August 1, 2008

Ms. Mary Rupp

Secretary of the Board

1775 Duke Street

Alexandria, VA 22314-3428

Re: 12 CFR Part 706 [RIN 3133-AD47] Unfair or Deceptive Acts or Practices

Dear Ms. Rupp:

The Indiana Credit Union League (ICUL) appreciates the opportunity to provide comments on NCUA's proposed rule addressing unfair or deceptive acts or practices related to credit cards and overdraft protection programs. The ICUL represents 188 of Indiana's 208 credit unions, with those credit unions' memberships totaling more than two million members.

Credit Cards

Given some of the practices by some credit card providers, we understand the desire to place restrictions on credit card processors. Many of the proposed restrictions are already in place with credit union card programs. However, there are several aspects of this proposal where the overall impact on consumers would be detrimental. The proposed rule's objective of helping consumers would not be accomplished when all trade-offs are considered. Our comment letter addresses these areas of the proposed rule.

Late Payments

The proposed rule attempts to "provide consumers with a reasonable time to make payments." We do not have a problem with the proposed 21-day requirement. The proposal to establish some timeframe in which a payment can be received after the due date, before a late payment fee can be assessed, is troubling. Many card processors utilize automated systems to process payments. With varying payment due dates, the proposal would require processors to look at individual envelopes in an effort to determine if the payment was mailed

with sufficient lead time to qualify as not late. This adds a manual step to the automated process. Any time a manual step is added, operational inefficiencies are created, increasing the cost of a credit card program. Increased costs are ultimately passed on to the consumer in the form of higher interest rates.

Allocating Payments

The proposed rule would require that payments over the minimum payment amount be allocated among balances with different interest rates. Allowing the consumer to specify how the payment should be allocated would require manual processes for implementation and would create additional program inefficiencies, resulting in higher program costs, and potentially higher interest rates to the consumer. Not allowing payments to be allocated to balances with deferred interest could also result in the consumer incurring interest expense as a result of the deferred balance not being paid off in the required timeframe. Many of these programs apply the interest from the day the credit was granted if the deferred interest balance is not paid off in time. Waiting until two cycles before the deferred period is over to allow payments to be applied to these balances may very well be too late.

Prohibition Against Increasing Rates on Outstanding Balances

The proposed rule would prohibit the interest rate on outstanding balances from being increased when the overall interest rate on the credit card is being increased. In the current environment, the consumer is given the opportunity to opt out of any rate increases by ceasing to use the credit card. We believe that this is sufficient. Requiring the financial institution to potentially carry and report several balances with different rates creates additional expense to the card issuer, creates confusion on the statement received by the consumer, and creates adverse asset liability management issues for the financial institution.

Another of our concerns is the proposed 14-day period after the notice of the increase in interest rate is sent to determine the outstanding balance. Most consumers will receive the notice well before the 14-day notice period is up. This could have the adverse effect of consumers running up charges at the lower rate purely on impulse. This also would not allow the financial institution to plan sufficiently to manage assets and liabilities to the current interest rate. While not all credit card rates are tied to a specific index, they are often tied to the financial institutions cost of funds and are viewed as variable rate products from an ALM standpoint. Limiting interest rate increases to only balances incurred after the rate increases dramatically changes the product's ALM structure and could result in higher interest rates being charged to offset the limited ability to manage the ALM risk associated with card balances through smaller interest rate increases as needed. If an interest rate has lowered on a credit card, would the higher interest rate continue on the outstanding balances, resulting in a higher cost to the consumer?

Other Proposed Changes

The remaining proposed changes contained in the rule are already being adhered to by most credit union programs, and we do not see an adverse impact on the credit union should they be implemented.

<u>Overdraft Protection Programs</u>

We appreciate the efforts to create disclosures to improve consumers' awareness of overdraft protection program (ODP). Credit unions are member-owned financial cooperatives that take pride in serving and educating their members/owners. With that said, there also needs to be a measure of balance with any proposed new rules. Overall, we believe that NCUA's existing best practices guidance for credit union ODPs are appropriate and these proposed rules should be scaled back to not require more than the guidance contained in NCUA Letter Number 05-CU-03.

What credit unions have been experiencing with ODPs is an overwhelming majority of qualified members who like the service. The service helps avoid embarrassment and minimize fees associated with a bounced check. Payment of an overdraft can reduce a member's cost because he/she does not have to pay the merchant's fee for the overdraft. Credit unions also have traditionally offered numerous services that allow for alternatives or help in preventing overdrafts. Examples are overdraft lines of credit, automatic overdraft transfers between deposit accounts, home banking and audio systems allowing for balance inquiry and balance transfers, and so on. Unfortunately, many members do not take advantage of these alternatives.

As proposed, we agree that financial institutions should be responsive when an individual chooses to opt-out of future overdraft usage and should disclose only the amount of funds available for immediate use or withdrawals. However, requiring financial institutions to provide a monthly opt-out becomes overly burdensome. An opt-out notice at the time the ODP relationship is created, along with an annual notice, should be sufficient and is the approach already covered in NCUA's "Best Practices." As for the allowable methods for opting out, we believe individuals and financial institutions should be given as much flexibility as possible (e.g., by mail, phone, electronically or in person).

As for content of the disclosure, there should be some consideration on making the language as general as possible, because most of our smaller to medium-sized credit unions order such notices in bulk from third parties. If the notice requires specific information (such as overdraft dollar fee, daily fee limit, and specifics regarding alternative services), the third party costs will rise accordingly. Also, dollar-specific fees would be duplicative because they are already required by Truth-in-Savings at account creation and when any change occurs. These proposed additional rules that go beyond the current "NCUA Best Practices" are unnecessarily burdensome.

Required disclosures on periodic statements will be difficult to implement for credit unions, due to necessary third-party core processing system changes that will need to occur in order to accommodate the disclosure requirements. Such changes will need to have specific programming, with the associated data processing costs being passed on to credit unions and subsequently to their members/owners. Currently, NSF charges are not being differentiated between ODP NSF charges and ones that apply to checks that were returned. This proposed additional requirement to break out the NSF charges separately goes beyond the current NCUA Best Practice and is unnecessarily burdensome. We believe compliance with this proposed requirement would be burdensome without enough additional benefit to the member. In our opinion, the member knowing how much they paid in total NSF charges is sufficient.

Should all or part of the proposed rule be approved, we strongly believe that the effective date should be no less than one year from the date the final rule is issued to allow sufficient time for the necessary data processing programming to be completed.

Thank you for the opportunity to comment on the proposed rule.

John McKenzie

President

Indiana Credit Union League

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