

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: January 14, 2010

FROM: Office of General Counsel

SUBJ: Withdrawal: Unfair
or Deceptive Acts or
Practices (Part 706)

ACTION REQUESTED: Board approval to withdraw the NCUA portion of the Unfair or Deceptive Acts or Practices (UDAP) rule, issued under the authority of the Federal Trade Commission (FTC) Act, as a joint rule in January 2009, with the Federal Reserve Board (FRB) and Office of Thrift Supervision (OTS). 74 FR 5498 (January 29, 2009).

DATE ACTION REQUESTED: January 29, 2010.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: Yes.

RESPONSIBLE STAFF MEMBERS: Tonya Green, Staff Attorney, Office of General Counsel.

SUMMARY: NCUA, working with the FRB and OTS, issued the UDAP rule to prohibit certain acts and practices in connection with consumer credit cards as unfair or deceptive under the FTC Act. 12 U.S.C. §45. The UDAP rule was set to become effective in July 2010, but its provisions were essentially overtaken last year when Congress passed the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) as an amendment to the Truth in Lending Act (TILA). Congress directed the FRB to implement the Credit CARD Act in revisions to Regulation Z. 12 CFR Part 226.

With some differences, the Credit CARD Act and the new Regulation Z provisions limit and place requirements on the same credit card practices that were the focus of the UDAP Rule, including: limiting the ability of credit card issuers to raise interest rates, limiting fees on subprime credit cards, providing for fair allocation of payments, and limiting late fees.

The FRB's changes to Regulation Z implementing the Credit CARD Act will become effective February 22, 2010. The UDAP rule duplicates, overlaps, and, in some provisions, conflicts with the Credit CARD Act and Regulation Z and, therefore, staff recommends it be withdrawn because it is unnecessary and would create confusion for credit union regulatory compliance. Under TILA,

NCUA has enforcement authority for federal credit unions and the FTC has authority for state-chartered credit unions.

RECOMMENDED ACTION: The Board approve the withdrawal.

ATTACHMENT: Withdrawal notice.