NAVY FEDERAL CREDIT UNION

Office of the President

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December 16, 2005

Ms. Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Docket No. R-1217

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments in response to the Federal Reserve Board's second Advance Notice of Proposed Rulemaking (ANPR) on the open-end credit rules of Regulation Z. Navy Federal is the nation's largest natural person credit union with $25 billion in assets and 2.6 million members.

Navy Federal is concerned about certain aspects of this proposal. Our comments on selected questions from the second ANPR follow:

> *Q-59. Are there certain types of transactions or accounts for which minimum payment disclosures are not appropriate? For example, should the Board consider a complete exemption from the minimum payment disclosures for open-end accounts or extensions of credit under an open-end plan if there is a fixed repayment period, such as with certain types of home equity lines of credit (HELOCs). For these types of products, should the Board provide an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still require a standardized warning indicating that making only the minimum payment will increase the interest the consumer pays?*

Navy Federal believes that HELOC's should not have a minimum payment disclosure. HELOC's have a fixed repayment period with the maturity date on the note. We are not convinced that multiple disclosures in this type of transaction are beneficial to our members.

> *Q-60. Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?*

We believe that a minimum payment disclosure should be omitted where there is a fixed repayment period, such as a HELOC. Otherwise, a required HELOC minimum payment

disclosure will confuse our members. In addition, certain account holders whose minimum payments appreciably cover principal (3% payment and 2% principal) should not be included.

Q-61. Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed payment periods and payments amounts, such as loans to finance the purchase of motor vehicles or other "big ticket items." How should the minimum payment disclosures be implemented for such credit plans?

In these instances, Navy Federal believes a warning is acceptable on each statement about the effects of only making the minimum payment.

Q-62. The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. However, the example of a 5 percent minimum payment must be disclosed by creditors that are subject to FTC enforcement. To eliminate any confusion that may be created by a consumer reading his or her statement, we believe that the best option is to use the actual APR that is currently in effect by the issuer/creditor for that particular consumer. The actual APR at Navy Federal fluctuates from 5.9 percent to 15.9 percent. We strongly encourage the Board to allow the financial institutions to use their actual APR in the hypothetical example to be printed on monthly periodic statements. This way a consumer will be able to apply the mandatory minimum payment disclosure to his or her particular situation.

Q63. Should the Board consider revising the account balance, APR, or "typical" minimum payment percentage used in examples for open-end accounts other than credit card accounts, such as HELOCs and other types of credit lines? If revisions were made, what account balance, APR, and "typical" minimum payment percentage should be used?

Navy Federal does not believe this is necessary for HELOC's. HELOC's have a specified time for repayment, so no additional disclosures are necessary.

Q-64. Should the hypothetical example refer to the minimum payment percentage as "typical," and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

We believe that it should be stated within the hypothetical example that the borrower's loan terms may differ from what is shown and that the borrower should check with his or her credit provider to obtain the actual repayment terms. Also, we think using the consumer's actual APR would further reduce confusion.

Q-65. In developing the formulas used to estimate repayment periods, should the Board use the three assumptions stated concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why?

The issuer/creditor should be able to select the method of calculation. The Board should develop an application where each issuer/creditor can input its own criteria. There are too many differences across the industry that may confuse consumers. Further, additional disclosures do not always provide consumers with a better understanding of credit terms, and using assumptions within the disclosures will lead the consumer to be misinformed.

We ask the Board to actively engage in consumer focus groups and embrace consumer testing to supplement the request for comment process. We concur with the remarks made by Ms. Julie Williams, Acting Director of the Office of the Comptroller of the Currency, before The Exchequer Club on January 12, 2005 that "just about every major participant in the processes of developing, designing, implementing, overseeing and evaluating consumer disclosures for financial products and services needs to rethink their approach to those tasks." Ms. Williams elaborated on her concerns, saying, ". . . [I]t is important that disclosures *work* to effectively inform consumers of what they want to know. I worry, however, that this approach is on the verge of breaking down, and if it's not re-focused, more prescriptive legislation and regulation could result. And it's reached that point not because consumers are getting too little information, but because they are getting *too much* information that's not what they're really after; and because the volume of information presented may not be *informing* consumers, but rather *obscuring* what's most helpful to their understanding of financial choices." We believe she is on target when she proclaimed, "There's a critical element that's been missing from our consumer disclosure rulemaking processes – testing *how consumers interpret* particular disclosures and how to make disclosures *usable* to them."

Q-66. Should the Board select "typical" minimum payment formulas for various types of accounts? If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

We do not believe that a "typical" formula exists. This is why we think that each issuer/creditor should be able to use information from its system. No "typical" formula created

by the Board would be accurate across the industry. Further, we believe the overall approach for the Board's review and amendments to TILA should reflect an emphasis on consumer interpretations and usability.

Q-68. Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

We prefer disclosures based on actual data rather than "typical" data. We believe that this will diminish confusion. Using actual numbers applicable to our members would justify the costs associated with compliance.

Q-69. Should the Board use a formula for calculating repayment periods that assumes a "typical" minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

There are different formulas for different situations. The Board should provide two typical formulas, one for loans without negative amortization and one for loans with negative amortization. Also, disclosures should clearly state whether a loan would result in negative amortization and the possible ramifications, such as an extended loan term, higher monthly payments, and a prepayment penalty, etc.

Q-70. What portion of credit card accounts accrue finance charges at more than one periodic rate? Are balances typically distributed in a particular manner? For example, is a greater portion of the balance accruing finance charges at the higher or lower rate?

Multiple interest rates are common. Therefore, the issuer/creditor needs to have the option of disclosure using either a blended actual rate, the highest applicable rate, or the Board approved generic language. Interest charged in these instances is typically based on the manner in which the balance was acquired (i.e., special rates for a specific time period for balance transfers, installment rates, etc. with a specific expiration). The disclosure needs to include how payments are applied (lowest rate, highest rate, promotional rate, etc.).

Q-71. The statute's hypothetical examples assume that a single APR applies to a single balance. Would it be appropriate to calculate an estimated repayment period using a single APR? If so, which APR for the account should be used in calculating the estimate?

We believe the actual APR should be used for the hypothetical example.

Q-72. Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; are there other ways to account for multiple APRs in estimating the repayment period?

Alternatively, we suggest the Board create a range based on the lowest APR and the highest APR because multiple interest rates are common.

Q-73. One approach to considering multiple APRs could be to require creditors to disclose on the periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

This would not be considered an additional cost for Navy Federal. We disclose this today on our credit card statements.

Q-74. As an alternative to disclosing more complete APR information on the periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

We believe that it should be optional for the issuer/creditor.

Q-75. If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments are always allocated first to the balance carrying the lowest APR?

When a member contacts Navy Federal concerning his or her account, we clearly disclose how payments are applied. If one of our members contacts the Board regarding his or her payment information, he or she should be able to obtain the same information. Otherwise, the information may conflict and lead to confusion.

Q-76. What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

Navy Federal believes in consistency. We think it is necessary to disclose the items suggested above with the repayment calculation on both the periodic statement and over the phone.

Q-77. What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an "actual" repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

We believe that there should be a tolerance for error if the repayment period is based on actual numbers from the issuer/creditor. There should be no tolerance, if the repayment period is based upon the Board's numbers.

Q-78. Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

Again, we believe that there should not be a tolerance, if the creditor uses the Board's numbers. We also think that there should be at least a one month tolerance, if the creditor uses actual numbers.

Q-79. Is information about the "actual number of months" to repay readily available to creditors based on current accounting systems, or would new systems have to be developed? What would be the costs of developing new systems to provide the "actual number of months" to repay?

There would be substantial costs for development because this is not currently available to us. However, providing actual numbers to our members that enable them to read information applicable to their situations would justify the costs associated with developing such systems.

Q-82. Are there other alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. What difficulties would creditors have in disclosing the repayment period on the periodic statement?

Navy Federal recommends a web-based tool that the consumer may access. This way, a consumer may enter the information from his or her statement. A phone is not always accessible and uses valuable resources. We believe that toll-free education is not practical, nor cost effective. It will likely generate additional questions in the consumer's mind that can't readily be answered by phone. A more practical alterative is to provide web-based access that would allow a consumer to get specific information and be more cost effective.

Q-83. What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

We believe current guidance is sufficient. We do not think further changes are necessary.

Q-85. The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures. The Board is directed to adopt standards that can be implemented in a manner that results in disclosures that are "reasonably understandable and designed to call attention to the nature and significance of the information." What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

We agree that any expiration date should be in close proximity to the introductory verbiage.

We think the only requirements for font is that it should be bolded for introductory rates. Further, language for any introductory rates with an expiration date should be on the front of the periodic statement.

Q-87. The expiration date and the go-to APR must be closely proximate to the "first mention" of the temporary introductory APR. The introductory APR might, however, appear several times on the first page of a solicitation letter. What standards should the Board use to identify one APR in particular as the "first mention" (such as the APR using the largest font size, or the one located highest on the page)?

We believe that the "first mention" should be located highest on the first page. We do not believe lenders should be allowed to place the "first mention" on the outside of an envelope.

Q-88. Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the "first mention" of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

Navy Federal believes that the most important factor is to disclose the rate that will apply at the expiration of the introductory APR. Therefore, each document that mentions the introductory APR would suffice.

Q-90. What guidance should the Board provide on how to disclose the "go-to" APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating that the rate will be determined based on creditworthiness?

We believe a range of rates indicating that the actual rate shall be determined based on the individual's creditworthiness would be appropriate.

Q-91. The Bankruptcy Act requires a general description of the circumstances that may result in revocation of the temporary rate must be disclosed "in a prominent manner" on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors' disclosures comply with the Bankruptcy Act amendments? Is additional guidance needed on what constitutes a "general description" of the circumstances that may result in revocation of the temporary APR?

We think that the circumstances disclosed should include the following: a cancellation, change in circumstances that affect creditworthiness, change of credit bureau score, or a default in payment.

Q-92. The introductory rate disclosures required by the Bankruptcy Act apply to applications and solicitations whether sent by direct mail or provided electronically. To what extent should the guidance for applications and solicitations provided by direct mail differ from the guidance for those provided electronically?

We believe that there should be no difference.

Q-93. Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

We do not think that they should be treated differently.

Q-94. What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

We think it should be the same information as provided on a printed statement.

Q-96. What guidance should the Board provide regarding what it means for the disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts?" Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

We believe a 30-day standard is appropriate.

Q-97. Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be charged?"

There may be a grace period for credit cards.

Q-99. Currently, under Regulation Z, creditors may establish reasonable cut-off hours; if the creditor receives a payment after that time (such as 2 pm), then the creditor is not required to credit the payment as of that date. If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

We believe the cut-off hour should be disclosed in close proximity to the due date.

Q-106. What issues should the Board consider in providing guidance on when an account "expires?" For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

Navy Federal believes that the expiration date on the credit card is the expiration date of the account.

Navy Federal appreciates the opportunity to provide comments in response to the Federal Reserve Board's second ANPR on the open-end credit rules of Regulation Z and the Bankruptcy Act's amendments to TILA.

Sincerely,

Cutler Dawson

Cutler Dawson
President/CEO

CD/dw