

# American Airlines Federal Credit Union

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Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal  
Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

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

RE: Unfair or Deceptive Acts or Practices  
Docket No. R-1314  
RIN 3133-AD47

Dear Ms. Johnson and Ms. Rupp:

I am writing on behalf of American Airlines Federal Credit Union (AA Credit Union). AA Credit Union has over \$5 billion in assets, is the ninth largest credit union in the United States and has over 211,000 members. I am a former member of the Board of Governors of the Federal Reserve System's (Board) Consumer Advisory Council having completed my term just last year.

I am writing in response to the request for public comment regarding the proposed rulemaking addressing unfair and deceptive practices for credit cards and overdraft services for deposit accounts.

AA Credit Union commends the National Credit Union Administration (NCUA) and the Board (jointly, the Agencies) for addressing unfair or deceptive practices in the financial institution industry. As a credit union, we believe that we are strong advocates for our members. We also believe that consumer education is the best tool for consumers to avoid getting caught up in deceptive practices. While we strongly oppose unfair or deceptive practices, for the reasons listed below, AA Credit Union has concerns regarding certain portions of the proposal.

## Credit Cards

### *Allocation of Payments*

Lenders would no longer be able to allocate payments to the lowest annual percentage rate (APR) if a card balance is subject to more than one interest rate. Currently, applying payments to the lowest rate, which is usually the promotional rate, is the standard norm. For a credit card that includes balances subject to different interest rates, the proposal would require creditors to allocate the amount in excess of the minimum payment to one of three methods:

- Apply the payment amount first to the balance with the highest interest rate and then apply any remaining amounts to the other balances in order from the highest rate to the lowest rate, or
- Divide the payment received equally among the balances, or
- Divide the payment received in a pro-rata manner among the various balances. This would allocate the amount among the balances based on the percentage of a particular balance as compared to the total of all the balances.

We strongly oppose this provision for various reasons. The unintended consequences of prohibiting a lender from applying member payments to the lowest credit card interest rate would be as follows:

- 1) There are some credit unions and financial institutions, including AA Credit Union, who currently do not charge interest on the first day of a member's purchase. We do not charge interest until 20 days after a purchase is made. By regulating how a creditor may allocate payments and prohibiting lenders from allocating payments to the lowest APR first, it would force lenders to start charging interest on the very first day a purchase is made to make up for the opportunity cost of the funds that are lent at the below cost interest rate. Also, it could drive some lenders to raise fees in order to make up for the lost revenue.

Allocation of payments to the lowest APR is not by itself unfair or deceptive if disclosed properly. Instead of regulating the allocation of payments, the Agencies should focus on regulating the disclosure of how payments are allocated so that it is done in a way that is understandable to the consumer.

- 2) Most lenders, especially small financial institutions, would no longer be able to afford to offer below cost promotional APRs, most notably 0% APR offers to all of its members, eliminating an essential tool for financing short term debt. Members with the lower credit scores would need to look elsewhere for any type of low rate financing. In the long run, members with poor credit scores would end up paying more money in interest and fees because of the elimination of low cost, short-term financing.

- 3) It would force credit unions with slim profitability in their credit card portfolio to sell their portfolio to a much larger institution. Again, this would have the unintended consequence of forcing out reputable lenders from providing credit to their members due to the myriad of regulations and operating expenses related to credit card management.

As long as a payment allocation is properly disclosed to members in an easy to understand manner, it should be up to the credit union to decide which type of payment allocation works best for their institution. The method of allocation should not be regulated.

Also, to have a consumer dictate how payments should be applied would be very difficult and expensive to implement operationally. We rely on a third party processor, as do many issuers of our size. We would be subject to their pricing structure and their programming systems to get this in place, which could increase the overall cost of our program, further decrease our profitability margin and directly impact what type of rates we can offer our members.

We have members all across the United States and branches in 17 states. We would prefer that federal laws take precedence over any state laws. It becomes very complicated and expensive from an operational point of view to keep track of various state laws and to determine which laws provide greater protection to consumers than the federal laws. With all of the substantial changes that the Agencies are making, consumers are or will be protected from deceptive practices.

#### *Increasing the Interest Rate on an Outstanding Balance*

The Agencies are proposing that the interest rate on outstanding balances only be increased in very limited circumstances. AA Credit Union does not currently retroactively raise rates on outstanding balances. However, we believe that a financial institution should have the right to do so or change an index in the event that market conditions dramatically change and proper notice is provided to the member at both account opening and when a rate is changed.

Generally, if an institution is unable to able to change a rate, underwriting standards could be tightened and rates offered to new credit card borrowers would most likely be increased to offset potential losses. The tightening of underwriting standards could again have the unintended consequence of forcing those with poorer credit scores to seek financing from businesses that are not regulated by the Agencies.

#### *Assessing Fees if the Credit Limit is Exceeded*

The proposal will prohibit creditors from assessing a fee if the consumer exceeds the credit card limit solely because a hold is placed on the available credit, for example, due to a merchant's credit hold. A fee may only be assessed if the actual amount of the transaction exceeded the credit limit.

This system of assessing “over the limit” fees has been abused by some financial institutions. AA Credit Union charges only one “over the limit” fee per cycle. The fee is charged for every cycle that the member is over their credit limit. However, please note that to do this properly, it requires the financial institution to go back and review the member’s cycle and determine if the member went over his or her credit limit during that particular cycle.

### Overdraft Protection Plans

The Agencies are proposing that creditors pay smaller dollar items before larger dollar items are processed if received on the same day for purposes of assessing overdraft fees. While AA Credit Union does process smaller amount items first, we have considered processing larger dollar amount items first. Processing systems allow institutions to choose whether larger items get paid first, smaller items get paid first or checks get paid as received. There are pros and cons to whatever format is chosen based on a particular member’s finances.

Processing a larger payment first is not necessarily deceptive in and by itself. If a large check was for a mortgage payment, car payment or rent payment, some consumers would prefer that large checks be paid first from their account rather than the smaller items so that they are not in default with their lender. On the other hand, some consumers would prefer that smaller items be paid first to avoid fees.

The proposal also recommends that creditors may use an alternative clearing approach as long as the consumer agrees to that particular approach. Currently, AA Credit Union’s core processing system does not have the capability of offering various choices to its members. We are only able to select one type of processing from the three that are mentioned above. We would advocate that the disclosure of the payment clearing process be regulated, but let the financial institution choose the process to pay items in the manner that most of their members prefer.

### *Opt-Out Right*

The Agencies are addressing certain practices related to overdraft protection plans on deposit accounts. Before charging a fee, creditors will be required to provide consumers with a notice and reasonable opportunity to “opt out” of an overdraft service. This would apply to all transaction that overdraw the deposit account including checks, ATM withdrawals, POS debit card purchases and ACH transactions. Additionally, members would be permitted to limit the “opt out” to ATM and POS debit card transactions.

AA Credit Union provides this paid overdraft service only to certain members who meet our guidelines. The service is not extended to all members. We limit the service to make sure that members have a good history with us, that they do not spend money they do not have and that they have the ability to repay the overdraft. If we believe that a member is “abusing” the overdraft service, our credit counseling department will contact the member and if they meet with us, we will refund a portion of the overdraft fees that were paid to AA Credit Union. We do not advertise this service.

While many financial institutions are able to provide overdraft services for ATM, ACH or POS debit card transaction, many of us offer overdraft services only on checks. Some institutions also do not have systems that are able to distinguish between providing an overdraft for an ATM, but not for a debit POS transaction.

We would request that for those institutions that do not advertise overdraft services and only allow it in limited circumstances, that we be given a waiver from providing multiple opt-out notices to our members. We would also request that institutions not be forced into providing partial opt-outs when some processing system do not even offer this type of feature or the institution has made a business decision to only offer this service for checks. Otherwise, smaller, but responsible institutions would be forced out of providing overdraft services to their members because of the operational costs involved in meeting these proposed requirements.

#### Effective Date

In the event this proposal is passed, we request that credit unions be given a minimum of two years to comply with any new regulation. Many credit unions, including AA Credit Union, rely on various third party vendors to meet our numerous data processing needs and we are not always able to control the timing of changes to the various systems to ensure that regulatory requirements are met.

Thank you for all of your diligent efforts on this proposal. We appreciate the opportunity to comment on this matter. If you have any questions, please call me at 817-931-7004.

Sincerely,



Faith L. Anderson  
Vice President & General Counsel

cc: A. K. Owens  
CUNA  
NAFCU