

NASCUS REPORT

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

Aug. 14, 2015

Agency has a duty on OTR, we write in response

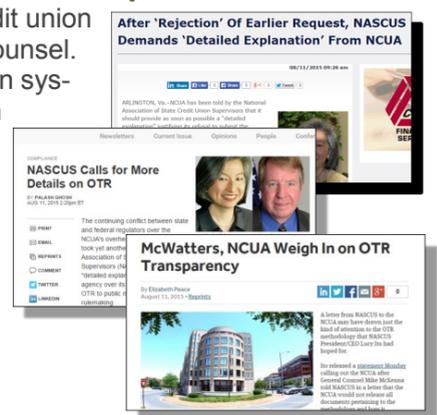
We told NCUA this week that it has a duty to justify its actions to stakeholders regarding the overhead transfer rate, and to provide a holistic picture of the debate about the issue for the credit union system. Those were two of many points we made in responding to a July 30 letter we received from NCUA's top lawyer, Mike McKenna, who rejected our assertion that the OTR is a rule under the Administrative Procedure Act (APA). In the same letter, he also declined to release a 2001 written opinion prepared by his office on the applicability of the APA and its "notice and comment" requirements for the OTR. We addressed both of those issues. With regard to APA applicability, we noted that the legal analysis commissioned by NASCUS concludes that the OTR substantially affects the rights of interested parties outside of the agency. If NCUA believes otherwise, we encouraged it to "cite case law that supports an exemption for OTR and is controlling." As for the 2001 legal opinion, we acknowledged that it may contain privileged information. If so, we asked that the agency draft and distribute an analysis of the legal issues for public review. There may be some movement on that point – one of the trade journals (see below) reported Wednesday that NCUA would "post on our website a legal opinion about the applicability of the Administrative Procedure Act's notice and comment process to determining the OTR." Stay tuned.

LINKS:

[NASCUS letter in response to NCUA OGC](#)
[NASCUS legal analysis of OTR](#)
[OTR resources](#)

... and our response resonates throughout system via trade pubs

Knowing an interesting story when they see it, all three of the major credit union trade journals reported on our letter in response to the NCUA general counsel. Our ultimate goal is to merely articulate the voice of the state credit union system on this vital issue. Under a headline of "McWatters, NCUA Weigh In on OTR Transparency," Credit Union Times reported on the pending legal opinion noted above, and quoted NCUA Board Member Mark McWatters saying – "absent truly compelling circumstances to the contrary" -- he sees no reason for NCUA not to submit the OTR for public comment. CUToday.info and Credit Union Journal also gave the story strong positioning, helping the credit union movement at large understand the issue and our points.



LINKS:

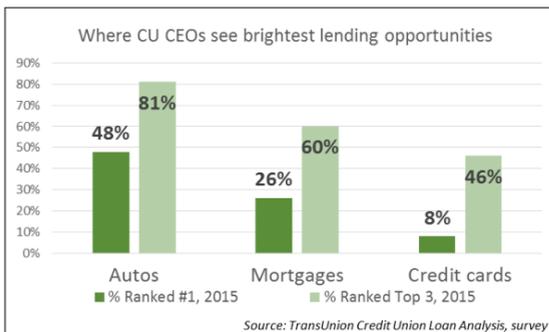
Credit Union Times: [McWatters, NCUA Weigh In on OTR Transparency](#)
CUToday.info: [After 'Rejection' Of Earlier Request, NASCUS Demands 'Detailed Explanation' From NCUA](#)
Credit Union Journal: [NASCUS Calls for More Details on OTR](#)

Summary outlines changes for FCU fixed assets

Although it only applies to federal credit unions, we've posted a summary of NCUA's new rule on fixed assets, which changes a number of regulatory approaches to fixed assets by the agency. (At state-chartered credit unions, fixed assets continue to be guided by respective state supervisory practices.) In particular, our summary points out that since the new rules eliminate the fixed-asset threshold for FCUs, NCUA has effectively deleted the definition of fixed assets, and focuses the final rule on ownership of property and the requirement for partial occupation. There is no regulatory deadline for full occupancy, just a requirement that the FCU plans to fully occupy the property within a reasonable time.

LINK:

[NASCUS summary, NCUA FCU fixed assets final rule](#)



CU CEOs see car loans, mortgages as top lending products

Credit union chief executives see auto lending as their best opportunity for loan growth and focus over the next 12 months, but mortgage lending is making a big surge, according to survey results from 90 credit union leaders released this week by TransUnion. In fact, the TransUnion analysis reported, credit unions' share of all mortgage originations has increased from 7% in first quarter of 2013 to 11% in the first quarter of this year. Transunion also said:

- Among car loans, only 12.5% were subprime in first quarter 2015 (approximately half that of other auto lenders).
- Among non-prime mortgage originations, credit unions grew by 25% in the first quarter of 2015, "while the rest of the industry grew at 4%."

LINK:

[TransUnion release on CU CEO survey](#)

Summit builds speaker, session lists

Nearly 20 speakers covering a wide range of regulatory, technological, legislative and legal topics in nine hours of general sessions, seven issues briefings and dialogs, and six separate breakout sessions are featured in the 2015 NASCUS State System Summit, Oct. 21-23 in New Orleans. Among the speakers:

- **NCUA Vice Chairman Rick Metsger**, who will facilitate a panel on credit union FOM;
- Cyber security professional **James Risler of Cisco Systems**, who will address the latest challenges and developments related to network security;
- **Mike Groat and Bob Long, both of Daon**, will provide an overview of a new biometrics systems for securing member verification;
- **CFPB expert and Attorney Allyson B. Baker of Venable LLP**, will discuss recent trends with the consumer agency and what they mean for credit unions and financial institutions at large;
- Payday lending analyst **Nick Bourke of the Pew Charitable Trusts**, who will examine the CFPB payday lending framework and it means for credit unions and other depositories, as well as state regulators.

In addition, nine hours of breakout sessions will focus on such topics as big data, disparate impact, data protection and Bank Secrecy Act (BSA) compliance. For more information, including how to register, see the links below.

LINKS:

[Agenda, 2015 NASCUS State System Summit](#)
[Speakers, 2015 NASCUS State System Summit](#)

BRIEFLY: US-CERT alerts, L&R at Summit, new members,

Starting with this issue, we'll be sharing with you **public alerts** that we receive from the U.S. Computer Emergency Readiness Team (US-CERT), a division of the Department of Homeland Security. The alerts are designed to provide timely information about current computer security issues, vulnerabilities, and exploits; see the link below for the most recent ... NASCUS members are most welcome to join an **open meeting of the NASCUS L&R Committee** set during the 2015 Summit at the Sheraton Hotel in New Orleans on Tuesday, Oct. 20, from 12:30 – 2:45pm. Lunch will be provided – so, please, RSVP to Isaida Woo of NASCUS if you planning to attend. During the briefing, participants will discuss the pressing regulatory and legislative issues before the state system; look for a formal agenda in the coming weeks. ... We're pleased, and thankful, to be growing our membership! Over the past few weeks, we've added five new credit union members (**Tuscaloosa CU**, **IBM SECU**, **Orange County's CU**, **Oregon Community CU**, and **Wescom CU**) and three benefactor members (**Cooperative Credit Union Association**, **Credit Union League of Connecticut**, and **Filene Research Institute**). Please welcome – and thank – these supporters when you work with them!

LINKS:

[Recent Email Phishing Campaigns – Mitigation and Response Recommendations](#)
[RSVP to Isaida Woo, re: Attendance at L&R committee, 2015 Summit \(New Orleans\)](#)