American Airlines
Federal Credit Union

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VIA E-MAIL

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

RE: Docket No. R-1364 – Interim Final Rule on Implementation of the CARD Act

Dear Ms. Johnson:

I am writing on behalf of American Airlines Federal Credit Union (AA Credit Union). I am the Vice President & General Counsel for AA Credit Union. AA Credit Union is a federally chartered credit union with over $5 billion in assets. It is the ninth largest credit union in the United States and has over 216,000 members located throughout the United States including Puerto Rico. We have been in existence for about 74 years.

Additionally, I also previously served a three year term on the Federal Reserve Board of Governor's (Board) Consumer Advisory Council (CAC) from 2005 through 2007. During my term on the CAC, the CAC actively discussed the protection of credit cardholders before the Board during at least two or three meetings. I am therefore familiar with the credit card abuses suffered by consumers and the consumer protections that the Board wanted to put in place.

I am writing to comment on the Board's interim final rule amending Regulation Z, the Truth in Lending Act (TILA). Specifically, I am writing to express our concern regarding the 21 day requirement which was included in Section 106 of the *Credit Card Accountability, Responsibility and Disclosure Act of 2009* (CARD Act). Section 106 amends TILA to prohibit a credit union from charging a late fee or considering a payment late for any purpose unless the periodic statement is sent at least 21 days in advance before a payment due date. For our credit cards, complying with this section has not been an issue as periodic statements are mailed separately. However, Section 106 has proved to be a tremendous compliance burden for our other open end consumer loans.

AA Credit Union supports the intent of the CARD Act to prevent predatory and abusive practices for credit cards. However, to include all open end lending and not just credit cards in Section 106 of the CARD Act was overreaching in that it is trying to cure a problem that does not exist. The purpose of Section 106 as it pertains to credit card holders was to give those cardholders enough time to receive and review their periodic statement so that a timely payment could be made. However, for credit unions who give other types of consumer open end loans, Section 106 is not a helpful tool to our members and in fact, it limits their choices for the reasons explained below.

Additionally, we also have concerns about Section 201 of the CARD Act which requires a "minimum payment warning" and actual repayment information on a periodic statement. Again, our concerns are not for credit card loans, but applying this section to our other open end consumer loans. Section 201 is scheduled to go into effect on February 22, 2010.

Background

Like many other credit unions, AA Credit Union gives its members consumer open end loans using a multi-feature plan to be convenient and efficient to our members. If a member wants a consumer loan with us other than a credit card, a member signs a master open end plan agreement. Under this master plan, the member can then take out different types of open end loans with us which are called sub-accounts. For example, open end loans given could include a line of credit, a car loan or a personal loan. Our consumer loans are simple interest loans. In fact, all of our consumer loans are all done on an open end basis. Mortgages and fixed term home equity loans are not included in this category and are considered closed end loans.

For convenience and efficiency, we send one monthly statement to our members. Therefore, if a member has a savings account, a checking account, a car loan and a line of credit with us, we provide one monthly statement consolidating deposit and consumer loan accounts on that statement. Our members appreciate the fact that we provide all of the information on one statement versus receiving many statements from us. A consolidated periodic statement is cost efficient and convenient to our members. We are able to pass the cost efficiencies of a single statement along to our members in the form of higher dividends on their share accounts and/or lower loan rates.

Because of the number of members we have and so as to not overwhelm our call center, AA Credit Union sends out five cycles of statements each month. Because we charge simple interest and do not have a grace period on our open end consumer loans that are not a credit card, we are able to assign a statement cycle to a member based upon the last digit in their account number and still be in compliance with the current Regulation Z. Currently, the way statement cycles are assigned to our members have nothing to do with a payment due date.

Additionally, because many of our members are offered payroll deduction or direct deposit through their employer, or choose to pay via ACH, when our members take out a consumer open end loan with us, they want to be able to select the timing and frequency of their payment to us. This helps our members tremendously for their budgeting purposes as it allows them to spread out their loan payments throughout the month on dates the money is available from their paycheck. This minimizes late payments and therefore late fees. For our members who pay by payroll deduction or direct deposit, they are paid weekly, bi-weekly, semi-monthly or monthly depending upon their job type. Our members then choose to repay their AA Credit Union loan on the frequency that they are paid. So if we have a member who receives a weekly paycheck, they will usually request that the monthly payment be spread out over the four to five weeks in the month. In order to comply with the periodic statement being sent 21 days in advance requirement, in situations where members choose to pay more frequently than monthly, a monthly statement would have to disclose multiple due dates for the coming month.

AA Credit Union lets its members pick any date of the month to be their payment due date. We believe this is the most consumer friendly option. This also helps our members tremendously for their budgeting purposes. If a member has an open end car loan and a line of credit with us, a member could request that they pay the car loan on the 1st of the month and the line of credit on the 15th of the month. Because we send out a consolidated statement, the statements cannot be sent out 21 days in advance of the member's payment due dates in this example. Note that the issue of when a statement is sent to our members has not been an issue for AA Credit Union or our members, because it is <u>our</u> members who are selecting their payment due dates and the frequency of their payments to us.

<u>Short Term Solution as of August 20th:</u>

Most of the CARD Act provisions only apply to credit cards. However, Section 106 was made to apply to all "open end consumer credit plans." It became effective on August 20. Section 106 mandates:

> "A creditor may not treat a payment on an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement ... is mailed or delivered to the consumer not later than 21 days before the payment due date."

As previously mentioned, AA Credit Union was able to comply with this provision for our credit cards because the periodic statement for each credit card is mailed separately from our other open end loans. However, for all of our other open end loans including a home equity line of credit, this requirement has proved to be a very difficult operational task.

To address concerns about the very short compliance period, the interim final rule allowed lenders to meet compliance obligations with Section 106 "for a short period of time" by:

- Including language on or with the periodic statement that payments are not due until at least 21 days after the statement is delivered regardless of the due date that is reflected,

- Not treating a payment as late for any purpose which includes not reporting the consumer as delinquent to a credit reporting agency or

- Not assessing a late fee or any other fee based on the consumer's failure to make a payment

<u>Short Term Operational Challenges:</u>

Due to the very short compliance date, AA Credit Union could not guarantee that periodic statements would be mailed at least 21 days before a payment due date. Therefore, to comply with the interim final rule, we took the following measures on each of the short term solutions listed above. As you will see below, in order for AA Credit Union to comply with the short term fix, there have been some unintended consequences that are affecting our members.

<u>Not reporting members' payment history to credit bureaus even if payment was received 21 days after the periodic statement was mailed:</u>

- We stopped reporting to credit bureaus on <u>all</u> loans which included closed end mortgage loans and closed end home equity loans. We had to stop reporting on all loans because we could not guarantee that if a member had both a closed end mortgage loan and an open end car loan with us that we would only report on the closed end mortgage. We realize that this is a disservice to our mortgage loan borrower and home equity closed end borrower who would like to build up their credit history and want us to report that they are current in their payments to us.

- For open end loans other than a credit card, we are also not reporting anything to credit bureaus. Even if our open end borrowers make timely payment within 21 days of when the statement is mailed, we still are not able to report this loan to credit bureaus. We cannot report these borrowers as current because our core processing system was not programmed to determine when a statement is mailed and make a corresponding association with a member's open end loan payment due date. To make these types of changes requires programming and testing which we are still in the midst of doing.

- Additionally, we also cannot report a member who is late in making his or her open end loan payments to us other than a credit card, even if we know that the payment was received 21 days after the statement was mailed. Reporting to credit bureaus is usually done electronically. In order to report "manually," the employee receiving the loan payment check, would have to review a member's account with us, find the date or statement cycle that a periodic statement is mailed out, add 21 days to the statement cycle date and then determine if the loan payment was received within 21 days of the mailing of the statement. This is a very cumbersome and time consuming process fraught with the possibility of errors. So, in the interim, no reporting to credit bureaus is being done. This actually removes the incentive for a member to make timely payments.

Stop charging or collecting late fees:

- Loss of income – Because we are still working on our long term solution to comply with Section 106 of the CARD Act, we are foregoing the collection of late fees. However, another issue that has arisen is that once we do have our "long term" fix, we are unsure if we will be able to collect late fees that were owed to us prior to August 20^{th} due to system issues.

- Additionally, we are currently unable to collect late fees if a member does make a payment 21 days after the periodic statement is mailed. We are unable to collect these late fees because the department that receives the payments would have to "manually" calculate the late fee. The late fee for consumer loans is 5% of the payment owed and not a specific dollar amount. (This fee structure is very beneficial to members with small loans since a fixed price late fee can often be a very high percentage of the balance on a small loan.) As previously mentioned, in order to charge the late fee, staff would need to review a member's account to determine when the member's statement was mailed, add 21 days to that date and then "manually" charge the late fee. This is a cumbersome process when staff has always relied on our core processing system to charge a late fee. To manually calculate a late fee is fraught with errors and we would need to have a quality review process in place which again would be another "manual" process.

  Because we have a strong focus on education and help make sure that we are putting members in loans that they can afford, we are fortunate that we have very few members who do pay late. However, significant resources are expended contacting and working with our members who are late. The late fee income we collect helps offset some of those expenses and ensures that the members who do pay on time are not fully burdened with the expenses associated with those members who do not pay on time. Therefore, during this period of time when we are not collecting late fees, we do not feel that we are being fair to our members who continue to meet their obligations.

Long Term Solution:

In order to ensure that we are sending a periodic statement at least 21 days in advance of a payment due date for our open end loans other than a credit card, AA Credit Union is in the process of moving payment due dates to correspond with our members' statement cycles. We have about ten departments that have been meeting at least weekly to determine step by step solutions of changing payment due dates for about 100,000 loans.

Here are some of the challenges that we are facing to comply with Section 106 of the CARD Act:

- Members with loans - For members who currently have loans with us, we will no longer be able to allow a member to change a payment due date to a date that is convenient for them. Instead, we are forced to dictate that the payment due date must coincide with a statement cycle date to ensure that a periodic statement is sent at least 21 days before a payment due date. If they have multiple open end loans with us, every one of their open end loans will have the same due date. We will encourage members to continue paying on their original due date for their convenience, but our system will not be able to maintain this "convenience due date" and it will not be disclosed on their statements. The responsibility will shift back to the member.

For those members who are on payroll deduction, direct deposit or automated transfer, AA Credit Union will need to convert due dates and payment amounts (weekly, bi-weekly and semi-monthly payment frequencies) to monthly if our member is paying that loan on a more frequent basis other than monthly. Due dates will have to be advanced from approximately 0 to 56 days from the current due date to ensure they can be "partially paid ahead" to avoid deficiencies and align with the various statement cycles.

Members will lose their ability to space their payments out over the month across their loans.

- New Members – For members that take out an open end loan with us other than a credit card, we will assign a statement cycle based upon the last digit of their account number. To ensure that a member receives their periodic statement 21 days in advance of a payment due date, we will be giving members an additional 3 days for mailing or giving them a total of at least 24 days before a payment would be due. Based upon the time of the month of when the loan is taken out, it is possible that the first payment due date will not occur until over 50 days from when the loan is disbursed. This increases their interest paid.

- Training and communication to lending staff and member service representatives – Today, much of the loan system programming was built around automatically populating certain key fields related to loan terms. This is intended to make the process quick for members and to minimize errors. Implementing our long term solution will negate several system efficiencies and require many changes to our internal processes. This means that several automated processes will become manual and subject to human errors. After loans are funded, a quality control check will be created to monitor reasonableness of loan due dates. All these changes will need to be communicated to staff and we must allow time for training before the long term solution can be implemented. All these extra steps only adds to our cost in serving our members.

- Training and communication to members – We expect that once our long term solution is in effect, it will generate many telephone calls from our members. As with any change that impacts a large segment of our members, we are forced to phase in the changes so that we can handle the questions. They will want to know why they cannot pick their payment due date, or at least disclose their "convenience due date," why we cannot honor their request to change their statement cycle, what is their benefit to the changes, etc.

For all of the reasons set forth above, we respectfully request the Board to limit Section 106 to credit cards only, because:

1. This section limits our members choices;
2. Is very expensive to limit;
3. It cures an issue that does not exist with credit unions;
4. It takes away a credit union's ability to be efficient and convenient to its members.

Section 201

Section 201 of the CARD Act amends Section 127(b)(11) of TILA which requires "minimum payment warnings" on periodic statements. We are aware that Congress had included similar language in the Bankruptcy Act of 2005. However, Congress limited that provision to credit cards only and did not apply it t to all open end loans.

Additionally, Section 201 requires that repayment information also be given on a periodic statement. Periodic statements would need to include:

- The number of months that it would take to pay the entire loan if the member makes only the minimum payment each month and conducts no further transactions.
- The total cost to the member, including interest and principal payments, of paying off the balance on the account if only minimum payments were made.
- The monthly payment amount that the member would need to make each month to repay the balance on the account in 36 months.
- The total cost to the member of paying the balance off over 36 months.

While the information above can be very helpful to members with a revolving loan, such as a line of credit, it would not be helpful to a member who has an open end car loan. The term and payment amount is set at the beginning of the loan. Our car loans are simple interest loans where a fixed payment(s) is required every month, unlike a credit card. There is no "minimum payment" on an open end car loan. The member either makes a complete payment, a partial payment or no payment.

In fact, trying to give the information required by Section 201 would be very confusing to our members. Some of our open end loans have a term shorter than 36 months. Disclosing the payment amount that the member would need to make each month to repay the balance on the account in 36 months, or the total cost, would make no sense and misrepresent the facts as the member might conclude that their payment has been reduced. If they paid based on the "36 month" information, they would pay less than what is owed and may incur late fees. Likewise, communicating the total cost to pay off the balance over 36 months would be confusing as it is not relevant to the loan.

We strongly request that you limit Section 201 to credit cards only for the reasons set forth above.

Thank you for the opportunity to comment on the interim final rule. We appreciate the opportunity to comment on this matter. If you have any questions, please call me at 817-931-7004.

Sincerely,

Faith L. Anderson

Faith L. Anderson
Vice President & General Counsel

cc: NCUA
CUNA
NAFCU
TCUL