

(12) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration;

(13) Repairing, maintaining, or installing fish screens to existing structures;

(14) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the existing footprint of the dam, and no major change in reservoir or downstream operations will result;

(15) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the dam or abutment areas, and no major change in reservoir or downstream operation will result;

(16) Repairing embankment slope failures on structures, originally built to NRCS standards, where the work is confined to the embankment or abutment areas;

(17) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the existing dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls;

(18) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards;

(19) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive

species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes;

(20) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting; and

(21) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

Signed this 4th day of February, 2010, in Washington, DC.

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 2010-2815 Filed 2-9-10; 8:45 am]

**BILLING CODE 3410-16-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 706**

**RIN 3133-AD47**

#### **Unfair or Deceptive Acts or Practices**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule; withdrawal.

**SUMMARY:** On January 29, 2009, jointly with the Federal Reserve System Board of Governors (FRB) and the Office of Thrift Supervision (OTS), the NCUA Board (Board) published a final rule and staff commentary amending its credit practices regulations (UDAP Rule). The UDAP Rule also included technical clarifications and was scheduled to become effective on July 1, 2010. The Board is now revising the UDAP Rule because its stipulations became unnecessary due to the enactment of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) on May 22, 2009, and amendments to Regulation Z implementing the Credit CARD Act that will become effective on February 22, 2010. For procedural reasons, the substantive requirements of the UDAP Rule will be removed effective July 1, 2010, but it is the Board's intent that only the technical clarifications become effective and that the substantive requirements will not take effect. This final rule applies only to the NCUA Board's regulations and does not affect the rules issued by the OTS and FRB.

**DATES:** This rule is effective July 1, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Moisette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:** On December 18, 2008, NCUA, along with the Federal Reserve Board (FRB) and the Office of Thrift Supervision, exercised its authority under the Federal Trade Commission Act (FTC Act) to issue a final rule prohibiting unfair acts or practices regarding consumer credit card accounts. The rule was published in the **Federal Register** on January 29, 2009, and the effective date for the amendments was July 1, 2010. 74 FR 5498 (January 29, 2009) (UDAP Rule).

The Credit CARD Act, enacted on May 22, 2009, amended the Truth in Lending Act (TILA) and established new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. Public Law 111-24, 123 Stat. 1734 (2009). After consultation with NCUA and other Federal financial regulators, the FRB amended 12 CFR Part 226 and the staff commentary (Regulation Z) to implement the Credit CARD Act. The Credit CARD Act and Regulation Z cover the practices regulated in the UDAP Rule, and in some instances, expand the UDAP Rule's requirements or consumer protections. For example, the UDAP Rule prohibited the financing of security deposits and fees for the availability of a credit card account in excess of 50% of the initial credit limit and limited how fees that did not exceed the 50% limit could be financed. The Credit CARD Act prohibits financing any fees charged within the first year an open-end credit plan in excess of 25% of the credit limit from the available credit. In as much as the UDAP Rule duplicates, overlaps, or conflicts with the Credit CARD Act and recent amendments to Regulation Z, the NCUA Board believes the recent amendments to Part 706 are unnecessary and is withdrawing the substantive requirements of the UDAP Rule. Accordingly, the Board is amending Part 706 to remove the substantive requirements and retain the clarifying technical amendments in the UDAP Rule, such as the addition of an authority, purpose, and scope section and, the removal of the provision for State exemptions.

This revision is applicable only to NCUA's portion of the UDAP Rule. For procedural reasons, the substantive

requirements of the UDAP Rule will be removed effective July 1, 2010. It is the Board's intent, however, that the substantive requirements on the UDAP Rule will not take effect. Additionally, the Board does not intend to finalize the proposed amendments to the UDAP Rule. 74 FR 20804 (May 5, 2009).

#### List of Subjects in 12 CFR Part 706

Credit, Credit unions, Deception, Intergovernmental relations, Trade practices, Unfairness.

■ For the reasons set forth in the preamble, NCUA revises 12 CFR Part 706 to read as follows:

### PART 706—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Sec.

706.0 Purpose and scope.

706.1 Definitions.

706.2 Unfair credit practices.

706.3 Unfair or deceptive cosigner practices.

706.4 Late charges.

**Authority:** 15 U.S.C. 57a(f).

#### § 706.0 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prohibit unfair or deceptive acts or practices in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). The prohibitions in this part do not limit NCUA's authority to enforce the Federal Trade Commission Act with respect to any other unfair or deceptive acts or practices.

(b) *Scope.* This part applies to Federal credit unions.

#### § 706.1 Definitions.

(a) *Person.* An individual, corporation, or other business organization.

(b) *Consumer.* A natural person member who seeks or acquires goods, services, or money for personal, family, or household use.

(c) *Obligation.* An agreement between a consumer and a Federal credit union.

(d) *Debt.* Money that is due or alleged to be due from one to another.

(e) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(f) *Household goods.* Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents,

provided that the following are not included within the scope of the term "household goods":

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(g) *Antique.* Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(h) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without receiving goods, services, or money in return for the credit obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation. The term includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to State law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

#### § 706.2 Unfair credit practices.

In connection with the extension of credit to consumers, it is an unfair act or practice for a Federal credit union, directly or indirectly, to take or receive from a consumer an obligation that:

(a) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(b) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(c) Constitutes or contains an assignment of wages or other earnings unless:

(1) The assignment by its terms is revocable at the will of the debtor, or

(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage

deductions as a method of making each payment, or

(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(d) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

#### § 706.3 Unfair or deceptive cosigner practices.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a Federal credit union, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice for a Federal credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open-end credit means prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) To comply with the cosigner information requirement of paragraph (a)(2) of this section, a clear and conspicuous disclosure statement shall be of this section given in writing to the cosigner prior to becoming obligated. The disclosure statement will contain only the following statement, or one which is substantially equivalent, and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

#### Notice to Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(2) If the notice to cosigner is a separate document, nothing other than the following items may appear with the notice. The following paragraphs (b)(2)(i) through (v) may not be part of

the narrative portion of the notice to cosigner.

(i) The name and address of the Federal credit union;

(ii) An identification of the debt to be cosigned (e.g., a loan identification number);

(iii) The amount of the loan;

(iv) The date of the loan;

(v) A signature line for a cosigner to acknowledge receipt of the notice; and

(vi) To the extent permitted by State law, a cosigner notice required by State law may be included in the notice in paragraph (b)(1) of this section.

(3) To the extent the notice to cosigner specified in paragraph (b)(1) of this section refers to an action against a cosigner that is not permitted by State law, the notice to cosigner may be modified.

#### **§ 706.4 Late charges.**

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a Federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, “collecting a debt” means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

By the National Credit Union Administration Board, on January 29, 2010.

**Mary F. Rupp,**

*Secretary of the Board.*

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**BILLING CODE 7535-01-P**

## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 103**

**RIN 1506-AB04**

#### **Financial Crimes Enforcement Network; Expansion of Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity**

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to amend the relevant Bank Secrecy

Act (“BSA”) information sharing rules to allow certain foreign law enforcement agencies, and State and local law enforcement agencies, to submit requests for information to financial institutions. The rule also clarifies that FinCEN itself, on its own behalf and on behalf of other appropriate components of the Department of the Treasury (“Treasury”), may submit such requests. Modification of the information sharing rules is a part of Treasury’s continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

**DATES:** *Effective Date:* February 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949-2732 and select Option 2.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### **A. Statutory Provisions**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT ACT”), Public Law 107-56 (“the Act”). Title III of the Act amends the anti-money laundering provisions of the BSA, codified at 12 U.S.C. 1829b and 1951–1959 and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (“the Secretary”) to administer the BSA has been delegated to the Director of FinCEN.

Of the Act’s many goals, the facilitation of information sharing among governmental entities and financial institutions for the purpose of combating terrorism and money laundering is of paramount importance. Section 314 of the Act furthers this goal by providing for the sharing of information between the government and financial institutions, and among financial institutions themselves. As with many other provisions of the Act, Congress has charged Treasury with promulgating regulations to implement these information-sharing provisions.

Subsection 314(a) of the Act states in part that:

[t]he Secretary shall \* \* \* adopt regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, with the specific purpose of encouraging regulatory authorities and law enforcement

authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.

##### **B. Overview of the Current Regulatory Provisions Regarding the 314(a) Program**

On September 26, 2002, FinCEN published a final rule implementing the authority contained in section 314(a) of the Act.<sup>1</sup> That rule (“the 314(a) rule”) allows FinCEN to require financial institutions to search their records to determine whether they have maintained an account or conducted a transaction with a person that a Federal law enforcement agency has certified is suspected based on credible evidence of engaging in terrorist activity or money laundering.<sup>2</sup> Before processing a request from a Federal law enforcement agency, FinCEN also requires the requesting agency to certify that, in the case of money laundering, the matter is significant, and that the requesting agency has been unable to locate the information sought through traditional methods of investigation and analysis before attempting to use this authority (“the 314(a) program”).

Since its inception, the 314(a) program has yielded significant investigative benefits to Federal law enforcement users in terrorist financing and major money laundering cases. Feedback from the requesters and illustrations from sample case studies consistently demonstrate how useful the program is in enhancing the scope and expanding the universe of investigations. In view of the proven success of the 314(a) program, FinCEN is broadening access to the program as outlined in the following paragraphs.

##### **C. Objectives of Changes**

###### **1. Allowing Certain Foreign Law Enforcement Agencies To Initiate 314(a) Queries**

In order to satisfy the United States’ treaty obligation with certain foreign governments, FinCEN is extending the use of the 314(a) program to include foreign law enforcement agencies. On June 25, 2003, the Agreement on Mutual Legal Assistance between the United States and the European Union (“EU”) (hereinafter, the “U.S.–EU MLAT”) was signed. In 2006, the U.S.–EU MLAT, along with twenty-five bilateral instruments, were submitted to the U.S. Senate for its advice and consent for

<sup>1</sup> Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity, 67 FR 60,579 (Sept. 26, 2002).

<sup>2</sup> 31 CFR 103.100.