



August 4, 2008

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

RE: RIN 3133-AD47
Unfair or Deceptive Acts or Practices

Dear Secretary Rupp:

On behalf of the Credit Union Association of New York, Inc. (the "Association"), I would like to take this opportunity to comment on a jointly issued agency proposal to outlaw certain practices as unfair or deceptive acts in relation to consumer credit and overdraft protection services. While the proposal is wide-ranging and contains many aspects that are commendable, I would like to address several concerns the Association has regarding the overdraft protection provisions of this Regulation.

Under this proposal, financial institutions, including credit unions, would generally be prohibited from charging overdraft protection fees on a consumer's account unless such member was given the opportunity to "opt-out" of receiving overdraft protection prior to a fee for such services being imposed. This proposal would require not only an initial opt-out notice to the consumer, but would require that consumers be given the opportunity to opt-out of this product on every statement on which an overdraft protection fee is imposed. Finally, as currently drafted, the proposal would allow for a partial opt-out under which consumers could choose to opt-out of receiving overdraft protection for ATM and POS transactions. As well intentioned as many of these proposals are, there are practical difficulties posed by their implementation for many of our credit unions.

By way of background, there are many smaller institutions that manually review accounts on a daily basis and decide what members are going to receive overdrafts on an individual basis. This approach allows credit unions to consider a member's payment history, as well as the likelihood that adequate funds will soon be available in the account. Under this erstwhile banking industry practice, courtesy pay is an option not a right and it is ultimately extended based on the judgment of credit union staff. Also, many of our credit unions do not update accounts on a real time basis but receive snapshots of account balances on a daily basis.

Against this backdrop, there are many operational concerns associated with this proposal that will impact the ability of members to receive overdraft protections. Courtesy pay always has been and always should be an option of the credit union. Since many financial institutions will provide the opt-out notice at account opening, this proposal will create confusion by mandating that all members receive the right to opt-out of a benefit to which they are not automatically entitled. In this regard, the sample opt-out notice provided in the companion proposed Regulation DD amendments should be strengthened to more forcefully underscore the fact that by choosing to receive overdraft protections consumers are not entitled to automatically receive this protection.

Leading the Way

One of the most significant operational concerns posed by this regulation is that many credit unions will not have the ability to know that an account is overdrawn at the point at which it is overdrawn. Consequently, if promulgated as proposed, credit unions will have to (1) absorb the costs associated with insufficient funds, or (2) forgo offering courtesy pay altogether, in spite of the fact that it is a product that many members expect. To address operational realities, regulators should not mandate a partial opt-out option. They should also reconsider their decision not to allow those institutions that unknowingly but in good faith pay an overdraft from charging a fee. The proposed exceptions authorizing the imposition of a fee notwithstanding a consumer's opt-out are entirely too narrow as they would not extend to, for example, ATM withdrawals.

Under this proposal, our members would have to be given the right to opt-out of receiving overdraft protection prior to the imposition of any fee relating to this service. In addition to choosing to receive this benefit, members would be given information of how to opt out anytime an overdraft fee is subsequently imposed. The consumer benefits from what is effectively an ongoing opt-out notice are more than outweighed by the administrative burdens. Since statements will contain the overdraft fees, members will be reminded that they have chosen overdraft protections. In contrast, credit unions will have to monitor and keep records on who has chosen to opt out and then insure that systems are updated to reflect that fact.

Under the proposed section 227.32, the regulation would mandate that credit unions comply with an opt-out request as soon as "reasonably practicable after the bank receives it". Given the reality that there will be disputes as to whether or not a member provided adequate notice to avoid the imposition of subsequent overdraft fees, additional guidance should be provided in the form of a specific number of days considered a practicable amount of time for financial institutions to have complied with an opt-out request.

In the final analysis, improperly implemented, this Regulation can and will have the impact of disproportionately burdening those members who choose to belong to small credit unions. As a result, in finalizing these proposals, the regulators should remain mindful of the need to allow institutions to make a good faith effort to comply with these proposals rather than have to choose between an operationally challenging regulatory regime and providing an important service to their members.

Sincerely,



William J. Mellin
President/CEO