

DRAFT

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA-2023-XXXX]

Request for Comment Regarding National Credit Union Administration Operating Fee Schedule Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and Request for Comment.

SUMMARY: The NCUA Board (Board) is requesting comment on 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 this notice, the Board proposes to change the exemption threshold below which Federal Credit Unions would not be required to pay the operating fee and proposes to establish a process to update the exemption threshold in future years based on the credit union system's annual asset growth.

DATES: Comments must be received on or before [insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <https://www.regulations.gov/>. Follow the instructions for submitting comments for Docket Number NCUA-2023-XXXX.
- *NCUA website:* <https://www.ncua.gov/regulation-supervision/rulemakings-proposals-comment>. Follow the instructions for submitting comments.
- *USPS/Hand Delivery/Courier:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

DRAFT

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: James Holm, Supervisory Budget Analyst, Office of the Chief Financial Officer, at (703) 518-6570.

SUPPLEMENTARY INFORMATION:

I. Legal Background

The NCUA charters, regulates, and insures deposits in FCUs and insures deposits in federally insured state-chartered credit unions (FISCUs). To cover expenses related to its tasks, the Board adopts a biennial 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 National Credit Union Share Insurance Fund, referred to as the overhead transfer rate (OTR);¹ and (2) operating fees charged to FCUs.²

¹ 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.”).

² 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.

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.”³ 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.”⁴ 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.”⁵

Accordingly, the FCU Act imposes three requirements on the Board related to assessing an operating fee on 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].”⁶

The NCUA’s regulations govern certain of the operating fee processes.⁷ The regulation establishes: (i) the basis for charging operating fees; (ii) a notice process; (iii) rules for new charters, conversions, mergers, and liquidations; and (iv) administrative fees and interest for late

³ 12 U.S.C. 1755(a).

⁴ 12 U.S.C. 1755(b).

⁵ *Id.*

⁶ 12 U.S.C. 1755(d).

⁷ 12 CFR 701.6.

payment, among other principles and processes.⁸ 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 operating fee 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,⁹ in January 2016, the Board published its methodology in the *Federal Register* and requested public comment on the same.¹⁰ The Board provided notice of several revisions to the operating fee in July 2020 and adopted a final operating fee rule in December 2020.

The Board first proposed its operating fee methodology in 1979, after Congress passed the Financial Institutions Regulatory and Interest Rate Control Act of 1978.¹¹ 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 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.”¹² In combination with a proposed change to section 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.¹³ It later published a final rule in the *Federal Register*, which included a finalized fee schedule for 1979.¹⁴

⁸ *Id.*

⁹ 5 U.S.C. 551 *et seq.*

¹⁰ 81 FR 4674 (Jan. 27, 2016).

¹¹ 44 FR 11785 (Mar. 2, 1979).

¹² *Id.* at 11786.

¹³ *Id.* at 11787.

¹⁴ 44 FR 27379 (May 10, 1979).

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 with total assets of less than \$50,000, and implementing a \$100 minimum fee.¹⁵ Second, in 1992, the Board requested comments on a plan to limit operating fees to the first \$1 billion of each FCU's assets.¹⁶ Third, in 1995, the Board requested comments on a plan to restructure the operating fee schedule for natural person FCUs and to exempt FCUs with assets of \$500,000 or less based on concern about small FCUs' ability to pay the fees.¹⁷ 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 \$750,000.¹⁸

In 2016, the Board published an updated 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. In 2020, the Board adopted three revisions to the methodology: (1) including the budget for capital projects within the total annual budget subject to the OTR; (2) including projected miscellaneous revenues within the total annual budget subject to the OTR; and (3) for purposes of determining the annual adjustment to the rate tier thresholds, comparing the average of total system assets reported in Call Reports for the four quarters available at the time the Board approves the budget to the average of total system assets in Call Reports for the four quarters of the respective previous years. Since that time, the Chief

¹⁵ 55 FR 29857 (July 23, 1990).

¹⁶ 57 FR 34152 (Aug. 3, 1992).

¹⁷ 60 FR 32925 (June 26, 1995).

¹⁸ *Id.*

Financial Officer has applied the 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 its 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*.¹⁹ While the Board has varied its practice with respect to operating fee schedule changes, it has done so within the FCU Act's broad directive that the operating 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.²⁰ In addition, the NCUA's regulation on operating fee processes includes a standing invitation for written comments from FCUs on existing operating fee schedules.²¹ Each year the Board also 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 rates are determined based on application of the published methodology.

II. Methodology for Determining the Aggregate Operating Fee Amount

The Board adopts an annual budget in the fall of each year, which includes an operating budget for the costs of day-to-day operations such as employee compensation, travel and training expenses, support purchased through contracts, and other miscellaneous administrative expenses. The annual budget also includes a capital budget for the estimated spending on critical projects,

¹⁹ Board Action Memorandum on 2013 Operating Fee (Nov. 15, 2012).

²⁰ 12 U.S.C. 1755(b).

²¹ 12 CFR 701.6(c).

such as for computer hardware and software, and for investments in agency-owned real property and equipment. The annual budget provides the resources required to execute the goals and objectives as outlined in the NCUA's strategic plan.²²

Adjustments to the Budget. When calculating the aggregate annual operating fee requirements, the Board adds together the operating budget and capital budget to determine the total annual budget required for the agency's operations and investments.²³ The Board then subtracts from the total annual budget its estimate for miscellaneous revenues that the agency will collect during the year, such as 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.

Overhead Transfer Rate: As discussed previously, the FCU Act authorizes the NCUA to expend funds from the National Credit Union Share Insurance Fund for administrative and other expenses related to federal share insurance.²⁴ The transfer from the National Credit Union 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

²² Additional information on the NCUA budget may be found at: <http://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx>.

²³ The NCUA Board considers a separate budget for administrative activities related solely to the NCUA's insurance program, which are financed directly from the National Credit Union Share Insurance Fund. In addition, the operations of the Central Liquidity Facility are considered by the Central Liquidity Facility Board, which is an instrumentality of the United States within the NCUA and managed by the Board, and has a separate budget funded from its own resources.

²⁴ 12 U.S.C. 1783(a).

regard to the OTR. The OTR is applied to actual expenses incurred each month, and the OTR share of monthly expenses is transferred from the National Credit Union Share Insurance Fund to the NCUA's Operating Fund. The estimated annual OTR is subtracted from the total annual budget, net of miscellaneous revenues, to determine the portion of the annual budget financed by the operating fee.

Interest Income and Other Adjustments: The Board reduces the portion of the annual budget financed by the operating fee by its estimate of interest income and by other adjustments in order to compute the net level of collections required to finance the agency's programs. Interest 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. The NCUA collects interest income by investing balances of operating fee collections in short-term Treasury securities because the collected funds are not immediately required to pay expenses. Other adjustments made by the Board include an estimate of prior-years' operating fee collections that are unlikely to be spent and that therefore reduce the need for new operating fee collections.

Operating Fee Requirements. The result of adjusting the total annual budget by the OTR share, interest income, and other adjustments is 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.

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. 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 operating fee schedule is a method of charging corporate FCUs a supervisory fee to defray costs and is now published annually in the budget.

III. Methodology for Determining the Operating Fee Schedule

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the operating fees charged to natural person FCUs and to set the operating 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 growth of the credit union system. Currently, 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 computed rate of natural person FCU asset growth; 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 adjust the threshold for each asset tier from the prior year by comparing the average of total system assets reported in Call Reports for the four quarters available at the time the Board approves the budget to the average of total system assets in Call Reports for the four quarters of the respective previous years. The tier thresholds are adjusted annually in this manner to preserve the same relative relationship of the scale to the applicable asset base.

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 using the prior-year assessment rates and the total 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, the assessment rates for each asset tier are adjusted downwards.

The resulting new operating fee schedule and due date are communicated through a Letter to Federal Credit Unions and posted online to *NCUA.gov* within 30 days of Board approval of the annual budget. The Board also makes available on the NCUA website an online operating fee calculator for FCUs to estimate their individual operating 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 the average of the assets reported for the previous four quarters available when the Board approves the budget. The NCUA combines operating fee and capitalization deposit adjustments 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.²⁵

IV. Change to Operating Fee Methodology and Request for Comment

The Board seeks comment on a change to the exemption level below which FCUs are not charged an operating fee and invites comment on other aspects of the operating fee methodology, as described below.

1. Threshold for Exemption from Paying an Operating Fee

Currently, FCUs reporting average assets of \$1,000,000 or less during the preceding four calendar quarters are exempt from paying an operating fee, because the Board considered and determined that such credit unions do not have the ability to pay the fee. The \$1,000,000 average asset exemption level has been in place since 2012 and has not been adjusted since that time. In the intervening 11 years, average assets across FCUs have approximately doubled. To account for this growth in the size of the credit union system, the Board is proposing to raise the average asset exemption level for FCUs to \$2,000,000 and to adjust the exemption 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 published by the Chief Financial Officer pursuant to 12 U.S.C. 1789(b). The NCUA would adjust the exemption threshold by the percentage by which average quarterly

²⁵ 12 U.S.C. 1755(d); <https://www.ncua.gov/files/agenda-items/AG20191212Item1b.pdf>, pages 57 to 64.

assets reported for the credit union system for the most-current four quarters have increased compared to the previous four quarters, using the Call report data available at the time the NCUA budget is published. For example, when the Board approved the 2023–2024 operating budget in December 2022, the average credit union system assets for the four most-current quarters (i.e., the third and fourth quarters of 2021 and the first two quarters of 2022) were 8.5 percent higher than the previous four quarters (i.e., the third and fourth quarter of 2020 and the first two quarters of 2021). This increase in assets can be expressed as an inflation multiplier (1.085 in the example given) and applied to the exemption threshold to determine the adjusted level.

The Board believes that this change would appropriately maintain its current policy of exempting the smallest natural person credit unions from paying the operating fee based on those institutions' inability to pay such a fee.

2. Other Aspects of the Operating Fee Methodology

The Board has not substantially modified the current three-tier operating fee schedule since 1993. 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, the Board is interested in whether such an approach is an equitable method for allocating the operating fee. There is a potentially wide range of approaches for assessing 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 fees away from relatively smaller credit unions to relatively larger ones, making the operating fee schedule less regressive. The Board could also make the operating fee schedule less regressive by increasing

DRAFT

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 is interested in receiving public comments on whether or how it should consider modifying the operating fee schedule and what specific aspects and conditions of the credit union system it should evaluate when making such decisions.

The Board is also interested in specific suggestions that would increase the equitable distribution of the operating fee across FCUs. Because the operating fee methodology allocates the non-OTR portion of the NCUA budget to all FCUs subject to it, changes to the methodology do not lower total operating fee collections but instead shift the fees to those FCUs required to pay it. The Board is interested in understanding how any proposals to change the methodology can be justified as fair and equitable not only for those FCUs whose operating fee would decrease, but also for those FCUs whose operating fees would increase and therefore bear a greater fee burden compared to the current methodology.

Authority: 12 U.S.C. 1755

By the National Credit Union Administration Board on XXXXX XX, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.