Securian Financial Group, Inc.
400 Robert Street North
St. Paul, MN 55101-2098
www.securian.com
651.665.3500

SECURIAN™

September 21, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Interim Final Rule – Periodic Statements & Change-in-Terms
Docket No. R-1364 (Regulation Z/Credit CARD Act)

Dear Ms. Johnson:

This letter is submitted in response to the Interim Final Rule implementing the provisions of the Credit CARD Act that became effective on August 20, 2009. These provisions require, among other things, that a periodic statement be sent on all open-end loans at least 21 days before the payment due date. If creditors do not meet that requirement, they cannot treat the payment as late for any purpose.

Securian Financial Group is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements for our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms and deposit forms to hundreds of credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

Our comments address the issue of how to comply with the 21-day requirement when the borrower's payment frequency is more often than monthly, e.g., weekly or bi-weekly, which is not unusual in the case of open-end loans that do not involve credit cards. The Credit CARD Act and the Board's Final Interim Rule failed to anticipate this issue, and we now seek the Board's guidance. To solve this issue, we respectfully propose that one monthly payment due date be allowed to be set by the creditor, regardless of the frequency with which the consumer agrees to make payments. Alternatively, we respectfully request that the Board exempt all open-end loans other than credit cards from the scope of the Rule.

SENDING STATEMENTS WHEN THE PAYMENT FREQUENCY IS LESS THAN MONTHLY

Background

It is not uncommon for many non-credit-card loan types, such as Home Equity Lines of Credit (HELOCs) and subaccounts under a multi-featured open-end credit plan, to have payments scheduled more frequently than monthly. This is because many credit union members enjoy the convenience of making automated payments from their checking or savings accounts at designated dates. This usually coincides with the consumers' pay periods and may be weekly or bi-weekly. Such payment arrangements help consumers manage their finances and ensure that timely payments are made. Paying more often than monthly also reduces the amount of finance charges that consumers pay, because finance charges do not accrue for an entire month before a payment is made. And for bi-weekly payments, 26 payments are made in one year, which also helps the loan be paid off quicker than it would with a monthly payment schedule. These payment arrangements are possible for non-credit card loan types because these loan types usually have fully-amortizing payment schedules; additional loan advances are infrequent (at which time the amortization schedule is adjusted); and the payment amount is not based on a percentage of the outstanding balance.

We seek clarification of how creditors may comply with the 21-day requirement when the payment schedule is more frequent than monthly. This issue was not addressed in either the Credit CARD Act or the Board's Final Interim Rule. Providing statements more frequently than monthly is extremely expensive for creditors, and confusing to the consumer. Such a requirement increases the burden to creditors significantly, while providing no additional benefit to the consumer.

Creditors should be allowed to send monthly statements, regardless of payment frequency

We believe that monthly statements are sufficient to protect the consumer and, as such, creditors should not be required to provide statements more often. In order to facilitate such a rule, we suggest a distinction between "payment due date" and "payment date" or "automatic withdrawal date". The creditor would be required to mail the periodic statement 21 days prior to the "payment due date"; however, they could allow the consumer to choose "payment dates" throughout the month without triggering the 21-day requirement. In such a case, the monthly statement would reflect the Payment Due Date, while the consumer's authorization to debit the account or other payment documentation would disclose the payment dates or automatic withdrawal dates.

For example:

> The Payment Due Date is the 28th of the month, and the monthly loan amount is $400.00. In order to meet these payment terms, the consumer sets up automatic withdrawals from his checking account each week in $100 increments. e.g., the Payment Due Date is Friday, August 28th. Automatic withdrawals of $100 are made on each Friday, the 7th, 14th, 21st, and 28th. In this case, the creditor would be required to mail or deliver the periodic statement at least 21 days prior to the 28th. It would not be required to send weekly statements for the 7th, 14th, and 21st automatic payment dates.

In this scenario, we suggest that the creditor could not charge a late fee, for any of the payments, until August 28th. For example, if the consumer misses the August 7th payment date, the creditor cannot consider it late until the 29th (because the total monthly payment due of $400 was not made in full by the Payment Due Date of August 28th). The creditor would then assess the late fee for the August 7th payment on the 29th, which would be reflected on the next periodic (monthly) statement. On the other hand, if the consumer deposits additional funds to his account, or makes other payment arrangements for the August 7th payment to be made on August 12th, he would not be considered late because he made all payments for the full amount of $400 by the Payment Due Date of the 28th.

If these rules are followed, we do not believe the creditor should be required to send four periodic statements, for the following reasons:

1. It significantly increases the creditors' compliance burden while providing no measureable benefit to the consumer;
2. It would not foster Congress' intent of providing enough time for consumers to make timely payments;
3. It would effectively eliminate a creditor's ability to offer, and a consumer to choose, the convenience and benefits of automatic payments taken more frequently than monthly; and
4. Sending monthly statements regardless of payment frequency poses no threat that credit card issuers will circumvent the 21-Day Rule.

<u>1. Increased compliance burden with no benefit to the consumer</u>. Requiring periodic statements 21 days before each automatic payment date significantly increases the burden to creditors while providing no additional benefit to the consumer. This is because there is no independent or free-standing "billing cycle" between the automatic payment dates with which to correlate a periodic statement; each week is simply one component or sub-set of the monthly billing cycle. As such, the additional weekly statements would not provide any more information than a monthly statement would. If a transaction occurred during a particular week, that would be reflected in a monthly statement.

Additionally, the monthly payment amount would not change immediately upon a transaction being made and therefore a weekly statement would tell the consumer nothing, and there would be no way for a creditor to comply with the requirement to identify the transaction under Reg Z, 12 CFR 226.8. For instance, if the consumer in the example above takes a draw on his HELOC on Wednesday, August 12th, the payment scheduled on August 14th would not change. This is because it takes time to process the transaction and the corresponding change in payment, and creditors tend to make such changes in batch mode at set times; e.g., a creditor may tally the HELOC advances once at the end of the month for all consumers, then determine each consumer's new payment amount, prepare all change notices at the same time, and then send them to the borrowers all at once. As such, t would not be unusual for the consumer who took a HELOC draw on Wednesday, August 12th to not see his payment change until sometime in mid- to late-September. The statement sent in September (for the billing cycle in August), however, would reflect the transaction that occurred on the 12th. In this scenario, the new statement would be mailed at the beginning of the month with enough time to meet the 21-day requirement as to the new payment amount due on the 28th. Sending weekly statements would provide no new information to the consumer and could confuse the customer when he knows he took a draw on the 12th, but it is not reflected on the 14th's statement. It would, however, significantly increase the creditor's operational burden and regulatory and litigation risk because there is no way for the creditor to comply with the requirement to identify transactions given such a short, unreasonable timeframe to do so.

Additionally, if the weekly payments are deducted automatically from the consumer's checking account, the consumer enjoys several added protections that Congress and the Board did not take into account. First, Reg E protects the consumer in that a 10-day notice is required to make changes in the payments. Therefore a weekly statement in fact *could not* reflect the new payment amount under the Reg E rules and the creditor is faced with a conflict in the rules. At the same time, however, the consume is protected because the change in payment is noticed to the consumer under Reg E.

The nature of electronic payments also helps decrease the risk to the consumer that a payment would be missed, or the wrong payment amount made, thus resulting in a late fee being charged or the account otherwise being treated as late. Therefore, a 21-day advanced notice period is not necessary to effectuate the purpose of TILA or the 21-day rule. Presumably, Congress settled on a 21-day notice period in order to provide time for (1) the statement to travel via U.S. Mail; (2) the consumer to receive the statement, examine the statement, write a check, and mail the check; (3) the check to travel via U.S. Mail; and (4) the check to be processed by the creditor. In the case of electronic payments, however, the consumer does not need to do anything to ensure that payment is sent to the creditor. It is done automatically on the payment date through the creditor's processing systems. Thus, in such situations, a 21-day advance notice requirement is unnecessary for each of the four payment dates. The consumer is sufficiently protected if one statement is sent 21 days before the August 28th due date.

2. Congress' Intent. Requiring four periodic statements to be sent when payment frequencies are weekly does not foster Congress' intent. Congress's intent when passing the 21-day requirement was to provide consumers enough time to make payments to avoid incurring late charges and other negative consequences of the payment being treated as late. As noted above, the 21-day period is predicated on a process of mailing statements and checks via U.S. Mail, which takes time. However, automatic debiting of payments does not take time. As such, the 21-day timeframe is unnecessary. In the example above, the intent of Congress is satisfied if:

1. one periodic statement with a stated due date of August 28th is mailed or delivered 21 days before the 28th; and
2. weekly payments that are missed are not considered late until the 28th.

As such, there is no need to send four weekly statements, and creditors should not be required to do so.

3. Elimination of Recurring Automatic Payments. If creditors must send four periodic statements when the payment frequency is weekly, creditors will be forced to discontinue the automatic payment service to their consumers. This is because sending periodic statements that frequently will be overly burdensome operationally, will increase regulatory and litigation risk exponentially, and would simply be cost-prohibitive for all the reasons expressed above. Many creditors have already chosen to discontinue this valuable and customer-friendly service. As a result, consumers will be forced to make one monthly payment at one set due date, which could severely restrict their ability to manage their finances. This in turn will increase the occurrence of late payments, which negatively impacts the creditors' costs and the safety and soundness of their institutions, while damaging the consumers' credit standing. This is not beneficial to either creditors or consumers, or the economy generally, and such negative consequences could not possibly have been Congress' intent.

4. Sending monthly statements regardless of payment frequency poses no threat of circumvention of the 21-Day Rule by credit card issuers.
The Board should also allow for one monthly statement when multiple payment dates exist because such a rule does not pose a threat that credit card issuers would circumvent the 21-day rule by offering multiple payment dates. This is because payment frequencies more often than monthly do not occur with credit cards for a couple reasons. First, neither the consumer nor the card issuer knows the

payment amount for any given month/billing cycle. This is because the payment amount is based on a percentage of the outstanding balance, and that outstanding balance will fluctuate as the consumer uses the card and makes payments. Second, billing cycles are approximately 30 days because anything shorter would be operationally burdensome and cost prohibitive. As such, significant roadblocks and disincentives exist in the credit card industry to keep card issuers from arranging weekly or bi-weekly payment frequencies in order to circumvent the 21-day rule.

For all the reasons stated above, we respectfully request that creditors be allowed to send one monthly statement regardless of payment frequency.

THE BOARD'S AUTHORITY TO EXEMPT ALL OPEN-END CREDIT OTHER THAN CREDIT CARDS

Another option to ease the compliance burden and general confusion regarding loans with payment frequencies of more often than monthly is to exclude all open-end loans, except for credit cards, from the 21-day requirement.

<u>The Board's Ability to Make an Exception</u>. TILA Section 105 mandates that the Board prescribe regulations to carry out the purposes of the Act. TILA also specifically authorizes the Board, among other things, to:

> issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

It was clearly Congress' intent for the Credit CARD Act to apply only to credit cards, and it is clear that Congress did not contemplate, or anticipate, the operational burden to creditors and the adverse impact on consumers when the letter of the Act is applied to open-end loans other than credit cards. Indeed, a member of Congress has submitted comments to the Board in this regard. Representative Todd Akin, 2nd District, Missouri, wrote to the Board expressing concerns similar to ours. In his comment letter, he states that the negative effect on consumers with open-end loans other than credit cards was not Congress' intent, and Representative Akin encourages the Board to adjust the rules to remedy the situation. Exempting all open-end credit other than credit cards would remedy this situation.

CONCLUSION

While we agree that consumers should be afforded enough time to make payments in order to avoid late charges, complying with the 21-day rule when the payment schedule is more frequent than monthly imposes negative consequences on both consumers and creditors that was not anticipated or foreseen by Congress or the Board. As such, we respectfully ask that the Board either:

1. Allow creditors to send monthly statements regardless of payment frequency with one set Payment Due Date (creditors would not be allowed to consider any of the payments late until the Payment Due Date); or
2. Exempt all open-end credit other than credit cards from the scope of the Final Interim Rule.

Thank you for your consideration.

Sincerely,

/s/

Catherine Klimek
Counsel
Securian Financial Group
400 Robert Street North
St. Paul, MN 55101