STATEMENT OF
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WRIGHT-PATT CREDIT UNION
ON BEHALF OF THE
CREDIT UNION NATIONAL ASSOCIATION (CUNA)
ON
H.R. 627, THE CREDIT CARDHOLDERS' BILL OF RIGHTS ACT
AND
H.R. 1456, THE CONSUMER OVERDRAFT PROTECTION FAIR PRACTICES ACT
BEFORE THE
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

MARCH 19, 2009

Good afternoon, Chairman Gutierrez, Ranking Member Hensarling, Members of the Committee.

Thank you very much for giving me the opportunity to testify today regarding H.R. 627, the Credit Card Holders' Bill of Rights Act and H.R. 1456, the Consumer Overdraft Protection Fair Practices Act on behalf of the Credit Union National Association. My name is Doug Fecher, and I am President and CEO of Wright-Patt Credit Union in Fairborn, Ohio.

Wright-Patt Credit Union serves 170,000 everyday Americans in the Miami Valley, Ohio (just outside Dayton), including the airmen and airwomen of Wright-Patterson Air Force Base and surrounding communities. Our philosophy is to help everyday people save more, smartly use credit, and improve their family's financial well being.

H.R. 1456 – Consumer Overdraft Protection Fair Practices Act

Mr. Chairman, I am a practical thinker and come from the perspective of "main street" Americans who are faced with making daily routine financial decisions that are best for their family, often with limited resources. To be honest, my members do not spend much time thinking about the laws and regulations that affect how they receive financial services. What they do think about, however, is how to make their paycheck last from payday to payday, how they are going to pay for the things they need, not to mention the emergencies they sometimes face, such as the car breaking down or the furnace going out.

The majority of people I serve do not tend to read disclosures, and if they do, it does not change their behavior. I am not against disclosures per se, but we must recognize they are of limited value.

Legislation that does not go far enough does not really help the consumer, and legislation that goes too far does not eliminate financial need, but instead will drive consumers away from credit unions and other legitimate service providers to those who will provide the types of "high cost" services that this legislation is intending to eliminate, making it impossible for credit unions such

as mine to be of much help. Indeed, the ideal legislation will create an equitable balance between consumer protections and the needs of service providers to be fairly compensated for their services and not subjected to unnecessary burdens. To say it another way, the ideal legislation will not limit consumers' access to legitimate financial services, such as bounce protection, but it should prohibit financial service companies from engaging in abusive or predatory practices.

The bounce protection legislation being considered is well intentioned – I agree with what it is trying to do – but as a practical matter will limit consumers' access to legitimate financial services, and may be technically impossible to implement. It will not curb abusive or predatory practices and in fact will likely have the unintended consequence of driving consumers to unscrupulous high-cost providers.

Wright-Patt Credit Union Overdraft Practices

Wright-Patt Credit Union charges $25 for non-sufficient funds (NSF) checks that bounce, which is the same as the fee to process an overdraft. We do not charge more to process an overdraft than we do to bounce a check. Our NSF fee is in addition to any fees that might be charged by the receiver of the check.

Our overdraft protection service saves members the cost and embarrassment of bouncing a check. Most merchants charge $30 or more to process a bounced check, which is in addition to the embarrassment that members face. We try to help members in these situations, and think we are saving people money.

We do not knowingly allow transactions that will result in an NSF fee if we have the capability to deny it. For example, we will not authorize a debit transaction if we know there is not enough money in the account to support the debit. Nor will we allow an ATM withdrawal if the money is not in the account. We realize that some banks, and perhaps a few credit unions, may not follow this practice.

We do not allow accounts to run consistently negative. We will only process overdrafts for members on direct deposit so we know they have a way of bringing their account positive again. We limit how negative we will allow an account to get based on a member's average balance with us. Some are limited to no more than a $300 negative balance, although those with higher balances will be allowed up to a $1,000 negative balance.

We do not process overdrafts on accounts that remain negative for more than two weeks. And, we limit the number of times per month that members may use this service. We do not charge a daily negative balance fee.

We do not take any action to manipulate how checks are presented in order to increase fee income, instead clearing them in the order presented for payment, regardless of amount. Many banks will force-order checks from largest to smallest. This practice increases the number of checks that will bounce in an account. They say they do this to clear a customer's "most

important" checks, such as the mortgage or car payment, but I believe that they do it to maximize fee income.

Finally, we offer free financial counseling and budget services to any member who wants to use it. Our goal is that members not ever pay an NSF fee. We do not do anything we believe is not in the best interests of members, and we do not make decisions for the sole purpose of generating additional income.

Wright-Patt Credit Union's overdraft program works for the majority of our members. Many come to the end of a pay period and they are out of money, but they still need to make a purchase. We clear the check, charge the same fee we would have charged if the check were returned, and take the account negative for a few days. These members will bring the account positive relatively quickly and go about their financial business. For these people we save them the cost and embarrassment of bouncing a check.

Then, there are members who have difficulty managing their money and are consistently writing checks that exceed their balances. To address this, we recently limited their use of our overdraft services, and we will close their account if this becomes excessive. This is a difficult decision because if we close their account we know they will go somewhere else for these types of services and pay higher fees. However, we see no other option if our financial counseling services are not successful.

Wright-Patt Credit Union is in the final stages of implementing an "opt-in" program on a trial basis in which members opening new checking accounts will be able to elect whether or not to use our overdraft services if they overdraw their accounts. At that time, we will disclose the cost of these services and the available options. We expect to have the program running in the next 60 days or so. We will assess the costs and benefits of the new program during this trial period before deciding whether to make this permanent.

Credit Unions' Concerns with H.R. 1456

Credit unions have four primary concerns with respect to H.R. 1456.

First, as introduced, the bill would classify overdraft protection products as lending products under the *Truth in Lending Act* (TILA) and include the service fee associated with the overdraft protection program within the APR calculation. CUNA opposes treating overdraft programs under the Truth in Lending Act because we do not believe that this service is a lending product. Rather, it is a service that credit unions provide their members which is associated with a savings product.

Second, if this bill were law, it would cause credit unions offering these programs to exceed the usury ceiling prescribed by the *Federal Credit Union Act* (presently at 18%), since even a modest fee would exceed this threshold. As a result, credit unions subject to the usury ceiling would no longer be able to offer these services, driving members of these credit unions to alternative – and perhaps more expensive – financial services providers. Moreover, we do not believe that the disclosure of an APR on an activity of this nature will be particularly helpful to

the consumer. Rather, we would support language requiring more meaningful disclosures, such as the disclosure of the cost of using the overdraft protection program versus the cost of the institution's bounced check (NSF) fee and line of credit, similar to those required under recent rules that were issued under the *Truth in Savings Act*.

Third, H.R. 1456 has the potential to present significant operational issues for financial institutions by requiring a written agreement with the member prior to the extension of any overdraft coverage. Since overdraft protection programs are well established, it is unrealistic and unreasonable to require a written agreement from the consumer/member before continuing to provide him or her with overdraft protection. Therefore, CUNA suggests that the bill provide additional disclosures as a "change in terms" for the account where overdraft protection is offered and specifically require that a consumer can formally "opt out" of a depository institution's overdraft protection program if he or she so desires. New account-holders would be provided this information and ability to opt out upon opening a new checking account.

Finally, the requirement that consumers be notified at an ATM or point-of-sale that the transaction will cause an overdraft event represents a compliance burden that we do not believe can be met given current technology and the structure of the payment system. There are other ways to notify consumers that the transaction that they are about to complete may cause an overdraft event. A "sticker" on the side of any ATM – which has been used in the past for other warnings – or a first screen general notice alerting the consumer that a withdrawal from the ATM may trigger an overdraft fee by his own institution, may be appropriate notice for consumers. At some point, however, we do think the consumer has the responsibility to know how much money he has in his checking account. We are also mindful of the fact that there is no warning given when a consumer writes that check which puts him in an overdraft position.

We encourage the Subcommittee to consider whether the goal of this legislation can be met by requiring these types of disclosures as opposed to regulating this product under TILA and requiring an APR disclosure that consumers will find of little value. To address these practical concerns about H.R. 1456, CUNA recommends that the bill be amended as amendments to the *Truth in Savings Act*, rather than to the *Truth in Lending Act*. This approach would eliminate any calculation of APR and eliminate concerns about the impact of the bill on federal credit unions' usury ceiling. To the extent that the Subcommittee feels that real-time disclosure is critically important, we suggest limiting that type of requirement to disclosure on ATM networks that are controlled and operated by the financial institution to which the consumer is affiliated. As we have noted in previous testimony, few credit unions drive their own ATM networks.

Once again, credit unions support the spirit of this legislation, which seeks to prohibit predatory overdraft practices. While we oppose this legislation in its current form, we would like to work with supporters in an effort to craft legislation that eliminates predatory activity without making it impossible for the good actors to offer this service to their members/customers.

H.R. 627 – Credit Cardholders' Bill of Rights Act

Innovations in the financial services sector, such as the credit card, have made credit more available and more convenient to use than at any time in history. When used properly, the credit card is an important purchasing tool for consumers. Credit cards are rarely collateralized, which

means the risks associated with this convenient form of credit is generally higher than other lending products; and, financial institutions, including credit unions that offer credit cards to their members need to be able to price that risk appropriately.

CUNA recognizes that there are legitimate concerns about abusive credit card practices. We applaud efforts to end discriminatory, predatory, deceptive and abusive lending practices, noting that these efforts should be balanced to avoid unintended consequences which would ultimately be adverse to consumers, including making credit more expensive and less available for consumers.

Last year, the Federal Reserve Board of Governors (Federal Reserve), the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA) issued rules that restricted and prohibited a number of credit cards practices, pursuant to their authority under the Unfair and Deceptive Acts and Practices Act (UDAP) and the Federal Reserve issued separate rules under Regulation Z (Reg Z) which address several of the concerns raised in H.R. 627; these rules will become effective July 1, 2010. H.R. 627 would for the most part put into law the requirements that the agencies will require banks and credit unions to follow beginning next year.

Effective Date

Inasmuch as credit unions will be required to comply with the new UDAP and Reg Z requirements in just over fifteen months, our most significant concern with H.R. 627 is the effective date of the measure. Credit unions can appreciate the consumer benefit of having the regulation codified. However, were this bill to become law, credit unions would only have three months to comply with the same requirements with which they are currently adjusting their systems to comply in fifteen months time.

Credit unions are making a significant investment in both time and resources to update computer systems and train staff to be ready to comply with the UDAP and Reg Z changes next year. For credit unions, the cost of compliance is borne directly by their member-owners. If legislation were enacted requiring credit unions to be ready to implement the UDAP and Reg Z changes in only three months time as opposed to fifteen months time, it would require significantly more resources, which would have a direct impact on member service. This would come at a time when credit unions are struggling with enormous regulatory burdens resulting from a number of new and significant laws and rules that have been enacted over the past decade, including requirements in the area of privacy, internet gambling, the *Real Estate Settlement Procedures Act*, the *Fair Credit Reporting Act*, and the *Bank Secrecy Act*, among others.

Notwithstanding the concerns that we have with the provisions of this legislation that are not consistent with the new UDAP and Reg Z rules, we encourage the Subcommittee to modify the effective date of this legislation to be consistent with the implementation date of the UDAP and Reg Z changes.

Universal Default

H.R. 627 seeks to limit the practice of "universal default," by prohibiting creditors from using adverse information concerning a consumer, other than actions directly related to the credit card account, as the basis for increasing the annual percentage rate of interest on outstanding credit card balances. The bill would prohibit creditors from increasing the interest rate on an existing balance unless the increase is due to the expiration of a promotion rate; the increase is due to changes in an index; or the increase results from the cardholder's failure to make a payment during the 30-day grace period after the due date.

Credit unions do not want to raise interest rates to gouge their members. CUNA supports the concept of prohibiting universal default on outstanding balances. A consumer's action which is unrelated to the card should not affect the interest rate of a previously incurred debt. However, as we indicated in our comment letter to NCUA and the Federal Reserve, the implementation of this provision will likely raise asset/liability management issues, possibly resulting in an increase in the initial pricing of credit and other rates and fees.

Advance Notice of Rate Increases

H.R. 627 would entitle a cardholder to a 45-day notice of the rate increase and the opportunity to close the account and pay off the existing balance at the current rate. The joint rule includes a similar 45-day notice requirement. Currently, creditors are required to provide 15-day notice. We suggested last year during consideration of H.R. 5244 that a 30-day notice requirement would make more sense operationally and still provide adequate consumer protection because it would be more compatible to the typical 30-day billing cycle. In practice, many credit unions already provide their members with 30 days notice and usually send these notifications with their periodic statements.

Double Cycle Billing

H.R. 627 would prohibit a practice known as "double cycle billing," which occurs when a creditor calculates interest charges based on balances in a billing cycle that precedes the most recent cycle. Credit unions do not generally engage in this type of interest calculation. We agree that this is an unfair practice and support its prohibition either through regulation or legislation.

Limitations Relating to Account Balances Attributable Only to Accrued Interest

H.R. 627 would prohibit creditors from imposing or collecting any fee on an outstanding balance the amount of which is attributable only to accrued interest on previously repaid credit extended under the plan. CUNA supports this provision.

Access to Payoff Balance Information

H.R. 627 would require creditors to provide cardholders, in each periodic statement, a telephone number, Internet address, and website address at which the cardholder may request the payoff balance on the account. Most credit unions already provide a telephone number but should not be required to also provide an Internet address and website since not all credit unions have interactive Internet capabilities.

Consumer Right to Reject Card before Notice is Provided of Open Account

H.R. 627 also prohibits creditors from reporting any information to a consumer reporting agency concerning the establishment of a newly opened credit card account until the credit card has been used or activated by the consumer. We appreciate that the bill clarifies that this language should not be construed as prohibiting creditors from furnishing information about applications for credit card accounts to consumer reporting agencies. With this clarification, CUNA supports this provision.

Payment Allocations

H.R. 627 would require lenders to allocate payments for a credit card that includes balances subject to different interest rates, on a pro rata basis, except under certain circumstances. CUNA supports prohibiting creditors from applying payments to balances with the lowest interest rate before applying it to those subject to higher rates.

Statement Dates

H.R. 627 would prohibit creditors from considering a payment as late unless the consumer is provided with reasonable time to make payments. Specifically, the bill would require these statements to be mailed at least 25 days before the bill is due. It is worth noting that the joint rule would require lenders to mail periodic statements to cardholders at least 21 days before the bill is due.

CUNA supports a requirement that periodic statements be mailed 21 days before the bill is due. We are concerned that a 25-day requirement is too close to the end of the billing cycle and could create logistical problems for credit unions. We encourage the Subcommittee to address this issue.

Over-the-Limit Transactions

H.R. 627 includes language regarding fees that are triggered when a cardholder exceeds the credit limit on the account. Specifically, the bill permits the cardholder to opt-out of receiving an extension of credit in excess of the consumer's credit limit and would prohibit over-the-limit fees when the consumer opts-out; requires creditors to disclose annually the right to opt-out of this card feature, and provide cardholders with multiple methods of opting-out of the feature; places additional restrictions on the number of times an over-the-limit fee may be charged and under what conditions it may be charged in excess of the limit; and prohibits the imposition of an over-the-limit fee if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit.

CUNA agrees with the concept that an over-the-limit fee should not be imposed if it results from holds placed by merchants that exceed the amount of the transaction. However, such a standard with respect to holds may create processing issues for creditors since they have little control over

the holds that are placed by merchants. We note that the Federal Reserve is considering a proposed rule under Reg E with regard to overdrafts in connection with debit holds.

Subprime Credit Card Accounts

H.R. 627 would require that all fees associated with opening a credit card account in excess of 25 percent of the credit extended to the consumer must be paid in full before the card may be issued to the consumer. We do not believe that credit unions offer cards under these circumstances and support these limitations.

Extensions of Credit to Underage Consumers

H.R. 627 prohibits the issuing of a credit card to a consumer under the age of 18 unless the consumer has been legally emancipated under State law. However, there may be legitimate reasons for underage consumers to have a credit card, including one that is co-signed by an adult. Rather than prohibit such cards, we believe that the regulators should develop guidelines specifically designed to protect younger consumers from abusive practices.

Additional Issues

In addition to the report to Congress already required in H.R. 627, we suggest that Congress request the Government Accountability Office (GAO) conduct a study on the impact of merchant data breaches on consumers and financial institutions. When merchants lose consumers' personal data, including credit card information, as a result of criminal intent or negligence, the cost of the breach is borne almost entirely on the consumer and his financial institution. Anecdotally, several of credit unions report that the cost per member of a merchant data breach is around $20 per member. Financial institutions are rarely made whole when breaches occur and this imbalance deserves additional scrutiny and study. We believe that this issue deserves to be studied by the GAO and considered by Congress.

Conclusion

Mr. Chairman, on behalf of the Credit Union National Association and Wright-Patt Credit Union, thank you very much for giving me the opportunity to express the association's views on these two bills. Credit unions look forward to working with the Subcommittee on these issues.

Credit Union National Association
Guidelines and Ethical Standards Related to Overdraft Protection Programs

CUNA's Board of Directors calls on every CUNA member credit union that offers overdraft protection services to adopt overdraft protection standards and ethical guidelines that will help emphasize credit unions' concern for consumers and further distinguish credit unions as institutions that care more about people than money.

When offering overdraft protection services, credit unions adopting these guidelines and ethical standards recognize that the following practices are not consistent with the credit union philosophy and principles and publicly affirm that they will not engage in any of these practices:

- **Deceptive Advertisement**
  Advertising, representing, or implying that the member should expect that all overdrafts will be paid but then stating in other documents that the paying of overdrafts is discretionary, which is a standard feature of overdraft protection plans. Such advertising may lead members to rely on the service in expectation that all overdrafts will be paid, which would be detrimental if any overdrafts are not ultimately paid by the financial institution.
- **Enticing Members to Overdraw Accounts Repeatedly**
  Advertising or promoting the overdraft protection plan in a manner that encourages the member to overdraw repeatedly his or her share draft account, **as opposed to** such a plan being used as an occasional convenience for the member. The frequent overdraw of accounts is a practice that financial education programs, such as those offered by credit unions, generally discourage.
- **Structuring Programs that Mislead Members**
  Including a feature that records the amount of coverage being offered to cover overdrawn share drafts as part of the "available funds," such as on ATM receipts, online statements and telephone balance statements.
- **Failure to Inform Heavy Users of Overdraft Protection Programs of Alternatives**
  Overdraft protection programs may not be appropriate for members who heavily use and rely on overdraft protection programs as a means to pay a significant proportion of every day living expenses. For these members, credit unions may offer a number of other products and services that would be more appropriate. These may include transfers from a savings account to the share draft account, as well as other types of less expensive secured and unsecured loans that the credit union offers to all its members.
- **Failure to Provide Financial Counseling Information**
  Credit unions recognize that they have a role in helping their members use overdraft protection services in a responsible manner. In addition to providing adequate disclosures regarding the features and fees associated with the programs, credit unions should also provide information regarding counseling services provided by the credit union or other reputable counseling services.