



104

June 17, 2008

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

Re: Comment – RIN 3133-AD47 – 12 CFR Part 706 – Unfair or Deceptive Acts or Practices

Dear Ms. Rupp:

City County Credit Union of Fort Lauderdale is submitting the following regarding the proposed regulation referenced above. We feel it is appropriate to provide a more global approach to the proposed section based on our internal operations.

Proposed rule: General. Under § 706.32(b), a federal credit union may not assess an overdraft fee if the overdraft would not have occurred but for a hold placed on funds in the consumer's account for a transaction that has been authorized but has not yet been presented for settlement, if the amount of the hold is in excess of the actual purchase or transaction amount when the transaction is settled. Section 706.32(b) does not limit a federal credit union from charging an overdraft fee in connection with a particular transaction if the consumer would have incurred an overdraft due to other reasons, such as other transactions that may have been authorized but not yet presented for settlement, a deposited check that is returned, or if the purchase or transaction amount for the transaction for which the hold was placed would have also caused the consumer to overdraw his or her account.

Comment: The proposed rule referenced above refers to overdrafts caused by Point of Sale (POS) pre-authorization holds placed on cardholder checking accounts by merchants. The financial institution has no control over such transactions generated by the merchant and electronically forwarded to the financial institution by the merchant's processor and appropriate network (Visa, MasterCard & others). We believe the issue would be more appropriately addressed and remedied by the merchants and networks, rather than placing the burden on the financial institution.

Ms. Mary Rupp
Page 2
June 17, 2008

105

When the merchant sends an electronic POS pre-authorization transaction to determine if the cardholder has a valid card (account number, expiration date, etc.), they sometimes request a specific dollar amount be held (\$1, \$25, \$50, etc.). This POS pre-authorization transaction is logged on the cardholder's account by the financial institution using the dollar amount and the transaction code provided by the merchant; then, an approval response is sent back to the merchant. This approval response is an indication that the card is good and that the authorized amount is on deposit. Once the merchant finalizes the transaction with the cardholder, a ticket of completion is sent electronically for the exact amount of the purchase. The financial institution matches the transaction code received from the merchant to the pre-authorization and only posts the final transaction to the account. Unfortunately, the ticket transaction code and the pre-authorization transaction code that are sent by the merchant do not always match. This mis-match of the transaction code causes the financial institution to hold funds for the pre-authorization and the ticket in error.

The financial institution has the least amount of authority over the merchant. The networks, like MasterCard & Visa, require the merchants to use a specific message format and to follow their operating rules and regulations. If changes must be made, it should be accomplished at the network level. MasterCard & Visa have the most clout to force the merchants to make changes to eliminate mis-match transactions or lose access to their credit/debit services.

In addition, the financial institution has no way to know that the merchant provides an invalid transaction code at the time of the transaction. The only way the financial institution determines the invalid transaction code exists is when the cardholder complains about the transaction activity that created an overdraft on their account.

If this regulation is approved as presented, the cardholder inconvenience will not be resolved. However, a burden will be placed on the financial institution to research and identify the invalid transaction codes, remove the hold placed in error and reverse any overdraft fees applied to the cardholder's account. This burden would significantly impact the operations areas of small financial institutions that do not have sophisticated systems and staff to handle the required research and manual adjustments necessary to correct the cardholder's account.

We appreciate your time and consideration with respect to this comment.

Sincerely,



Beverly J. Watts
Compliance Officer