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NORTH CAROLINA CREDIT UNION LEAGUE

Committed to helping credit unions succeed

August 4, 2008

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

VIA FACSIMILE: (703) 518-6319

AUG05'08 AM 9:13 BOARD

Subject: North Carolina Credit Union League Comments on Proposed Rule Part 706

The North Carolina Credit Union League is pleased to submit comments to the National Credit Union Administration in response to the proposed rule Part 706. The North Carolina Credit Union League is the state trade association representing more than 120 credit unions in North Carolina.

The proposed rule would prohibit institutions from engaging in certain acts or practices in connection with consumer credit cards accounts and overdraft services for deposit accounts.

Credit unions are a leader in serving consumers and observing fair lending practices. Today we serve 2.8 million North Carolina consumers, and manage more than $23 billion in consumer assets. Our credit unions are locally owned and controlled, not-for-profit entities that return all their earnings to their members.

In reviewing the proposed amendments with our member credit unions we offer comments received from 28 credit unions. By and large our credit unions support many of the provisions of the proposal to address abusive practices by creditors such as universal default and double cycle billing. The following comments reflect a few specific areas:

Credit Cards

<u>Late Payments</u>

The proposal will prohibit creditors from considering a payment as late, unless the consumer is provided with reasonable time to make payments, which should be at least 21 days before the due date.

The current requirement under Regulation Z – Truth in Lending requires that a statement must be mailed or delivered at least 14 days prior to the date or the end of the time period during which the consumer can pay the balance and avoid additional finance charges. While we appreciate the intent to allow consumers as much time as possible to make their payment, some commenter's believed the proposal represents challenges in its application. Essentially, this obligates a credit union to deliver statements within a week of the last statement period. While this is generally the standard practice for most credit unions, any delay could cause credit unions to be in noncompliance with the rule if any member is subject to a late payment.

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Overdraft Protection Plans

The proposal will also address the following practices as they pertain to overdraft protection plans (e.g., courtesy pay), which <u>will not</u> include overdrafts paid pursuant to a line of credit, such as transfers from a credit card account, a home equity line of credit, another account at the institution:

<u>Opt-out Right</u>
Before charging a fee, creditors will be required to provide consumers with a notice and a reasonable opportunity to "opt-out" of the overdraft plan

We believe it is valuable to offers consumers the opportunity to make informed decisions regarding an overdraft protection service. Credit unions currently provide this member education (on overdraft protection and other programs) when opening accounts, in monthly newsletters and through various other points in their relationship with the member. Consistent with this belief in helping members make good decisions about their personal finances, we would support proposed requirement to provide consumers an opt-out notice when opening an account.

However, the proposed requirement to provide consumers with an opt-out notice each statement cycle an overdraft fee is assessed presents issues for both credit unions and consumers. For credit unions, the opt-out would present an ongoing and new compliance burden by requiring disclosures to be sent for a fee that the consumer has already agreed to pay. For consumers, receiving a disclosure and opt-out statement each statement month an overdraft occurs could be confusing.

<u>Overdrafts Due to Debit Holds</u>
For debit card transactions, creditors will be prohibited from assessing a fee if the overdraft results solely by a hold placed on funds that exceed the actual purchase amount of the transaction. A fee may be imposed: 1) if the purchase amount itself would have caused the overdraft; 2) if other transactions have been authorized but not yet been presented for settlement; or 3) if a deposited check in the account is returned. This is assuming the consumer did not opt-out of paying overdrafts in these situations.

The "overdraft due to debit holds" will have the greatest impact and without major changes by VISA and MasterCard, will be a huge burden on card issuers. Currently there is no way, except an after the fact review, to know if a requested merchant hold is greater than the actual final transaction amount. The three most common merchants that use this practice are hotels, car rental agencies and gas stations. There may be help coming for pay at the pump transactions with VISA's proposed "real time posting", although it is not clear exactly how the process is going to work. We have no control over the amount of the hold requested by a merchant or the actual amount of the transaction signed for by the cardholder. Some of this burden needs to be shifted back to the originator of the transaction.

Holds can be placed on transactions for up to 3 days. The proposal would require a retro active evaluation in determining whether a fee was properly posted. The calculation could become quite complicated if the member uses their debit card often. This would impose a significant burden on credit unions to revise their data processing systems.

The intent of the legislation is admirable; however, the implementation could be more burdensome and have unanticipated consequences. For example, credit unions may elect to have their debit cards denied at car rental, hotels, etc. as opposed to overhauling their data processing systems. This could hurt the consumer more than the original intent to help.

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The North Carolina Credit Union League recognizes the amount of time and consideration that the Board has devoted to this proposal. We appreciate the opportunity to share the views of North Carolina's credit unions with the Board.

Respectfully submitted,

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