might be a more straightforward method of determining how much of the operating budget should be borne by the NCUSIF.

NCUA Response: The weighted average allocation applied to the central offices is based on the aggregate insurance-related costs for the field offices and agency offices with their own unique allocation factors. NCUA uses a weighted average allocation factor applied to the central offices' aggregate total budget because these offices provide direct support to the field offices in their examination and supervision of FICUs and to the other central offices. Therefore, the central offices' time is allocated proportionate to the weighted average of these offices. Central offices that have "unique allocation factors" have chartering functions that are not entirely related to insurance, so their insurance-related time is allocated separately. The Asset Management Assistance Center, on the other hand, manages liquidation payouts and assets acquired from liquidations on behalf of the Share Insurance Fund. Since AMAC's role is 100 percent insurance related, AMAC's "unique allocation factor" is based on its sole function being insurance related.

OTHER COMMENTS

Inequity in the OTR Methodology

Other comments focused on the OTR's inequity between FISCUs and FCUs. One commenter noted the importance of the OTR methodology because FISCUs pay the full cost of their state examinations and then through the OTR pay 100 percent of NCUA's insurance reviews of FISCUs, as well as a portion of FCU examinations and CUSO and third-party reviews. One commenter noted that FISCUs make up only 37 percent of the total number of credit unions, but because FISCUs encompass approximately 50 percent of insured shares, the cost of the OTR is borne equally from the funds of both FISCUs and FCUs even though there are more FCUs whose examination costs are being charged to the NCUSIF. While this commenter recognized the alternative argument that FCUs would assert that they pay an aggregate greater amount of NCUA's overall budget when aggregating the total expense to FCUs from the operating fee and the OTR, the commenter noted the assertion ignores the fact that the NCUSIF is not expending resources to conduct examinations on a majority of FICUs because it relies on exam work conducted by the state regulators; exam work that is paid for entirely by FISCUs. The commenter noted that historically, the majority of NCUA's annual budget has been paid by the OTR, reaching a high of nearly 75 percent of NCUA's 2016 budget. The commenter highlighted the significance of the OTR funding the majority of the budget because of the perceived inequities within the methodology that result in FISCUs shouldering an "inordinate cost of supervising the safety and soundness of the credit union system." The commenter also noted its concern with the overall increase in the OTR from the current proposal.

NCUA Response: The Board fully supports an equitable distribution of costs among FICUs. The Board continues to believe the current OTR methodology is a fair and equitable means of allocating costs to the Share Insurance Fund. The operating fee is charged to FCUs based on a tiered assessment structure that recognizes the FCU's ability to pay the operating fee based on its total assets. The operating fee funds a portion of NCUA's operations similar to the assessments some State regulatory agencies charge FISCUs to fund the respective State agencies' operations. Since NCUA also serves in the role as insurer, the FCU Act permits for a portion of NCUA's operations to be funded by the Share Insurance Fund. This funding is not a direct cost to the FISCUs or the FCUs.

Principles-Based Methodology vs Metric-Based Methodology – Precision vs Assumption

A commenter noted that the adoption of the current principles-based methodology marked a departure from the well-established ETS, which was a metrics-based approach designed to capture examiner time spent on insurance related matters versus non-insurance related through the assessment of individual regulations and other measures. The commenter felt the ETS approach was, by necessity, more complex than the current principles-based allocation methodology, but it also made fewer assumptions about the allocation of the NCUA's insurer and examiner resources. The commenter noted that eliminating the data-oriented assessment of insurance-related activities under the ETS would make it harder to track how much time examiners actually spend on insurance-related activities. In the absence of the ETS data, the commenter opined it is now harder to evaluate the effectiveness of the current methodology. The commenter highlighted the potential inequities resulting from using the current assumption-based methodology versus the precision from the older model.

NCUA Response: While the current OTR methodology is less complex than the ETS, the OTR methodology is objective and remains formula driven. The NCUA's goal in using a formula-driven OTR methodology is to provide a comprehensive, fair, and equitable allocation of costs within a framework that can be administered at a relatively low cost such as the current methodology. As noted in the Final Notice for the current methodology, this methodology is simpler than its predecessor and is still both objective and formula driven. Additionally, the ETS and the assignment of time as insurance, insurance regulatory, and consumer regulatory has been an area of debate. The Board noted that continued refinement of the categories would not alleviate this debate or eliminate the confusion that existed around the process.[20] Further, while the OTR is formula driven, the Board can adjust the methodology at any time to ensure it continues to reflect the most equitable and suitable approach to allocating costs.

Quantification of Benefits Derived from the Current OTR Methodology

One commenter acknowledged the administrative benefit in adopting a simpler methodology, but stated NCUA has not sought to quantify its statement that the adoption of a principles-based OTR has "reduced the resources needed to gather the cost center time allocation used in the OTR calculation." The commenter continued by saying there has also been no attempt to compare the noted savings with those predicted by the agency when it first proposed the principles-based methodology. The commenter's expectation is that when NCUA says there are cost savings associated with a particular rule or policy change, it should endeavor to maintain a level of transparency and supply estimates and retrospective data for the industry to consider.

NCUA Response: When the Board adopted the revised OTR methodology in 2017[21], the NCUA saw an immediate cost savings in 2018 due to the elimination of the ETS. As noted in the 2017 OTR Final Notice, under the prior OTR methodology, ETS were conducted annually. The process included regulatory mapping prior to the beginning of the ETS cycle to make any

[20] 82 FR 55655 (November 2017)
[21] Ibid.

necessary adjustments to classifications.[22] Additionally, the examiners and their supervisors participating in the ETS received training on how to complete the survey. Examination or supervision time was also increased at each contact where an ETS was completed by roughly one hour. The process also included aggregation and analysis of the data by the Office of Examination and Insurance (E&I). Eliminating the ETS from the OTR methodology resulted in a resource savings in examiner time, training time, and office analysis and support.

Working Group or Advisory Committee to Oversee the OTR

Some commenters suggested NCUA establish a working group or advisory committee made up of equal representation of NCUA and state regulators to establish a new OTR methodology that accurately and fairly represents the shared work and contributions of the insurer and the state regulator. The commenters suggested this committee would be charged with continuing oversight and review of all factors contributing to the OTR methodology and recommendation of future OTR charges. Another commenter offered that the establishment of a credit union advisory committee would provide a means for the debate and exchange of ideas about the OTR that is difficult to facilitate in the notice and comment process.

NCUA Response: The Board believes the current OTR is transparent and provides for stakeholder input, therefore, a committee to oversee the OTR is not needed. Further, while not required by the Administrative Procedure Act, the Board remains committed to solicit through the *Federal Register* public comment on the OTR methodology at least every three years, and whenever the NCUA seeks to change the OTR methodology.

[22]Information on the last regulatory mapping performed by the NCUA in 2017 can be found on the NCUA's website https://www.ncua.gov/files/publications/about/mapping-ncua-regulations-2017.pdf.

V. Operating Fee for FCUs

The NCUA's regulations govern certain of the operating fee processes.[23] The regulation establishes: (i) the basis for charging operating fees (total assets); (ii) a notice process; (iii) rules for new charters, conversions, mergers, and liquidations; and (iv) administrative fees and interest for late payment, among other principles and processes.[24] Certain aspects of and adjustments to the operating fee process, such as changes to which FCUs are exempt from operating fees or the multipliers used to determine fees applicable to FCUs that fall within designated asset tiers, are usually not published in the *Federal Register*. Instead, in November 2015, the Board delegated authority to the NCUA's Chief Financial Officer to administer the Board-approved methodology, and to set the operating fees as calculated per the approved methodology during each annual budget cycle beginning with 2016. Although it is not required to do so under the Administrative Procedure Act,[25] in January 2016, the Board published its methodology in the *Federal Register* and requested comment.[26] The Board provided notice of a clarification to the operating fee methodology in July 2020, and sought comment on several potential updates to the methodology. This notice provides the NCUA's response to comments about the July 2020 methodology, and documents the Board's final revisions to the operating fee methodology.

The Board proposed the current operating fee methodology in 1979, after Congress passed the Financial Institutions Regulatory and Interest Rate Control Act of 1978.[27] This legislation permitted the Board to consolidate previously separate chartering, supervision, and examination fees into a single operating fee, charged "in accordance with schedules, and for time

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[23] 12 CFR 701.6.
[24] *Id.*
[25] 5 U.S.C. 551 *et seq*.
[26] 81 FR 4674 (Jan. 27, 2016).
[27] 44 FR 11785 (Mar. 2, 1979).

periods, as determined by the Board, in an amount necessary to offset the expenses of the Administration at a rate consistent with a credit union's ability to pay."[28] In combination with a proposed change to § 701.6 of the NCUA's regulations in 1979, the Board proposed an initial fee schedule in the *Federal Register*, including rates for 12 asset tiers.[29] It later published a final rule in the *Federal Register*, which included a finalized fee schedule for 1979.[30]

On four additional occasions prior to the July 2020 notice, the Board had requested comments on potential changes to the operating fee schedule through a *Federal Register* notice, independent of any changes to 12 CFR 701.6. First, in 1990, the Board provided notice to the public that it was considering consolidating the operating fee schedule from 14 asset tiers to two asset tiers, retaining an exemption for FCUs under $50,000 in assets and implementing a $100 minimum fee.[31] Second, in 1992, the Board requested comments on a plan to limit operating fees to the first $1 billion of each FCU's assets.[32] Third, in 1995, the Board requested comments on a plan to restructure the operating fee schedule for natural person FCUs, to exempt FCUs with assets of $500,000 or less based on concern about small FCUs' ability to pay the fees.[33] The Board also requested comments on imposing a minimum fee of $100 on all natural person FCUs with assets over $500,000 but less than or equal to $750,000.[34]

In 2016, the Board published its current methodology in detail in the *Federal Register* and solicited comment. The Board made no changes in response to comments on the methodology published in 2016 and delegated authority to the NCUA Chief Financial Officer to apply the published methodology. Since then, the Chief Financial Officer has applied the

[28] *Id.* at 11786.
[29] *Id.* at 11787.
[30] 44 FR 27379 (May 10, 1979).
[31] 55 FR 29857 (July 23, 1990).
[32] 57 FR 34152 (Aug. 3, 1992).
[33] 60 FR 32925 (June 26, 1995).
[34] *Id.*

published Operating Fee methodology and explained its application in the NCUA's annual budget documents.

In general, the Board has not used *Federal Register* notices in connection with annual adjustments to the asset tiers and rates of the operating fee schedule. Instead, the Board has opted to adopt such changes at open meetings. As recently as 2012, for example, the Board increased the asset threshold used to exempt FCUs from operating fees from $500,000 to $1 million at an open meeting, without requesting advance comment in the *Federal Register*.[35] While the Board has varied its practice with respect to fee schedule changes, it has done so within the FCU Act's broad directive that the fee schedule should be as "determined by the Board to be appropriate," subject to its consideration of its expenses and the ability of FCUs to pay.[36] In addition, the NCUA's regulation on operating fee processes includes a standing invitation for written comments from FCUs on existing fee schedules[37] and each year the Board invites comments on the draft NCUA budget, which includes a detailed explanation of how the operating fee is calculated and how changes to the operating fee rate are determined based on application of the published methodology.

VI. Methodology for Determining the Aggregate Operating Fee Amount

The Board adopts an annual budget in the fall of each year, which includes as an operating budget the costs of day-to-day operations such as employee compensation, travel and training expenses, support purchased through contracts with service providers that have expertise outside of the agency's core capabilities, and other miscellaneous administrative expenses. The

[35] Board Action Memorandum on 2013 Operating Fee (Nov. 15, 2012).
[36] 12 U.S.C. 1755(b).
[37] 12 CFR 701.6(c).

annual budget also includes as a capital budget the estimated spending on capital projects, such as for computer hardware and software, and for investments in agency owned real property and equipment, and provides the resources required to execute the goals and objectives as outlined in the NCUA's strategic plan.[38] As discussed above, two primary sources fund the annual budget: (1) requisitions from the Share Insurance Fund, determined through the OTR and (2) operating fees paid by FCUs.

Adjustments to the Budget. When calculating the aggregate annual operating fee requirements, the Board first subtracts amounts transferred from the Share Insurance Fund through the OTR and other expected income amounts, as discussed below, from the operating budget, which funds the day-to-day needs for the upcoming year.

Overhead Transfer Rate: As discussed above, the FCU Act authorizes the NCUA to expend funds from the Share Insurance Fund for administrative and other expenses related to federal share insurance.[39] An overhead transfer from the Share Insurance Fund covers the expenses associated with insurance-related functions of the NCUA's operations. The OTR is one of the funding sources for the budget, but the OTR does not affect the amount of the annual budget. The Board approves the annual budget separately and without regard to the OTR. The OTR is applied to actual expenses incurred each month.

[38] Additional information on the NCUA budget may be found at the following Web address: http://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.
[39] 12 U.S.C. 1783(a).

Other Income: Other income reduces the required operating fees by providing an additional source of funds to cover regulatory (i.e., non-insurance) related aspects of operating the NCUA. Other income is projected based on the latest financial statements and includes interest income and miscellaneous revenues. Interest income includes interest on operating fund balances invested in short-term Treasury securities because the funds are not immediately required to pay expenses. Other income includes miscellaneous revenues, such as revenues from the production or sale of NCUA reports and publications, rent collected from other federal agencies that share NCUA facilities, and parking fee revenues. The NCUA owns a share of the parking garage underneath the complex of buildings that includes the agency's Central Office, and the NCUA receives its share of the revenue collected from fees charged to those who park in the garage.

Adjustments for capital project budgets and notes payable. The budgets for capital projects and notes payable are added to the balance remaining after deducting the estimated overhead transfer share of the operating budget. These budgets include capital acquisitions planned for the year and the annual payment of the note payable for the NCUA Central Office building on King Street.

Capital Projects. Each year the NCUA conducts a rigorous assessment of its needs for information technology (IT), facility improvements and repairs, and other multi-year capital investments. Routine repairs and lifecycle-driven property renovations are necessary to properly maintain investments in the NCUA's Central Office building in Alexandria, Virginia, and the agency's office building in Austin, Texas. IT systems and hardware are another significant capital expenditure for modern organizations, and the budget includes investments both for maintaining and upgrading currently operational systems and networks as well for developing replacements for systems and hardware that has reached the end of its useful life.

Repayment of NCUA Central Office on King Street, Note Payable. In 1992, the Operating Fund entered into a commitment to borrow up to $42.0 million in a 30-year secured term note with the Share Insurance Fund to fund the costs of constructing the NCUA's Central Office in 1993. Since the Operating Fund borrowed monies from the Share Insurance Fund, the annual scheduled principal payments are excluded from the OTR and overhead transfer amount. The annual scheduled principal payments are treated as a cash need and applied as an increase to operating fee requirements.

Operating Fee Requirements. The result after adjustments for capital project and notes payable needs is the total 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.

VII. Methodology for Determining the Operating Fee Schedule

The corporate credit union fee schedule was established in 1979 and has changed little over the years. Corporate FCUs hold assets of natural person credit unions, which are already assessed under the natural person operating fees for those members that are FCUs. Assessing corporate FCUs at the same rate would, effectively, assess the same assets twice for natural person FCU members of corporate FCUs. Corporate FCUs return a large portion of their earnings to natural person credit unions in the form of lower fees and higher dividends. Raising operating fee assessments for corporate FCUs would result in higher expenses for corporate FCUs. Corporate FCUs would need to pass the higher expenses to natural person credit unions in the form of higher fees and lower investment yields. The corporate FCU fee schedule is a method of charging corporate FCUs a supervisory fee to defray costs and is now published annually in the budget.

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the operating fees, and to set the fee schedule as calculated per the approved methodology, beginning in 2016. After determining the operating fee requirements for natural person FCUs, the Chief Financial Officer creates the natural person FCU operating fee schedule for the upcoming year. The FCU operating fee schedule is published annually in the budget.

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 inflationary growth of the credit union system. FCUs with $1 million or less in assets pay no operating fee.

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 projected asset growth rate; and (2) updating the prior-year assessment rates for each asset tier by determining the average assessment rate adjustment.

Updating prior year asset levels. The first step in determining the new operating fee schedule is to increase the threshold for each asset tier from the prior-year by the projected asset growth rate. Tier thresholds are adjusted annually to preserve the same relative relationship of the scale to the applicable asset base.

The projected asset growth rate is a forecast of FCU asset growth rates for a year. The NCUA's Office of Chief Economist (OCE) uses three different methods to forecast asset growth and combines them to generate an overall asset growth rate forecast.

Forecasting method one uses Call Report data for the first half of the year to predict full-year asset growth. This is done by first calculating the ratio of first-half asset growth to full-year asset growth. The percentage of full-year growth accounted for by first-half asset growth varies from year to year but, on average, nearly 80 percent of the asset growth for FCUs occurs in the first half of the year. Using the growth rate in the first half of the year, OCE projects the full-year growth rate.

Forecasting Method two uses Call Report data to determine the most recent four-quarter growth rate and sets this rate to the full-year asset growth rate. This approach is based on the idea that an FCU is likely to establish and maintain a relatively constant growth rate over a short period, after accounting for variations in the growth rate that is attributable to seasonal fluctuations. This implies that a good forecast of full-year asset growth is the most recently available four-quarter asset growth.

Forecasting method three uses a time series statistical model. Using quarterly Call Report data, NCUA predicts future four-quarter asset growth using the four-quarter growth in assets for the period ending two quarters earlier (that is, four-quarter asset growth lagged two quarters).

In general, forecasting literature shows that combining forecasts from different approaches can improve forecast accuracy and decrease the likelihood of forecast errors. Using the root mean squared error statistic to calculate the accuracy of the individual approaches and combined forecast approaches, NCUA has found that the combined forecast approach is better at predicting the final asset growth rate than any of the individual approaches. NCUA therefore averages the forecasts from the three approaches to maximize accuracy.

Updating the prior year's assessment rates. After updating the prior-year asset tier thresholds, the next step is to project operating fees using the updated asset tier thresholds and the prior year assessment rates charged for each tier. The percentage difference between the projected operating fee collections and the operating fee collections required to support the budget is the average rate adjustment.

The average rate adjustment is used to amend the prior-year's assessment rates for each asset tier either upwards or downwards. If the projected amount of operating fees is less than the required budgeted amount, then the assessment rates for each asset tier are adjusted upwards. If the projected amount is more than the required budgeted amount, then the assessment rates for each asset tier are adjusted downwards.

The resulting new operating fee schedule and due date are communicated via a Letter to Federal Credit Unions and posted to NCUA.gov within 30 days of Board approval of the annual budget. The Board also makes available an online operating fee calculator on the NCUA website for FCUs to estimate their individual fees for the upcoming year. No later than March of each year, natural person FCUs with assets greater than $1 million will receive an invoice for their operating fee. Operating fees are based on actual assets reported as of December 31 of the previous year. The NCUA combines operating fee and capitalization deposit adjustment into a single invoice normally due in April. As required by the FCU Act, the NCUA will deposit the collected fees in the United States Treasury.[40]

VIII. Changes to Operating Fee Methodology

As summarized above, the Board sought comment on three proposed changes to the Operating Fee methodology and is adopting each change as proposed.

1. Treatment of Capital Budget

Under current practice, the Board initially funds the NCUA's planned capital projects budget entirely through operating fees assessed on FCUs. The Board proposed to change this practice by reimbursing the appropriate portion of these expenditures through the OTR.

In recent years, the NCUA Office of the Chief Financial Officer (OCFO) has worked to improve the agency's financial management processes and modified some of its practices to align with contemporary Federal financial management standards. This allows the agency to manage its cash flow more effectively and to record appropriately on its books the contractual commitments its makes, particularly for complex and multi-year capital projects.

As a result of these improvements and modifications, in the 2018 budget NCUA clarified 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. Namely, such amounts would no longer be included in annual budgets presented to the Board as they result in no expenditure tied to the recognition of an expense under GAAP. Since that time, the calculation for the operating fee has also excluded such items when

[40] https://www.ncua.gov/files/agenda-items/AG20191212Item1b.pdf, pages 57 to 64

determining the allocation of the annual budget between the share paid through the OTR and the share paid through the operating fee.

Accordingly, in the July 2020 notice, the Board proposed to clarify that for the purposes of calculating the operating fee, the budget for capital projects will be included within the total annual budget subject to the OTR. This approach ensures 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. Under the existing methodology, the Share Insurance Fund reimburses the operating fund for capital projects at the OTR and over several years according to depreciation schedules, which are non-cash transactions. 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. This change also increases 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 Share Insurance Fund.

As provided in the July 2020 notice, the following table compares how the operating fee calculation for the 2020 budget would have differed had funds for capital projects been subject to the OTR like for the other parts of the annual budget for that year.

OPERATING FEE CALCULATION FOR BOARD-APPROVED 2020 BUDGET COMPARED TO 2020 OPERATING FEE CALCULATION SHOWING PROPOSED CAPITAL BUDGET TREATMENT

($ millions)

		Board-Approved 2020 Budget	2020 w/ Capital Budget Change
1	Proposed Operating Budget	**$ 315.883**	**$ 315.883**
	Capital Acquisitions	$ -	$ 25.076
2	Remove King Street Station Note from Calculation	$ (1.340)	$ (1.340)
3	Operating Budget to apply OTR	**$ 314.543**	**$ 339.619**
4	Overhead Transfer Rate **61.3%**	$ (192.815)	$ (208.186)
5	Interest Income	$ (2.250)	$ (2.250)
6	Miscellaneous (rent and publication fees)	$ (1.000)	$ (1.000)
7	**Net** (sum lines 3 - 6)	**$ 118.478**	**$ 128.183**
8	Operating Fund adjustment	$ -	$ -
9	Capital Acquisitions	$ 25.076	$ -
10	Payment of King Street Note Payable (scheduled principal payments)*	$ 1.340	$ 1.340
11	**Budgeted Operating Fee/Capital Requirements** (sum lines 5 -10)	**$ 144.894**	**$ 129.523**
12	Corporate Federal CU Operating Fees	$ (0.200)	$ (0.200)
13	**Natural Person FCU Operating Fees Required** (sum lines 11 -12)	**$ 144.694**	**$ 129.323**
14	Fees projected with Asset Growth of **5.6%**	$ (143.072)	$ (143.072)
15	**Difference** (lines 13 & 14)	**$ 1.622**	**$ (13.749)**
16	**Average Rate Adjustment Indicated** (line 15 divided by line 14)	**1.13%**	**-9.61%**

<u>Comments Received</u>: None of the commenters objected to the proposed change to the treatment of capital project budgets for purposes of computing the operating fee. One commenter recommended that the costs of capital projects whose sole benefit accrues to the NCUA should

not be subject to the OTR and provided as an example the fact that the agency will discontinue its NCUSIF computer lease program for State Supervisory Authorities in 2021, meaning that capital project funds will be used to provide computers only to NCUA employees.

NCUA Response: While it is a factual statement that the NCUA will discontinue its NCUSIF computer lease program for State Supervisory Authorities in 2022, the agency believes it misstates the purpose of applying the OTR to the capital budget. The computed OTR is an estimate of the share of the NCUA's work that relates to its role as insurer. Although the NCUA will not provide computers for State Supervisory Authorities in the future, that does not eliminate the share of insurance-related work that NCUA employees perform. As a result, even though some capital projects such as the agency's computer lease provides direct benefit only to NCUA employees, it is still appropriate to apply the OTR to such project costs since the purpose of the OTR is to pay for the insurance-related share of the NCUA's budget via reimbursement from the SIF. Accordingly, the Board adopts this change to the operating fee methodology without modification.

2. Treatment of Miscellaneous Revenues

Under current practice, miscellaneous revenues collected by the NCUA reduce operating fees charged to FCUs. The Board proposed to change the treatment of miscellaneous revenues, reducing the percentage of the NCUA budget funded by the OTR transfer from the Share Insurance Fund.

As discussed in the preceding sections, miscellaneous revenues includes 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 typically total approximately $1,000,000.

The Board proposed to clarify that for the purposes of calculating the operating fee, projected miscellaneous revenues will be included within the total annual budget subject to the OTR. The Board stated that it believes this approach is consistent with its proposed change to the treatment of capital project budgets, and that it better reflects the equitable distribution of the agency's net expenses between FCUs and FISCUs.

As provided in the July 2020 notice, the following table compares how the operating fee calculation for the 2020 budget would have differed had miscellaneous revenues reduced the amount of the budget funded through the OTR for that year.

OPERATING FEE CALCULATION FOR BOARD-APPROVED 2020 BUDGET COMPARED TO 2020 OPERATING FEE CALCULATION SHOWING PROPOSED MISC. REVENUE TREATMENT

($ millions)

		Board-Approved 2020 Budget	2020 w/ Misc. Revenue Change
1	Proposed Operating Budget	**$ 315.883**	**$ 315.883**
	Miscellaneous Revenue (rent and publication fees)	$ -	$ (1.000)
2	Remove King Street Station Note from Calculation	$ (1.340)	$ (1.340)
3	Operating Budget to apply OTR	**$ 314.543**	**$ 313.543**
4	Overhead Transfer Rate **61.3%**	$ (192.815)	$ (192.202)
5	Interest Income	$ (2.250)	$ (2.250)
6	Miscellaneous (rent and publication fees)	$ (1.000)	$ -
7	**Net** (sum lines 3 - 6)	**$ 118.478**	**$ 119.091**
8	Operating Fund adjustment	$ -	$ -
9	Capital Acquisitions	$ 25.076	$ 25.076
10	Payment of King Street Note Payable (scheduled principal payments)*	$ 1.340	$ 1.340
11	**Budgeted Operating Fee/Capital Requirements** (sum lines 5 -10)	**$ 144.894**	**$ 145.507**
12	Corporate Federal CU Operating Fees	$ (0.200)	$ (0.200)
13	**Natural Person FCU Operating Fees Required** (sum lines 11 -12)	**$ 144.694**	**$ 145.307**
14	Fees projected with Asset Growth of **5.6%**	$ (143.072)	$ (143.072)
15	**Difference** (lines 13 & 14)	**$ 1.622**	**$ 2.235**
16	**Average Rate Adjustment Indicated** (line 15 divided by line 14)	**1.13%**	**1.56%**

Comments Received: The majority of the commenters that supported the inclusion of the capital budget in the OTR also commented on and stressed the importance of including the projected miscellaneous revenues in the OTR calculation to reduce the overall amount of funding needed from the Share Insurance Fund. Accordingly, the Board adopts this change to the operating fee methodology.

3. Annual inflationary updates to operating fee schedule asset tier thresholds

Separately from the July 2020 notice, the Board proposed to amend its rule at 12 CFR 701.6 for determining total assets used as the basis for calculating the operating fee due from any FCU.[41] Under the proposed rule, total assets would be calculated as the average of total assets reported on an FCU's previous four Call Reports available at the time the NCUA Board approves the agency's budget for the upcoming year. The Board has adopted that proposed rule without change, and it will go into effect 30 days after publication in the *Federal Register*.

In the July 2020 notice, to 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, the Board proposed changing its approach for adjusting the rate tier thresholds. Specifically, for purposes of determining the annual adjustment to the rate tier thresholds, the Board 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.

[41] 85 FR 53708 (Aug. 31, 2020).

Comments Received: None of the commenters objected to the proposed change to adjusting the operating fee rate tier thresholds. Accordingly, the Board adopts this change to the operating fee methodology.

4. Other Requests for Comment on Operating Fee Methodology

The Board also solicited comment on three additional topics to inform potential future enhancements to the methodology. The Board will study these comments and consider future changes in these areas.

First, the Board noted that it has not substantially modified the current three-tier operating fee schedule since 1993. The current 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, the Board is interested in whether such an approach is an equitable method for allocating the agency's operating costs. There is a potentially wide range of approaches for distributing the cost of the NCUA's budget that is funded by the operating fee. For example, the Board 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 would shift costs away from relatively smaller credit unions to relatively larger ones, making the fee schedule less regressive. The Board could also make the operating fee schedule less regressive by increasing the rates for the second and third tiers on the schedule. Alternatively, adjusting the rates upward for the first and second tiers of the current operating fee would create a more regressive schedule. The Board sought comment on approaches to this issue.

Comments Received: None of the commenters provided specific recommendations for how or whether to revise the current three-tier operating fee schedule. Two commenters recommended that the NCUA review its operating fee schedule in a fully transparent process. The first commenter recommended that the NCUA convene a representative working group of credit union executives who could provide their perspectives on adjustment to the operating fee schedule. The second commenter recommended that the NCUA consider how share growth that resulted from the COVID-19 pandemic could affect the intent of proposed changes to the operating fee schedule.

NCUA Response: The Board agrees with the respondents to this question that recommend following a fully transparent process for developing a new operating fee schedule. The Board will study the issue further and consider potential future changes. The Board is not making any changes to the current operating fee schedule at this time.

Second, the Board sought comment on changing the threshold below which FCUs are not required to pay an operating fee. Currently, the Board 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 Board has accounted for the ability of small FCUs to pay the fees by exempting those under this threshold from paying any fee. In light of growth in total FCU assets, and of consolidation among FCUs, the Board sought comment on what factors it might consider when adjusting this threshold. The Board provided the following table to inform the public of the potential impact of raising the exemption threshold to various levels above the current $1 million threshold:

Revenue Impact of Increasing Exclusion Level to New Minium Level
(counts based on 2019 Q4 Call Report, amounts based on 2020 Operating Fee invoices)

	Current Structure		Exclude FCUs with <$1.5M assets			Exclude FCUs with <$5M assets			Exclude FCUs with <$10M assets		
Rate Tier	Count	Revenue	Count	Revenue	Change in Revenue	Count	Revenue	Change in Revenue	Count	Revenue	Change in Revenue
Total Assets less than $1 million	180	---	180	---	---	180	---	---	180	---	---
Additional CUs with Assets between $1 million and new minium	N/A	N/A	60	-$ 20,315	-$ 20,315	401	-$ 317,170	-$ 317,170	765	-$ 1,054,870	-$ 1,054,870
Total Assets more than exclusion threshold and less than $1,599,193,665	3,005	$ 90,483,240	2,945	$90,495,885.69	$ 12,646	2,604	$ 90,680,673	$ 197,433	2,240	$ 91,139,878	$ 656,638
Total Assets more than $1,599,193,665 and less than $4,839,136,005	70	$ 35,838,526	70	$35,843,535.10	$ 5,009	70	$ 35,916,725	$ 78,199	70	$ 36,098,607	$ 260,081
Total Assets greater than $4,839,136,005	20	$ 19,036,855	20	$19,039,515.37	$ 2,661	20	$ 19,078,393	$ 41,538	20	$ 19,175,006	$ 138,151
Total..	**3,275**	**$ 145,358,621**	**3,275**	**$ 145,358,621**	**---**	**3,275**	**$ 145,358,621**	**---**	**3,275**	**$ 145,358,621**	**---**

<u>Comments Received</u>: Five commenters provided their views about the exemption threshold. One commenter did not believe the exemption threshold should be changed, three commenters recommended raising the exemption threshold from $1 million to $10 million, and one commenter noted they were not opposed to raising the exemption threshold but argued that any foregone revenue should result in a dollar-for-dollar reduction to the NCUA budget.

<u>NCUA Response</u>: Given the lack of consensus between the respondents to this question, the Board will study the operating fee exemption threshold further and consider potential future changes. The Board is not making any changes to the current exemption threshold at this time.

Third, the Board sought comment on ways to encourage FCUs and FISCUs to complete an annual diversity survey. The NCUA provides credit unions an annual voluntary diversity self-assessment, as authorized by law.[42] The Board sought comment on whether and in what amount FCUs that complete an annual voluntary diversity self-assessment should receive a

[42] Section 342(b)(2)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203.

modest discount on the FCU operating fee due in the subsequent year. The Board also sought comment on appropriate incentives in this area for FISCUs, which do not pay an annual operating fee to the NCUA. Alternatively, the Board sought comment on other non-financial incentives that might encourage both FCUs and FISCUs to participate in the survey.

Comments Received: The NCUA received six comments in response to questions about incentives for completing the voluntary diversity self-assessment. None of the commenters provided specific or actionable recommendations for incentives that would encourage participation in the self-assessment. Four commenters encouraged the NCUA to ensure that equal incentives are provided to both FCUs and FISCUs, while one commenter raised concerns that any incentive provided to FCUs not result in changes to the OTR without appropriate notice to the public. One commenter opposed any incentives for participating in the assessment.

NCUA Response: Given the lack of clear consensus among respondents to this question, the Board believes it must study further how to create incentives for completing the voluntary diversity self-assessment. The Board will be mindful of those commenters that suggested that there should be equity between FCUs and FICUs for any incentive program. The Board is not establishing any incentives for completing the diversity self-assessment at this time.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.