

NASCUS REPORT

A weekly dispatch of the National Assn. of State Credit Union Supervisors

July 24, 2015

OTR takes on big role

A critical week in Washington for a crucial issue

The overhead transfer rate (OTR) took an outsize role this week in Washington – including at the monthly NCUA Board meeting, and at a hearing on Capitol Hill featuring NCUA Board Chairman Debbie Matz. Also playing a role: The legal analysis released by NASCUS last month, concluding that the OTR is a “major rule,” and is thus subject to public notice and comment, and a letter from NASCUS to leaders of the subcommittee holding the hearing about the “inequitable impact” NCUA’s funding mechanism and examination cycles are having on state-chartered credit unions and state regulators. Also: NASCUS released a brief video on the OTR designed as a primer for those who want to learn more about the issue, and its impact on them and state credit unions. NASCUS is driving attention to the OTR on behalf of state credit unions; here’s a rundown of all the developments:

On the Hill: OTR takes prominence in hearing ...

In testimony before the House financial institutions subcommittee, Chairman Matz suggested that, in order for NCUA to obtain more frequent public input on the OTR “going forward,” the agency will solicit comments on the rate’s methodology “every three years in conjunction with the public review of the agency’s strategic plan.” But, in our view, that approach is just inadequate. As the legal analysis we released late last month detailed, the OTR is a rulemaking for the purposes of the Administrative Procedure Act. That means, the OTR must be subject to notice – in the *Federal Register* – and public comment whenever the rate is changed – immediately, just like any rule. State-chartered credit unions deserve to know what the elements of the OTR are when it is developed by NCUA, and have the opportunity to comment on it when the rate changes.

LINK:

[NCUA Board Chairman Matz statement to House financial institutions subcommittee](#)

... and lawmaker presses for details

During the hearing, Rep. Mick Mulvaney, R-S.C., pressed the NCUA board chairman on the development of the OTR (he’s the author of H.R. 2287, the NCUA Budget Transparency Act, which NASCUS strongly supports). He pointed out that an unredacted audit report of the OTR by PriceWaterhouse Coopers noted concerns about the lack of formal transparency around such a major component of the budget process. He further noted that, until recently, a redacted version of the report – which excluded the concerns about OTR transparency -- was posted on the NCUA website. He asked who redacted the report – Matz answered “the office of the general counsel.” Following today’s hearing, it would appear that the PriceWaterhouse Coopers audit was in concert with our analysis. The agency should consider these two views carefully, and take action accordingly. Over the long run: we believe that leads to formal ‘notice and comment’ of the OTR.

To Hill, we stress NCUA funding mechanism, exam cycles

In our statement for the subcommittee’s record of Thursday’s hearing, we voiced concern that NCUA’s funding mechanism and examination cycles are having an inequitable impact on state-chartered credit unions and state regulators. We urged the subcommittee’s leaders to “carefully examine the proper separation within the NCUA of insurance and supervisory functions, and the impact of that imprecise distinction on the health and well-being of the dual chartering system.” We also noted that a primary and long-standing priority of our association is to achieve “meaningful transparency around the NCUA’s budget and its allocation of expenses across state and federal credit unions.” In particular, we pointed to the OTR as an example.

LINK:

[NASCUS letter to leaders of House financial institutions subcommittee](#)

At monthly board meeting, OTR arises

Earlier Thursday, the NCUA Board unanimously approved two final rules (on capital planning and stress testing, and on fixed assets for FCUs), but split (by a vote of 2-1) on action to reprogram the agency’s 2015 operating budget – with the OTR, again, figuring into developments. Voting against the budget reprogramming (which results in a net reduction of overall expenditures of more than \$1.3 million for the remainder of the year) was Board Member Mark McWatters, who read a statement noting a variety of concerns. Those included: Dismay at the increase in the budget, the historic climb in the OTR over the past several years, and “certain aspects of the budgetary process employed by NCUA, including the failure of the agency to submit the OTR methodology for public comment under the Administrative Procedure Act (APA).” He specifically pointed to the NASCUS legal analysis (which we released last month) concluding that the determination of the OTR is subject to a notice and comment requirement under the APA. Regarding the budget, McWatters suggested that “further consideration needs to be given to how funds from mid-year budget reductions are allocated and whether they should be used, at least in part, to address OTR issues directly, rather than routinely applied to reduce operating fees to benefit just one group of credit unions.” We absolutely agree.

LINK:

[McWatters statement on NCUA budget, OTR](#)



Not sure about OTR? Watch the video

All this talk about the “OTR” could rightly make anyone’s head swim – especially those who aren’t that familiar with it. So, we developed a brief video (just a bit over a minute long) to explain the issue in simple, brief terms. We settled on this approach to afford a simple and concise way to explain the issue, because it’s crucial to our members, as it has important implications to the balance of the dual-chartering system. Check it out, by clicking on the image (or at the link below).

LINK:

[NASCUS video: The OTR in brief](#)

BRIEFLY: Antonakes successor; Oct. 3 for TRID; NCUA webinar; key legislation; Cybersecurity hotel cutoff date

There were non-OTR developments this week, including: former state regulator **Steve Antonakes** will be succeeded as the second-ranking official at the Consumer Financial Protection Bureau by **Meredith Fuchs**, the current CFPB general counsel. Antonakes has resigned and leaves at the end of this month. Meanwhile, **David Bleicken** will now serve as Acting Associate Director for the Division of Supervision, Enforcement and Fair Lending. Before joining the agency, he was Deputy Secretary of Banking for Non-Depository Institutions and Consumer Services at the Pennsylvania Department of Banking and Securities ... Following a recommendation made by NASCUS, the **CFPB has pushed back compliance with its TILA-RESPA Integrated Disclosure rules (TRID) to Oct. 3** ... Just weeks before the NASCUS/CUNA Cybersecurity Symposium Aug. 24-25 in Denver, **NCUA will host a webinar July 29** on the FFIEC’s new cyber-assessment tool – which is widely expected to be incorporated into NCUA’s exams ... The **Senate Appropriations Committee approved legislation** that would, among other things, allow privately insured, state chartered credit unions become members of Federal Home Loan Banks (FHLBs) and require NCUA to hold annual, public budget hearings ... **Hotel room rate cutoff** for the 2015 NASCUS/CUNA Cybersecurity Symposium is next week; see the link below for hotel details.

LINK:

[2015 NASCUS/CUNA Cybersecurity Symposium, Aug. 24-25 in Denver](#)