



February 16, 2021

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

*Submitted electronically
to Regulations.gov*

RE: RIN 3133- AF20; Overdraft Policy

Dear Ms. Conyers-Ausbrooks,

The Dakota Credit Union Association (DakCU), which represents state and federally chartered credit unions in the states of North Dakota and South Dakota, appreciates the opportunity to provide comment to the National Credit Union Administration (NCUA) regarding its proposed rulemaking concerning overdraft policy.

Currently, 12 CFR 701.21(c)(3) sets forth the policy a Federal Credit Union (FCU) must adopt with regard to overdrafts. Specifically, “the policy must: set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; establish a time limit not to exceed forty-five calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; limit the dollar amount of overdrafts the credit union will honor per member; and establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.”

The NCUA is proposing to revise the 45 day time limit that the FCU overdraft policy mandates. As noted in the proposed rule, “the Board believes that this change would help ensure that FCUs have the additional flexibility necessary to provide relief to their members in a manner consistent with the NCUA’s responsibility to maintain the safety and soundness of the credit union system.” *86 FR 3877 (January 15, 2021)*. DakCU agrees with and appreciates the NCUA in identifying the need to remove this unnecessarily prescriptive time limit.

The 45 day time limit became effective July 1, 2000. The NCUA adopted the 45 day threshold, up from the proposed ten day limit, for “safety and soundness reasons.” *65 FR 15225 (March 22, 2000)*. At the time, the NCUA noted that 45 days, “should be sufficient time for any prudent individual to cover the overdraft or apply for a loan.” *Id.* It appears this prescriptive threshold was not based on collectability or other collection standards, merely what a prudent person should be able to do in a 2000 world. However, as the COVID-19 pandemic is demonstrating, the actions of a prudent person can be impacted by events beyond their control. DakCU believes FCUs can still



operate an overdraft program without a prescriptive regulatorily mandated time limit while adhering to safety and soundness principles.

As proposed, § 701.21(c)(3) would be revised to provide that a FCU’s written overdraft policy must, “...set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union’s ability to absorb losses; establish a specific time limit that is reasonable and universally applicable for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; limit the dollar amount of overdrafts the credit union will honor per member; and establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts...” *86 FR 3879 (January 15, 2021)*.

DakCU fully supports the proposed revisions to 12 CFR 701.21(c)(3) regarding overdraft policy requirements. Allowing a FCU to “establish a specific time limit that is reasonable and universally applicable for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft” will provide FCUs the needed flexibility in meeting their members’ needs.

The proposed revisions would also direct that, “consistent with U.S. GAAP, overdraft balances should generally be charged off when considered uncollectible. In addition, overdraft services covered by Regulation E, 12 CFR part 1005, are subject to applicable requirements set forth in that regulation.” *86 FR 3879 (January 15, 2021)*. DakCU is supportive of this language as it would be consistent with existing guidance and current regulations applicable to overdraft practice.

DakCU agrees with NCUA’s concerns that “the requirement that an FCU’s overdraft policy establish a time limit not to exceed 45 calendar days for a member to cure their overdraft is unnecessarily prescriptive during normal times, but has been and will continue to be especially detrimental as FCUs and their members face challenges imposed by COVID–19.” *86 FR 3878 (January 15, 2021)*. DakCU believes these changes are necessary for FCUs to better serve their members and communities.

Thank you for this opportunity to share our comments.

Respectfully,

A handwritten signature in black ink that reads "Jeffrey Olson". The signature is written in a cursive, flowing style.

Jeffrey Olson
CEO/President

A handwritten signature in black ink that reads "Amy Kleinschmit". The signature is written in a cursive, flowing style.

Amy Kleinschmit
Chief Compliance Officer