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February 16, 2021

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Overdraft Policy, RIN 3133-AF20

Dear Ms. Conyers-Ausbrooks:

The Credit Union National Association (CUNA) represents America's credit unions and their 120 million members. On behalf of our members, we are writing regarding the National Credit Union Administration's (NCUA or agency) proposed rule on Overdraft Policies.¹

Background

Section 701.21(c)(3) of the NCUA's regulations provides that a federal credit union (FCU) can advance money to a member to cover an account deficit without having a credit application on file if the credit union has a written overdraft policy.² This written overdraft policy must: (1) Set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; (2) establish a time limit *not to exceed 45 calendar days* for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; (3) limit the dollar amount of overdrafts the credit union will honor per member; and (4) establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.³

During its December 2020 Meeting, the NCUA Board (the Board) issued a proposed rule to amend the requirements for a written overdraft policy. Specifically, the proposal would modify the requirement that the written overdraft policy establish a time limit not to exceed 45 calendar days for a member to cure each overdraft. Instead, the proposed rule would remove the prescriptive 45-day limit and replace it with a requirement that the written policy establish a specific time limit that is both "reasonable and applicable to all members." However, it should be noted the amended overdraft policy would still require the FCU to "establish a specific time limit" to cure the overdraft but that time limit *may* exceed 45 days.

Consistent with U.S. generally accepted accounting principles (GAAP), overdraft balances should generally be charged off when considered uncollectible. This will remain the case even after the adoption of the proposed change.

¹ Overdraft Policy, 86 Fed. Reg. 3876 (Jan. 15, 2021).

² Federally insured, state-chartered credit unions (FISCU) are not subject to the overdraft policy requirements in 12 CFR 701.21(c)(3).

³ 12 CFR 701.21(c)(3).

General Comment

CUNA supports the agency's proposed rule. COVID-19 has presented America's credit unions and their members with extraordinary challenges. Despite the disruption of the past year, credit unions have continued to deliver high-quality financial services to credit union members throughout the duration of the pandemic. In that regard, we appreciate the agency's proactivity as it has examined and adapted its rules, regulations, and policies to ensure credit unions have the tools necessary to meet the evolving needs of their members. The Overdraft Policy proposal is a perfect example of the agency's ingenuity and we recommend the Board act quickly to implement the proposed change so that credit unions can amend their policies, as they deem appropriate, in the interest of assisting financially distressed members.

Credit Unions Have Responsible Overdraft Policies and Practices

Overdraft protection protects a consumer purchasing goods and services, permitting the transaction to process, in situations when the payment exceeds the consumer's available balance. In accordance with all relevant laws and regulations, a consumer has opted-in to these services as part of their account agreement. Credit unions offer overdraft programs as a convenience and accommodation, and members that choose to opt in often do so for the peace-of-mind these services provide.

During the current crisis, consumers are buying critical goods and services intended to help them and their families weather shelter-in-place precautions or tend to their health. We believe arbitrarily limiting the ability of credit unions to work with members at this time – especially because of rigid regulatory language – is the wrong course of action and should be corrected. While the language in Section 701.21(c)(3) has needed an update for some time, the pandemic and the resulting financial disruption present a clear opportunity for the Board to consider adopting long-overdue policy changes.

As consumers affected by the pandemic struggle to make ends meet, the agency and other authorities should continue to encourage affected consumers to reach out and work with their local credit union to reduce or eliminate incurred fees or to consider other low-cost products and services. In fact, many credit unions are already working with their members to reduce the cost of overdraft fees or waiving fees entirely. For example, a credit union in Colorado cut their overdraft/non-sufficient funds fees to just one cent to assist its members. Helping members in times of need is not uncommon among America's credit unions. CUNA believes credit unions should be allowed to continue working with members to develop *customized solutions* that help secure their financial well-being.

Consistency with Interagency Guidance

In February 2005, the NCUA joined with the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) to publish guidance on overdraft protection programs in response to concerns about aspects of the growing marketing, disclosure, and implementation of overdraft services.⁴ In the joint guidance, the banking agencies stated that overdraft balances should be charged off when they are considered to be uncollectible but no later than 60 days from the date of the overdraft. This NCUA proposed change would address the inconsistency between the current 45-day limit imposed on FCUs for curing an overdraft and interagency guidance that suggests a maximum of 60 days before an overdraft is charged off. In effect, NCUA's current requirement has created an arbitrary ceiling and, after adopting the proposed rule, credit unions would be allowed to align their overdraft policies with the 2005 interagency guidance, if they deem such a change to be appropriate. We support the agency adopting changes to its rules and regulations that encourage and permit the flexibility to adopt policies based on the needs of a credit union's membership.

⁴ Joint Guidance on Overdraft Protection Programs, 70 Fed. Reg. 9127 (Feb. 24, 2005).

In the proposal, the Board makes clear that it “expects that FCUs will exercise their good, professional judgment when working with members and determining when overdraft balances are deemed uncollectible.”⁵ CUNA believes the Board is justified in trusting credit unions to exercise their professional judgement in this regard. Throughout the entirety of the pandemic, credit unions have been showcasing sound judgment daily while helping their members deal with the adverse impacts of COVID-19.

Conclusion

On behalf of America’s credit unions and their 120 million members, thank you for your consideration. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,



Alexander Monterrubio
Senior Director of Advocacy & Counsel

⁵ 86 Fed. Reg. 3876 at 3878.