PENNSYLVANIA CREDIT UNION ASSOCIATION

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August 4, 2008

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

*Sent via email*

***Re: Comments on Proposed Rule 12 CFR Part 706: RIN 3133-AD47 (Unfair or Deceptive Acts or Practices)***

Dear Ms. Rupp:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments to the National Credit Union Administration on its advance notice of proposed rulemaking to commence a review of credit card practices and overdraft protection programs or consumer credit cards accounts and overdraft services for deposit accounts. The PCUA is a statewide trade association that represents nearly ninety (90%) percent of the approximate five hundred and eighty-eight (588) credit unions located within the Commonwealth of Pennsylvania.

To respond to the Board's request for comment, the PCUA consulted with its Regulatory Review Committee (the Committee). The Committee consists of twelve (12) credit union CEOs who lead the management teams of Pennsylvania's federal and state-chartered credit unions. Members of the Committee also represent credit unions of all asset sizes. The comments contained in this letter reflect the input of the Committee and PCUA staff.

Credit unions, as non-profit, cooperative organizations, provide consumers with valuable financial services. As champions of consumers, our Committee, for the most part, supports the credit card practices proposal. In our comments below, we offer a compelling rationale for significant modifications to proposed sections 706.23, allocation of payments and 706.24, application of rate increases to outstanding balances. Likewise, section 706.27 should include clarifications that permit share-secured credit cards.

With regard to Subpart D, Overdraft Services, our comments will demonstrate that our Committee provides such services to consumers in a fair and even-handed manner. Accordingly,

we advocate a drastic simplification to proposed section 706.32(a), "opt-out." The debit holds addressed in section 706.32(b) are beyond the control of a credit union. Therefore, it is inappropriate to impose a compliance burden on a credit union in connection with a transaction initiated by a third party, namely a merchant or retailer.

Subpart C Consumer Credit Card Account Practices

Pennsylvania's credit unions support rules that enhance a consumer's ability to comparison shop and find the best financial alternative. NCUA's effort to curb sharp credit practices through this proposed rule is laudable. As NCUA analyzes a rule aimed at the credit practices of Federal credit unions, we urge the agency to take note that credit unions do not engage in sharp practices and represent the best consumer deals.

In September of 2006, the Government Accountability Office (GAO) issued a report, "CREDIT CARDS Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," GAO-06-929. GAO's report commented on a complex web of rate structures and fees, focusing on the largest credit card issuers in the United States. PCUA, through its service corporation, Pacul Services, Inc., conducts credit card processing for over 200 credit unions in multiple states. In the wake of the GAO report, Pacul Services surveyed all of its card issuers. In sum, credit unions offer consumers the better deal.

Among the largest card issuers, GAO reported the average finance charge for purchases was 12.3% and most cards had variable rates. GAO-06-929, p. 15. The Pacul Services survey found credit union issuers charged an average purchase rate of 11.03% and less than one percent of the programs offered variable rates. GAO reported large issuers charged an average default rate of 27.3%. Id. at 24. Credit unions processing with Pacul Services did not charge a default rate. GAO's study revealed average late fees at $33.64 and average high balance fees at $30.81. Id. at 18, 20. Pacul Services' study found those same fees averaging $16.00 and $15.00 respectively.

Our recent discussions with the Committee revealed similar results. Further, the Committee members do not engage in double-cycle billing. Again, we support most of the credit practices proposal and offer the following comments and suggestions for improving the rule.

**§706.23, Unfair Allocation of Payments**

NCUA proposes that a federal credit union, allocate of payments in excess of the minimum payment when annual percentage rates apply to different balances using one of these methods:

- applying entire amount first to the balance with the highest annual percentage rate,
- splitting the amount equally among balances, or
- splitting the amount pro rata among the balances

The Committee believes this will be an administrative nightmare and is not pro-consumer. We have concerns as to whether our processing programs will be able to decipher and allocate payments to a higher balance as opposed to a special promotion balance (i.e. the consumer never pays off the lower rate and continues to use the card). Based on their experience, the Committee offers this example. Suppose a credit card offers a 4.9% promotional rate that increases to a 9.9% nominal rate. Should the consumer pay $100 per month but continue to make purchases, the cardholder will never eliminate the promotional balance. In the long run the consumer will pay for a rule such as proposed section 706.23 in the form of higher percentage interest rates and fees, as well as, the potential elimination of zero percent financing. In addition, we asked the Board to offer suggestions as to how a credit union may implement this should the provision be adopted.

**§706.24 Unfair Application of Increased Annual Percentage Rates to Outstanding Balances**

Proposed section 706.24 would prohibit credit unions from increasing the annual percentage rate on an outstanding balance except in connection with variable rate increases, expiration of a promotional rate expired, or the receipt of a past due minimum payment. In the event of an increase in the annual percentage rate the outstanding balance to which a creditor could not apply an increased rate would be the amount owed as of 14 days after the creditor provided a change-in-terms notice consistent with the Truth-in-Lending Act and Regulation Z. The creditor would not need to determine the specific date the notice was received by the consumer for purposes of calculating the 14-day period. Instead, the creditor could determine this based on the time it takes to generate the notice. Section 706.24(c) sets specific criteria for repayment of the outstanding balance.

The legal analysis rationalizing proposed section 706.24 fails to make a compelling case for declaring that a rate increase on an outstanding balance is an unfair or deceptive practice pursuant to the Federal Trade Commission Act, 15 U.S.C.A. § 45(n). Despite five pages of text, the entire justification for the rule rests on the unsubstantiated assertion that: 1) an increased annual percentage rate to an outstanding balance ***appears*** to cause substantial monetary injury by increasing the interest charges assessed to a consumer's credit card account; and 2) this injury does not ***appear*** to be reasonably avoidable by consumers as a ***general matter.*** (Proposed rule p.31, emphasis added.) The foregoing unsupported legal conclusions rest on the assumption, articulated in the remaining analysis, that consumers do not read credit card disclosures or notices. (Proposed rule pp. 32-35)

The proposal overlooks consent by usage. The Committee members explained that their credit unions rarely, if ever, increase the annual percentage rate on a fixed-rate card. However, their card agreements do reserve the right to change any credit term, consistent with the Truth-in-Lending Act as implemented by Regulation Z. See 12 C.F.R. §§ 226.6, 226.9. In instances where a credit union increases its rate, the credit union delivers advance notice as required by Regulation Z and empowers the cardholder to accept or reject the change in terms. If the cardholder uses the card after the effective date of the change, such use signals the consumer's

assent. If the cardholder cancels the card or simply does not use it, he or she retains the benefit of the original bargain and pays according to those terms. The consumer, not the financial institution or the marketplace, controls his or her destiny in such a scenario. Consent by usage affords a consumer ample opportunity to avoid an increased cost; therefore, the practices described here do not constitute an unfair or deceptive practice as defined in the Federal Trade Commission Act.

The treatment of outstanding balances articulated in section 706.24(c) raises significant operational concerns very similar to our comments on the allocation of payments explained above. The Committee is also concerned that this provision will force credit unions to create numerous "buckets" (i.e. one for zero percent interest, balance transfers, pro balances and cash advances) for applying the appropriate rate. Processing systems have finite capacity and there is a limit to how many buckets that can be built. We feel this will be most problematic for small asset size credit unions which will have difficulty implementing and complying with this provision. Consequently, if enacted, the rule would likely compel credit unions to offer variable-rate cards in lieu of fixed-rate programs as a hedge against interest rate risk and to avoid the complicated and expensive processing required by this rule.

Finally, the language of section 706.24(c) perplexed our Committee members in terms of payment allocation. In short, we are not sure the proposal offers any benefit to consumers. Consistent with the example we cited above, we cannot see how the member pays off the outstanding balance in the lower interest rate bucket if he or she pays a fixed amount per month, but does not pay off the monthly balance, and continues to make purchases or take out cash advances. We urge NCUA and the other regulators to re-examine this provision and provide examples of how the proposed treatment of outstanding balances work in the consumer's favor. Also, the timing aspect of this rule is unclear. Somehow, a creditor is required to determine an outstanding balance commensurate with the timing or delivery of a change in terms notice. The rule makes compliance a murky proposition at best, inviting consumer complaints over which rate applies to which balance. NCUA and the other regulators should clarify this rule, aiming for a simple and clear effective date or timing requirement.

**§706.25 Unfair Fees for Exceeding the Credit Limit caused by Credit Holds**

Section 706.25 would prohibit federal credit unions from assessing a fee for exceeding the limit on a credit card account if the credit limit would not have been exceeded but for a hold on any portion of the available credit. Many credit holds are imposed by merchants and fall outside the control of the card issuing credit union. A credit union cannot differentiate a purchase or any excess amount for a hold until the transaction settles. Settlement might not occur by the cycle date. Accordingly, it is unfair to hold a credit union responsible for transactions - - credit holds – that is does not generate or control. The Federal Trade Commission should study merchant practices and regulate their payment systems activity in an appropriate manner.

**§706.27 Unfair Financing of Security Deposits and Dees for the Issuance or Availability of Credit**

Section 706.27 would prohibit certain practices done in connection with issuing credit or taking security deposits. Members of the Committee do not engage in these practices. The rule should include a new subsection (d) that states:

No provision of this section shall be construed to prohibit federally insured credit unions from taking a security interest in a share account, share draft account or share certificate in connection with an extension of credit.

Subpart D, Overdraft Services

**§706.32(a) - Unfair Practices regarding Overdraft Services**

Proposed section 706.32 would require institutions to provide the consumer with the right to opt out of the institution's payment of overdrafts and a reasonable opportunity to exercise that opt out. The proposal would also apply to all transactions that overdraw an account.

The Committee currently provides courtesy pay and other overdraft protection services as an opt-out. For example, the Committee members who offer courtesy pay, refund the member any fee they incurred if the member objects and discontinues the service. Committee members who offer traditional overdraft services explained they have processes in place to permit members to decline the service. They strongly recommend the opt-out apply to all transactions uniformly, otherwise, processing will become unduly difficult and expensive. There is concern that an ala cart option, in terms of service for overdraft, could lead to a risk of fraud for the consumer, not to mention being very confusing for the consumer as well.

The timing of the opt out notice, receipt before a consumer is charged a fee is reasonable. However, we recommend that NCUA clarify the rule to state that only members who qualify for overdraft services are required to receive an opt out notice. Overdraft services are, generally, not extended to every member and the opt out notice would only cause confusion to a consumer who is not eligible for the service. Finally, we want to emphasize that opt out notices should only apply where fees are charged for overdraft services.

**§706.32(b) Debit Holds**

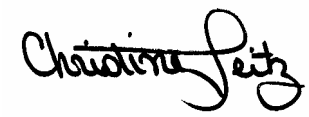
Section 706.32(b) would prohibit certain acts or practices associated with assessing overdraft fees in connection with debit holds specifically if the overdraft is caused solely by a hold placed on funds that exceeds the actual purchase amount of the transaction, unless this purchase amount would have caused the overdraft.

The Committee feels this requirement is burdensome and unfair. Many debit holds occur as a result of merchant activity. Credit unions have little to zero control over the amount of the hold(s) only the merchant determines what the hold amount will be. When a merchant places such a hold, the credit union cannot determine the difference between the purchase amount and any extra hold. The rule as written, therefore, imposes huge financial burdens on the consumer and the credit union and creates extra processing issues for all credit unions.

NCUA could take a more even-handed approach by rewriting 706.32(b) to limit the restrictions to holds imposed by the credit union. Holds imposed by third parties, well beyond the power of a credit union to control, should not fall within the scope of the regulation. The Federal Trade Commission should study merchant holds and impose standards on merchants enabling the consumer to comparison shop between retailers and service providers.

Thank you again for this opportunity to comment on behalf of Pennsylvania credit unions. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss our comments.

Sincerely,



Christine Seitz
Governmental Affairs Specialist

CS:RTW:llb

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