

Proposed Rule Summary

Prepared by the NASCUS Regulatory Affairs Department
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NCUA

Part 707 Truth in Savings Act Disclosures

NCUA is proposing to amend its Truth in Savings Act rule, Part 707, to align it with the Federal Reserve Board's Regulation DD. The Truth in Savings Act (TISA) requires NCUA to promulgate similar regulations to the Federal Reserve Board (FRB) TISA rules.

NCUA's TISA rules apply to all credit unions, both federally and privately insured.

Rule at a Glance:

- The proposed rule would amend the provisions and provide guidance on the electronic delivery of disclosures.
- The proposed rule would require all credit unions to disclose aggregate overdraft fees on periodic statements.
- The proposed rule also addresses balance disclosures credit unions provide to members through automated systems.

Comments due:

Comments are due to the NCUA May 26, 2009.

The complete proposed rule may be viewed here:

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/PR-707web.pdf

Background

To comply with the TISA, the FRB issued rules in 2007 and 2008 addressing electronic disclosures and overdraft protection. NCUA is issuing this proposed rule which is substantially similar to the FRB's final rules, as required by TISA. Under the E-Sign Act, member disclosures, which are required by other laws or regulations to be provided or made available in writing, may be provided or made available in electronic form if a member affirmatively consents after receiving disclosures informing the member of: (1) the right to receive the required information in writing; (2) the consent necessary to receive electronic notices; (3) procedures to withdraw consent; (4) how to receive a paper copy of an electronic record and any fees; and, (5) the equipment needed to receive e-notices. In its 2007 rule, the FRB clarified when electronic disclosure may be made without prior consumer consent.

With regard to overdraft protection program disclosures, under a May 2005 final rule, all depository institutions were required to specify in their account disclosures the categories of transactions for which an overdraft fee may be imposed and institutions that promote the payment of overdrafts in an advertisement were required to include in the advertisements certain information about the costs associated with the service and the circumstances under which the credit union would not pay an overdraft. Depository institutions were also required to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid.

In December 2008, the FRB adopted a final rule expanded the requirement to disclose overdraft fees on periodic statements to apply to all depository institutions, and not just those that promote the payment of overdrafts. The final rule also includes format requirements to help make the aggregate fee disclosures more effective and noticeable to consumers and requires account balances disclosed to consumers by an automated system such as an ATM, website, or telephone response system, to exclude additional amounts institutions may provide where there are insufficient funds in an account.

NCUA's proposals are intended to bring credit union regulation in line with the FRB rules.

Rule Summary

Electronic Disclosures

The proposed rule would revise §707.3(a) to clarify that credit unions may provide disclosures to members or potential members in electronic form, subject to compliance with the consent and other applicable provisions of the E-Sign Act. The proposal also clarifies 3 circumstances when electronic disclosures would not have to comply with the E-Sign Act consent provisions:

- When credit unions provide disclosures to members or potential members both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations; and
- When credit unions provide the disclosures required by §§707.4(a)(2) (disclosures provided upon request) and 707.8 (advertising) in electronic form, under the circumstances in those sections.

Section 707.4 Account Disclosures, would be amended to clarify that credit unions opening accounts by electronic communication, for example, on the internet, may not delay providing disclosures under §707.4(a)(1). Section 707.4(a)(1) provides that account-opening disclosures may be mailed or delivered within ten business days in circumstances where a member is not present when they open an account. The rationale underlying the ten-day grace period is credit unions cannot provide written disclosures immediately when, for example, an account is opened by telephone. However, the difficulties in providing disclosures for accounts opened by mail or telephone do not exist for requests to open accounts received by electronic communication using visual text; disclosures can be provided at the same time. Thus, the proposed rule would amend paragraph (ii) to §707.4(a)(1) and require disclosures must be provided before accounts are opened using electronic communication.

Section 707.4(a)(2)(i) provides that, if a member or potential member is not present at the credit union when a request for account disclosures is made, the credit union must mail or deliver the disclosures within a reasonable time after the credit union receives the request. Under the proposal, to provide the requested disclosures electronically, the credit union must send the disclosures to the member or potential member's e-mail address, or send a notice alerting the member or potential member to the location of the disclosures, such as on the credit union's internet website.

Under the current Section 707.8 Advertising, the proposed rule would add a new comment 8(a)–11 to clarify that rules regarding advertising disclosures provided in electronic form would also apply to the disclosures described in §707.11(b), which permit credit unions to state a rate of return in addition to an annual percentage yield (APY), as long as the rate is stated in conjunction with, but not more conspicuously than, the APY. New comments would also clarify that certain exemptions from disclosure requirements for advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards would not apply to advertisements using electronic communication, such as internet advertisements.

The proposed rule would delete §707.10 that addresses the general requirements for electronic communications. With the advent of the E-Sign Act, NCUA believes Part 707.10 is no longer necessary or appropriate.

Overdraft Protection Disclosures

Currently, §707.11(a) requires credit unions that promote the payment of overdrafts in an advertisement to provide on periodic statements the aggregate dollar amount totals for overdraft fees and, for returned item fees, the aggregate totals for both the statement period and the calendar year-to-date.

To inform members about the fees charged for using discretionary overdraft services and to help them better understand the costs associated with their accounts, this proposed rule would expand §707.11(a) to require all credit unions, regardless of whether they promote the payment of overdrafts, to disclose the aggregate fee information for the statement period and calendar year-to-date. The rule would also:

- add format requirements to help make the aggregate fee disclosures more effective and noticeable to members;
- delete examples of communications that would not trigger the aggregate fee disclosure;
- clarify that the aggregate fee total does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged for Reg Z service

The complete proposed rule may be viewed here:

http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/PR-707web.pdf