

NCUA-IR - 83-1 ENFORCEMENT GUIDELINES AND RESTITUTION
REVIEW PROCEDURES 02/83

NATIONAL CREDIT UNION ADMINISTRATION

POLICY STATEMENT

PS 83-1

DATE: February 18, 1983

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR CHAPTER VII

POLICY STATEMENT

Truth in Lending; Enforcement Guidelines and Restitution Review
Procedures

AGENCY: National Credit Union Administration (NCUA)

ACTION: Policy Statement

SUMMARY: The NCUA Board has made the following changes in its policies for implementation of the restitution provisions of the Truth in Lending Act: (1) established procedures that will be followed in reviewing requests by Federal credit unions for relief from restitution; (2) delegated to the NCUA Regional Directors the authority to rule on such requests; and (3) revised its guidelines concerning restitution by Federal credit unions for violations resulting from improper disclosure of credit insurance so that, to the extent permitted by law, restitution will not be required in cases where members were not misled by the violations.

EFFECTIVE DATE: February 18, 1983

ADDRESS: National Credit Union Administration, 1776 G Street, N.W.,
Washington, D.C. 20456

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director,
Department of Legal Services, at the above address or telephone (202) 357-1030.

POLICY STATEMENT 83-1

Background

The Truth in Lending Act (Act) directs the Federal financial institution regulatory agencies, including NCUA, to require institutions under their jurisdiction to make restitution to consumers in certain cases for understatement of the annual percentage rate or finance charge disclosed in connection with extensions of consumer credit.

Generally, pursuant to section 108(e) of the Act (15 USC 1607(e)), restitution must be made if (1) the undisclosed was willful or (2) the undisclosed exceeds certain

tolerances and it either resulted from gross negligence or was part of a pattern of similar violations in the institution. In certain limited circumstances, the Act directs the agencies not to order restitution either because the violations are old beyond certain limits, or because they predate an earlier examination in which the violations were not noted, or because the amount of the adjustment is below \$1. In certain other circumstances, described below, the Act provides the agencies with the discretion to waive or modify restitution. NCUA and the other financial regulatory agencies have adopted guidelines that explain the actions the agencies generally intend to take in certain of those situations in which the Act gives the agencies discretion. NCUA's guidelines were published at 45 FR 48712 (1980).

Purposes

The purposes of this policy statement are to (1) provide notice of a revision to NCUA's restitution guidelines concerning violations resulting from improper disclosure of credit disability and life insurance, (2) summarize for the benefit of Federal credit unions and other interested parties those circumstances in which NCUA may under the law exercise discretion to waive or modify restitution, (3) set out procedures to be followed by Federal credit unions that wish to request review of an initial recommendation by NCUA staff that restitution be considered, and (4) delegate to the NCUA Regional Directors the authority to rule on such requests subject to review in certain cases by the NCUA Board.

Revision to Enforcement Guidelines

The Act grants the enforcement agencies discretion in determining whether to require restitution for violations resulting from improper disclosure of the cost and optional nature of credit life and disability insurance, with respect to violations that occurred prior to April 1, 1982, and were nonwillful. Concerning this discretion, NCUA's enforcement guidelines as previously published provided that restitution would be required for failure to disclose the optional nature of the insurance. If the optional nature was disclosed, but either the cost was not disclosed or there was no signed insurance option, the guidelines provided that the credit union would be required to notify the member of the cost and optional nature and offer to cancel and return all premiums. Based on its experience in implementing those guidelines, NCUA has determined that they are unduly restrictive and that other factors, such as a low penetration rate of sale of such insurance, may provide evidence that member-borrowers understood the optional nature of the insurance. The previous guidelines with respect to credit life and disability insurance are therefore repealed. Restitution will not be required if the Federal credit union demonstrates, by penetration rate or other evidence, that it is unlikely that the credit union's members were misled by the violation. If such a demonstration can not be made, the credit union may be required to notify affected members and offer to cancel the insurance and return all premiums. (It should again be noted that this policy applies only to violations that occurred before April 1, 1982. The Act does not permit the agencies to exercise this type of discretion with respect to violations that have occurred on or after that date.)

Agency Discretion

In order to promote a better understanding of the circumstances in which it may be appropriate for NCUA to waive or modify restitution, the following is a summary of

the discretion granted under the Act with reference to any relevant enforcement guidelines. With the exception of paragraph 5, discretion does not apply to willful violations. Otherwise, discretion is granted:

1. Where the understatement did not result either from a pattern of violations or from gross negligence;
2. Where the understatement resulted from improper disclosure of certain charges that would, if properly disclosed, be excludable from the finance charge, i.e., charges related to property and liability insurance (section 106(c) of the Act), fees for perfecting and releasing security interests (section 106(d)), and the cost and optional nature of credit life and disability insurance (section 106(b), limited by date of occurrence of the violation as explained above). The enforcement guidelines provide that restitution will not be required for violations involving sections 106(c) and (d) of the Act. With respect to violations involving section 106(b), NCUA has revised its enforcement guidelines as described above;
3. Where either (1) the finance charge or annual percentage rate was accurately disclosed, but the other disclosure was either omitted or 10% or less of the amount that should have been disclosed (e.g., slipped decimal) or (2) neither the finance charge nor annual percentage rate was disclosed. In these cases, the enforcement guidelines provide that no adjustment will be required, except that where no annual percentage rate was disclosed, the contract rate will be used or in its absence the member will not be required to pay an amount greater than the actual annual percentage rate subject to a limited tolerance;
4. Where NCUA determines that the understatement resulted from any unique circumstance involving a clearly technical and nonsubstantive disclosure violation which did not adversely affect information provided to the consumer, and
5. Where, in connection with loans consummated before April 1, 1980, restitution would have a significantly adverse effect upon the safety and soundness of the credit union. Also, in connection with loans consummated on or after April 1, 1980, restitution may be permitted in partial payments over an extended period where immediate full restitution would have such an effect.

Procedures and Delegation

In those instances where NCUA discovers, through an examination or otherwise, an apparent violation for which restitution may be appropriate, NCUA personnel will advise the Federal credit union of the apparent violation and recommend that the Act and enforcement guidelines be reviewed and that voluntary restitution be considered. (NCUA can order restitution only in accordance with cease and desist proceedings conducted pursuant to 12 USC 1786(e)(1).) In any case where a Federal credit union either disagrees with a factual determination of NCUA staff that reimbursable violations exist or believes that agency discretion, as described above, can and should be exercised to waive or modify restitution, the following procedures will be utilized.

1. The Federal credit union should submit a written request, along with supporting documentation, to the appropriate NCUA Regional Director for consideration.

2. The Regional Director will review the request and supporting documentation. Additional information or clarification will be solicited if appropriate. The Regional Director, under authority delegated by the NCUA Board, will make a decision and will notify the Federal credit union of the decision and any requested action.

3. In any case where the Regional Director declines to exercise discretion granted under the Act to waive or modify restitution, the credit union may request a review of that decision by the NCUA Board.

By the National Credit Union Administration Board on February 9, 1983.

ROSEMARY BRADY
Secretary of the Board