August 1, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Via email: reg.comments@federalreserve.gov

Mary Rupp
Secretary of the Board
NCUA
1775 Duke Street
Alexandria, VA 22314-3428
email: regcomments@ncua.gov

Re: Docket No. R-1314

Re: NCUA Proposed Rule Part 706

Dear Ms. Johnson and Ms. Rupp:

PSCU Financial Services, Inc. provides credit and debit processing services to over 550 credit union members ("CUs") and we are an active participant in many credit union-dedicated councils (PSCU-FS"). We believe credit unions that offer credit and debit card programs continue to provide their members with very consumer-friendly policies. It is our hope that our experience in shaping those consumer-friendly policies with our CUs offers the Board a useful guidepost for many of the proposed changes on docket number R-1314, aka "UDAP".

1. Unfair time constraints for consumers to make payments.

Proposed §____.22(b)
The Agencies specifically asked for comment on:

<u>The number of days after the closing date of the billing cycle that institutions typically mail or deliver periodic statements:</u> Our processor produces and mails periodic statements 3 – 4 days after the billing cycle has closed. Most processors have built in good delivery time frames, although actual delivery dates often depend on the performance of the United States Postal Service.

We believe that the standard to be applied should be (1) for mailed statements, 21 days after the mailing date, not 21 days after the delivery date, and (2) for electronic statements, 14 days after the availability date. A CU's billing cycle usually closes 5 days after the payment is due. We do not believe a 21 day delivery date is recommended or possible because the length of a cycle is federally mandated and processing time is

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standard at 3 to 4 days from the cycle date. Any less time to process and still provide for the statutorily-mandated cycle period would require a smaller window between the payment due date and the cycle date. It is important to us to use our 5 day window of accepting payments prior to the close of the billing cycle. Our CUs provide a 25 day grace period from statement cut off to their due date. Our ability to accept payments after the due date and prior to the billing cycle date, effectively provides a 30 day grace period to make a payment on the account.

Item 4. For the foregoing reasons, we believe that 21 days is sufficient time for a consumer to receive a mailed statement, review it and send a payment in the mail to the issuer. We want to distinguish a 21 day mailing date requirement from a 21 day delivery date. We do not believe it is necessary to have, and hope that the Agencies have not intended to propose, 21 days after the delivery date for mailed statements since that would require a mailing date of 28 days under the current standard. Nor do we believe that the regulators intend to suggest revising the length of the billing cycle, the length of the processing, or the "grace period" between the payment due date and the billing cycle date, all of which would be impacted and are much more burdensome for financial institutions in order to meet a 21 day delivery date.

We do not believe a 21 day lead-time is needed for statements delivered electronically. As the FRB comments noted, 7 days to review a statement and 7 days to deliver the payment to the issuer give the cardholder sufficient time to make a conforming payment. PSCU seeks to provide its CUs with innovative electronic payment products and believes a 14 day delivery of electronic statements is sufficient time for consumers to receive and make payment since the large majority of consumers who receive their bills electronically also pay those bills electronically and do not require the additional mailing time for either bill or payment delivery.

Require FIs to accept payments one or two days after payment due date without assessing a late payment fee.

The Agencies' comment is just what PSCU suggested on July 18th, in its comment letter for Docket No. R-1286. Our suggestion was made in the context of section 226.7(b)(11), the cut-off time for payment due dates. Many of our CUs provide a "grace period" and accept payments made up to 5 days after the due date without assessing a late payment fee as a courtesy to their members. This system functionality currently exists. The CU chooses a "grace period" program setting to accept late payments without assessing late payment fees on its members. We understand some large issuers can reverse the late payment for the consumer but we do not know if their process is automated or is only performed at the consumer's request.

As we offered in our letter re docket no. R-1286, section 226.7(b), we suggest issuers be required to have, and to disclose in their account agreements, at least a 1-day grace period for accepting late payments, which would eliminate the need for a cut-off time or times on the payment due date.

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Impact of proposed rule on the availability of credit : We interpret this comment to refer to the speed the financial institution replenishes the consumer's available credit. Our CUs usually issue credit on the account 3 days after a payment by check is made. Our experience has shown that replenishing the credit any sooner exposes our CUs to much higher check-kiting and fraud losses. We have not found that accepting payments past the due date but before the cycle date has a negative impact on consumer's availability of credit.

2. Unfair allocation of payments among balances with different interest rates:

Proposed §____.23

System technology currently exists to allocate payments among different balances with different interest rates on cardholder accounts. Our CUs can select certain processing settings to have those payments applied according to the card program of the CU.

However, we believe the cumulative effect of the proposed changes will have a chilling effect on credit available to those who need it most.

The cumulative effect of, and unintended consequence of: setting payment allocation requirements to the highest interest rate first; the prohibition on interest rate increases on existing balances (with limited exceptions); and the requirement to provide 45 day advance notice of rate increase, combine to dramatically impact an issuer's ability to cover its costs and make a fair return on capital; which likely will have a drastic chilling effect on the availability of open-ended credit to consumers. To illustrate this impact, we are confident that CUs and other issuers will radically change the way their promotional offer programs work in the following ways:

Shorter duration
Less frequent promotional offers
Reduction in the number of eligible consumers who get the offer
Higher promotional rates

As an example, let's say that using a convenience check, a consumer does a balance transfer to their account at a 5.9% rate for the life of the balance. Under the proposed prohibition in applying an increased rate to an existing balance, there is no incentive for the issuer to offer a life of balance (fixed) promotional rate of 5.9% on $5,000 to a consumer if the CU cannot apply an increased rate to the existing balance should the consumer's credit status decrease and the risk on the account increase. We do not believe all consumers should experience credit tightening in promotional offers because some consumers become a higher credit risk. The effect on promotional offers illustrates how the credit market to consumers will become smaller and more costly. Any reduction in the numbers of consumers who qualify for a promotional offer cannot be beneficial to all consumers.

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Commentary has been provided that certain proposed prohibitions would better help the consumer understand the true cost of a credit card issuer's promotional program. We believe this does not tell the whole story of the impact of proposed prohibitions. Rather, when fewer consumers get promotional rates, promotional offers are made less frequently, higher promotional rates are set and the promotional rates are of much shorter duration (6 months or 12 months), and more consumers are excluded from participating in a promotion. The promotional offer has bypassed them.

The promotional rate example reflects how issuers must narrow the scope of risk when they (1) cannot quickly re-price, (2) cannot increase the rate on the credit already extended and (3) reduce available credit by not offering promotional programs to consumers with a lower credit score. The consumer's behavior should govern whether they can manage the account on the offered terms, instead of never offering the program with a more attractive rate and term because the CU has less ability to manage increases in credit risk as they arise.

It is very unusual for CUs to have more than one promotional rate on an account so allocation among promotional rates would not typically occur.

Request for comment as to frequency that issuers apply payments to the lowest interest rate first: To our knowledge, it is a universal practice that all issuers apply payments to the lowest interest rate first. Of the different allocation methods proposed, PSCU believes applying payments on a pro-rata allocation is the preferred method. For reasons discussed in section 3 below, we do not agree that prohibiting interest rate increases to existing balances should become regulation. However, in the event they would, we most certainly believe that payments should be first allocated to the existing balance that can not have its rate increased.

Request for comment whether consumers should be permitted to instruct the institution regarding allocation of amounts in excess of the required minimum periodic payment. Although there are several methods for allocating payments that the institution may set up with its processor, it is impossible for the institution to have its processor set allocation of payments at the individual account level or by a consumer's request.

3. Unfair application of increased annual percentage rates to outstanding balances:

Proposed §____.24

Request for comment : the extent to which institutions raise rates on pre-existing card balances. Currently, all issuers increase the interest rate on the existing balance of the account. The interest rate increase is not limited to new charges.

The vast majority of our CUs offer cardholders fixed rate pricing. The CUs are willing to accept the (typically) lower revenue to their portfolio because "the membership likes it" and the CUs can re-price accounts to offset increased risk. The credit unions' choice to

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offer fixed rates matches up with consumer's sense of security knowing rates are fixed. Issuers who offer fixed rates are at a disadvantage when they cannot recapture the increased credit cost reflected in an index's rate increase. Under the UDAP proposal, the differences between variable and fixed rates are emphasized. A variable rate could change twice in a month and a fixed rate would not be able to re-price as quickly. We believe prohibiting an interest rate increase to an existing balance (with certain exceptions) will pull more issuers away from fixed rate credit card pricing. Credit unions that feel compelled to move to variable pricing to remain viable if not competitive will sacrifice a key distinction from commercial issuers and a key benefit to consumers.

Request for comment 10th bulletpoint, item (3): whether 30 days is the appropriate measure of a serious delinquency. The meaning of 30 days is key. Does 30 days mean the 30 days that passes from the time the statement was mailed to the consumer until the payment is due? Or does 30 days mean payment received 30 days after the payment is due?

Generally our CUs do not define delinquent as occurring when a payment is made more than 30 days after the statement is mailed (6 days after the payment was due). Unless payment is not made during the next billing cycle (closer to 60 days after the statement is mailed), the payment is not deemed delinquent. That is, to our CUs, 30 days delinquent is more akin to the 60 day period from the time the statement is mailed or 30 days after the payment due date.

Under that definition of 30 days, if CUs are not permitted to raise interest rates until 45 days after that "30 day" period, they will be at a true disadvantage when other issuers choose to raise a rate as soon as a consumer makes a late payment. Issuers with more aggressive billing would already be compensated at a rate that corresponds to their increased credit risk for impacted accounts. The CUs' generous interpretation of "30 days" would need to be withdrawn and the CUs members, even those who do not make late payments, will no longer get a 60 day window. The loss of a longer period prior to delinquency is the loss of another unique benefit we offer our CUs and their members. We believe the current notice requirement of 15 days, since the notice would not be issued until the 60 day window has passed, is already a 45 day period between delinquency and rate increase.

Thus, the impact of the proposed 45 day notice requirement would curtail our ability to offer fixed rates and to reduce our pre-delinquency period, both of which are pro-consumer practices. Accordingly, we do not believe the proposed ban on applying higher rates to existing balances, is needed in addition to the other proposed changes. We believe the combined impact of these three proposed regulations will cause a reduction in available credit and the pricing of credit to over-correct the marketplace, making open-ended credit more limited and costly for consumers. From our perspective, credit unions' unique options to consumers are lost as the credit marketplace makes it harder to distinguish between for-profit and cooperative and it becomes more homogeneous.

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However, of these proposed regulations, we believe the prohibition to raise rates on existing balances is the most drastic over-correction and should not be implemented. If the Agencies believe the proposed change isn't a big deal, because issuers can charge a higher rate on new purchases to offset lower rates on existing balances, that is not accurate. We project that by increasing interest rates on new purchases only, it will take 3 – 7 years for that new rate to become the dominant rate in the portfolio. Since this impact of the new rate is felt for years, not months, there will be decreased credit offered to consumers. We also expect some CUs to move to variable rate pricing (90% of our members used fixed APR pricing). Other CUs may sell their credit portfolio which would reduce service to financial underserved populations and those populations would have to seek credit from more stringent lenders.

4. Unfair fees for exceeding the credit limit solely because of a hold placed on an account;

Proposed §____.25

Holds placed on credit cards are most commonly for hotels, restaurants, fuel purchases and car rentals. Of these holds, the fuel purchase occurs more often and that hold is more likely to cause an over limit on a credit card account.

Recent actions have been taken by credit card associations to move to "Real-Time Clearing (RTC)" to address numerous issues that arise between merchants, the associations, financial institutions and consumers during authorization holds, especially in light of radically increased fuel prices. The associations intend to reduce a standard authorization hold from 3 days to 24 hours. The associations even plan to reduce the fuel purchase hold down to 1 to 2 hours as well as standardize the hold dollar amount to an estimate based on the particular fuel merchant's typical sale. Those changes are to become effective for an interim period as early as October 2008. The reduction of authorization hold time and closer estimate of actual purchase that result from "RTC" can be expected to lower the volume of fuel purchase holds causing over limit fees and overdraft charges.

The spike in fuel prices has highlighted the frequency and duration of authorization holds. In the context of regulation of overdraft charges, however, we can expect that the shortening of authorization hold time will reduce the frequency of exceeding credit limits, the overdraft of debit accounts and the correspondent volume of fees assessed for these overages, and, ultimately, benefit the consumer.

Per Visa bulletin 080701, consumer debit cards account for roughly two-thirds of all Visa fuel transactions. Although fuel purchases are also made with credit cards, we would then expect the authorization hold's impact to credit card over limit occurrences is much lower than the holds' impact on debit accounts. The associations also will provide for a "partial authorization" which would allow consumers to make a small fuel purchase, free

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from a larger standard authorization hold, and avoid incurring overdraft or over limit charges.

With respect to CUs assessment of fees for exceeding a credit limit, those fees are often waived when the account is only 2-3% over limit. And in exceeding that limit, our CUs do not extend credit more than 10% over the credit limit. CUs do assess overlimit fees on credit cards and the overlimit fees for credit cards are lower or the same as the overdraft fees for debit cards, but are lower than the overlimit fees typically charged by non-CU issuers. Some of these fees are guided by a CU's state charter.

Based on the associations' intended changes to authorization hold times, we do not believe regulation of over limit fees due to authorization holds is needed. In fact, we believe the authorization hold will soon become a more reliable estimate of the intended charge and needs to be in place to ensure available credit for the purchase. It is important that financial institutions not be penalized in order for merchants, the associations and consumers to have greater confidence in the debit and credit payment of charges that have an authorization hold.

Prohibited Overdraft Protection Program Practices

Proposed §____.32

Outline as offered by the NCUA:
1. Opt-out
a. FCU cannot assess an overdraft unless it has provided the member the opportunity to opt-out of its overdraft protection program.

Most consumers know and understand how overdraft services works. Most consumers probably don't want to feel forced to participate in an overdraft protection program. If a consumer is provided the opt-out option at account opening and selects that option, we believe the consumer has made a reasonable judgment about their need to not have overdraft protection. Most consumers understand that overdraft protection programs offer a lower cost to the consumer than if each item were declined or returned NSF which can cause the consumer to incur additional fees due to the payee. We do not believe this opt-out needs to be provided to the consumer on the periodic statement. We believe the opt-out of overdraft services should be offered in the overdraft notice to the consumer. The consumer is usually aware if they need overdraft protection and can decide the merits and costs of using it.

Technology also allows for institutions to provide links to other credit options offered by the institution that may be less costly to the consumer in lieu of overdraft charges. Consumers should be offered the ability to have their debit card linked with a savings account, credit card, a line of credit, or any other credit or payment product that would allow the consumer to transfer monies into their debit account to avoid excessive fees.

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We believe the Short Form Opt-Out Notice is appropriately clear and should be included in an overdraft notice mailed to a consumer. We agree with commenters who made a clarification in the use of the term "overdraft service" and offered the term "Payment of Overdraft Items" to include overdraft items that are paid whether or not an overdraft service is offered, available or in place for that type of transaction.

b. Members may elect to do a partial opt-out to prevent overdrafts caused by ATM withdrawls and point of sale transactions.

The Agencies request comment on:
Whether the scope of the consumer's opt-out right under §___.32(a)(1) should be limited to ATM transactions and debit card transactions at the point of sale.

And

The potential costs and consumer benefits for implementing partial opt-out that applies only to ATM transactions and debit card transactions at the point of sale.

We do not believe it is possible to limit an opt-out to ATM and point of sale (POS) transactions. We understand that system limitations, even in real-time processing, cannot accurately represent an available balance, nor do we believe that an effective disclosure of the opt-out option at ATM & POS can be provided. These limitations are described in paragraphs that follow.

CUs and financial institutions can provide real-time available balances, excluding checks at ATM and point of sale (POS). We do not believe it is possible to construct an adequate disclose of this limitation, rather, we believe consumers would not understand this limitation and they would, to their own detriment, rely on the balance reflected at ATM & POS terminal whether or not they have written checks against that balance.

The proposed Model Form is lengthy and we do not know how it could be reworded so that a brief message, easily read on the terminal screen, would contain the detail to make the opt-out notice meaningful to consumers at the time of ATM & POS transactions.

Although the consumer would be offered the opt-out, unless the consumer adequately understands the discrepancy in available balance, the consumer cannot possibly rely on the real-time balance available on their debit account.

Suppose the consumer has written three checks, one for day care, one for a child's sport and one for a religious institution, totaling $250. Any one of those payees could delay their presentment of the check until days, or as much as a week, later. If payment transactions are made electronically, the CU has a way to gauge the balance available with that payment info. But when check clearing is dependent on when funds are submitted for deposit, the CU has no control over the consequences and the change in available funds. It would be unfair for the consumer to believe he/she can depend on the

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CUs information on available balance when the consumer has a much better idea of how frequently and the dollar value they have in outstanding checks. These are the consumers we believe are intended to be protected from incurring excessive fees and they are the ones who would be confused by an "available balance" provided by their financial institution that is no more accurate than the last check written. Checks must be excluded entirely from available balances displays, which creates inaccuracy and confusion regarding the true meaning of "available balances", and therefore do not aid consumers in avoiding potential overdrafts in their transactions.

<u>2. Overdrafts caused by a debit card – prohibition of overdraft charges if overdraft is caused solely by hold placed on available funds…unless actual purchase would have caused the overdraft.</u>

For reasons presented above in 4., Section _____.23(b) comments, the associations announcement to reduce authorization hold time and provide a closer estimate of the actual purchase amount that result from Real Time Clearing ("RTC") can be expected to lower the volume of fuel purchase holds causing over limit fees and overdraft charges. According to Visa bulletin 080701, consumer debit cards account for roughly two-thirds of all Visa fuel transactions. We believe this change by the associations, set to commence in October 2008 for an interim period, represents a significant benefit to consumers and consumers' use of debit cards for fuel purchases because of the reduction in inaccurate or lengthy authorization holds that caused unintended overdraft charges.

Based on the reduced authorization hold times, we do not believe a ban on overdraft fees due to authorization holds is needed. In fact, we believe the authorization hold will soon become a more reliable estimate of the intended charge and needs to be in place to ensure available credit for the purchase. It is important that financial institutions not be penalized in order for merchants, the associations and consumers to have greater confidence in the debit and credit payment of charges that have an authorization hold.

<u>Requested comment on the impact of requiring institutions to pay smaller dollar items before larger dollar items when received on the same day for purposes of assessing overdraft fees on a consumer's account</u>.

We do not believe consumers would prefer that the larger dollar item is paid last, when the larger dollar item can easily be a mortgage or car payment, items that are more critical to the consumer's sense of financial stability and credit score. We believe a limit on the number of overdraft charges assessed on an account per day has merit. We believe that an overdraft daily fee limit would reduce the total overdraft fees that are caused by multiple transactions being processed on the same day.

<u>Request for comment how such a rule would impact an institution's ability to process transactions on a real-time basis.</u>

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Many institutions already process on a real-time basis and we recommend real time processing. But we do not believe processing on a real-time basis alone would allow financial institutions the filter to reduce consumers' overdrafts since financial institutions do not drive when the payment transmissions are received. Merchants and merchant-acquirers drive the payment transmissions process. Processors would have trouble managing intra-day processing. The item that cleared at 4 p.m. might be the mortgage check and the item that cleared at 11 a.m. the following day might be a previous days' purchase at the drug store. The institutions have no way of "catching" large dollar transactions without reverting in some way to batch processing. If real-time processing must be subject to batching in order to sort high and low dollar transactions, the speed of over-all processing suffers making real-time processing a misnomer, less attractive and more costly.

Agencies request comment whether any final rules should be effective given a one year period to comply, or shorter or longer time period.

Initial Regulatory Flexibility Act Analysis

The proposed changes to Reg AA are substantial. Issuers and processors will spend large sums of money to implement the changes. The operational, system programming, and quality control manpower and other resources needed to design, engineer and implement the changes are on a vast scale. Moreover, issuers and processors have substantial numbers of existing applications, programming, and process settings that would have to be changed. For all of these reasons, we respectfully request an implementation schedule of 24 months for any new Regulation AA requirements so that the changes can be done properly, with the least amount of disruption and with the cost impacts minimized.

The only way to implement changes in a year will be with higher costs because the scale of changes is a two to three year project but would get crammed into a one year timeframe, so those costs will be passed on to consumers.

PSCU-FS appreciates this opportunity to submit comments on the Agencies' proposed changes to Reg AA. If you have any questions or would like additional information on these comments, please contact Steve Salzer, General Counsel, Ethics and Compliance Officer, at (727) 561-2227.

Sincerely,

David J. Serlo
President/CEO

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