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VIA E-MAIL: regs.comments@federalreserve.gov

September 21, 2009

Ms. 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:

The Credit Union National Association (CUNA) appreciates the opportunity to submit further comments to the Federal Reserve Board (Board) in response to the interim final rule amending Regulation Z, the Truth in Lending Act (TILA), that will require creditors to adopt reasonable policies and procedures to ensure that periodic statements for any open-end consumer credit account are mailed or delivered at least 21 days before the payment is due in order to be able to charge a late fee or to otherwise consider the payment as late. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 8,000 state and federal credit unions, which serve 92 million members.

Summary of CUNA's Comments

- Credit unions continue to experience severe difficulties as they struggle to comply with the 21-day rule. CUNA is seeking a targeted legislative remedy, and we urge the Board to support these efforts that will not undermine the objectives of the Act.
- An issue that is not included in the interim final rule but one which we are compelled to bring to your attention now because of the problems it will create for credit unions concerns the minimum payment disclosures that will be effective February 22, 2010.

- CUNA urges the Board to limit the minimum payment disclosure requirements to credit cards.
- We believe this step is consistent with previous action the Board has taken in this area and would not jeopardize the objectives of the Board's regulations.
- If these disclosures are not limited to credit cards, credit unions will incur significant costs to provide information to their members that will be confusing and may lead some to make incorrect payments.
- The Board has already recognized these problems when it issued rules earlier this year to implement similar minimum payment requirements under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- The Board limited those statutory provisions regarding minimum payment disclosures to credit cards, and we urge the Board to do so again.
- The requirement to provide a 45-day advance notice of a rate increase due to a delinquency or default may cause credit unions to curtail credit limits and raise interest rates on credit card accounts.
- CUNA does not support the requirement that financial institutions provide a toll-free telephone number for consumers to use if they want to reject the change-in-terms. This will impose significant costs and burdens for those credit unions that currently do not operate or maintain toll-free numbers with little benefit for members since most of these calls will likely be local in which there is no cost. In the alternative, we urge the Board to provide an exception to this requirement for smaller financial institutions.
- Under the proposal, if the account is used for transactions that occur more than 14 days after the notice is provided, then the creditor may apply the rate increase or changed term to those specific transactions even if the consumer rejects the change or increased term prior to the effective date. CUNA supports these provisions, although we urge the Board to include clarification that creditors should be able to assume the 14-day period begins three business days after the creditor mails or delivers the notice, regardless of when the notice is actually received by the consumer.

Twenty-One Day Rule

Over the course of the summer, CUNA submitted eight letters and held numerous discussions with Federal Reserve Board officials regarding the problems credit unions confronted as they considered and worked to comply with the 21-day rule. These problems resulted from the fact that a number of credit unions have allowed their members to choose their own periodic payment date and amount and because the credit unions provide combined account statements to their members to disclose the account history. These arrangements have made it difficult in the extreme for these credit unions to meet the 21-day rule requirements, particularly given the August 20, 2009 effective date of the interim rule. In recognition of that fact and to facilitate compliance with the 21-day rule, the Board included an alternative compliance approach in the Supplementary Information provided with the interim final rule published July 22, 2009 that credit unions could utilize for a “short period of time.” This “short period of time” has been appropriately interpreted to mean the reasonable amount of time it takes for a credit union, acting in good faith, to meet the requirements of the rule. In talking with credit unions around the country, we understand that they are working hard to meet their regulatory responsibilities but continue to face ongoing problems and compliance hurdles. To address these concerns, we are working with Congress as expeditiously as possible to achieve passage of targeted, remediable legislation and continue to urge the Board to support these efforts.

Minimum Payment Disclosures

Although not addressed in the interim final rule, the CARD Act requires that minimum payment disclosures be provided on periodic statements for all open-end credit accounts. These disclosures will provide the time it takes to repay the balance if only minimum payments are made, as well as the total interest that will be assessed. They will include a specific disclosure as to the amount of the payment that must be made to repay the balance in 36 months, along with the amount of interest that would be assessed.

For credit unions, the application of the minimum payment disclosures to all open end credit accounts raises severe problems very similar to a number of concerns addressed in our earlier comments regarding the delivery of periodic statements at least 21 days before the payment due date.

Credit unions serve individuals within their fields of membership who choose to become members. Because of this membership relationship, most credit unions provide monthly consolidated membership statements that disclose information on all of a member's savings, checking, and loan accounts. The loan accounts may include a variety of open-end accounts, including general lines of credit, lines of credit associated with share draft and checking accounts, signature loans, and home equity lines of credit (HELOCs). CUNA is concerned also because about 3,500 credit unions use multi-featured, open-end lending programs. Under these plans, a credit union member has one account with the credit union with a number of features, or sub accounts, that are also available. This arrangement allows the member to access a variety of different types of open-end credit under a single plan, including loans for automobiles and other vehicles.

To comply with the minimum payment disclosures, credit unions that provide consolidated statements and multi-featured open-end lending programs would need to provide several minimum payment warnings on each statement. This could be very confusing for members, because it will significantly increase the amount of information on these periodic statements, resulting in information overload for the borrower.

Also, the minimum payment disclosures do not seem to be appropriate in a number of situations in which a credit card is not involved. For example, a vehicle loan has a fixed payment for a fixed period of time so it would be meaningless to provide minimum payment information in these situations in which the payments does not vary. It would also not make sense to indicate what the payment would be in order to repay the loan in 36 months if the remaining term is less than 36 months. We have similar concerns with regard to very short-term loans in that it would be meaningless to provide information on the payment that would need to be made in order to repay the loan in 36 months in situations in which the duration is only two or four weeks. Not only will this information be meaningless, but members may be confused and some may not make the correct payment if multiple amounts are disclosed.

These minimum payment provisions will also be very burdensome for credit unions as they will significantly increase their compliance costs. This concern is compounded because credit unions are in the process of making the necessary changes to comply with the other requirements of the CARD Act and the Regulation Z rules issued earlier this year as well as numerous other regulatory requirements that have been issued by the Board and other regulatory agencies in recent years. More rules are anticipated next year, such as the new Regulation Z rules for closed-end mortgage loans. These significant costs are also being incurred in what is widely acknowledged as the worst economic crisis since the Great Depression, which has adversely affected the financial condition of a number of credit unions throughout the country.

For these reasons, we urge the Board to use its authority under Section 105(a) to limit these disclosure requirements to credit cards by recognizing that these disclosures would not be useful or necessary for other types of open-end credit. Section 105(a) of TILA allows the Board to make adjustments to the TILA statutory requirements that are "necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

The Board recently used this authority with regard to similar minimum payment disclosures that were required under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Similar to the CARD Act requirements, these provisions required disclosures on the front of each periodic statement in a prominent location that describe the effects of making minimum payments. However, in developing the rules issued earlier this year to implement these requirements, the Board used its authority under Section 105(a) to limit these disclosures to credit cards by recognizing they would not be useful or beneficial for other types of open-end credit. The Board specifically noted that the costs of requiring these disclosures for HELOCs cannot be justified since they have fixed repayment periods that have previously been disclosed. This rationale is especially applicable to all fixed payment loans provided under multi-featured, open-end plans since the specific payments themselves have been previously disclosed, in addition to the repayment periods.

Similarly, the Board decided to exempt other open-end plans from these requirements, such as overdraft lines of credit and general purpose credit lines, recognizing that these types of products are not "credit options of the kind for which the minimum payment disclosures are intended" and that creditors may no longer offer these services to those consumers who currently use them if these provisions are not limited to credit cards. For all of these reasons, we urge the Board to use its authority again under Section 105(a) to restrict these minimum payment disclosure requirements to credit cards.

45-day Notice for Change-in-Terms

Under the CARD Act, creditors must provide consumers with a 45-day advance notice of a rate increase or other significant change to the terms of the credit card agreement. There must also be a disclosure of the consumer's right to cancel the account prior to the effective date of the rate increase or the change in the significant term. In addition, the 45-day notice is required when the rate is increased due to a delinquency, default, or penalty and must be provided after the occurrence of the event that led to the rate increase.

Although CUNA does not specifically oppose the intent of these provisions, we do want to emphasize that the application of these requirements with regard to delinquencies and defaults will have an adverse impact on credit unions that assess penalty interest rates for late payments. Penalty rates imposed by credit unions are appropriate to the extent they encourage members to make timely payments.

However, this new requirement, along with the CARD Act provisions that generally prohibit interest rate increases on existing balances unless payments are late by at least 60 days, will require credit unions to exercise significantly more caution with regard to the credit limits it provides to its members. For example, these new provisions may force credit unions to curtail credit limits much more frequently and may also lead to an overall increase in interest rates to compensate for the reality that credit unions may no longer be able respond to the perceived increased risk of default as early as they otherwise would before the enactment of the CARD Act.

CUNA is also very concerned with the provisions in the interim rule that will require financial institutions to provide a toll-free telephone number for consumers to use if they want to reject the change-in-terms. This will impose significant costs and burdens for those credit unions that currently do not operate or maintain toll-free numbers. We urge the Board to eliminate this requirement or provide an exception to this requirement for smaller financial institutions.

The members of credit unions that do not have toll-free telephone numbers generally live and work near their credit union, which means they would not be charged for the local calls they would make if they wanted to exercise their right to reject a change to their credit card account. The overwhelming costs and burdens of maintaining and staffing a toll-free telephone number completely outweigh any small financial benefit that would accrue to the small percentage of members who would be charged for these calls. We also note that the CARD Act does not impose any statutory requirement to provide toll-free telephone numbers for consumers who decide to reject changes to their accounts and see no basis for the Board to impose such a requirement beyond these statutory provisions.

Under the proposal, if the account is used for transactions that occur more than 14 days after the notice is provided, then the creditor may apply the rate increase or changed term to those specific transactions even if the consumer rejects the change or increased term prior to the effective date. This is to mitigate the effects if a consumer deliberately conducts transactions after receiving the notice and then rejects the increased rate or changed term shortly before the effective date to ensure that the change does not apply to these recent transactions.

CUNA supports these provisions. However, we urge the Board to include clarification that creditors should be able to assume the 14-day period begins three business days after the creditor mails or delivers the notice, regardless of when the notice is actually received by the consumer. This assumption is included in a number of other Regulation Z provisions, including the recent final rule that implemented the Mortgage Disclosure Improvement Act and the recent proposal to amend the closed-end mortgage rules.

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In closing, we appreciate the Board's consideration of our concerns, particularly as they relate to the minimum payment disclosures. If you have questions about our comments, please contact Senior Assistant General Counsel Jeffrey Bloch or me at (202) 638-5777.

Sincerely,

Mary Mitchell Dunn

Mary Mitchell Dunn
Senior Vice President and Deputy General Counsel