



**National Association
of Federal Credit Unions**

3138 10th Street North
Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Advocacy, Education & Compliance

October 5, 2016

The Honorable Rick Metsger, Chairman
The Honorable J. Mark McWatters, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: NCUA's Usury Ceiling under the FCU Act

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the National Credit Union Administration's (NCUA's) interpretation of the usury ceiling under the *Federal Credit Union Act* (FCU Act).

Under current regulations, overdraft services on traditional deposit accounts are expressly excluded from Regulation Z's requirements for open-end credit through the operation of the definitions for "creditor" and "finance charge." However, the recently issued CFPB rule on prepaid cards, redefines a "credit card account" and "finance charges" to include overdraft charges and credit fees associated with prepaid accounts.

The final rule offers a lengthy historical discussion¹ to rationalize this change, the salient observation being that the vast majority of prepaid account transactions are preauthorized—thus obviating the need for a courtesy overdraft service traditionally associated with a checking account. Accordingly, the Bureau thinks that card issuers may rely on overdraft services to boost revenue, although it admits that very few prepaid products offer overdraft services. Rules for classification of fees or charges as finance charges in connection with prepaid accounts are specified in greater detail in § 1026.4(b)(11) and related commentary.

Credit unions must not charge interest in excess of the ceiling imposed by the FCUA and NCUA regulations. Currently, the general rate ceiling is 18%, inclusive of all finance charges.² The NCUA has determined that finance charges are defined as they are under Regulation Z, but reserves the exclusive right to determine what fees are included in the computation of the rate

¹ Final Rule, Prepaid Accounts, 830 (Oct. 4, 2016) [hereinafter Final Rule].

² 12 C.F.R. §701.21(c)(7).

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ceiling.³ NAFCU requests to meet with you as soon as possible to discuss the potential impact of this rule and other rules the CFPB is contemplating.

Should you have any questions, please do not hesitate to contact me or Andrew Morris, NAFCU's Regulatory Affairs Counsel, at amorris@nafcu.org or (703) 842-2244.

Sincerely,

A handwritten signature in cursive script that reads "Carrie R. Hunt".

Carrie Hunt

Executive Vice President of Government Affairs and General Counsel

³ "While credit unions are bound by Regulation Z's definition of finance charge for disclosure purposes, NCUA alone has authority to determine which types of charges are included in the computation of interest for the usury ceiling set forth in the Act and Regulations." NCUA, Letter, 1991-0412, available at <https://www.ncua.gov/Legal/OpinionLetters/OL1991-0412.pdf>