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National Association of Federally-Insured Credit Unions

March 28, 2020

The Honorable Rodney E. Hood, Chairman
The Honorable Todd M. Harper, Board Member
The Honorable J. Mark McWatters, Board Member
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Tabled Interim Final Rule on Overdraft Policy

Dear Chairman Hood and Board Members Harper and McWatters:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in support of the interim final rule regarding overdraft policy in section 701.21 which the NCUA Board tabled last week at its May Board meeting. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products. The current regulation requires federal credit unions (FCUs) to work with members with negative balances to obtain an agreement as to how that negative balance will be resolved within 45 days. This requirement, which is not imposed on other financial institutions, creates unnecessary restrictions on FCUs' ability to work with struggling members. NAFCU urges the NCUA Board to take up this rule again and approve it for publication at its June meeting.

NAFCU thanks Chairman Hood for supporting this interim final rule and whole-heartedly agrees that the time for this relief is now. The changes proposed by this rule offer critical relief for credit unions seeking to assist struggling members during the COVID-19 pandemic. NAFCU wrote to the NCUA Board on this issue on March 26, 2020, and the need for this relief has only grown since that time. NAFCU urges Board Members Harper and McWatters to approve the rule for publication so that credit unions are not unnecessarily constrained by regulation in resolving negative balances with members.

The Interim Final Rule Provides Critical Flexibility During the COVID-19 Pandemic

The current requirements of section 701.21(c)(3) are unnecessarily burdensome for FCUs, unnecessarily restrictive for members and should be eliminated. The rule, which requires an FCU to establish a written overdraft policy with a time limit not to exceed 45 days to either make the account current or approve a loan to cover the negative balance applies regardless of the size of the negative balance or the circumstances of the borrower. This arbitrary regulatory limitation puts credit unions and their members at a disadvantage, especially during the COVID-19 pandemic, and does not align with rules for banks and other depository institutions.

On May 19, 2020, President Trump issued an executive order directing agencies to rescind, modify, waive or provide exemptions from regulations that may inhibit economic recovery.[1] At its May meeting, the NCUA Board expressed its intention to operate in the spirit of that order, despite its independent status. No member of the NCUA Board defended the merits of the 45-day timeframe, and the requirement was widely characterized as overly prescriptive and outdated. The 45-day timeframe is an unnecessary burden for FCUs under normal circumstances, and in light of the COVID-19 pandemic, FCUs can least afford to expend staff time and resources unnecessarily. The requirement establishes rigid parameters for FCUs in working with members to resolve negative balances. In comparison, banks are permitted reasonable flexibilities for resolving these negative balances within the confines of generally accepted accounting principles (GAAP) and existing interagency guidance, both of which also apply to FCUs.

As members continue to experience significant hardship as a result of the pandemic and income becomes less consistent, it is likely that negative balances will become more common and resolved by consumers more slowly. Credit unions will have to manage an increased volume in such accounts and the need to convert these negative balances to loans and repayment plans. Given reduced staff, the unknown length of time consumers may need to wait for monetary assistance, and difficulties surrounding establishing loans and repayment agreements during social distancing, the current 45-day limit on carrying negative balances in Section 701.21(c)(3) should be eliminated as proposed by the interim final rule. This relief is needed immediately and NAFCU urges the NCUA Board to act quickly.

The Interim Final Rule Provides Important Assistance to Members

The COVID-19 pandemic makes the availability of overdraft protection critical for consumers. As Chairman Hood indicated at the meeting, members need this assistance to purchase groceries, pay their utilities and make other critical purchases. Eliminating this timeframe gives FCUs the ability to work with their members and meet them where they are at.

The current 45-day timeframe expires before the 60-day timeframe for determining whether the negative balance is collectible for charge-off purposes.[2] If the 45-day timeframe were eliminated, an FCU would be free to determine that the negative balance is collectible prior to the 60-day timeframe, but establish a repayment plan that extends to 60 or 90 days. Alternatively, it would enable the FCU to initiate a loan application to resolve the negative balance without struggling to finalize the loan before the 45-day time period. These extended timeframes would make it more possible and less burdensome for a member to resolve the negative balance on the account without posing risk to the safe and sound operation of credit unions.

In the wake of the *Coronavirus Aid, Relief and Economic Security Act* (CARES Act), many consumers reported frustration that their economic impact payments (EIPs) sent by direct deposit

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[1] Executive Order on Regulatory Relief to Support Economic Recovery (May 19, 2020) *available at* https://www.whitehouse.gov/presidential-actions/executive-order-regulatory-relief-support-economic-recovery/ (last accessed May 21, 2020).
[2] This 60-day timeframe is established by the Interagency Guidance on Overdraft Protection Programs attached to NCUA Letter to Credit Unions 05-CU-03.

were partially or entirely offset by prior existing negative balances in the account. Many FCUs expressed a desire to avoid this in order to assist their members but struggled to do so in light of the 45-day timeframe, in addition to significant operational difficulties. Whereas other financial institutions not subject to the 45-day timeframe are able to offer relief on this issue for 60 or 90 days, many FCUs were limited by the 45-day timeframe in section 701.21(c)(3) and could not offer equivalent relief if they were otherwise capable of doing so. The House recently passed the *Health and Economic Recovery Omnibus Emergency Solutions* (HEROES) Act, H.R. 6800, which would provide additional EIPs to Americans. Even if that bill should fail, the Administration has expressed support for additional EIPs. Although FCUs' ability to avoid the offset of these payments by negative balances varies significantly based on operational circumstances, eliminating the 45-day timeframe for resolving negative accounts eliminates one barrier for FCUs who are able and willing to do so.

Conclusion

The need for this relief is immediate, directly connected to the pandemic, poses no additional risk to the credit union system and is in the best interest of FCU members. NAFCU strongly urges the NCUA Board to approve an interim final rule providing this relief. Further, NAFCU urges the NCUA Board to make this relief permanent as, even under normal circumstances, the requirement does not provide protection to consumers, ensure safety or soundness, or otherwise serve a meaningful role in NCUA's regulatory scheme. If you have any question or concerns, please do not hesitate to contact Senior Regulatory Counsel, Elizabeth LaBerge at (703) 842-2272 or elaberge@nafcu.org.

Sincerely,

B. Dan Berger
President and CEO