



CUNA & Affiliates
A Member of the Credit Union System

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September 30, 2003

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. OP-1158, Proposed Interpretation and Guidance on the
Anti-Tying Restrictions of the Bank Holding Company Act
Amendments of 1970

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed interpretations and guidance on the anti-tying restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 (BHCAA). CUNA represents more than 90 percent of our nation's 10,000 state and federal credit unions.

The BHCAA generally prohibits a bank from conditioning the availability or price of one product or service on a requirement that the customer also obtain another product or service from the bank or affiliate of the bank. The BHCAA provides exceptions to this general requirement, such as permitting a bank to condition the availability or price of a product on a requirement that the customer obtain a "traditional bank product" from the bank or affiliate, such as a loan, discount, deposit, or trust service.

The proposal describes the scope and purposes of Section 106, as well as the statutory and regulatory exceptions to the prohibitions contained in Section 106. The proposal also includes examples of the types of conduct and arrangements by banks that are prohibited and permissible under Section 106.

Credit unions are not-for-profit financial institutions that provide financial products and services for their members. The product and services provided are based on the needs of the members. Unlike banks, credit unions have no incentive to

devise complex tying arrangements that pressure consumers to purchase additional products and services that they may not want or need.

Our concern here is for the individual and small business owner, who typically have less bargaining power and are less financially sophisticated than the large corporate customer. These individuals and small business owners may be more susceptible to both overt and subtle pressures from banks to require them to purchase additional, unneeded products and services from banks or their affiliates. This is in contrast to credit unions, whose mission is to serve their members, not make a profit, and are owned and controlled by the members they serve.

Although the BHCAA provides some protections against these practices, there is no doubt that banks attempt to devise loopholes and tortuous interpretations of the BHCAA anti-tying provisions to help them achieve greater market share at the expense of other financial service providers, such as credit unions. This is consistent with the bank's continued attack on any attempts by credit unions to improve their services for their members and by the constant attacks on the credit union tax-exempt status, all in an effort to further expand market share. These attacks continue even in light of the spate of recent news articles that have described a variety of schemes that certain financial institutions have developed in order to avoid paying the legitimate taxes that all for-profit entities must pay.

The practice of pressuring individual consumers and small business owners to use and pay for products and services that they do not need or want is very harmful as it limits consumer choice. But for this practice, these individuals and small business owners would be more freely able to explore options for receiving these products and services, including the option of using a credit union. Credit unions would not only be competitive based on costs, but would also use this opportunity to further educate these consumers on other options to improve their financial condition. This further opportunity would be lost if banks pressure consumers to pay for unnecessary products and services.

This practice not only limits consumer choice, but is also very anti-competitive as it deprives credit unions of a valuable opportunity to compete for the chance to provide financial services and products to these individual consumers and small business owners. Credit unions have a very difficult time competing with those financial institutions that use their resources to try to eliminate competition and to pressure consumers to use and pay for products and services that they do not need, thus depriving credit unions of the opportunity to compete to provide such products and services. This has become increasingly difficult as banks have merged and become ever larger over the past several years.

Credit unions are not the only parties concerned about these practices. Such concerns have been raised by consumer groups, as well as members of

Congress. About a year ago, Congressman John Dingell (D-MI) identified these practices as a significant problem for borrowers and requested the General Accounting Office (GAO) to study this matter.

For these reasons, we urge the Board to carefully review the proposed interpretation and guidance on the BHCAA anti-tying restrictions to address specifically the concerns outlined above. This will benefit all consumers, as well as credit unions and other entities that compete with banks to provide financial products and services. We also urge the Board to review carefully the upcoming GAO report and to incorporate the recommendations in that report that are intended to resolve the concerns that are addressed in this letter.

Thank you for the opportunity to comment on the proposed interpretations and guidance on the anti-tying restrictions of Section 106 of the BHCAA. If you or other Board staff have questions about our comments, please give me a call at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Bloch", is written over a light gray rectangular background.

Jeffrey Bloch
Assistant General Counsel