

July 11, 2005

Mary Rupp, Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

**RE: Michigan Credit Union League's Comments on Interim Final Rule Part 717, Fair Credit Reporting – Medical Information**

Dear Ms. Rupp,

The Michigan Credit Union League (MCUL) appreciates the opportunity to provide comments to the National Credit Union Administration (NCUA) concerning the NCUA's interim final rules on Fair Credit Reporting Medical Information Regulations. The MCUL is a trade association representing over 90% of state and federally chartered credit unions in the state of Michigan. This comment letter was drafted in consultation with the MCUL Government Affairs Committee, which is comprised of Michigan credit union staff and officials.

MCUL appreciates the NCUA's efforts to implement the requirements of the Fair and Accurate Credit Transactions (FACT) Act with regards to preventing creditors (in this case federally-chartered credit unions) from obtaining or using medical information pertaining to consumers in connection with a determination of the consumer's eligibility, or continued eligibility, for credit. We respect the NCUA's interpretation that the FACT Act only permits regulatory authority over federally-chartered credit unions (FCUs), and that state-chartered credit unions (SCUs) fall under the jurisdiction of the Federal Reserve Board (FRB) under "all other creditors," however we believe that the regulation of this issue should fall under a credit union regulator or the Federal Trade Commission (FTC.) In addition, we encourage the NCUA to work closely with the FRB to address the issues listed below.

**Summary of Comments**

- MCUL strongly urges the NCUA to reassess the FACT Act to allow SCUs that are federally insured to fall under the jurisdiction of the NCUA.
- MCUL supports the exceptions provided by the NCUA to permit the sharing of medical information and believe they adequately address the relevant issues related to the extension of credit for FCUs.
- MCUL encourages the NCUA to work with the FRB to create guidance with regards to sharing medical information with affiliates for SCUs.
- MCUL encourages the NCUA to delay implementation of its guidance until a final determination is made regarding if the NCUA has regulatory authority in this issue over SCUs, and if not, who is responsible for overseeing the sharing of medical information with affiliates for SCUs.

## **Discussion**

**Use of Same Guidance as Federal Credit Unions.** Because interpretations of the FACT Act do not permit NCUA to provide exceptions for SCUs, the FRB has written a separate rule to cover SCUs and others that were not originally covered under the proposed rules. We encourage the NCUA to reassess whether the FACT Act provision regarding medical information will allow the NCUA to extend its rule to SCUs. We believe that allowing the NCUA jurisdiction over SCUs is the most logical step, as the NCUA works more intimately with federally insured credit unions (a category that most state credit unions fall under) than the FRB.

If the NCUA and FRB determine there is no possible interpretation that would allow the NCUA authority over SCUs, then the MCUL encourages continuing work towards a legislative solution to provide NCUA, or state regulators, with appropriate rulemaking authority over this issue for SCUs. This would place those most familiar with SCUs in a position to monitor and regulate this issue. We feel that it would be more effective than a general rule to address the situations of “all other creditors” than those addressed specifically by the FACT Act.

**Exceptions Adequate for Using Medical Information.** MCUL believes that the exceptions provided under the interim rules on the Fair Credit Reporting of medical information regulations clear up many of the concerns that we previously had about this issue. Under the first exception to the general prohibition, a creditor may obtain and use medical information in determining credit eligibility if the following three requirements are met:

- The information is the type routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the proceeds.
- The creditor uses the information in a manner and to an extent no less favorable than it would use comparable information that is not medical information in a credit transaction. Medical expenses or income may be treated more favorably.
- The creditor does not take the consumer’s physical, mental, or behavioral, condition or history, type of treatment, or prognosis into account as part of any credit eligibility determination.

We believe the first bulleted requirement which allows information of the type routinely used in making credit eligibility determinations, such as information relating to debts, expenses, income, benefits, assets, collateral, or the purpose of the loan, including the use of the proceeds will allow most FCUs to operate with out major modifications to their current lending guidelines on this issue. In addition, the allowance for creditors to obtain medical information that is unsolicited if they do not later use the information will further enhance most FCUs’ ability to operate.

MCUL believes that the expanded exception to allow the consumer or the consumer’s legal representative to specifically request that the creditor use medical information in determining credit eligibility, without obligating the creditor to comply with the request, will greatly benefit both credit unions and members alike. One of the previous concerns was that there was a great deal of relevant information that would be made impermissible because of the medical information limitations of the FACT Act. We believe allowing consumers the ability to decide what medical information they disclose to financial institutions will help financial institutions to make more informed decisions that

they may have been reluctant to make because of previously unavailable information, which will ultimately benefit the consumer.

**Work with the FRB to Provide Guidance for Information Sharing with Affiliates.** SCUs will be at a disadvantage to other FCUs if they are not provided with guidance on medical information sharing with affiliates. Our understanding is that the FRB does not believe it has the authority to address this issue, however there are no other entities (i.e. the NCUA, Federal Trade Commission [FTC] or SCU supervisors) who have indicated that they have the authority either. At this point, the guidance that SCUs have regarding information sharing of medical information with affiliates is severely limited compared to the guidance available for banks, FCUs and thrifts.

We believe that the first way to address this issue is for the regulation of SCUs to fall to the NCUA or SCU regulators. In the absence of this, we believe that the NCUA should encourage the FRB to provide guidance to SCUs, and other creditors who do not currently have guidance on this issue. This would prevent any indecision that SCUs have in addressing this issue, and would prevent any regulatory ambiguity from occurring in the future.

**Delay the Effective Date.** The effective date of the interim final rules will be March 7, 2006. MCUL believes that there is still much ambiguity with regards to the rules and the authority to enforce those rules for SCUs. We believe the implementation date should not be set until there is a final determination as to who should enforce these rules for SCUs, and if the FRB will continue to regulate this issue, then who is responsible to determine guidance for information sharing with affiliates for SCUs. In addition, we believe that additional time will allow credit unions time to prepare and implement the FACT Act changes in their lending policies.

We suggest that the effective date should be at least six months from the resolution of the above concerns. We suggest this timeframe because when the rule is finalized these restrictions will become effective for all credit unions and may create further unresolved issues.

We appreciate the opportunity to comment.

Sincerely,



Matthew Beard  
Regulatory Specialist  
Michigan Credit Union League

cc: Credit Union National Association, Inc.