

# American Airlines Federal Credit Union

Faith Ileva Anderson  
Writer's direct dial  
817-931-7004  
Writer's facsimile  
(817) 931-6656

e-mail address:  
faith.anderson@aacreditunion.org

Also admitted in Wisconsin

VIA FACSIMILE 1-202-452-3819

July 18, 2008

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

RE: Comments on Docket No. R-1315; Regulation DD (Overdrafts)

Dear Ms. Johnson:

I am writing on behalf of American Airlines Federal Credit Union (AA Credit Union). AA Credit Union has over \$5 billion in assets, is the ninth largest credit union in the United States and has over 211,000 members located throughout the country. Additionally, I am a former member of the Board of Governors of the Federal Reserve System's (Board) Consumer Advisory Council having completed my term just last year.

The Board is proposing amendments that set forth the content and format requirements for notices given to consumers informing them of their right to opt-out of a financial institution's overdraft services under Regulation DD (Proposal), which implements the Truth in Savings Act. While this Proposal does not apply to federal credit unions, our regulator, the National Credit Union Administration (NCUA), is required to promulgate a "substantially similar" regulation within 90 days of the effective date of any Truth in Savings regulation prescribed by the Board. Therefore, we would like to express our concerns on this Proposal.

## **Disclosure of Consumer Opt-Out of Overdraft Services**

The Proposal requires that a financial institution provide a consumer with an opt-out disclosure before the institution assesses any fee in connection with paying an overdraft. It also requires that an opt-out disclosure be provided with each periodic statement in which an overdraft fee was charged.

While we understand that the Board's intent is to provide education to the consumer, we believe that the Proposal provides too much notice such that the consumer would become numb to the disclosure that is being provided. Consumers are currently inundated with so many disclosures that disclosures in general have lost their effectiveness in changing a consumer's behavior.

Instead of providing an opt-out disclosure each time overdraft services are used, it would be more prudent and would increase the effectiveness of an opt-out disclosure if the notice was sent annually with the consumer being given the right to opt-out at any time.

#### *Format and Content*

The Proposal provides that the opt out notice must state the categories of transactions for which an overdraft fee may be imposed. The Board should be aware that many smaller financial institutions are only able to provide overdraft services for checking accounts. Many of us do not have the capability to provide overdrafts for ATM withdrawals or point of sale (POS) debit card transactions. Therefore, financial institutions should have the option of tailoring Sample Form B-10 to reflect the actual services being provided.

Additionally, for those consumers wanting to opt-out, the financial institution should have the option of deciding whether they want to receive the opt-out in written form with a signature versus a check box, over the Internet if behind a PIN or through a telephone call. This type of decision depends upon an institution's risk tolerance and systems that it has in place.

#### *Sample Form B-10 Opt Out Notice*

The current Sample Form B-10 Opt-Out Notice is lengthy and not easy to read. For the disclosure to be effective, it must be simple and concise. I would recommend that the Board revise the sample and come up with a shorter initial notice. For example, the listing of fees could be shortened. A full sentence is not necessary to describe each fee. The option to opt-out could also be shortened from two paragraphs to a few sentences.

We are also concerned with the cost of providing Sample Form B-10 with every periodic statement in which overdraft services are used. As you are aware, the costs of paper, transportation and postage are increasing. As noted above, we would recommend only requiring that an annual opt-out notice be given. In the alternative, we would recommend that a much shorter notice be sent with each periodic statement after the first overdraft fee has been incurred. For subsequent notices, we would recommend that only an opt-out provision be given without the necessity of again disclosing the fees.

If an institution would like to disclose any additional funds that it would advance in the event of an overdraft, the institution should have that option. But given the current length of the opt-out notice, many institutions would most likely not be able to provide much detail on the other loan products or services that they offer due to space limitations on a periodic statement if Sample Form B-10 must be used in its current form.

### **Disclosure of the Aggregate Costs of Overdraft Services on Periodic Statements**

Institutions that do not advertise overdraft services should not be required to provide additional disclosures in the periodic statement. Currently, only those institutions that advertise the payment of overdraft services are required to disclose the aggregate dollar amounts charged for overdraft and returned item fees by month and year-to-date.

It is a programming and cost burden to disclose the summary of fees in a tabular form as listed in Sample Form B-11 and to require that the opt-out disclosure be in close proximity to the fees on a periodic statement. For example, at our institution, a member may have more than one checking account. Although we do not advertise overdraft services, we currently provide a summary of the overdraft service fees after each type of checking account.

It would be a waste of paper and printing costs, if we are required to give the opt-out notice for each type of checking account that incurs overdraft fees. The opt-out notice as listed would take at least one-half of each statement page. If the disclosure is required to be on a statement, it is much easier and less burdensome to put the notice only once on the last page of the statement.

It is also not necessary to put the disclosure in close proximity to the fees. It would be a burden to us if we are required to give aggregate overdraft information in a tabular form. It would take quite a bit of programming to make sure that the aggregate information is listed as required in Sample Form B-11. It would be easier and still effective, if an institution were required to make the summary of fees more prominent in relation to what else is on the statement without the Board mandating a tabular requirement.

With all of the requirements that the Board is putting in place, it is not necessary to require the disclosure of aggregate fees to those institutions that do not advertise this service.

### **Effective Date**

In the event the Board decides to move forward with this Proposal, we would strongly request that you give institutions as much time as possible to implement the changes. Many institutions rely on third party vendors to make the required changes to its systems. We depend on these third parties to make our systems comply with any Board or NCUA mandate. We strongly recommend that with changes to Reg. DD and anticipated changes to other regulations that institutions be given up to 24 months to implement any substantive requirements.

### **Balance Inquiries**

We strongly support the Board's recommendation that when a consumer requests a balance inquiry on their account that only the actual amount of available funds that the

consumer can use should be given. We believe that adding on any other amounts to the available balance is misleading and confusing to the consumer.

Thank you for all of your diligent efforts on this Proposal. We appreciate the opportunity to comment on this matter. If you have any questions, please call me at 817-931-7004.

Sincerely,



Faith L. Anderson

Vice President & General Counsel

cc: A. Owens  
CUNA  
NAFCU  
NCUA