



July 31, 2008

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

RE: Comments on Proposed Legislation - RIN 3133-AD47  
Unfair or Deceptive Acts or Practices  
12 CFR Part 706

Dear Ms. Rupp,

In review of the proposed changes to the Unfair or Deceptive Acts or Practices regulation referenced above, we would like to share our thoughts and comments with you on the impact these proposed changes may have upon a credit union's operations and costs.

**Proposed rule:** Under § 706.32 (a) (2) Partial opt-out, a federal credit union must provide a consumer the option of opting out only for the payment of overdrafts at automated teller machines and for point-of-sale transactions initiated by a debit card, in addition to the choice of opting out of the payment of overdrafts for all transaction.

**Comment:** We are in favor of members who have Over-Draft Protection on their share draft accounts in receiving an additional "Right to Opt-out Notice" on their periodic statements; however, we are opposed to credit unions being required and held accountable for providing a member the option of opting out only for the payment of overdrafts at automated teller machines and for point-of-sale transactions initiated by a debit card for the following reasons:

- 1) Credit Unions have no control over the transaction or information that is displayed on Point-of-Sale (a/k/a POS) machines used by merchants and

910.864.2232  
1.800.793.2328  
www.fortbraggfcu.org

MAILING ADDRESS:  
P.O. Box 70240  
Fort Bragg, NC 28307

FORT BRAGG LOCATIONS:  
★ Main Office: Hefner Plaza, South PX Drive  
★ Bastogne Drive

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★ 1638 Skibo Road, Fayetteville, NC 28303  
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★ 7840 Raeford Road, Fayetteville, NC 28304



Automated Teller Machines (a/k/a ATM or ATMs), which are owned and/or operated by other third parties (e.g. – banks, credit unions, stores, and etc.). We believe these notice issues and requirements would be more appropriately addressed by the merchants and networks (VISA, Master Card, and etc.) that have direct control over such machines, processes, and transactions. The only control credit unions do have over the transactional process is approving or denying the merchant's transaction and request based on the available account balance or overdraft amount available for a consumer.

- 2) The proposed regulation would place an undue legal and cost burden on credit unions that are debit card issuers because it would open Pandora's door for consumer and class action litigation. Even if the merchant, network, or third party was found at fault by the courts for failing to provide the proper consumer regulatory notice and right to opt-out at the time of transaction, the litigation would most certainly include the issuing Credit Union since that is the location where the member maintains their account, which was unfairly overcharged and assessed a fee. If this regulatory requirement is going to be placed upon debit or credit card issuers, then the regulation must fully address and provide a safe harbor, including the full reimbursement of all legal expenses, for those issuers who fulfilled their obligations under the regulations.
- 3) Displaying of the opt-out notice on debit/credit card machines may violate current privacy laws and bring undue embarrassment upon the consumer at the time of transaction with the merchant. We have all seen our fair share of POS machines at merchants and we all know that they sit out in public view of the consumer, sales clerk, and others who may be around the machine at the time of transaction. If the machine displays a message requesting the consumer to opt-out of the transaction before it is finalized, it may cause unwanted stress and embarrassment on the part of the consumer because others may have been alerted to the fact that there is not enough money on deposit in the consumer's account to actually cover the transaction. One of the chief elements why consumers want overdraft protection on their accounts is to avoid the possible embarrassment that could occur if an item was not paid and/or returned, like at a restaurant. Now we are putting it on public display for all to see (e.g. – restaurant, telephone catalogues merchants, etc).

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- 4) Certain merchants do not have the necessary debit card equipment to handle opt-out notice request at their Point of Sale machines (e.g. – restaurants, online vendors, telephone catalogues merchants, etc.).
- 5) Financial institutions and network software systems across the country do not currently have the ability to comply with the proposed changes. The rewriting of the software for financial institutions and networks to comply with the proposed regulation would be costly and take a long time to implement.
- 6) The proposed changes would further create confuse amongst debit/credit card users and would require the implementation of a national training program for millions of individuals who accept or handle credit and debit card transactions, not to mention the general public.

It would be a perfect world if we could insulate every consumer from every potential adverse action that may affect them throughout life, but the truth and reality of the matter still remains is that the consumer must accept some level of awareness and responsibility concerning the daily events, be it financial or otherwise, that occur and impact their lives. Consumers can avoid fees if they manage their funds appropriately. In respect to consumer awareness and education, maybe it would be worthwhile to require all high school seniors to pass a basic skills money management competency test before they are allowed to graduate from high school. As stated earlier, Fort Bragg Federal Credit Union is in favor of a regulation that would require additional Opt-out notifications in the member's periodic statement.

**Proposed rule:** 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, 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.

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**Comment:** Complying with the above proposed requirement would create an undue burden and costs upon Credit Unions. What was once automatically handled and decided by a computer system and software would now require manual account overview and decisioning. As a result of the proposed regulation, credit unions and other financial institutions would be forced to increase the amount of fee they assess a consumer to adequately cover the additional cost for the service.

Fort Bragg Federal Credit Union feels that the above proposals to change the existing regulations would create over-regulation of a service that most members are already currently satisfied with. Once a member realizes the amount they saved in fees had an item been returned, they are more than grateful that an Over-draft Protection service stood in for them. If this was not the case, then we would have hundred of members opting out of the service monthly instead of the one or two request we receive. Let us never forget that it is the majority that rules and not the handful minority who are not satisfied with any type of Overdraft Protection program. In closing, Fort Bragg Federal Credit Union would support the idea of providing additional opt-out warnings on periodic monthly statements.

Thank you

Eric Broyles  
Assistant Vice President of Lending

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