The Huntington National Bank
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December 16, 2005

By e-mail to: regs.comments@federalreserve.gov

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

Attn: Docket Number R-1217

Re: Supplement to Advance Notice of Proposed Rulemaking—Regulation Z Open-End Credit Disclosures
70 *Fed. Reg.* 60235 (Oct. 17, 2005)

Dear Ms. Johnson:

This letter is submitted on behalf of The Huntington National Bank, a national banking association ("Huntington"),[1] in response to the above referenced Supplement to the Advance Notice of Proposed Rulemaking (the "Notice Supplement") with respect to the open-end disclosure provisions of Regulation Z published by the Board of Governors of the Federal Reserve System (the "Board"). The Board has re-opened the comment period for this rulemaking because of the recent amendments to certain disclosure requirements in the Truth-in-Lending Act contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act Amendments"). Huntington appreciates the opportunity to provide the comments set forth below with respect to this Notice Supplement.

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[1] The Huntington National Bank ("Huntington Bank") is a national bank and the principal subsidiary of Huntington Bancshares Incorporated, which is a $33 billion regional bank holding company headquartered in Columbus, Ohio. Along with its affiliated companies, Huntington Bank has more than 139 years of serving the financial needs of its customers, and provides innovative retail and commercial financial products and services through more than 300 regional banking offices in Indiana, Kentucky, Michigan, Ohio and West Virginia. Huntington Bank also offers retail and commercial financial services online at huntington.com; through its technologically advanced, 24-hour telephone bank; and through its network of approximately 900 ATMs. Selected financial service activities are also conducted in other states including: dealer sales activities in Florida, Georgia, Tennessee, Pennsylvania and Arizona; private financial and capital markets group services in Florida; and mortgage banking offices in Maryland and New Jersey. International banking services are made available through the headquarters office in Columbus and an office located in the Cayman Islands and an office located in Hong Kong.

Exemptions from the Minimum Payment Disclosure

The Board has asked in Q59 and Q63 and elsewhere in the Notice Supplement if certain types of open-end credit accounts should be exempt from the new minimum payment disclosure requirement imposed by the Bankruptcy Act Amendments. The statute itself excludes charge card accounts that require payment in full each month. We believe it would be appropriate for the Board to conclude that the minimum payment disclosure was intended by Congress to apply only to typical credit card accounts (*i.e.*, open-end accounts that have no term for repayment and for which the issuance of credit card plastic is a standard, rather than optional, feature), and thus we believe that other forms of open-end credit beyond charge card accounts should also be exempt.

The Board recognizes in the Notice Supplement that the debate in Congress about minimum payment disclosures focused on credit card accounts, quoting Senator Grassley's remarks in this regard.[2] Those remarks noted that the important piece of information this disclosure was providing to consumers was "how long it will take to pay off their credit card debts by only making the minimum payment"—in other words, what is the maximum period of time within which to pay off the account?[3] Since typical credit card accounts have no term for repayment, the maximum amount of time it would take to pay off the account is a function of a computation which the average consumer is not able to perform and which utilizes information which is not all readily available to the consumer even if the consumer could be expected to do the math required by the computation. Thus, requiring a disclosure of the maximum amount of time it would take to repay the balance by only making the minimum payment is the equivalent of disclosing a term for repayment. For accounts that already contractually have a term for repayment, there is no need to do a computation on behalf of the consumer based on the minimum payment in order for the consumer to know the maximum amount of time it will take to pay off the account, and thus there is no need for a minimum payment disclosure as required by the Bankruptcy Act Amendments to tell the consumer how long it will take. Furthermore, the maximum term of repayment for accounts with a contractual term for repayment will not necessarily be a result of the minimum payment amount in the same manner as it is for typical credit card accounts, and thus the disclosure options provided by the Bankruptcy Act Amendments can be misleading for such accounts.[4]

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[2] 70 *Fed. Reg.*, at 60237.

[3] There is also some indication that this minimum payment disclosure is most useful for consumers who are less financially able to pay more than the minimum payment amount. For example, in the Notice Supplement the Board asks if the minimum payment disclosure requirement should be allowed to be omitted for consumers who typically do not revolve balances or who typically make monthly payments that exceed the minimum payment requirement. This suggests that the minimum payment disclosure may not have been intended for types of accounts that would not typically be offered to consumers who are less financially able to pay more than the minimum payment amount.

[4] The required disclosure language "[m]aking only the minimum payment will increase . . . the time it takes to repay your balance" is not, except accidentally, correct for such accounts, since the maximum time for repayment in full is established by other contractual terms which are not necessarily dependent on how much the consumer pays each month.

What types of open-end accounts would be excluded from the minimum payment disclosure if the Board determined that open-end accounts that have a contractual term for repayment should be excluded?

First, this should exclude all home equity credit line accounts subject to Regulation Z §226.5b. For these types of accounts, Regulation Z already requires disclosure of the length of time credit may be obtained (the draw period) and the time it takes to repay the account in full if the balance is not due at the end of the draw period (the repayment period) in both the early disclosure provided at application and in the "initial" disclosures that are provided at account opening and that are typically combined with the account agreement provided at the time the account is opened.[5] In addition, if paying only the minimum payment will not repay any principal or will pay less than the outstanding balance resulting in a balloon payment, that must be disclosed both in the early disclosure and in the "initial" disclosure required for home equity credit line accounts.[6] Furthermore, the early disclosure provided at the time of application for home equity credit lines must contain a minimum payment example that includes the time it would take to repay the balance based on a $10,000 balance if the consumer paid only the minimum payments.[7] If the home equity credit line account has special features, such as fixed rate and term payment options, the payment terms, including the length of time over which repayment can occur for that feature, must also be disclosed.[8] Thus, unlike for credit card accounts, consumers who open home equity credit line accounts are told at the time of application and at the time the account is opened how long credit will be available and what the term of repayment will be, in addition to other disclosures with respect to the effect of minimum payments. These and other provisions of Regulation Z §226.5b essentially require a contractual term for repayment of the balance in full.[9] The amount of disclosure about the minimum

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[5] Regulation Z, §226.5b(d)(5)(i) and §226.6(e)(2).

[6] Regulation Z, §226.5b(d)(5)(ii) and §226.6(e)(2).

[7] Regulation Z, §226.5b(d)(5)(iii).

[8] See Comment 5b(d)(5)(ii)-2 in the Regulation Z Official Staff Commentary.

[9] The Regulation Z Official Staff Commentary in Comment 5b(d)(5)(i)-1 contemplates the possibility of a home equity credit line account where the length of the plan is indefinite because there is no limit on the period during which the consumer can take advances. Such an "evergreen" account would appear to work similar to the way credit card accounts work in terms of credit availability. However, we believe a home equity credit line account with an unlimited draw period and no maturity date is not feasible. In many states, state real estate law may provide that the lien of a mortgage without a stated maturity date expires after a set number of years (21 years, for example, in Ohio), which would appear to preclude having a home equity credit line account with no time limit on the draw period and no maturity date for repayment if the creditor expected to maintain its security interest in the real estate. Moreover, the substantive restrictions on home equity credit lines in Regulation Z §226.5b(f) would appear to create significant difficulties for a home equity credit line with no time limit on the draw period and no stated maturity date. For example, without a preset draw period term and maturity date, there would apparently be no way to terminate the account and end the draw period unless there was a payment default, fraud by the consumer or action or inaction by the consumer adversely affecting the security for the account and the additional restrictions on the ability of the creditor to change the terms of a home equity credit line account are likely to make an "evergreen" account even less attractive for a creditor to offer. Moreover, many if not most institutions offer interest-only minimum payments during the draw period for home equity credit line accounts, and it would be impossible to have an interest-only payment with an "evergreen" account because the creditor would be prohibited by existing Regulation Z substantive restrictions from changing the terms at some point to require repayment of principal.

payment and the term for repayment in full for home equity credit line accounts subject to Regulation Z §226.5b is more than sufficient under current law, and the addition of the minimum payment disclosure as required by the Bankruptcy Act Amendments would be both unnecessary and confusing.[10]

Second, excluding open-end accounts that have a contractual term for repayment from the minimum payment disclosure requirement would also exclude all other types of open-end credit line accounts that have a contractual term for repayment above and beyond the term implicit in a minimum payment requirement. Overdraft lines of credit or other unsecured lines of credit[11] would be excluded under this approach if they have the appropriate contractual obligation for repayment over a specified term. For example, if such lines of credit have a contractual provision permitting availability for one year and requiring the balance due in full at the end of that time, they would fall within this approach.

We believe, however, that using an exclusion based solely on the account having a contractual term for repayment would not be broad enough to exclude other types of non-home equity credit lines which do not appear to be within the intent of Congress in focusing on credit cards as the object of this new minimum payment disclosure requirement. Thus, as indicated above, we believe that open-end accounts should also be excluded from this new minimum payment disclosure requirement if they have no credit card associated with the account or if the credit card associated with the account is an optional, rather than a standard, feature of the account. This additional grounds for exclusion would make it clear that overdraft lines of credit tied to asset accounts and other types of unsecured credit lines that are not primarily credit card accounts would be excluded. For example, Huntington has an overdraft credit line account product that is linked to the consumer's checking account and is only accessed by overdrafts in the checking account. The primary means of repaying balances in this overdraft credit line is from deposits to the checking account which are automatically applied first to reduce the overdraft credit line balance, although, since in the unusual case the consumer may never make

Thus, while we have not done any kind of survey to determine if "evergreen" home equity credit lines are offered, we have not seen them in the marketplace and believe they must be rare, if offered at all.

[10] It is also important to note that home equity credit line accounts typically have repayment options that are more complex than credit card accounts and do not lend themselves to the kind of simple disclosure about the minimum payment required by the Bankruptcy Act Amendments. Home equity credit line accounts offered by many (we believe probably most) financial institutions include multiple options for repayment of various portions of the balance, with multiple components to the minimum payment computation, which would make it very difficult to provide the simple minimum payment disclosure on periodic statements contemplated by the Bankruptcy Act Amendments and would render any such disclosure meaningless, if not seriously misleading. Huntington's standard home equity credit line account, for example, has an interest-only minimum payment during the draw period for the primary portion of the credit line, and then an amortized payment of substantially equal payments of principal and interest over 240 months during the repayment period (but not less than a certain dollar minimum amount) which is reamortized every 12 months during the repayment period if the rate has changed. The account also has subaccount alternatives that each have their own method of determining the minimum payment, ranging from interest-only to an amortized payment of principal and interest over a stated number of months, and some of these options are the same during the draw period and the repayment period and some (interest-only, for example) are only available during the draw period.

[11] We believe it is unusual for consumers to be offered lines of credit secured by personal property or secured by real estate other than what would subject the account to Regulation Z §226.5b.

another deposit to the checking account, there is also an alternative minimum payment based on a percentage of the balance in order to ultimately have an obligation to repay the balance. It is difficult to believe that Congress intended to apply the minimum payment disclosure to this type of account, and in any event, the required disclosure language would be confusing and unhelpful in this case where the primary form of repayment occurs through deposits to the checking account. Huntington also offers unsecured credit line accounts which are usually accessed by check or by in-person or telephone requests to loan officers, but which offer credit card plastic access only if that feature is requested by the consumer. These accounts are both unsecured and typically require payment of the entire balance in full when the account is cancelled for any reason, making them usually available to a higher net worth customer base than typical credit card accounts. While these accounts may have a contractual term for repayment, some versions may not actually have that contractual requirement,[12] but these unsecured credit lines are by their nature of more limited availability and do not appear to be the type of account that Congress had in mind when thinking of holders of credit card accounts who may be less financially able to pay more than the minimum payment amount each month who perhaps need a warning about what they may be getting themselves into.

We believe that crafting an exclusion based on accounts which have a contractual term for repayment or which have no credit card or have credit card access as an optional, rather than a standard, feature could be modeled on, or even use in part, the existing exclusion in Regulation Z §226.5a(a)(3), pursuant to which the Board exempted several types of open-end credit plans from the credit and charge card application and solicitation disclosures that became part of Regulation Z several years ago. This explicit list includes home equity plans subject to Regulation Z §226.5b, overdraft lines of credit tied to asset accounts, lines of credit accessed only at automated teller machines, and lines of credit accessed solely by account numbers, whether or not such accounts are accessed by credit cards or other types of cards (such as debit cards or check guarantee cards), and the list implicitly covers in the exclusion lines of credit accessed by check, or otherwise not accessed by any credit card or other card, because such non-card accounts are not covered by §226.5a to begin with. One approach the Board could take would be to make the minimum payment disclosure requirement applicable only to accounts covered by §226.5a, with a further exclusion of (i) charge card accounts requiring payment in full every month (an exemption already contained in the Bankruptcy Act Amendments) and (ii) accounts which have credit card access, but only because the credit card was an optional, rather than standard, feature of the account.[13] Another way to craft the exclusion would be to have an exemption that operated independently of the exemption in §226.5a which could be worded as excluding (i) home equity credit lines subject to §226.5b, (ii) overdraft credit lines tied to asset accounts whether or not accessible by debit cards, check guarantee cards or other types of cards, and (iii) any other type of open-end credit plan that has either a contractual term for repayment (other than the term implicit in a minimum payment requirement) or which has no credit card

[12] In Huntington's case, absence of a contractual draw period or term of repayment is more likely to be the case in accounts acquired through acquisition of other financial institutions.

[13] Without this latter addition, unsecured credit lines which offer credit card access as an optional, rather than standard, feature would not come within the exclusion. Overdraft credit lines would already appear to be within the existing exclusion from §225.5a contained in §225.5a(a)(3).

access or for which the issuance of credit card plastic is an optional, rather than standard, feature.[14]

The Board has also asked in Q60 whether the Board should consider an exemption that would permit creditors to omit the minimum payment disclosure from periodic statements for accountholders who typically (i) do not revolve balances or (ii) make monthly payments that regularly exceed the minimum. We do not have a position either way with respect to that possible exemption, except to request that any such exemption, if provided, be purely voluntary and optional on the part of the creditor and not mandatory. Once a creditor is programmed to provide the minimum payment disclosure for accounts to which it applies, it may then be more difficult and/or require additional programming to exclude the disclosure for otherwise covered accounts performing in certain ways. Additionally, if such an exemption is provided, creditors will need clear guidance in the regulation as to the conditions permitting the omission of the disclosure.

Minimum Payment Disclosure for Credit Card Accounts

The Bankruptcy Act Amendments generally offer two alternative ways of providing the minimum payment disclosure for accounts for which this disclosure requirement is applicable. The first is a disclosure of several sentences on the front of the billing statement that provides a "typical" example, and refers the consumer to a toll-free number that would provide information from a table prepared by the Board. The second is a shorter disclosure that is not required to be in any particular place on the billing statement and refers the consumer to a toll-free number from which the consumer can obtain an estimate of the "actual" number of months it will take to repay the outstanding balance on that consumer's account. From several of the questions asked by the Board in the Notice Supplement, it is clear that the Board understands that the disclosure of the number of months to repay the balance making only the minimum payments is a difficult computation to make and disclose with any degree of accuracy under either alternative, and that the Board recognizes that even the second, or "actual" alternative, is nothing more than a somewhat better estimate than would be provided under the first, or "table-driven" alternative.

[14] It is also important in crafting the terms of any exemption to avoid terminology or conditions that may inadvertently fail to include accounts in the benefit of the exemption for technical reasons. For example, the time it takes to repay a home equity credit line balance during the repayment period may in fact depend on the size of the balance at the beginning of the repayment period, but that can still be significantly different from how a credit card account works if the home equity credit line account contractually provides for that repayment over a set period of time. Thus whether or not an exemption applies should not depend on whether on not the repayment period is affected by the size of the balance. The repayment period in Huntington's standard home equity credit line account, for example, amortizes the balance in substantially equal payments of principal and interest over 240 months, but there is also a set dollar minimum for that payment amount which could cause the balance to be repaid in a shorter period of time even if the consumer made only the minimum payments. Moreover, Huntington's standard account has a feature at the end of the repayment period which permits the consumer to continue making minimum monthly payments after the expected maturity date if the payments are not sufficient to pay off the balance by the end of 240 months, but that extension is the result of possible interest rate increases during the last 12 months since the payment amount was last amortized and is not likely to result in more than one or two additional payments. Thus, language that conditioned the exemption on a completely fixed maturity date or fixed number of payments would not accommodate an account with this type of extension feature.

Since the first, or "table-driven", alternative is a matter of providing the consumer with the table information created by the Board, which presumably must be accessed by the consumer inputting certain items of data (since the Board's tables presumably cannot be structured to obtain any actual data from the financial institution about the consumer's account), compliance with that alternative does not appear to be dependent on assumptions or safe harbors beyond those which the Board incorporates into the tables themselves, and thus would automatically be available in connection with use of the tables. With respect to the second, or "actual", alternative, however, it is important that the Board provide appropriate assumptions and/or safe harbors for utilizing this alternative, because without them, the degree of inaccuracy inherent in attempting to provide this disclosure will render this alternative too risky to use. It appears to us that there are at least four items of information that are most important with respect to determining the "actual" number of months to repay the balance making only the minimum payments, namely (i) the account balance, (ii) the applicable interest rate or rates and the portions of the balance to which such rates apply, (iii) the minimum payment computation, and (iv) any flat alternate minimum payment. Additionally, certain basic assumptions work together with these basic items of information, namely (i) assuming the account has no new transactions or charges, (ii) assuming that the rate does not change, (iii) ignoring late charges, overlimit fees, and other fees charged on the account, and (iv) assuming the disclosure is given as of the most recently passed statement closing date for which information is readily available from the financial institution's system (rather than requiring disclosures utilizing information derived mid-billing cycle). Whether these alone, or certain other items of information and/or assumptions are the most important in determining the number of months, we believe that the Board should create a safe harbor that stipulates that any number of months correctly calculated (*i.e.*, "correctly" in the sense of avoiding mathematical errors) using these limited number of important items and assumptions will be deemed to be accurate, notwithstanding differences that may occur from one computation to another because of other less important factors or assumptions, such as the balance computation method, the payment due date, the method of allocating payments, when payments are actually received, the number of days in a month, and so on.

Additionally, we believe that with respect to the second, or "actual", alternative, at least some of the limited number of important items of information are not going to be within the knowledge of the consumer, or even if they are, expecting the consumer to obtain and input these actual amounts from a billing statement or other source is likely to be inconvenient for the consumer and is also likely to result in inaccurate data input (for example, because the consumer is using a statement that is several months old or does not understand what item of information is being requested for input). We believe it is likely that the limited important items of information (and certainly the four listed above) will be available from the financial institution's processing system that services the account, although consideration will have to be given to the costs and potential complications of accessing this information for purposes of providing the required disclosure.

New Disclosures Regarding Tax Information

The Bankruptcy Act Amendments require certain new disclosures with respect to tax deductibility of interest on the loan or account if the extension of credit exceeds or may exceed the fair market value of the real estate securing the account, and this disclosure is required for both open-end accounts and closed-end loans at the time of application for the account or loan. Since by its terms in the statute the requirement to provide this tax disclosure is contingent on whether or not the extension of credit amount exceeds the fair market value of the property, it is important for the Board to clarify that this disclosure may also be given contingently or routinely, instead of having the disclosure contingent on the actual facts of that consumer's loan and property value. At the time of application the creditor is unlikely to know, or have access to, any information establishing the value of the property, and additionally in the statute there is nothing to indicate how the value of the property is determined for purposes of giving this disclosure. Furthermore, there is also nothing in the statute to indicate how the amount of the extension of credit is to be determined, particularly with respect to open-end lines of credit where there the borrower may draw less than the credit limit amount (or in some cases, more than the stated credit limit amount), and also with respect to certain types of closed-end credit where there may be a committed amount different than the actual amount of credit taken or where credit is disbursed in stages.

Disclosures Related to Late Payments

In Q97, the Board asks 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?" Typically, grace periods provided before a late charge is assessed have nothing to do with delaying or postponing the date on which the payment is due. The grace period relates solely to the time period after which payment is due before the creditor will assess a late payment fee. Thus, for any account for which a creditor provides a grace period before late charges are assessed, the "earliest date on which a late payment fee may be charged" will be different from (later than) the "date on which the payment is due".

In Q99 the Board asks whether a creditor's "cut-off hour" (the word "hour" is singular in the Board's Notice Supplement) should be disclosed on each periodic statement. Please note that financial institutions have a multiplicity of cut-off times depending on the location of where the payment is received. Cut-off times can be different from one banking office to another (because, for example, of different distances from the bank's processing facility where items must be physically taken for processing), and can be different for various other payment channels (for example, drive-up windows, ATMs, online or electronic payments, or lock-box or other facilities for receiving payments) due to different processors and different times required to bundle and deliver transactions to such processors. Since consumers may typically make payments at banking offices and ATMs, or by electronic fund transfers through online or telephone bill payment services, as well as by mailing physical payments to the address on the billing statement, and cut-off times at all the possible payment locations are not likely to be the same, requiring a disclosure of cut-off times would be unduly complicated and not likely to be of use to

the customer, and generally would be unnecessary since cut-off times are usually posted at physical locations or in connection with electronic fund transfers.

Prohibition on Terminating Accounts for Failure to Incur Finance Charges

Our comments on this prohibition contained in the Bankruptcy Act Amendments relate to situations which may technically violate this prohibition, but which we believe were not intended to be covered by this prohibition. Our understanding is that this prohibition was intended to prevent creditors from terminating accounts where the consumer paid off the balance each month, taking advantage of the "free-ride" period and thus not paying any finance charges on the balance. We believe the Board should clarify that this prohibition applies only to accounts having a "free-ride" period.

One situation which may technically violate this prohibition is where the account does not have a contractual term or termination event, but is terminated by the creditor because the account has a zero balance. The statute indicates that nothing in this prohibition is intended to prohibit a creditor from terminating an account for inactivity in three or more consecutive months, which may be intended to apply to accounts with a balance (that now presumably is incurring finance charges), but where the consumer does not incur any additional charges or advances on the account for less than three months, rather than to an account with a zero balance. We recommend that the Board clarify that nothing in this prohibition is intended to prohibit termination of an account with a zero balance.

Another situation is how this prohibition applies to open-end accounts which have contractual termination provisions—for example, an unsecured credit line account which is granted for a year, and where the ability to obtain additional credit ends at the end of that one year period. The prohibition on terminating accounts for failure to incur finance charges could arguably be violated when the account terminates based on that one-year contractual termination provision, depending on whether the account was incurring any finance charges in the last two months of the account (for example, because the account had a zero balance). We recommend that the Board clarify that nothing in this prohibition is intended to prohibit termination in accordance with provisions of the account agreement relating to the term or repayment period of the account.

Thank you for the opportunity to provide these comments.

Very truly yours,

Daniel W. Morton
Senior Vice President & Senior Counsel