CREDIT PRACTICES RULE

OVERVIEW

Overview

Part 706 of the NCUA Rules and Regulations, the Credit Practices Rule, implements Section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 57a, as it applies to federal credit unions. The purpose of the regulation is to define unfair or deceptive acts or practices of credit unions in connection with extensions of credit to consumers.

The Credit Practices Rule is broken down into three parts:

- Unfair Credit-Contract Provisions
- Unfair or Deceptive Practices Involving Cosigners
- Unfair Late Charges

Unfair Credit-Contract Provisions

It is an unfair act or practice for a credit union, directly or indirectly, to take or receive from a consumer an obligation in connection with the extension of credit that:

- Constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.
- Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.
- Constitutes or contains an assignment of wages or other earnings unless:
    - the assignment by its terms is revocable at the will of the debtor; or
    - the assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or,
    - the assignment applies only to wages or other earnings already earned at the time of the assignment.
- Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

Unfair or Deceptive Practices Involving Cosigners

In connection with the extension of credit to consumers, it is:

- A deceptive act or practice for a credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.
- An unfair act or practice for a credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated.

To comply with the cosigner notification requirement, credit unions must provide a clear and conspicuous disclosure statement in writing to the cosigner prior to becoming obligated. The notice may be a separate document or included in the documents evidencing the consumer credit obligation.

Unfair Late Charges

In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, if the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s). To do so would be considered "pyramiding" late fees.

For example: A consumer's payments are $40 a month. The consumer makes his or her February payment in full, but makes it late. The credit union assesses a $5 late charge. The consumer makes a March payment of $40 on time, but fails to pay the $5 late charge. The credit union uses part of the March payment to pay off the outstanding late charge, and then considers the March payment deficient. **The credit union may not assess another late charge since the March payment was made in full and on time.**

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the credit practices rule.
Reputation risk can occur when the credit union incurs administrative action or poor publicity and reduced member confidence as a result of failure to comply with the rule.

Additional Information

Additional information is available in Part 706 of NCUA Rules and Regulations. In addition, you may review similar rules issued by the Federal Trade Commission, 15 C.F.R. Part 444, at http://www.ftc.gov or the Federal Reserve Board's Regulation AA, 12 C.F.R. Part 227, Subpart B, which provides question and answer examples in the staff commentary and can be accessed at http://www.federalreserve.gov/ .

CREDIT PRACTICES RULE

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Notice to Cosigner [Part 706.3(b)]

A credit union must provide a clear and conspicuous disclosure statement in writing to the cosigner prior to becoming obligated. The notice is to contain only the following statement, or one which is substantially equivalent, and will either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration is responsible for enforcement among federal credit unions, while the Federal Trade Commission (FTC) enforces the Credit Practices Rule for state-chartered credit unions.

Penalties and Liabilities

The Credit Practices Rule sets no specific administrative action. There are no penalties specifically listed in NCUA Rules and Regulations Part 706. NCUA has the enforcement authority to declare unfair or deceptive trade practices of federal credit unions, to investigate such practices, and to issue rules regulating such practices. NCUA may take administrative action if such prohibited practices are identified. Federal credit unions engaging in prohibited practices are also exposed to suit by the victims of such practices.