NATIONAL CREDIT UNION ADMINISTRATION

Request for Comment Regarding Revised Overhead Transfer Rate Methodology

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: In a voluntary effort to invite input from stakeholders, the NCUA Board (Board) is seeking comments on proposed changes to the Overhead Transfer Rate (OTR) methodology. The primary goal of the proposed changes are to reduce the complexity of the OTR methodology. The proposed changes would also reduce the resources needed to administer the OTR. This document provides a summary of and response to comments received on the current OTR methodology, and explains and solicits comments on the proposed changes to the OTR methodology.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to ensure consideration.

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

- NCUA Web Site: https://www.ncua.gov/about/pages/board-comments.aspx.
- E-mail: Address to boardcomments@ncua.gov. Include "[Your name]—Comments on OTR Methodology" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Gerald Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mailing address.

Public Inspection: You can view all public comments on NCUA's website at https://www.ncua.gov/about/pages/board-comments.aspx as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's headquarters at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6360 or send an e-mail to EIMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Russell Moore or Julie Decker, Loss/Risk Analysis Officers, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 518-6383 or (703) 518-6384.

SUPPLEMENTARY INFORMATION: NCUA requested comments on the current OTR methodologies and processes through a notice in the Federal Register published on January 27, 2016.[1] Areas the Board specifically sought comments on included:

- Whether the OTR should continue to be determined using a formula-driven approach, or instead be set largely at the discretion of the Board;
- the definition NCUA uses for insurance-related activities;
- adjustments or changes to the current calculation; and

[1] 81 FR 4804 (Jan. 27, 2016).

- alternate methodologies to arrive at an accurate and fair allocation of costs.

Within the 90-day comment period, NCUA received 40 comment letters on the OTR methodology. The commenters included federally insured state-chartered credit unions, national credit union trade organizations, state leagues, and state supervisory authorities. There were no comment letters received from federal credit unions. While there were only 40 comment letters, the comments addressed a broad range of complex issues. In addition to reviewing comments for input on the existing approach, NCUA staff explored options for the Board to consider for improving the OTR methodology. Many of the comment letters discussed the methodologies for both the OTR and the Operating Fee as well as other budget-related issues. This request for comments focuses specifically on the OTR methodology. Comments related to the Operating Fee methodology and other budget-related issues were referred to the appropriate office.

Based on the comments and NCUA's internal assessment, the Board is considering changes to the OTR methodology.

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I. Background

NCUA administers the Federal Credit Union Act (the Act), which is comprised of three Titles: Title I - General Provisions, Title II – Share Insurance, and Title III – Central Liquidity Facility. The agency's mission is to "provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit."[2] This includes protecting member rights and deposits. Specifically, NCUA charters, regulates, and insures shares in federal credit unions and insures shares and deposits in federally insured state-chartered credit unions through the National Credit Union Share Insurance Fund (Share Insurance Fund).

NCUA is responsible for ensuring federally insured credit unions operate safely and soundly and comply with all applicable laws and regulations within NCUA's jurisdiction.[3] In so doing, the agency mitigates risk to the Share Insurance Fund and prevents taxpayer-funded bailouts.

To achieve its statutory mission, the agency incurs various expenses, including those involved in examining and supervising federally insured credit unions. The Board adopts an Operating Budget each year to fund the vast majority of the costs of operating the agency.[4] The Act authorizes two primary sources to fund the Operating Budget: (1) Requisitions from the Share Insurance Fund; and (2) Operating Fees charged to federal credit unions.[5]

[2] *https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx.*
[3] In coordination with State Supervisory Authorities with respect to federally insured state-chartered credit unions.
[4] Some costs are directly charged to the Share Insurance Fund or the Temporary Corporate Credit Union Stabilization Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.
[5] Other sources of funding for the Operating Budget include interest income, funds from publication sales, parking fee income, and rental income.

In 1972, the Government Accountability Office recommended NCUA adopt a method for properly allocating Operating Budget costs – that is the portion to be funded by requisitions from the Share Insurance Fund and the portion to be covered by Operating Fees paid by federal credit unions.[6] NCUA has since used an allocation methodology, known as the OTR, to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

NCUA has employed various allocation methods over the years, with the current methodology adopted in 2003. For a chronological summary of the history of the OTR, refer to *Overhead Transfer Rate (OTR) – Timeline* at https://www.ncua.gov/About/Documents/Budget/Misc%20Documents/overhead-transfer-rate-chronology.pdf. For a detailed explanation of the current methodology, refer to *Federal Register – NCUA Request for Comment Regarding Overhead Transfer Rate Methodology* at https://www.federalregister.gov/documents/2016/01/27/2016-01626/request-for-comment-regarding-overhead-transfer-rate-methodology.

II. Legal Authority Comments and Responses

The Board detailed the legal parameters within which it must fund the NCUA Operating Budget in the January 2016 notice and request for comment.[7] While the Board did not expressly solicit comments on said authorities, a number of comments addressed NCUA's legal authority. Below the Board restates the legal parameters outlined in the January 2016 notice. Within these parameters, NCUA has developed a new OTR methodology proposed in this publication that

[6] *http://www.gao.gov/assets/210/203181.pdf*.
[7] 81 FR 4804 (Jan. 27, 2016).

continues to ensure application that is fair to both federal credit unions and federally insured state-chartered credit unions, and that is consistent across all of NCUA's cost centers.

a. Legal Authority

NCUA charters, regulates and insures shares in federal credit unions and insures shares and deposits in federally insured state-chartered credit unions. To cover expenses related to its statutory mission, the Board adopts an Operating Budget in the fall of each year. The Act authorizes two primary sources to fund the Operating Budget: (1) Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper'';[8] and (2) ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].''[9] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].'' Taken together, these dual primary funding authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating these expenses.

To allocate agency expenses between these two primary funding sources, NCUA uses the OTR. The OTR represents the formula NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II. Almost all other operating expenses are collected through

[8] 12 U.S.C. 1783(a).

[9] 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.

annual Operating Fees paid by federal credit unions.[10] Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for NCUA's Operating Budget and, hence, 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.[11] Second, NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[12] NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR. If NCUA's OTR methodology were challenged, the court would uphold NCUA's methodology unless it were shown to be arbitrary or capricious, contrary to law, or unsupported by statutory authority under the Administrative Procedure Act (APA).[13] The Board believes the existing OTR and this proposal are fully consistent with the APA and all other applicable law.[14]

b. Comments

In response to its initial OTR notice, NCUA received a variety of comments related to the legal authority to requisition funds from the Share Insurance Fund to cover a portion of the Operating Budget. Several commenters stated the agency does not have authority or discretion to establish and determine the OTR. Some commenters asserted that NCUA lacks the legal authority to use the Share Insurance Fund to cover costs of operating the agency. Other commenters claimed NCUA has only very narrow authority to allocate costs, has too broadly

[10] Annual Operating Fees must ‘‘be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee.’’ 1755(b). The NCUA Board's methodology for determining the aggregate amount of Operating Fees was discussed in a separate Federal Register publication.
[11] 12 U.S.C. 1783(a).
[12] The Act in 12 U.S.C. 1755(a) states, ‘‘[i]n accordance with rules prescribed by the Board, each [federal credit union] 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.’’ See also 12 U.S.C. 1766(j)(3).
[13] 5 U.S.C. 706(2).
[14] *See, e.g., Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983).

interpreted its authority, and may assign to the Share Insurance Fund only those costs directly associated with share insurance payments for failed or troubled credit unions. Some commenters insisted NCUA is required to fund the vast majority of the cost of operating the agency through Operating Fees charged to federal credit unions, claiming Congress intended that Operating Fees were to subsidize costs in managing risk to the Share Insurance Fund. Having considered these comments, NCUA maintains that a plain reading of the Act, as described in section II.a. above and in the January 2016 notice, supports the agency's legal authority and broad discretion in allocating operating costs.

Various commenters disagreed with the agency's legal analysis and argued that some combination of 12 U.S.C. 1781(b)(1), 1782(a)(5), and 1790 also limit NCUA's requisition of funds from the Share Insurance Fund for the Operating Budget. Several commenters went further and argued that Title II's legislative history indicates the savings from NCUA's reliance on Title I and State Supervisory Authority examinations and reports should accrue to the benefit of the Share Insurance Fund. The Act's plain language does not require an analysis of the legislative history.[15] Even if legislative history was applicable in this case, the plain reading of the Act is consistent with the legislative history and does not support commenters' interpretation that Congress intended costs savings provisions to only accrue to the Share Insurance Fund as discussed below.

Multiple commenters stated that the plain language of the Act requires the Board to structure examinations and Call Reports originally required under Title I so they may be used for Title II share insurance purposes.[16] These commenters similarly stated that the Act places

[15] *See, e.g.*, *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 ((2002).
[16] 12 U.S.C. 1781(b)(1), 1782(a)(5).

requirements on NCUA to use state regulator examinations and reports to the maximum extent feasible.[17] In response, the Board notes that Title II, in 12 U.S.C. 1781(b)(2), authorizes examinations as needed for the protection of the Share Insurance Fund and other credit unions in addition to those permitted under Title I, recognizing that the scope and timing of Title I examinations does not necessarily satisfy share insurance needs under Title II. Regardless of the parsing of the various statutory provisions on this point, the Board is careful to build efficiencies wherever reasonable in light of NCUA's dual roles as (1) charterer and prudential regulator of federal credit unions and (2) insurer of federal credit unions and federally insured state-chartered credit unions. Efficiencies gained from NCUA's dual role provide cost savings and help avoid subjecting credit unions to the burden of redundant examinations. Further, the Act's provisions on cost savings do not prohibit NCUA from allocating insurance-related operating expenses to the Share Insurance Fund through the OTR under 12 U.S.C. 1783(a). Specifically, 12 U.S.C. 1781(b)(1) requires NCUA to adjust the way it conducts examinations of federal credit unions so they may be "utilized for share insurance purposes." This provision does result in cost savings. However, it does not preclude NCUA from allocating the costs of the "share insurance purposes" portion of federal credit union examinations to the Share Insurance Fund.[18] The Board thus disagrees with commenters that argued that the Act requires the cost-savings of NCUA's dual roles to accrue specifically to the Share Insurance Fund.

While the Board did not cite 12 U.S.C. 1790 as an additional limitation in its earlier notice, the Board agrees with commenters stating that this provision should inform NCUA's interpretation of Title II so that it consciously avoids discrimination against federally insured

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[17] *Id.*

[18] With respect to call reports and other ongoing reports submitted by federally insured credit unions, 12 U.S.C. 1782(a)(5) is also a cost savings provision but does not preclude allocating insurance-related costs of the applicable data collections to the Share Insurance Fund.

state-chartered credit unions to the benefit of federal credit unions.[19] However, the Board does not believe that either the current or the proposed OTR process discriminates against federally insured state-chartered credit unions or federal credit unions to the benefit of the other.

As background, all federally insured credit unions are subject to the same requirements for funding the Share Insurance Fund. Specifically, § 1782(c)(1)(A)(i) requires that "[e]ach insured credit union shall pay to and maintain with the [Share Insurance Fund] a deposit in an amount equaling 1 per centum of the credit union's insured shares." Section 1782(c)(2)(A) requires that "[e]ach insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions)." Thus, in funding the Share Insurance Fund, federal credit unions and federally insured state-chartered credit unions are not treated any differently. Similarly, the requisitions from the Share Insurance Fund used to fund the insurance-related expenses of NCUA's Operating Budget under § 1783(a) do not distinguish between federal credit unions and federally insured state-chartered credit unions.

As for the OTR methodology and whether it complies with § 1790, the OTR methodology only considers the type of activity (i.e. insurance-related or not) and treats the expenses related to that activity the same regardless of the type of charter to which the activity applies. Specifically, both the existing and proposed OTR methodologies provide that all insurance-related expenses are funded from the Share Insurance Fund, regardless of charter type.

The Act clearly permits expenses related to insurance to be funded by the Share Insurance Fund regardless of charter. Specifically, 12 U.S.C. 1783(a) expressly allows expenses ''incurred

[19] 12 U.S.C. 1790 ("It is not the purpose of this subchapter to discriminate in any manner against State-chartered credit unions and in favor of Federal credit unions, but it is the purpose of this subchapter to provide all credit unions with the same opportunity to obtain and enjoy the benefits of this subchapter.").

in carrying out the purposes of [Title II]" to be allocated to the Share Insurance Fund. The costs NCUA incurs in safeguarding the Share Insurance Fund relate to the risks in federal credit unions and federally insured state-chartered credit unions. The Act provides the Board with a number of specific authorities that relate to costs NCUA incurs in carrying out its obligations under Title II. For instance, Title II of the Act authorizes the Board "to appoint examiners who shall have the power, on its behalf, to examine any insured credit union…whenever in the judgment of the Board an examination is necessary to determine the condition of any such credit union for insurance purposes."[20] Further, Title II authorizes the Board to implement regulations applicable to all insured credit unions to address risk to the Share Insurance Fund. Title II states the Board may "prescribe such rules and regulations as it may deem necessary and appropriate to carry out the provisions of this subchapter."[21] Title II also grants the Board the following additional authorities relevant to agency operating costs:

- "Appoint such officers and employees as are not otherwise provided for in this chapter;"[22]
- "employ experts and consultants or organizations thereof;"[23]
- "prescribe the manner in which its general business may be conducted and the privileges granted to it by law may be exercised and enjoyed;"[24]
- "exercise all powers specifically granted by the provisions of this subchapter and such incidental powers as shall be necessary to carry out the power so granted;"[25] and

[20] 12 U.S.C. 1784(a).
[21] 12 U.S.C. 1789(a)(11).
[22] 12 U.S.C. 1789(a)(4).
[23] 12 U.S.C. 1789(a)(5).
[24] 12 U.S.C. 1789(a)(6).
[25] 12 U.S.C. 1789(a)(7).

- "make examinations of and require information and reports from insured credit unions, as provided in this subchapter."[26]

The Board concludes that these authorities taken together provide NCUA as insurer with broad discretion to impose regulations on and examine all insured credit unions. In addition, the cost of the agency activities associated with exercising these and other accompanying authorities can properly be considered costs of carrying out Title II of the Act.[27]

Finally, a number of commenters argued that the OTR methodology and/or calculations either should or must go through full APA notice and comment rulemaking. The APA does not require notice and comment for the OTR methodology. The legal analysis of NCUA's Office of General Counsel on the applicability of the notice and comment provisions of the APA to the OTR methodology is summarized in the January 2016 OTR notice[28] and articulated more fully in a legal opinion posted on NCUA's website.[29] In soliciting comment on the OTR through the Federal Register NCUA has gone, and continues to go, beyond its APA obligations.

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[26] 12 U.S.C. 1789(a)(8).

[27] For example, Title II specifically addresses a broad range of standards for all insured credit unions, including standards for insurance against burglary and defalcation, loss reserve requirements, investment limitations, ongoing reporting requirements (such as the Call Report), independent audits, accounting principles, national flood insurance program requirements, liquidity capacity, unsafe and unsound conditions or practices, security standards, recordkeeping, monetary transaction and recordkeeping and reporting, benefits to institution affiliated parties, capital standards, and approval of officials.

[28] 81 FR 4804 (Jan. 27, 2016) ("Since its inception, NCUA has taken the position that the OTR is not a legislative rule under the Administrative Procedure Act (APA) and is, therefore, exempt from notice and comment rulemaking processes. [] As such, NCUA has never used notice and comment rulemaking to establish either an individual determination of the OTR or the general methodology used to calculate the OTR. However, the OTR has been explained, discussed, and reviewed in various public records, including in annual Board Action Memorandums related to budget matters, independent evaluations, and other documents available in public records and on NCUA's Web site.[] Beyond its APA obligations, the Board has chosen to solicit public comments on the OTR processes and methodologies through this Federal Register publication.").

[29] NCUA's legal analysis with respect to the OTR and APA process is available at the following Web page: *https://www.ncua.gov/Legal/Documents/Opinion/OL2015-0818.pdf*.

III. Current OTR Methodology and Process Comments and Responses

a. Formula Driven or Set at the Discretion of the Board

The majority of commenters expressed support for NCUA's continued use of a formula to determine the OTR. The Board agrees NCUA should continue to use a formula to determine the OTR. Use of a well-designed and comprehensive formula represents a good faith effort to consider all of the agency's costs relative to how NCUA is carrying out its various responsibilities. A formula also helps ensure costs assigned to the OTR relate to agency activities to carry out Title II responsibilities. 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. Though it 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.

However, five commenters favored setting the OTR at a fixed 50 percent of the Operating Budget. Commenters that supported setting the OTR at 50 percent indicated that it is easily understandable, more in line with the dual functions of NCUA as regulator and insurer, and that the OTR was set at 50 percent for many years. The Board does not believe it is transparent or appropriate to set the OTR at any level, such as the 50 percent recommended by commenters, without a reasoned basis to demonstrate that level of agency operating costs are properly allocated to Title II activities.[30] However, the Board agrees that the OTR methodology can be simplified and maintain a sufficient degree of comprehensiveness to ensure it is equitable.

[30] *See* 12 U.S.C. 1783(a).

Such a simplification should improve understanding of the OTR and reduce administrative costs. For a discussion of how the Board proposes to simplify the OTR methodology, see section IV.

b. Delegation of the OTR Calculation to NCUA Staff

Ten commenters objected to the Board's delegation of the OTR calculation to NCUA staff. They argued that by doing so the Board abdicated its oversight and discretion over the OTR and that it will result in reduced transparency. During the November 29, 2015, Board meeting, the Board approved the delegation of authority to administer the Board approved OTR methodology to the Director of the Office of Examination and Insurance (E&I).[31]

Delegating the ministerial application of the Board approved OTR methodology does not mean the Board has abdicated its oversight and discretion for the OTR. With limited exceptions not at play here, the Act permits the Board to "delegate to any officer or employee of the Administration such of its functions as it deems appropriate."[32] Further, the current delegation to staff to administer the OTR does not provide staff with the power to change the methodology for calculating the OTR. Rather it mirrors the typical organizational separation of duties where the board sets policy and staff implements the policy. The Board retains approval authority over the methodology that is used to calculate the OTR; only the Board can change the OTR methodology or use its discretion to change the OTR from the calculated result if circumstances so warranted. However, having the OTR set by a Board approved formula, instead of an explicit Board vote each year, helps avoid any perception that the agency would casually override the calculation in setting the OTR. At any time, any Board member may request a Board vote be scheduled to change the OTR methodology, or to change the OTR from the calculated result.

[31] NCUA Board Action Bulletin found at the following web address: *https://www.ncua.gov/About/Pages/board-actions/bulletins/2015/november/BAB20151119.aspx*.

[32] 12 U.S.C. 1789(a)(10); *see also* 1766(d).

The delegation has not resulted in a reduction in transparency. As was done prior to the delegation, each year staff submits a report to the Board on the results of the calculation and conducts a briefing at a public Board meeting. The materials supporting the OTR calculation and the result are provided as part of the public Board briefing and posted on the agency's website. The Board intends for this public reporting to continue. Further, the Board is committed to soliciting public input at least every three years on the OTR methodology, and any time a change to the methodology is considered.

c. Transparency

Nine commenters stated that the current OTR methodology is not sufficiently transparent. NCUA has made various efforts over the years to be transparent with respect to the OTR, and recently published extensive information about the OTR. The setting of the OTR has been briefed and acted on each year at a public Board meeting. The associated Board Action Memorandums, which are public records, fully detailed the calculation and included supporting materials. The current methodology was extensively reviewed at a public Board meeting when adopted in 2003. All related materials have been made a matter of public record and posted on NCUA's website. Numerous analyses, independent evaluations, and other documents are available in public records and on NCUA's website. To improve transparency further, the agency organized and posted a variety of new and historical materials on its website in 2015.[33] Additionally, the January 27, 2016, request for comment regarding the OTR methodology provided detailed explanations for the processes and methodology related to calculating the OTR. Although all information related to the OTR calculation is publicly available already, the

[33] Materials related to the OTR can be found at *www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx*.

Board acknowledges that an obstacle to transparency is the complexity of the methodology itself. In an effort to address the transparency concern, the Board is considering simplifying the OTR methodology. While still formula driven, the proposed changes to the methodology would provide for a simpler approach that remains comprehensive, fair, and equitable. The proposed changes to the methodology are described in detail in section IV of this document.

d. Definition of Insurance-Related Activities

NCUA's definition of insurance-related activities received the most comments. Of the 36 commenters on this topic, most disagree with the definition NCUA uses for insurance-related activities. Many commenters objected to equating "safety and soundness" with "insurance-related," with some arguing that the charterer/prudential regulator cares about safety and soundness and it is therefore not the sole domain of the insurer. Commenters asserted the definition assumes that NCUA has no safety and soundness oversight in its role as regulator and charterer of federal credit unions. By doing so, commenters claim NCUA is shifting expenses that should fall under the operating fee paid by federal credit unions to the Share Insurance Fund.

NCUA recognizes the historical role of a charterer/prudential regulator involves enforcing laws and implementing public policy. Before the advent of federal deposit insurance, federal financial institution regulators were concerned with protecting the stability of the financial system by "regulating" it. Thus, financial institution examinations focused on ensuring (1) statutes and regulations were followed to protect consumers, and (2) institutions were viable to protect consumer deposits, preserve access to financial services, and safeguard the stability of the economy. Though not responsible for the financial liability that comes with the role of insurer, prudential regulators are concerned with potential threats to the viability of their financial institutions to protect consumers and their jurisdiction's economy. This focus on viability benefits the insurer, whose primary role is to protect depositors and the taxpayer and contribute to the stability of the financial system.

NCUA has a unique dual role in that it serves as both the regulator of federal credit unions and the insurer of all federally insured credit unions.[34] Congress established the Share Insurance Fund and assigned its administration to the Board.[35] This arrangement has a variety of benefits. A regulator/supervisor with insurance responsibility creates a strong alignment of incentives in preserving safety and soundness, thereby managing risk to the Share Insurance Fund. The appropriate combination of functions reduces the likelihood that a regulator would act without adequate regard for the insurance implications. It also generally avoids additional and duplicative oversight costs, and the corresponding burden on insured institutions of separate requirements and supervision from a different regulator and insurer.

Given its multiple roles, NCUA appropriately allocates costs associated with activities connected to each role. Various provisions of the Act, as noted earlier, govern or inform this allocation. Thus, NCUA currently categorizes those activities designed to manage risk to the Share Insurance Fund as "insurance-related." This includes activities designed to enforce

[34] The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and federal savings associations as well as federal branches and agencies of foreign banks. On its website, the OCC lists its mission as ensuring that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. Similarly, the Board of Governors of the Federal Reserve System has supervisory and regulatory authority over a wide range of financial institutions, including state-chartered banks that are members of the Federal Reserve System, bank holding companies, thrift holding companies and foreign banking organizations that have a branch, agency, a commercial lending company subsidiary or a bank subsidiary in the United States. On its website, the Federal Reserve states its mission is to provide the nation with a safer, more flexible, and more stable monetary and financial system. One of its four stated general duties is supervising and regulating banking institutions to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers. On its website, the Federal Deposit Insurance Corporation states its mission is to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships.

[35] 12 U.S.C. 1782, 1783.

regulations NCUA adopts to carry out the purpose of Title II (Share Insurance) as well as related examination and supervision activities.[36] NCUA's categorization focuses on the primary motivation for the regulation or examination and supervision activity. The motivation for insurance-related regulations and examination activities is based on the nature of the threat to the viability of the institution, and therefore potential losses to the Share Insurance Fund. The insurance-related definition excludes procedures that assess compliance with other regulations. Consumer protection and other laws and regulations (such as field of membership rules) designed to otherwise govern how credit unions operate, and related examination activities, are not primarily intended to reduce the potential for losses to the Share Insurance Fund. Moreover, while systemic and egregious violations of such laws could result in material fines to the institution, such occasions are very infrequent and rarely result in the failure of the institution or losses to the Share Insurance Fund.

Thus, NCUA currently allocates costs associated with regulating and examining the safety and soundness of insured institutions as insurance-related. Worthy of note, Congress uses "safety and soundness" and related terminology in the Act.[37] There are two subjects in Title I containing safety and soundness terminology: the interest rate ceiling for federal credit unions (12 U.S.C. 1757(5)(A)(vi)(I)) and provisions regarding multiple common bond groups (12 U.S.C. 1759(d) and 12 U.S.C. 1759(f)). The current safety and soundness language applying to these two subjects in Title I was added after Title II was enacted. There are 19 references to

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[36] As noted in the Legal Authority section, NCUA has the authority to promulgate rules and regulations to carry out the purpose of Title II – Share Insurance. Accordingly, the NCUA Board has approved rules and regulations that specifically address credit union activities that pose risk to the Share Insurance Fund. NCUA has mapped all examination related rules and regulations to one of two categories: insurance regulatory related, or non-insurance or consumer regulatory related. This regulatory mapping provides the basis for determining how examination time is reported for use in the current OTR methodology. The mapping is discussed in detail in the 2013 independent study by PwC and in NCUA's January 2016 request for comment.

[37] "Safe and sound," "safety and soundness," and "unsafe or unsound" are the terminology encompassing safety and soundness found in the Act.

safety and soundness in Title II. These provisions cover a range of subjects.[38] In particular, NCUA's various enforcement authorities for violations of laws or regulations and unsafe or unsound conditions or practices are contained in Title II. Thus, most of Congress' focus on safety and soundness in the Act is in the context of share insurance.

However, NCUA acknowledges that safety and soundness is not the sole domain of the insurer; prudential regulators have various responsibilities with respect to the "safety and soundness" of institutions they oversee. In some respects this is recognized in the current OTR formula through the "Imputed SSA Value." To better reflect that the prudential regulator and insurer both have responsibilities for safety and soundness, the Board is considering adjusting the OTR methodology so safety and soundness is not accounted for as the primary domain of the insurer. For more information on the proposed change to the OTR methodology, see section IV.

One commenter stated that routine examinations of all insured credit unions should be paid through Operating Fees. Another commenter asserted that the OTR should only be used for examinations of federally insured state-chartered credit unions and examinations of troubled federal credit unions. These recommendations assume that as insurer, NCUA takes only a reactive approach to managing risk to the Share Insurance Fund.

The Board notes that NCUA's role as insurer is best fulfilled by a proactive approach to preventing losses, not just addressing troubled or failed institutions. Since the implementation of federal share insurance in 1970, the Board has instituted a more proactive examination and supervision program geared toward safety and soundness to better manage risk to the Share Insurance Fund. Additionally, as credit unions have become larger and more complex, the risks to the Share Insurance Fund have changed, with NCUA making corresponding adaptions to its

[38] See 12 U.S.C. 1781(c)(2), 1782(a)(6)(B), 1786(b), 1786(e), 1786(f), 1786(g), 1786(k)(2), 1786(r), 1786(s), and 1790d(h).

operations. In 2002, the Board strengthened its commitment to fulfilling NCUA's role as insurer by implementing the Risk-Focused Examination Program. As recently as 2016, the Board made the examination program even more risk-based by adopting an extended examination cycle for healthy, well-run credit unions. These programs base examination scope and timing largely on the risks an institution poses to the Share Insurance Fund. Further, the objective of the risk-focused examination is to enable NCUA to identify and address risks before they become a major problem. All of these changes have resulted in an increase in the agency's insurance-related activities.

The Act and NCUA Regulations have also evolved, resulting in more emphasis on safeguarding the Share Insurance Fund. For example:

1. The Credit Union Membership Access Act was enacted into law in 1998.[39] This law resulted in new obligations on credit unions and NCUA, such as prompt corrective action, designed to protect the Share Insurance Fund.

2. During the aftermath of the financial crisis, the Board strengthened critical safety and soundness rules, such as interest rate risk and liquidity management standards.

3. NCUA also has been providing regulatory relief. New authorities and less prescriptive, more principles-based rules have helped to reduce compliance burdens and provide credit unions with more authority to serve members and manage risk. They result in examiners devoting more time to ensuring safety and soundness through the examination process rather than relying on regulatory limits.

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[39] Information about the Credit Union Membership Access Act is contained within NCUA Letter to Credit Unions 98-CU-16 located at the following web address: *https://www.ncua.gov/Resources/Documents/LCU1998-16.pdf.*

Under this proactive approach, the Board's primary motivation for many of the agency's current regulations and the majority of the examination program is to manage risk to the Share Insurance Fund.

The Board acknowledges there is not always a clear separation between the role of a prudential regulator concerned with enforcing laws and implementing public policy and that of an insurer. For example, NCUA relies, to the extent feasible, on the examination work performed by state regulators to manage risk to the Share Insurance Fund posed by federally insured state-chartered credit unions. This results in some cost savings in the NCUA Operating Budget. Since 2004, the value of the insurance-related work conducted by state regulators and relied on by NCUA has been reflected in the OTR methodology as the "Imputed SSA Value." To ensure equitable treatment, the Imputed SSA Value is calculated on the same cost basis as if NCUA had to conduct the work itself.[40] The current methodology applies the same approach and definition of insurance-related examination activities to examinations of federally insured state-chartered credit unions as for federal credit unions. The Imputed SSA Value has the effect of reducing the OTR, thereby taking into account the fact that all insured credit unions benefit from the insurance-related examination costs of state regulators borne by state-chartered credit unions.

The Board recognizes that another plausible approach to accounting for the related missions of charterer/prudential regulator and insurer is to employ an alternating or partnership framework within the OTR methodology. This would simplify the OTR methodology and avoid having to delineate safety and soundness as the primary domain of the insurer. The concept of an alternating or partnership framework being applied to the OTR methodology is described in detail in section IV of this document.

[40] The Imputed SSA Value for 2017 is $50.8 million.

e. State Regulator Costs

Some commenters asserted that because NCUA equates safety and soundness with insurance-related activities, the OTR methodology is not fair and equitable as state regulators also examine federally insured state-chartered credit unions for safety and soundness. As a result, some commenters contended federally insured state-chartered credit unions are charged twice for safety and soundness examinations; once by their state regulator via an operating fee and then by NCUA via the OTR. Further, some commenters claimed that federally insured state-chartered credit unions are disadvantaged when the OTR rises due to increased NCUA examination time allocated to insurance, because the NCUA operating fee paid by federal credit unions declines.

NCUA appreciates the work state regulators do in contributing to the safety and soundness of the credit union system. The agency will continue to partner and coordinate closely with state regulators in this regard. It is important to note that ultimately NCUA is accountable for carrying out the purpose of Title II of the Act and managing risk to the Share Insurance Fund. The extent state regulators examine for safety and soundness is the choice of state governments. This choice, along with the adequacy of the examination, affects the extent to which it is feasible for NCUA to rely on these examination reports to meet its Title II responsibilities. State governments also choose the extent to which they rely on the work of NCUA in its role as insurer to reduce overall state costs and burden.

State-chartered credit unions are not charged twice as a result of state regulators also examining for safety and soundness. The extent to which state regulators examine for safety and soundness in a manner that can be relied on by NCUA reduces the overall agency costs to which the OTR is applied, benefiting all insured credit unions. Conversely, NCUA's involvement in developing reporting and examination systems for all insured credit unions, publishing guidance, training and equipping most state examiners, and participating in the examination of federally insured state-chartered credit unions reduces overall state regulator costs.[41] As discussed above, the current OTR methodology takes into account via the Imputed SSA Value the insurance-related work conducted by state regulators and relied on by NCUA. In addition, the Imputed SSA Value is calculated using the same examination time allocation for federal credit unions. Thus, when more of the agency's examination time is dedicated to insurance-related areas, the Imputed SSA Value also increases. The Imputed SSA Value has the effect of reducing the OTR (and conversely increasing the operating fee paid by federal credit unions) to the benefit of state-chartered credit unions. This provision helps ensure the current OTR methodology is fair and equitable.[42]

Some commenters suggested that if the OTR continued to define all safety and soundness activities as insurance-related, NCUA should use each state regulator's actual costs instead of an imputed value. Others argued NCUA should pay the state governments for their actual costs instead of merely reducing the OTR.

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[41] NCUA budgeted to spend over 150,000 hours participating in the examination and supervision of federally insured state-chartered credit unions in 2017. To conduct this additional work would require state regulators to add an estimated 175 staff at a cost of up to $35 million. Most state regulators participate in NCUA's examiner training programs, use the agency's examination and Call Report systems, and benefit from the agency's exam techniques and supervisory guidance. State regulators would have to individually or collectively develop and administer these functions and systems if NCUA did not provide them. For context, NCUA's 2017 budget included the following for units associated with these functions and systems: $10.5 million for the Division of Training and Development; $16.4 million for the Office of the Chief Information Officer's information technology operations; and $12.3 million for the Office of Examination and Insurance. Also, NCUA's 2017 capital budget includes $10.4 million to support the Enterprise System Modernization program; much of this program involves modernization of systems that directly or indirectly support supervising credit unions. Additionally, in 2017 NCUA budgeted $1.4 million for training of state examiners and $162,480 in computer lease expense for equipment provided to state regulators.

[42] Overhead Transfer Rate Review, PriceWaterhouseCoopers, Section 1.4.3 (January 20, 2011)(Based on PwC's review, there was no reasonable basis to conclude that the OTR methodology ex-ante and for reasons beyond the control of credit unions, favours or disadvantages any one type of credit unions (i.e. federal versus state chartered) over another.)

NCUA notes that it is neither feasible nor appropriate to use the actual state regulator costs in determining the OTR. To ensure the methodology is fair and equitable across all federally insured institutions, the Imputed SSA Value is intentionally designed to reflect the replacement cost to NCUA if the agency had to do the insurance-related work it relies on the state regulators to conduct. The cost structure for state regulators can vary widely and include non-germane and potentially inordinate costs. Also, it is not feasible to obtain reliable and comprehensive information about the relevant cost of each state regulator. NCUA has no authority to compel states to provide this information, nor to maintain records in such a way as to ensure proper allocation of germane costs.

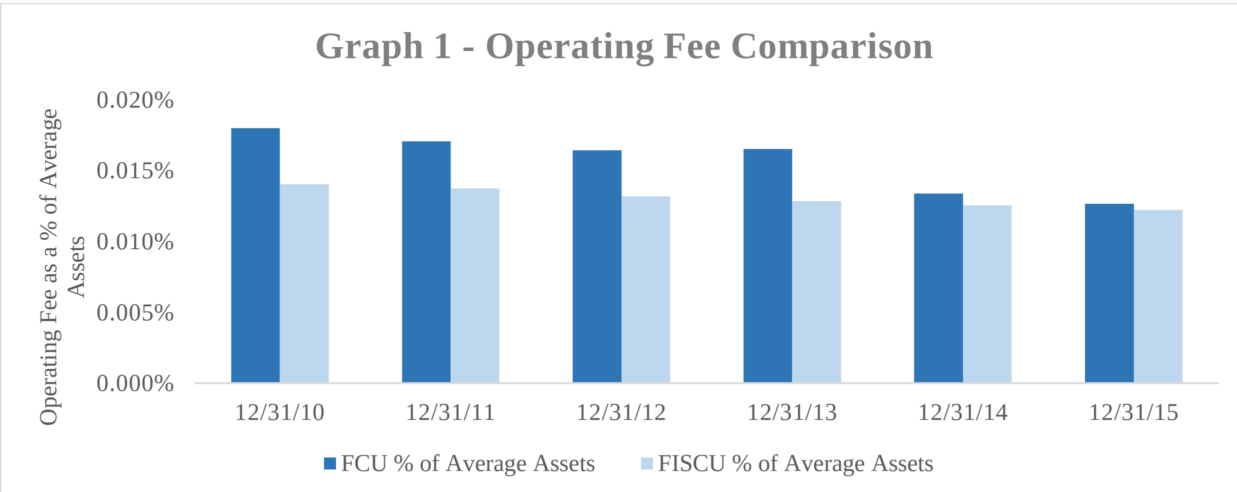
As part of the process of evaluating the suggestion to use actual state regulator costs, NCUA attempted to obtain and review the costs of state regulators and their methodologies for annual and/or examination fees for state-chartered credit unions. This included determining how costs are allocated to the credit union specific activities for state regulators housed within state offices with broader responsibilities.[43] NCUA staff first reviewed publicly available information with limited success. NCUA also sent letters to the state regulators to request details on fee structures, costs, and allocation factors for credit union specific activities. The information request did not result in sufficiently comprehensive information upon which to draw any reliable conclusions.[44]

Based on Call Report data, NCUA did compare the total Operating Fees as a percent of average assets paid by federal credit unions to those reported by federally insured state-chartered

[43] Based on the responses received from the state regulators, many state credit union programs are divisions contained within a larger office with funds co-mingled with other programs. The state regulators that responded and that do not separate funds for credit unions from other financial institutions supervised generally either do not allocate expenses or did not provide their allocation methodology.

[44] In total, 27 state regulators responded to varying degrees. These state regulators provided as much of the requested information as they could, given limitations they faced.

credit unions. Though this comparison has some limitations, the trends in Graph 1 below show that Operating Fees recorded by federal credit unions and federally insured state-chartered credit unions are comparable in aggregate.



Further, federal credit unions continue to bear the majority of NCUA's operating costs. For NCUA's 2017 Operating Budget, federal credit unions cover 67 percent of the total Operating Budget through the operating fee and their proportional share of the OTR.

f. Regulation Mapping[45]

NCUA has mapped all examination-related rules and regulations to one of two categories: insurance regulatory related, or non-insurance and consumer regulatory related. A third party has reviewed the regulatory mapping.[46] NCUA reviews the regulatory mapping prior

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[45] As part of the current OTR methodology, the agency maps NCUA examination activities related to specific regulations based on the primary purpose of the regulation - whether it is for carrying out the purpose of Title II (insurance-related) or part of NCUA's responsibility as charterer or prudential regulator. For details regarding the regulation mapping, see Appendix A of the January 27, 2016 request for comment.

[46] PwC National Credit Union Administration (NCUA) Analysis of Examination Time Survey (ETS) Modifications – October 2, 2013: *https://www.ncua.gov/About/Documents/Budget/2013/2013ETSAnalysis.pdf*.

to the beginning of each examination time survey cycle for any necessary updates.[47] A detailed review was completed again for 2017 that resulted in minor adjustments to classifications. For the full regulatory mapping, see the 2017 Mapping of NCUA Rules and Regulations document posted on NCUA's public website at https://www.ncua.gov/About/Documents/mapping-ncua-regulations-2017.pdf.

Since NCUA equates safety and soundness with the term insurance-related in the current OTR methodology, commenters argued that the mapping of NCUA's rules and regulations is faulty. Some commenters asserted that classifying NCUA rules as insurance-related is flawed because NCUA as charterer/prudential regulator is charged with ensuring compliance with all the provisions contained within the rules and regulations.

As noted in the Legal Analysis section above, the Board has the authority to promulgate rules and regulations to carry out the provisions of Title II (Share Insurance) of the Act, as well as examine credit unions for share insurance purposes.[48] Accordingly, the Board has approved rules and regulations that specifically address safety and soundness with the intent to protect the Share Insurance Fund. As such, the current OTR methodology accounts for examination and supervision activities for insurance-related regulations as an insurance cost.

As noted above, the Board recognizes that another plausible approach to accounting for the related missions of charterer/prudential regulator and insurer is to employ an alternating or partnership framework within the OTR methodology. This would simplify the OTR methodology in part by avoiding having to map regulations to a specific role as it relates to

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[47] The examiner time survey is performed annually and is used to determine the percentage of the workload budget relates to regulatory and insurance-related tasks for federal examinations and supervision contacts.
[48] 12 U.S.C. 1789(a).

federal credit unions. The concept of an alternating or partnership framework being applied to the OTR methodology is described in detail in section IV of this document.

g. Other Methodological Aspects of the OTR

NCUA received 23 comments suggesting various other changes to the current OTR process. The areas of the calculation receiving comments were the examiner time survey, the allocation factors for various NCUA central offices, and the use of insured shares in the calculation.

- Examiner time survey:[49] Commenters generally agreed with using a time survey in allocating the cost of federal credit union examination and supervision. However, some commenters suggested NCUA conduct a time survey during all examinations and supervision contacts instead of on a statistically valid sample basis. Some commenters suggested having state regulators complete the examiner time survey as well.

  It is not necessary to have 100 percent coverage of all examination and supervision contacts to form a statistically valid basis for the survey. A complete census of all federal credit union examinations and supervision contacts would result in additional agency costs – all staff would have to be trained annually and all examinations and supervision contact hours would need to be increased for the time necessary to complete the survey.[50] Moreover, the survey is not pertinent to NCUA's work in federally insured state-chartered credit unions given NCUA is only functioning in its capacity as insurer.[51] The benefits of any small

[49] The current examiner time survey is discussed in detail in the Request for Comment Regarding Overhead Transfer Rate Methodology published in the Federal Register on January 27, 2016.

[50] Completing examination time surveys increases the time spent on each examination and supervision contact by an average of one hour. This equates to about 6,000 hours if survey data was collected at every onsite examination and supervision contact. Additionally, annual training would be required for all examiners and supervisory examiners. This would increase training hours for field staff by about 700 hours. The total additional time would be about 6,700 hours, approximately 6 additional employees.

[51] As required by law, NCUA does review compliance with the Bank Secrecy Act and the Flood Disaster Protection Act when it conducts an examination of a federally insured state-chartered credit union and the state regulator has

increases in precision would be outweighed by the corresponding costs. With respect to state regulator examinations, the agency has no authority to require state regulators to complete a time survey, and it would be challenging to ensure uniformity in how their time is reported. The proposed changes to the OTR methodology discussed in section IV would eliminate the need for an examiner time survey, resulting in additional cost savings.[52]

- Allocation factors for various NCUA central offices: Some commenters stated the allocation of costs for NCUA's non-field offices are not based on standard or consistent criteria. Overall, NCUA agrees that improvements can be made in allocation methods involving the non-field cost centers, and is addressing this in the proposed changes to the OTR methodology. Some noted that the Office of National Examinations and Supervision (ONES) costs cannot be 100 percent safety and soundness as it examines natural person credit unions with assets over $10 billion and, therefore, has regulatory responsibility. Other commenters noted ONES is also responsible for reviewing Bank Secrecy Act compliance for the corporate credit unions it supervises, suggesting some non-insurance time is spent supervising them. NCUA agrees that ONES time is not 100 percent insurance related and this issue was addressed in the 2017 OTR calculation. Other commenters questioned why the Office of Small Credit Union Initiatives and the Office of Consumer Financial Protection and Access vary in their methodology for classifying time spent on field of membership expansion. NCUA agrees that there are differences in the time allocations and has developed

chosen not to conduct the review. These situations are limited and the time associated with this activity would have an indiscernible effect on the OTR.

[52] Based on the most recent Examination Time Survey results, field staff time would be reduced by approximately 200 hours annually. Central office and regional office staff time devoted to operating, maintaining, and administering the Examination Time Survey and related processes would be reduced by approximately 150 hours annually.

a consistent standard for use in the proposed changes to the OTR methodology discussed in section IV.

- Use of Insured Shares: Two commenters recommended not using insured shares in the calculation of the OTR. The commenters suggested that time and resources spent in each charter type would be more appropriate. In developing the revised OTR methodology in 2003, one of the main goals of NCUA was to allocate costs as precisely as possible. For the current OTR methodology, it is necessary and appropriate to incorporate insured shares to ensure it is precise and equitable. Use of insured shares is consistent with the mutual nature of the Share Insurance Fund and part of the statutory scheme related to Share Insurance Fund deposits, premiums and dividends.[53] It also reflects the fundamental economics with respect to how the implicit costs of the OTR are borne by federal and state-chartered credit unions. Nevertheless, there are reasonable alternative approaches to calculating the OTR that do not involve use of insured shares. As discussed in section IV, the proposed changes to the OTR method eliminate the need for use of insured shares in the calculation.

IV. Details of Proposed OTR Methodology

The proposed simplification of the OTR formula is intended to facilitate greater understanding of the methodology, and will decrease the agency resources necessary to administer the OTR. The new approach is within NCUA's authority and, though simplified, would provide a sufficient level of precision with respect to the allocation of agency costs. The simplified formula applies the following underlying principles to the allocation of agency operating costs:

[53] 12 U.S.C. 1782(c)(2) and (3).

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related. The 50 percent allocation mathematically emulates an examination and supervision program design where NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within NCUA. It reflects an equal sharing of supervisory responsibilities between NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions.[54] It is consistent with the alternating examinations FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.
2. All time and costs NCUA spends supervising or evaluating the risks posed by federally insured state-chartered credit unions or other entities NCUA does not charter or regulate (for example, third-party vendors and CUSOs) is allocated as 100 percent insurance related. NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related.

[54] The insurer may evaluate compliance matters as part of a reciprocal arrangement with the prudential regulator in evaluating matters specific to insurance as part of the overall shared supervision of a credit union. A simplified assumption of equal sharing reflects the offsetting benefits for each role under a framework emulating an alternating examination program.

3. Time and costs related to NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.[55] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions operate in the marketplace, NCUA resources allocated to these functions are properly assigned to its role as charterer/prudential regulator.
4. Time and costs related to NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related. NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of NCUA's role as insurer.

These four principles are applied to the activities and costs of the agency to arrive at the portion of the agency's Operating Budget to be charged to the Share Insurance Fund as discussed in detail below.

Step 1 – Workload Program

Annually, NCUA develops a workload budget based on NCUA's examination and supervision program to carry out the agency's core mission. The workload budget reflects the amount of time necessary to examine and supervise federally insured credit unions, along with other related activities, and therefore the level of field staff needed to implement the exam

[55] This includes any reviews of credit unions focused solely on compliance, such as a fair lending exam. It does not include the more broadly based examinations and supervision contacts of federal credit unions covered by principle 1. It also does not include enforcing laws, like Prompt Corrective Action, that are part of share insurance under Title II as covered by principle 4.

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 mission program activities that are insurance related. For illustrative purposes, Table 1 shows the application of the allocation principles to the 2017 workload budget.[56]

Table 1 – Allocation of Workload Hours[57]

Workload Programs 2017 Data	**(A) Budgeted Workload Hours**	**(B) Percent Insurance Related**	**(A) x (B) Insurance-Related Workload Hours**	**Allocation Basis**
Federal Credit Union Examination & Supervision	498,159	50%	249,080	Based on allocation principle 1 reflecting NCUA's roles as both prudential regulator and insurer.
State Credit Union Examination & Supervision	167,414	100%	167,414	Based on allocation principle 2 reflecting NCUA's role as insurer.
Consumer Compliance Reviews & Related Training	20,000	0%	0	Based on allocation principle 3 reflecting NCUA's role as prudential regulator.
Field of Membership & Chartering	500	0%	0	Based on allocation principle 3 reflecting NCUA's role as prudential regulator.
CUSO & Third-party Vendor Reviews	5,576	100%	5,576	Based on allocation principle 2 reflecting NCUA's role as insurer. Field staff time conducting reviews of CUSOs and third-party vendors – NCUA does not charter or regulate CUSOs and third-party vendors.
Total	**691,649**	**N/A**	**422,070**	
Total Insurance-Related Workload Hours to Total Workload Hours			**61%**	Weighted average of field staff program time devoted to NCUA's role as insurer.

[56] If the proposed change to the methodology is adopted by the Board, the calculation would apply to future workload and operating budgets. Thus, actual results may vary from those presented herein for illustrative purposes.
[57] Numbers may not reconcile exactly due to rounding.

Step 2 – Operating Budget

The Operating Budget represents the costs of the activities associated with achieving the strategic goals and objectives set forth in the NCUA Strategic Plan. The Operating Budget is based on agency priorities and initiatives that drive resulting resource needs and allocations. Information related to NCUA's budget process, including detailed information on the Board-approved 2017 Operating Budget, is available on the agency's website.[58]

The agency achieves its primary mission through the examination and supervision program. For the proposed formula, as applied to the 2017 Operating Budget, the percentage of insurance-related workload hours (61 percent) derived from Step 1 represents the main allocation factor used in Step 2 for the costs of the field offices (the Regions and ONES). A few agency offices have roles that are significantly distinct enough to warrant their own allocation factors, as discussed below. A weighted average allocation factor (60 percent) representing the aggregate budgets for the Regions, Ones, and the specific agency offices listed in Step 2 is applied to the central offices that design or oversee the examination and supervision program, or support the agency's overall operations. These costs in total make up NCUA's Operating Budget. Table 2 reflects the application of the OTR allocation factors to the 2017 Operating Budget as an example.

Table 2 – Allocation of NCUA Operating Budget[59]

Cost Area (2017 data)	(A) Operating Budget $Millions	(B) Percent Insurance Related	(A) x (B) Operating Cost to be Borne by the Share

[58] *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx*.
[59] The totals may not reconcile exactly due to rounding.

			Insurance Fund $Millions
Regions and ONES The financial budget for the agency's five regional offices and ONES is allocated based on the weighted average of insurance-related activities calculated from the workload budget in Step 1 (using principles 1, 2, and 3). Resources in the regions and ONES execute NCUA's examination program. Thus, the budgeted costs related to these programs should receive the same allocation basis as the programs themselves.	$170.9	61%	$104.3
Asset Management Assistance Center Manages liquidation payouts and assets acquired from liquidations on behalf of the Share Insurance Fund. Thus, the OTR allocation factor is based on principle 4 and allocated at 100 percent insurance related.	$7.4	100%	$7.4
Office of Consumer Financial Protection and Access Largely in NCUA's role as charterer and prudential regulator, this office is responsible for chartering and field-of-membership matters, low-income designations, bylaw amendments, consumer financial literacy efforts, consumer inquiries and complaints, consumer protection compliance, fair lending examinations, and related interagency coordination. These activities are allocated based on principle 3 as 0 percent insurance related. The office does some work with respect to federally insured state-chartered credit unions, including share insurance coverage matters, in NCUA's role as insurer; these activities are allocated based on principle 4 as 100 percent insurance related. The net of this combined activity results in an allocation factor of 13 percent insurance related. See discussion below for more details.	$9.9	13%	$1.3
Office of Small Credit Union Initiatives Provides consulting and training services for small credit unions, both federal credit unions and federally insured state-chartered credit unions. Also processes grants and loans for federally insured credit unions. Principle 1 is applied to the office's work with federal credit unions and principle 2 is applied to the office's work with federally insured state-chartered credit unions. The net of this combined activity results in an allocation factor of 60 percent insurance related. See	$6.5	60%	$3.9

discussion below for more details.			
Subtotal The 60 percent subtotal factor represents the dollar-weighted average of the above four cost centers (Regions and Ones, Asset Management Assistance Center, Office of Consumer Financial Protection and Access, and Office of Small Credit Union Initiatives) representing specific aspects of NCUA's mission.	$194.6	60%	$116.8
All Other Offices This category includes the offices that design or oversee the agency's mission and its related offices, or provide necessary support to mission offices or the entire agency. As such, the proportion of insurance-related activities for these offices correspond to that of the mission offices. Therefore, these office costs are allocated based on the weighted average of insurance-related activities calculated in the subtotal above.	$103.6	60%	$62.2
Total	**$298.2**		**$179.0**

Regional Offices and ONES:

The financial budget for the agency's five regional offices and ONES is allocated based on the weighted average of non-insurance and insurance-related activities calculated in Step 1. The Regions and ONES execute NCUA's examination programs; thus, the budgeted costs related to these offices should receive the same allocation basis as the programs themselves. The allocation factor is based on principles 1, 2, and 3 as documented in Table 1. The budget for the regional offices and ONES is allocated at 61.0 percent for insurance-related activities.

Asset Management Assistance Center:

NCUA conducts credit union liquidations and performs management and recovery of assets through the Asset Management and Assistance Center. The Asset Management Assistance Center assists NCUA regional offices with the review of large, complex loan portfolios and actual or potential bond claims. It also participates extensively in the operational phases of conservatorships and records reconstruction. The purpose of the Asset Management Assistance Center is to manage and reduce costs to the Share Insurance Fund and credit union members of credit union failures. Thus, OTR allocation is based on principle 4 at 100 percent insurance related.

<u>Office of Consumer Financial Protection and Access</u>:

This division is responsible for NCUA's consumer financial literacy efforts, consumer inquiries and complaints, consumer protection compliance and rulemaking, fair lending examinations, interagency coordination and outreach, chartering and field-of-membership matters, low-income designations, charter conversions, and bylaw amendments. The majority of the work performed by the Office of Consumer Financial Protection and Access is related to NCUA's role as prudential regulator and charterer of federal credit unions. This office is unique and differs from the Regions and ONES in the distribution and nature of work performed related to federal credit unions. Thus, principle 3 is applied to the majority of this office's work and allocated at 0 percent insurance related. However, some work the office performs involves federally insured state-chartered credit unions, which falls under principle 4. The office also addresses share insurance coverage matters, which also falls under principle 4.

The composite rate of this office's insurance-related activities calculates as 13 percent as reflected in Table 3. Thus, an allocation factor of 13 percent is applied to the office's financial budget in the OTR calculation.

Table 3 – Allocation of the Office of Consumer Protection and Financial Access Staff Time

Division	# of Staff (Full Time Equivalent)	Staff Time Spent on Activities (Full Time Equivalent)	Allocation Factor	Proportion of Staff Insurance-Related Work (Full Time Equivalent)
Administrative	3			
- Principle 3 Activities		2.7	0%	0.0
- Principle 4 Activities		0.3	100%	0.3
Consumer Access	20			
- Principle 3 Activities		15.0	0%	0.0
- Principle 4 Activities		5.0	100%	5.0
Consumer Affairs	12			
- Principle 3 Activities		11.4	0%	0.0
- Principle 4 Activities		0.6	100%	0.6
Consumer Compliance Policy and Outreach	10			
- Principle 3 Activities		10.0	0%	0.0
- Principle 4 Activities		0.0	100%	
Totals	**45**			**5.9**
Insurance-Related Full Time Equivalent Staff to Total Staff	**13%**			

The office's administrative staff provides support for the whole office. Ten percent of this unit's work was devoted to supporting insurance-related functions, like responding to consumer inquiries on share insurance coverage. Thus, principle 4 is applied to those activities as 100 percent insurance related while the remaining 90 percent of their time was spent supporting charting, bylaw, field of membership, and related activities, which fall under principle 3 as 0 percent insurance related.

The Division of Consumer Access staff spent 25 percent of their time addressing insurance-related functions, like insurability standards for mergers and insurance applicants where principle 4 applies. The remainder of this unit's time was spent processing various chartering and field of membership expansion applications and bylaw matters where principle 3 applies.

The Division of Consumer Affairs staff spent 5 percent of its time addressing share insurance questions received from consumers which falls under principle 4. The division spent the remaining 95 percent of its time on consumer related activities like administering the Financial Literacy Program, which falls under principle 3.

The Division of Consumer Compliance Policy and Outreach focuses on issues related to consumer regulations including implementing the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Truth in Lending Act, and the Real Estate Settlement Procedures Act. All of these activities fall under principle 3; therefore, 100 percent of the division's staff time is allocated as 0 percent insurance related.

<u>Office of Small Credit Union Initiatives</u>:

The proposed methodology allocates the cost of the Office of Small Credit Union Initiatives based on principles 1 and 2. The office tracks the time the Economic Development Specialists spent consulting and training both federal credit unions and federally insured state-charted credit unions. The proportion of time spent on federal credit unions is allocated based on principle 1 while federally insured state-chartered credit union work is allocated based on principle 2. Other office personnel process grants and loans for both federal credit unions and federally insured state-chartered credit unions. Grant and loan activities are allocated the same way as the consulting and training time using principles 1 and 2. The resulting allocation factor for the Office of Small Credit Union Initiatives is 60 percent as shown in Tables 4 and 5.[60]

Table 4 illustrates the allocation for the Office of Small Credit Union Initiative's consulting hours between federal and state-chartered credit unions applied to the budgeted hours

[60] About 73% of all grants and loans processed by the Office of Small Credit Union Initiatives in 2016 were for federal credit unions. Of the 18,633 hours budgeted for Economic Development Specialist consulting and training, about 81% is for federal credit unions.

for 2017. Principle 1 is applied for federal charters and principle 2 is applied for state charters. The result is a composite rate of 59.3 percent insurance-related hours for the Economic Development Specialists.

Table 4 – 2017 Economic Development Specialist Workload Allocation				
Charter Type	**Budget (Hours)**	**Percent Insurance Related**	**Hours Insurance Related**	**Percent of Budget Insurance Related**
Federal Charter	15,185	50%	7,592	40.7%
State Charter	3,448	100%	3,448	18.5%
Total	**18,633**	**N/A**	**11,040**	**59.3%**

Table 5 illustrates the allocation of the grant and loan activities performed by the Office of Small Credit Union Initiatives by charter type. Principle 1 is applied for federal charters and principle 2 is applied for state charters. This results in a composite rate of 63.7 percent insurance-related activities for grants and loans.

Table 5 – Grant Approval and Loan Disbursement 2016 by Charter Type[61]				
Charter Type	**Total Grants and Loans**	**Percent Insurance-Related**	**Total Insurance-Related**	**Percent of Total**
Federal Charter	235	50%	118	36.3%
State Charter	89	100%	89	27.5%
Total	**324**	**N/A**	**207**	**63.7%**

[61] Numbers may not reconcile exactly due to rounding.

Table 6 shows the resulting overall composite rate of 59.8 percent insurance-related activities for the Office of Small Credit Union Initiatives. This factor is applied to the financial budget for this office in the OTR calculation.

Table 6 – Allocation of the Financial Budget			
Staff	**Budget**	**Insurance-Related**	**Budget Allocation**
Economic Development Specialists	$ 3,733,000	59.3%	$ 2,211,982
Grants and Loans	$ 527,000	63.7%	$335,881
Total	**$ 4,260,000**	**59.8%**	**$2,547,773**

All Other Offices:

NCUA's remaining offices design or oversee the agency's mission and its related offices, or provide necessary support to mission offices or the entire agency. As such, the proportion of insurance-related activities for these offices corresponds to that of the mission offices. It would be administratively burdensome to attempt to account for any variation in activity levels from the mission functions, and would not result in a material difference in outcomes. Therefore, these office costs are allocated based on the weighted average of insurance-related activities calculated in the subtotal of agency costs for the offices above that have a distinct allocation factor. The budgeted costs for the following offices are allocated at 60.0 percent insurance-related activities for purposes of calculating the OTR:

- NCUA Board,
- Executive Director,
- General Counsel,
- Chief Financial Officer,

- Chief Information Officer,
- Chief Economist,
- Human Resources,
- Examination and Insurance,
- Inspector General,
- Minority and Women Inclusion,
- Public and Congressional Affairs, and
- Continuity and Security Management.

c. Step 3 – Calculate the OTR

The OTR represents the percentage of the NCUA Operating Budget that is funded by a transfer from the Share Insurance Fund.[62] Using the result from Step 2, the OTR calculation is shown in Table 7.

Table 7– OTR Calculation	
Operating Costs to be Borne by the Share Insurance Fund	$179.0
÷ Total Operating Budget	$298.2
= OTR	**60.0%**

Based on data used to determine the OTR for 2017, the proposed changes to the OTR methodology would result in an OTR of 60.0 percent. The current methodology resulted in an OTR of 67.7 percent for 2017. Table 8 summarizes the results for the 2017 OTR calculation using the current and proposed methodologies.

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

Table 8 – 2017 OTR Results Comparison			
	Current Methodology	**Proposed Methodology**	**Change**[63]
OTR Percent	67.7%	60.0%	-7.70%
OTR $Millions	$201.8	$179.0	-$22.8

For informational purposes only, Table 9 illustrates the portion of NCUA's total Operating Budget costs funded explicitly and implicitly by federal credit unions and federally insured state-chartered credit unions respectively.

Table 9 – Operating Budget Cost Distribution		
Portion of 2017 Operating Budget Covered by:	**Federal Credit Unions**	**Federally Insured State-Chartered Credit Unions**
Federal Credit Union Operating Fee	40.0%	0.0%
OTR (proportional based on insured shares)	30.8% (60.0% x 51.3%)	29.2% (60.0% x 48.7%)
Total	**70.8%**[64]	**29.2%**

The proposed change to the OTR methodology would result in the annual Operating Fee paid by federal credit unions increasing by about 24% - an increase of $22.8 million from $96.4 million to $119.2 million. Based on the 2017 Operating Fee scale, Table 10 provides several examples of how a federal credit union's operating fee would increase.

[63] For 2017, the proposed OTR methodology calculation would result in a decline of 11.4% from the current methodology.

[64] Based on the current OTR methodology, 67 percent of the total 2017 Operating Budget is covered by federal credit unions through Operating Fees and the OTR: *https://www.ncua.gov/About/Documents/Agenda%20Items/AG204161117Item4a.pdf*.

Table 10 – Examples of Operating Fee Increase for Federal Credit Unions	
Asset Size of Federal Credit Union	**Increase to Annual Operating Fee**
$9.46 billion	$133,234
$1.01 billion	$51,143
$503 million	$25,445
$100 million	$5,060
$50 million	$2,526
$10 million	$505
$1 million	$0

V. Request for Comment

In addition to the proposed changes to the OTR methodology, the Board proposes to formally adopt the following OTR related processes:

- To solicit through the federal register public comment on the OTR methodology at least every 3 years, and whenever NCUA seeks to change the OTR methodology.
- Maintain the staff delegation to administer the OTR methodology but require public board briefings every year, no later than each December, on the results of the calculation and to post all related materials to NCUA's website.
- As part of future rulemaking, indicate for any proposed regulation involving the activities and authorities of credit unions whether the regulation is based on Title I, Title II, and/or Title III of the Act and seek comment on this determination. While the proposed new OTR methodology would no longer rely on mapping of regulations, this will increase clarity regarding the purpose of and authority for any new or updated regulations and preserve future flexibility with respect to any desired changes to the OTR methodology.

The Board seeks comments on all the proposed revisions to the OTR methodology and formal adoption of the procedures discussed above. In particular, the Board is interested in comments on alternative approaches to arriving at an allocation factor for the cost of examining and supervising federal credit unions (principle 1). For example, within the context of the overall simplification of the OTR methodology, should federal credit union examination and supervision activity be allocated primarily to the operating fee, or should it continue to reflect that much of NCUA's examination and supervision focus is on managing risk to the Share Insurance Fund.[65]

Commenters are also encouraged to discuss any other relevant issues they believe NCUA should consider with respect to the OTR methodology and, to the extent feasible, provide documentation to support any recommendations.

By the National Credit Union Administration Board on June 23, 2017.

Gerard Poliquin,

Secretary of the Board.

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[65] To provide context for commenters, an assumption under principle 1 in the proposed OTR methodology that only the examination and supervision of troubled federal credit unions was insurance-related would result in an OTR of about 31 percent. Conversely, if the results of the Examiner Time Survey (about 88 percent insurance-related) were used for the allocation factor for principle 1 in the proposed OTR methodology, it would result in an OTR of about 85 percent.

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