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August 4, 2008

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

Dear Secretary Rupp:

PolicyWorks appreciates the opportunity to comment on the Federal Reserve Board's, OTS's, and NCUA's proposed changes addressing unfair and deceptive practices for credit cards and overdraft protection plans (RIN 3133–AD47). PolicyWorks is a wholly-owned subsidiary of the Iowa Credit Union League. In addition to being an Iowa-based government and public affairs firm, PolicyWorks provides regulatory guidance and information to credit unions throughout the state.

Opt-out Notice

PolicyWorks supports the idea that consumers should be able to opt-out of an overdraft protection program if they do not want this service, and that this should be provided at the time the plan is first provided to them. Not only is this a reasonable requirement, but this also provides a good opportunity to provide educational information to consumers so they can make an informed choice as to whether to use this service. In addition, credit unions will also always honor a request from a member who decides at any time that he or she no longer wants to participate in the program.

Although we support the requirement to give consumers a notice that provides them the right to opt-out at the time the overdraft service is first offered to them, we strongly oppose the provisions that will require credit unions and other financial institutions to also provide an additional opt-out notice during any periodic statement period in which the service is used, whether it is provided on the periodic statement or in a separate notice. Such a requirement will simply be too burdensome for credit unions and the information provided, in combination with the other significant disclosures provided on the periodic statements, will be too overwhelming for members, who will likely ignore this additional information.

Furthermore, we believe that the proposed opt-out notice requirements should not apply at all to credit unions or other financial institutions that currently use an "opt-in" approach with regard to their overdraft protection plans. Under this approach, consumers have to affirmatively choose to enroll in these plans before the credit union will cover the overdrafts, as opposed to the more common "opt-out" approach in which consumers are covered under the overdraft plan, unless they inform the institution that they do not want to participate. It would make no sense to apply the proposed requirements to financial institutions that use an opt-in approach, especially the requirement to provide notices during the periodic statement periods in which overdrafts occur. Consumers who on their own initiative inform their financial institution that they wish to participate in the overdraft protection plan have clearly expressed their intentions, and it is simply unnecessary to provide them with additional notices of their right to opt-out of a service in which they voluntarily elected to participate.

Reasonable Amount of Time to Make a Payment

PolicyWorks supports the proposed 21-day safe harbor period between mailing or delivery of the periodic statement and the due date. We believe this time period gives card members sufficient time to review their statement and make payment.

We further believe that if 21 days is deemed sufficient for statement review and payment, there should not be any additional restrictions placed on issuers to prohibit treating a payment as late if the payment is received one or more days after the payment due date. If, for example, the Agencies determine that a 3 day grace period is appropriate, we would suggest moving the safe harbor period to 24 days and maintain the payment due date as just that - the date by which payment on the account is due. When a cardholder enters into an agreement to use an unsecured credit product, there are reasonable performance expectations due from both parties. In our opinion, making at least the minimum monthly payment on time each month is a reasonable expectation placed on the cardholder.

Issuers have implemented various policies that extend a grace period beyond the payment due date or otherwise treat the payment as on time when it is received after the payment due date. Card members who are dissatisfied with their current issuer’s policies around the treatment of late payments can most likely find an issuer that will satisfy their needs in this regard. However, these policies and treatments of late payments are just one of many product features that each cardholder needs to weigh in determining the value of the card product as a money management tool.

Unfair Acts or Practices Regarding Allocation of Payments

Generally, we support the proposed methods of payment allocation, for accounts within different annual percentage rates on different balances, as outlined by the Agencies. However, if the Agencies enact the proposal regarding the Application of Increased Rates to Outstanding Balances, we support the Agencies permitting institutions to apply amounts in excess of the minimum payment first to balances on which the institution is prohibited from increasing the rate.

We do not support the proposed special rules of payment allocation for accounts with promotional rate balances or deferred interest balances. While well intended, this proposal will remove all financial incentive for issuers to make discounted promotional rate offers to all but their very best card members, resulting in higher cost of credit for the majority of the population.

As a money management tool, many card members use their open-ended credit card account specifically as a closed-end installment loan. This practice benefits issuers and consumers alike – issuers, as they fine-tune and stabilize the risk in their portfolio, and card members, who receive a low or no interest rate fixed-term loan that they may otherwise not qualify for. Further, the ease by which these offers are made and accepted has dramatically lowered switching costs for card members.

Application of Increased Rates to Outstanding Balances

We do not support the proposal to prohibit issuers from increasing interest rates to pre-existing balances except in the two proposed specific circumstances. The proposal would prohibit issuers from employing a key mechanism that is used to maintain an acceptable risk-adjusted rate of return on a portfolio of open-ended, unsecured receivables.

The open-ended, unsecured nature of a credit card product provides issuers the ability to change the product to align with the customer's preferences, thereby delivering increased value to the cardholder. The ubiquitous nature of rewards in the market today demonstrates issuers' ability to provide real additional value which can be quantified by the dollar value of reward redemptions.

Unlike a securitized loan, there is no physical collateral. The 'collateral' is the customer's ability and willingness to pay. In general, card members are asked to do two things with their credit card product; use it responsibly—don't go over the credit limit—and make the minimum monthly payment on time each month. If the cardholder becomes more of a risk because their behavior has deteriorated, the balance should have a higher risk premium associated with it because the 'collateral' has become riskier.

Increased rates on accounts, including outstanding balances is an action taken as a result of the sophistication the issuers have brought to the science of risk management of these types of portfolios. This proposal severely limits issuers' ability to take action.

We believe issuers will be forced to take the following actions to maintain the risk tolerance standards of their portfolios. First, issuers will raise the cost of credit for most people to build in a risk premium for balances that turn out to be riskier after the charges were incurred. We believe this action will reduce access to credit on a larger percentage of the population and include card members who use their card responsibly, similar to insurance companies behavior after catastrophic events that either raise insurance premiums to exorbitant levels or quit offering insurance against the event.

Second, issuers today make firm offers of credit to people with marginal credit histories because a good percentage of these people will use their card responsibly and become good credit risks. Card members whose credit deteriorates can be managed appropriately using existing methods of re-pricing. Going forward under the proposal, issuers will be less likely to offer credit to all people with marginal credit scores, thereby reducing access to credit to a significant proportion of the population.

Finally, issuers may fundamentally change the product from an open-ended product to a series of closed-end tranches of credit whereby issuers will reassess each customer periodically and assign pricing for a fixed period of time. This option would do a better job of isolating adverse action to those card members whose behavior has deteriorated. However, the cost of administering this type of product operationally will increase the overall cost structure for issuers, thereby increasing the cost of credit to almost everyone.

We believe that clear disclosures communicated to card members periodically coupled with targeted messaging to at-risk card members that lays out clear consequences for continued negative behavior is the option that best educates all card members, while maintaining the lowest cost of credit for all.

Firm Offers of Credit

We support the Agencies proposal to include disclosures that detail the criteria used to determine the creditworthiness of the applicant in assigning the interest rate. We believe that as consumers become more ‘credit report’ savvy, they are better able to choose the right credit product to meet their needs. Education efforts such as these are needed to manage expectations and continue to raise awareness of the importance of maintaining a good credit history through responsible credit usage.

Partial Opt-out Provision

We are concerned about the provision within proposed Appendix B, model clause B-10 “Overdraft Services Opt-Out Notice Sample Form,” that gives the consumer the right to prohibit overdraft payments for ATM withdrawals and debit card purchases, but continue to pay overdrafts for other transactions. We are particularly concerned with a consumer’s right to opt-out of overdraft payments for debit card purchases. There are system limitations within debit card networks, over which credit unions have little control, that mandate such transactions be cleared once a merchant authorization has been granted. Further, there will likely be processing limitations that will make it difficult to distinguish between POS and ACH transactions. For this reason, we suggest that the consumer’s right to opt-out of overdraft protection services be all or none. A partial opt-out option would pose several overly burdensome data processing difficulties and would likely only serve to confuse the consumer.

Application to State-chartered Credit Unions

PolicyWorks also believes that there should be further clarification as to what would be required for state-chartered credit unions. NCUA's proposal will apply to federal credit unions. It is our understanding that the Federal Trade Commission will not be issuing a proposal at this time. Because the Federal Trade Commission has authority in this area over state-chartered credit unions, we would like to see further clarification as to what would be required of state-chartered credit unions.

We appreciate the opportunity to comment on the proposed rule. If you have any questions, feel free to contact me at 515-221-3005.

Sincerely,

Anne L Whatley

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