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AMERICA'S CREDIT UNIONS

August 4, 2008

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

Re: Comments on Proposed Rule Part 706

Dear Ms. Rupp,

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on NCUA's proposal to exercise its authority under section 5(a) of the Federal Trade Commission Act to prohibit unfair or deceptive acts or practices. The proposed rule, issued jointly with the Federal Reserve Board and Office of Thrift Supervision, would prohibit institutions from engaging in certain acts or practices in connection with consumer credit card accounts and overdraft services for deposit accounts.

As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 178 credit unions that have over 1.7 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

Summary of GCUL's Position

GCUL commends the Agencies efforts to consider consumer protections pertaining to abusive credit practices. However, as we have noted in earlier comment letters, credit unions are not the source of the problems found in today's marketplace. Additionally, from our conversations with credit unions around the State of Georgia, it is our opinion that the proposal has potentially serious adverse affects on not only credit union earnings and service quality, but also in consumer understanding of proper account management. For these reasons, we cannot support the entire proposal in its current form. Our concerns and objections regarding specific provisions of the proposal are outlined in the following paragraphs.

Detailed Responses

Subpart C – Consumer Credit Card Account Practices

§ 706.15 State Exemptions.
NCUA has asked if individual States should be permitted to seek an exemption from these rules if State law provides greater or a substantially similar level of protection. In our opinion, there should be no ability for individual States to invoke exemptions. It is our opinion that in doing so, NCUA would be undermining the application of Federal standards. Additionally, an option for State law preemption would likely result in excessive costs for credit unions to manage programs at the State level and undermine the ability of credit unions to offer out-of-state members similar credit card benefits under a uniform application.

§ 706.23 Unfair Allocation of Payments.
For a credit card that includes balances subject to different interest rates, creditors will be required to allocate the amount in excess of the minimum payment under one of the three following methods or in another manner no less beneficial:

- Apply the 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.
- Divide the amount equally among the balances.
- Divide the amount in a pro-rata manner among the balances. This would allocate the amount among the balances based on the percentage of that balance as compared to the total of all the balances.

Creditors would no longer be permitted to apply payments to balances with the lowest interest rate before applying it to those subject to higher rates. Also, if an account includes a balance subject to a discounted rate or a balance in which interest is deferred for a period of time, creditors would be required to apply payments to all the other balances before applying payments to those subject to a discounted rate or deferred interest. However, creditors will be able to apply payments to the balance in which interest is deferred during the last two billing cycles of the deferred interest period. Creditors will also not be able to require consumers to repay a portion of the promotional rate balance or deferred interest amount in order to receive a grace period for purchases, which would happen if payments are first applied to these balances.

In most cases, credit unions apply payments to charges incurred in chronological order, regardless of the rate applied to each charge. Requiring financial institutions to apply payments in a specific manner not only micro-manages the institution, but it also substantially impacts the institution’s ability to properly manage its asset-liability program.

The proposal would also require substantial investment by credit unions and/or their credit card processors to provide compliance with the proposal. Many of the changes that are proposed would require substantial reprogramming time to data processing systems. In addition, the proposal's three options could have the effect of increasing the confusion of borrowers about how their payments are credited.

Additionally, the proposal would make pricing of discounts very difficult, as we would have to assume a worst-case scenario for payment allocation. What this means is that promotional rates would exist on a consumer's account for longer periods as they pay off debt, making the availability of promotional rates less widespread.

For these reasons, we object to this section of the proposal.

§ 706.25 Unfair Fees For Exceeding the Credit Limit Caused By Credit Holds.
According to this section, the proposal will prohibit creditors from assessing a fee if the consumer exceeds the credit limit solely because a hold is placed on the available credit, such as when the hold placed by the merchant exceeds the amount the consumer is obligated to pay. The fee may be imposed if the actual amount of the transaction exceeded the credit limit. Creditors will also not be able to impose a fee when the hold on the transaction causes a subsequent transaction to exceed the credit limit. These provisions will not prohibit the use of credit holds, just the imposition of a fee under these specific circumstances.

We are not sure how credit unions can manage this process. Currently, some data processing systems look for a 'negative available credit limit' when calculating an over-the-limit fee. Therefore, if a hold is placed, the fee is assessed. As proposed, this rule would cause many systems to be out of compliance…subjecting the data processors (and credit unions) to undergo reprogramming and incur significant costs. For these reasons, we do not support this section of the proposal.

Subpart D – Overdraft Services
Credit unions members overwhelmingly appreciate the overdraft service provided by their credit union and rarely, if ever, request to discontinue the service. This is common across the industry, whether the service is used or not. Consumers enjoy the added peace of mind knowing that their transactions will be honored in the event they make a miscalculation or have an unintentional overdraft occurrence.

§ 706.32 Unfair Practices Involving Overdraft Services.
<u>General Opt-Out Right</u>
In the proposal, 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. This will apply to all transactions that overdraw the account, including checks, automated clearinghouse (ACH) transactions, ATM withdrawals, recurring payments, or point-of-sale (POS) debit card purchases.

We do not support this section of the proposal. We believe there is a potential conflict with this provision and the *Membership and Account Agreement* that is provided to consumers when an account is opened at a credit union. In particular, we note that the agreement provides a contractual protection for the payment of checks written by the member. Likewise, it is also common practice in the credit union industry to provide consumers with the ability to opt-out at the time the account is opened or upon the enrollment of the overdraft protection service. Similarly, many credit unions already engage in the member-friendly refund of fees incurred when it is evident the member made a mistake or encountered some other problem.

Partial Opt-Out Right

The proposal also permits consumers to limit the opt-out to ATM and POS debit card transactions, since consumers would not be subject to merchant fees or other adverse consequences if the overdraft is not paid for these transactions.

We are not convinced that ATM and POS networks are capable of differentiating these transactions. Additionally, regardless of how a transaction occurs, a certain level of consumer responsibility exists. Consumers should be responsible for the tracking of their balances and knowing when sufficient funds aren't available to cover an overdraft item. Most credit unions are already engaged in consumer education efforts and outreach initiatives to educate and inform those members in need of assistance. For these reasons, we do not support this section of the proposal.

Opt-Out Notice

As proposed, the opt-out notice must be provided both before a fee is charged for the first time and during each periodic statement cycle in which a fee is assessed, if the consumer does not choose to opt-out. If the consumer does not opt-out after the first opportunity but decides to opt-out after being assessed the fee and receiving the notice during the statement period, the opt-out would only be applicable to subsequent transactions and the consumer would remain responsible for paying the fee. Only one opt-out notice would need to be provided during the statement period, even if multiple fees are charged during that period.

This section of the proposal is unnecessary. We believe credit unions should only have to provide an opportunity to 'Opt Out' once, upon account opening or upon the subscription for the service (as is current practice), instead of on a monthly basis.

As noted above, consumers overwhelmingly appreciate the overdraft service provided by their credit union and rarely, if ever, request to discontinue the service. This is common across the industry, whether the service is ever used or not. Consumers enjoy the added peace of mind knowing that their transactions will be honored in the event they make a miscalculation or have an unintentional overdraft occurrence.

Overdraft Due To Debit Holds

In the proposal, 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.

We do not support this section of the proposal. The proposed rule referenced above refers to overdrafts caused by Point of Sale (POS) pre-authorization debit card holds placed on cardholder checking accounts by merchants. The financial institution has no control over such transactions generated by the merchant and electronically forwarded to the financial institution by the merchant's processor and appropriate network (Visa, MasterCard & others). **We believe the issue would be more appropriately addressed and remedied by the merchants and networks, rather than placing the burden on the financial institution.**

When the merchant sends an electronic POS pre-authorization transaction to determine if the cardholder has a valid card (account number, expiration date, etc.), they sometimes request a specific dollar amount be held ($1, $25, $50, etc.). This POS pre-authorization transaction is logged on the cardholder's checking account by the financial institution using the dollar amount and the transaction code provided by the merchant; then, an approval response is sent back to the merchant. This approval response is an indication that the card is 'good' and that the authorized amount is on deposit. Once the merchant finalizes the transaction with the cardholder, a ticket of completion is sent electronically for the exact amount of the purchase to the financial institution. The financial institution matches the transaction code received from the merchant to the pre-authorization and only posts the final transaction to the account. Unfortunately, the ticket transaction code and the pre-authorization transaction code that are sent by the merchant do not always match. This mismatch of the transaction code causes the financial institution to hold funds for the pre-authorization and the final ticket in error.

Financial institutions have the least amount of authority over the merchant. The networks, like MasterCard & Visa, require the merchants to use a specific message format and to follow their operating rules and regulations. If changes must be made, it should be accomplished at the network level. MasterCard & Visa have the most clout to force the merchants to make changes to eliminate mismatch transactions or lose access to their credit/debit services.

In addition, financial institutions have no way to know that an invalid transaction code is provided by the merchant at the time of the transaction. **The only way a financial institution determines the invalid transaction code exists is when the cardholder complains about the transaction activity that created an overdraft on their checking account.**

If this section of the regulation is approved as presented, **cardholder inconvenience will not be resolved**. **This is not an issue that financial institutions can resolve.** However, a burden will be placed on financial institutions to research and identify the invalid transaction codes, remove the hold placed in error and reverse any overdraft fees applied to the cardholder's checking account. This burden would significantly impact the operations areas of small financial institutions that do not have sophisticated systems and staff to handle the required research and manual adjustments necessary to correct the cardholder's checking account.

Thank you for the opportunity to comment on the proposed rule regarding unfair and deceptive credit practices. If you have questions about our comments, please contact Cindy Connelly or me at (770) 476-9625.

Respectfully submitted,

Richard Ellis
Vice President/Credit Union Development
Georgia Credit Union League