
Board Action Bulletin



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NCUA BOARD MEETING RESULTS FOR DECEMBER 18, 2008

Unfair and deceptive consumer credit rule finalized

The NCUA Board joined the Office of Thrift Supervision and the Federal Reserve Board in approving final rule, Part 706, governing unfair or deceptive acts or practices related to credit cards.

The ruling, which applies only to federal credit unions, recognizes that, in some cases, disclosures do not provide adequate protection for consumers. The rule restricts or prohibits certain practices that are considered unfair based on the test set forth in the Federal Trade Commission Act, including: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.

The following summarizes specifics of the rule designed to prohibit certain credit card practices deemed unfair or deceptive.

Late payments -- Prohibits treating a payment as late unless consumers are given a reasonable time period for payment. A credit card statement must be sent at least 21 days before payment is due.

Payment allocation -- Requires reasonable allocation of amounts paid in excess of a required minimum payment in relation to interest rate accruals. The rule specifically requires allocation to segments with the highest annual percentage rates (APR) in descending order or among the balances in proportion to the total outstanding balance.

Application of interest rate increases to pre-existing balances -- Prohibits credit card issuers from applying an increased APR to existing balances except in cases of a variable rate account, where payments are 30 days late or do not comply with a workout arrangement, and when a "go to" rate has been previously disclosed on an account with a specified term or expiration date.

Double cycle billing -- Prohibits a finance charge based on days in a prior billing cycle for an outstanding balance in the current cycle.

Security deposits and fees for providing credit -- Prohibits an FCU from financing a security deposit or other account opening fees if the charges constitute a majority of the available credit offered. The rule modifies the proposal to limit first month fees to no more than 25 percent of available credit, and requires that fees between 25 and 50 percent of available credit be spread equally over the next five months.

The final rule is effective July 1, 2010.

CUSO amendments finalized

The NCUA Board adopted numerous amendments to the rules affecting credit union service organizations (CUSO), Parts 712 and 741, to clarify the rules, enhance CUSO operations and address safety and soundness concerns.

The amendments add two new categories of permissible CUSO activities: credit card loan originations and payroll processing services. Amendments also add new examples of permissible CUSO activities within existing categories and expand the permissible scope of certain services to include persons eligible for credit union membership. The amendment imposes new regulatory limits on the ability of credit unions to recapitalize their CUSOs in certain circumstances.

Although the CUSO rule generally only applies to federal credit unions, the amendment extends revised provisions to all federally insured credit unions that assure NCUA will have adequate access to books and records and requires that CUSOs are operated as separate legal entities. The rule also contains a procedure whereby state regulators may seek an exemption from federal access to records of CUSOs owned by state-chartered credit unions.

The amendment also clarifies that CUSOs may buy and sell participations in loans they are authorized to originate. The final rule amendments are effective 30 days after publication in the Federal Register.

NCUSIF status report

Through November 30, National Credit Union Share Insurance Fund (NCUSIF) 2008 revenue and expense included gross income of \$265.7 million, operating expense of \$74.0 million, insurance loss expense of \$177.0 million, and net income of \$14.7 million, primarily the result of the year's insurance loss expense.

Fifteen federally insured credit unions failed through November. Thirteen were involuntary liquidations and two were assisted mergers. The number of problem code 4 and 5 credit unions has risen from 211 at year-end 2007 to 257. These institutions represent 2.19 percent of total insured shares. Sixty-five percent of problem code credit unions have less than \$10 million in shares, while three of these credit unions hold over \$1 billion in total shares.

The NCUSIF had \$7.67 billion in equity at November 30, 2008. Insurance loss expense totaled \$177 million through November and \$280.3 million has been charged to reserves during the year. The provision for CU

losses (reserve) account totaled \$168.9 million November 30 -- \$33.9 million for identified problem credit unions, and \$135 million in unallocated reserves.

The NCUSIF equity ratio is 1.27 percent based on June 30, 2008, insured shares of \$601.6 billion. The equity ratio is expected to end the year at 1.27 percent, based on estimated 6.85 percent annual insured share growth.

Board votes are unanimous unless otherwise indicated