



OHIO CREDIT
UNION LEAGUE

August 4, 2008

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

Re: RIN 3133-AD47
Unfair or Deceptive Acts
Ohio Credit Union League Comments on Proposed Rules

Dear Ms. Rupp:

On behalf of the Ohio Credit Union League (OCUL), this letter responds to the joint proposed rule by the National Credit Union Administration (NCUA), the Federal Reserve Board (Fed) and the Office of Thrift Supervision (OTS), that would prohibit a number of credit card practices and would impose restrictions on overdraft protection plans (also referred to as “courtesy pay,” and “overdraft privilege”). The Ohio Credit Union League is a credit union trade association representing the interests of Ohio’s federal and state-chartered credit unions and its 2.6 million members.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. We appreciate the opportunity to provide suggestions and feedback prior to the consideration of any rules as proposed.

Credit Card Practices

In summary, the joint proposed rule would prohibit credit card practices associated with 1) unfair time constraints for consumers to make payments; 2)

unfair allocation of payments among balances with different interest rates; 3) unfair application of increased annual percentage rates to outstanding balances; 4) unfair fees for exceeding the credit limit solely because of a hold placed on an account; 5) unfair balance computation method; 6) unfair financing of security deposits and fees for issuance or availability of credit; and 7) deceptive firm offers of credit.

The proposal would also require federal credit unions (FCU) provide an opportunity for a member to opt-out of an overdraft protection program, and would prohibit an FCU from charging a fee for an overdraft caused by a hold placed on member funds in connection with the use of a debit card.

In general, OCUL supports the majority of the proposed changes relating to full disclosure of terms and conditions and changes in practices, many of which provide clearer guidance and more adequate notice to members, without jeopardizing credit union risk controls and that do not create over-burdensome on-going compliance requirements. Many of the proposed changes address issues that help remedy abuses of many credit card issuers (outside the general practices of credit unions) and creates much tighter controls around these practices that all parties must adhere to. *However, there are a few exceptions that we oppose, as outlined below:*

Increasing the Interest Rate on an Outstanding Balance

The proposal would not permit creditors to increase the interest rate on an outstanding balance, unless 1) the interest rate is subject to a variable index rate; 2) the interest rate is a promotional rate; 3) the minimum payment is not received within thirty days after the due date; or 4) the interest rate is solely based on an outstanding balance.

OCUL disagrees with the proposed rules that limit the ability of a creditor to increase rates on the limited factors stated above. We believe the proposed rules go too far by imposing unfair restrictions on a credit union's ability to manage its assets/liabilities/risk in changing interest rate markets, and could simply cause unintended consequences to all members in the form of higher interest rates and

fees. Current regulations permit a creditor to give a 15-day advance notice of a rate increase on existing balances and future purchases and provide the consumer an opportunity to pay-off (or close) their current balance according to their contract schedule at the current rate if the consumer does not agree to the change (by simply not making a purchase or advance after the effective date). OCUL proposes that the current rules continue to apply, except to extend the advance notice requirements from the current Regulation Z/Truth-in-Lending period of 15 days to the new 45 day advance notice cited in the new proposal. The additional 30 days of advance notice would provide consumers more than adequate time to pay off the current balance at the existing terms, close the account, or accept to the new higher interest rate terms.

Fees for Exceeding the Credit Limit

The proposal would prohibit creditors from assessing a fee if the consumer exceeds their credit limit solely because of a hold that is placed on the available credit (i.e. when the hold placed by a car rental agency or a gas station that exceeds the amount the consumer actually purchases).

OCUL objects to the proposal as currently drafted. OCUL is of the opinion that the processes currently in place for merchants to be permitted to randomly place holds on consumer accounts, and processes to clear these holds are beyond the reasonableness for the average consumer to comprehend and track - including when and how long holds are effective, and how they affect over-limit credit card occurrences. The practice of placing holds on funds is a merchant activity, not that of a financial institution. Credit/debit card companies (i.e. VISA and MasterCard) are responsible for permitting this practice and should be required to change that practice to the benefit of the consumer, rather than effectively transferring responsibility for this to card-issuing financial institutions as this proposed rule would effectively do. In addition, processes are not currently in place in many credit unions to be able to track holds by merchants in real time, 1)

requiring them to either ignore holds and assume the additional risk, or 2) cause an undue burden of staff time and expenses to do so.

Overdraft Protection Program Practices

Right to Opt-Out

The proposal requires financial institutions to provide consumers with a notice and an opportunity to “opt-out” of their overdraft plan, before any fee can be charged. If the consumer does not opt-out and incurs a fee for an overdraft, then the financial institution must send an opt-out notice to the consumer during each statement period in which an overdraft(s) occur.

As presented in the proposal, OCUL supports these full and clear disclosures to members of their rights to opt-out of overdraft protection programs, both at the time of establishing an account initially and during a statement period if an overdraft occurs. The options provided are reasonable, allowing disclosures to be on the statement itself, or on an opt-out statement to be sent to the customer once during the statement cycle if an overdraft occurs. Any additional notification requirements would be burdensome and unnecessary.

Some Ohio credit unions have already implemented or are considering implementation of an opt-in only policy. The Agencies’ joint rules do not address what proposed rules, if any, financial institutions must adhere to regarding those who follow this stricter overdraft protection implementation/consumer disclosure policy. OCUL suggests that initial and yearly notifications of members’ opt-out rights in these cases are sufficient.

Partial Opt-Out

While OCUL supports the opt-out disclosure requirements and the ability of consumers to receive full and clear disclosures, the partial opt-out requirements will be confusing to most consumers to fully understand what transactions are denied, accepted, and subject to fees. While the seasoned veteran who studies

the proposed rules can decipher the complex chart of when, why, how, etc., the average consumer will end up more confused than ever. For these reasons, OCUL does not support the partial opt-out provisions as currently drafted. One possible solution would be to allow each financial institution to voluntarily decide whether to offer partial/limited opt-out provisions to its customers (for ATM and point-of-sale debit card transactions as proposed).

Debit Card Holds

The proposal would prohibit financial institutions from imposing a fee when the account is overdrawn solely because an extra hold (i.e. at time of a hotel reservation, purchase of fuel, or renting a car) is placed on funds by a merchant in a consumer's deposit account. OCUL objects to the new requirements in the proposal for two primary reasons:

1. The proposed rule, as currently drafted, creates a very significant undue burden on some financial institutions by transferring an automated process to a manual process in order to effectively manage overdrafts. Managing holds (typically three days...and do not clear when the transaction posts if the amounts differ) would be very difficult to manage, or require the financial institution to invest in very costly, sophisticated software to try to do so. At the same time, manually reviewing transaction histories is a time consuming process. Overdrafts handled at the teller line or in one of multiple daily ACH batches would require manual account overviews to determine if debit card holds are in place. At the same time, ignoring holds altogether is an unacceptable risk for some financial institutions.
2. The practice of placing holds on funds is a merchant activity, not that of a financial institution. Credit/debit card companies (i.e. VISA and MasterCard) are responsible for permitting this practice and should be required to change that practice to the benefit of the consumer, rather than effectively transferring responsibility for this to card-issuing financial institutions as this rule would effectively do.

The Ohio Credit Union League appreciates the opportunity submit the above comments on the joint Agencies' proposed rules on Unfair or Deceptive Practices Act for Credit Cards and Overdraft Protection Plans. In whole, the proposed rules provide some much needed relief to consumers relating to a broad range of unreasonable consumer practices by certain financial institutions and other creditors.

Thank you for your consideration of the above comments and recommendations in the final rule drafting process. The Ohio Credit Union League is open to provide additional input or comments if requested. If so, please contact me at (800) 486-2917 ext. 232 or dshoup@ohiocul.org.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "David J. Shoup", written in a cursive style.

David J. Shoup
Vice President, Regulatory Affairs