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National Association of Federally-Insured Credit Unions

February 12, 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:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in support of the National Credit Union Administration's (NCUA) proposed rule eliminating the prescribed 45-day limit in its requirements for an overdraft policy in NCUA's lending rule. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 123 million consumers with personal and small business financial service products. NAFCU and our members have long advocated for NCUA to eliminate this required timeframe as it creates operational burden, is inconsistent with generally accepted accounting principles (GAAP), and poses no benefit to credit union members. NAFCU supports the proposal to replace this timeframe with a credit union-determined timeline that is reasonable and consistently applied as this will provide credit unions with appropriate flexibility to assist their members.

General Comments

NAFCU strongly supports the rule as proposed. The current requirements of section 701.21(c)(3) are unnecessarily burdensome for federal credit unions (FCUs), unnecessarily restrictive for members and should be eliminated. The rule, which requires an FCU to establish a written overdraft policy with a time limit not to exceed 45 days to either make the account current or approve a loan to cover the negative balance applies regardless of the size of the negative balance or the circumstances of the borrower.

This timeframe ultimately harms members most by limiting FCUs' ability to work with the member. No consumer protection argument in support of a 45-day timeframe, as opposed to a 60-day or 90-day timeframe, has been raised and indeed there are no policy reasons for doing so. Further there is no safety and soundness concern specifically alleviated by the 45-day timeframe as opposed to other reasonable lengths of time. Indeed, in their Joint Guidance on Overdraft Protection Programs, the Office of the Comptroller of the Currency (OCC), Federal Reserve, and Federal Deposit Insurance Corporation (FDIC) all included an expectation for "the establishment of specific timeframes for when consumers must pay off their overdraft balances." While NCUA also participated in this guidance in Letter to Credit Unions 05-CU-03, it stands alone in

establishing a regulatory timeframe, let alone one as short as 45 days. GAAP rules regarding charge-offs already provide sufficient protection for credit union balance sheets. This limitation is simply not necessary or supported by policy considerations.

The replacement of the 45-day timeframe with a timeframe that is “reasonable and universally applicable,” is a vast improvement. This will allow FCUs to streamline processes related to reviewing these accounts, establish reasonable repayment periods and lending processes related to these negative balances, and, most importantly, offer members who are struggling financially with flexibility and understanding as they work with them.

Credit Union Overdraft Programs Are Helping Members During the Pandemic

Credit unions are stepping up for their members in response to the actual needs and risks posed to their individual membership with generosity, care, and an eye towards safety and soundness. What FCUs need is the flexibility to provide appropriate, tailored relief programs and assistance to their members based on the facts on the ground. Not all regions, populations, or sectors have been affected by the pandemic in the same manner and it would not be appropriate to issue broad mandates regarding all credit union’s overdraft programs (ODPs). Doing so could have unanticipated consequences for credit union ODPs and potentially make these services less available.

Overdraft programs continue to enjoy consumer support. While these programs are not an ideal method of regularly managing cash flow shortfalls, it is an important, cost-effective service for members during a time when it is most critical that members have access to credit union assistance and do not turn to predatory payday lenders or check cashing services. Credit union ODPs are helpful in incentivizing positive member behavior and some credit unions report that ODP fees are used to fund member education programs or the operational cost of the ODP itself.

Credit unions are intensely aware that the financial security and health of their membership during the pandemic is both their mission and necessary for the success and survival of the credit unions. Due to the increase in liquidity, some credit unions have been able to make major accommodations on fees or have increased charitable giving to assist their membership in response to the pandemic. Some report having waived all overdraft fees during specified timeframes in response to member need, and some of these timeframes are ongoing. One Region 1 credit union reported a 90 percent decrease in overdraft fee income in 2020 due to these accommodations. Credit unions that have not broadly waived fees continue to waive and reverse fees based on individual member need and intend to continue that practice into the future. At least one credit union reported issuing reminders to member service representatives regarding their existing authority to waive these fees and encouraging them to do so in response to member need. For members that are chronically incurring overdraft and NSF fees, credit unions report working directly with members to identify the issues leading to this pattern, make alternative recommendations where appropriate, and, if necessary, reduce access for members determined to be using an ODP abusively. In short, FCUs are actively working to ensure that ODPs are helping their members through this crisis, rather than contributing to it.

Specific Difficulties and Adverse Incomes Related to the 45-Day Timeframe

FCUs have long reported confusion, operational burden, and member service difficulties regarding the lending rule's requirement that negative balances be resolved by depositing funds or establishing a loan within 45 days. The misalignment between the 45-day timeframe and GAAP's 60-day timeframe for determining whether a negative balance is collectible is counterintuitive and creates confusion for FCU staff in establishing procedures for handling these accounts. The 45-day timeframe forces FCUs to treat members more harshly than the credit union's own balance sheet.

FCUs report that in the past, they have been forced to resolve a negative balance due to this timeframe even when they know a direct deposit will be forthcoming and that the amount will therefore be determined collectible within GAAP's 60-day period. In such situations, a member's account may have to be closed with the understanding that if the member's funds become available it will be reopened and settled. This is completely unnecessary work for credit union staff driven solely by this regulatory timeframe.

This understandably creates frustration and a negative member experience for members who cannot control the timing of their direct deposits. These circumstances are particularly common with members' whose income consists of Social Security direct deposits or unemployment benefits, which are experiencing delays due to the severe increase in claims. This arbitrary regulatory limitation puts FCUs and their members at a disadvantage, especially during the COVID-19 pandemic, as it does not align with rules for banks and other depository institutions. As banks are not subject to this timeframe, explaining this limitation to members is difficult and gives the appearance that the FCU is simply unwilling to carry the balance beyond 45 days when a bank may be. One credit union specifically reported that they have lost members as a result of this difficulty.

Others report that the 45-day timeframe is simply too short to meaningfully work with members who are struggling. In order to fully complete a repayment arrangement or underwrite and document a loan, credit union staff would essentially need to begin working with borrowers on day one of the negative balance. This is a waste of credit union resources and staff time as many negative balances are quickly resolved. Consumer advocates would like credit unions to resolve these negative balances through loans. However, FCUs also report that examiners see establishing a loan to repay a negative balance as an attempt to capitalize bad debt and report being criticized for doing so. A policy which insists that these loans be established so quickly only further exacerbates this tension. The credit union must have autonomy to determine whether a loan is the appropriate tool to help a member resolve a negative balance. A longer time frame would allow a FCU to properly determine first whether a loan is an appropriate approach, and then underwrite a loan that will meet the needs of both its member and the FCU from a safety and soundness perspective. Credit unions need the ability to work with struggling members, to rely on their own experience in resolving these negative balances, and to establish reasonable policies within the context of the credit union's operations. The proposed rule permits credit unions to do exactly that.

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Conclusion

The need for the relief posed by this proposed rule is long overdue. It is in the best interests of both credit unions and their members that credit unions have as much flexibility to work with those who are struggling. NAFCU supports the proposed rule and urges the NCUA to finalize this rule. If you have any question or concerns, please do not hesitate to contact me at (703) 842-2272 or elaberge@nafcu.org.

Sincerely,

Elizabeth M. Young LaBerge
Senior Regulatory Counsel