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VIA E-MAIL TRANSMISSION
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March 28, 2005

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-1217
Review of Regulation Z Open-End Credit Rules

Dear Ms. Johnson:

We are pleased to respond on behalf of our member credit unions to the Board's Advance Notice of Proposed Rulemaking ("ANPR") on possible changes to the open-end credit rules under Regulation Z. The Illinois Credit Union League represents over 380 state and federal credit unions in Illinois.

Scope of Review (Q1)

The current ANPR requests comments on the provisions of Regulation Z regarding open-end credit that is not home-secured. The Board solicits comment on the advisability of reviewing Regulation Z in stages. We believe that reviewing Regulation Z in stages is the most appropriate way of reviewing the Rule.

We note that the ANPR does not address open-end advertising requirements and that open-end and closed-end advertising requirements are not included in the ANPR's list of other areas of Regulation Z to be reviewed in the future.

The substantial lack of uniformity in Regulation Z's advertising trigger terms and disclosures should be addressed. We believe that open-end and closed-end advertising requirements should be addressed together in a future ANPR.

Account Opening Disclosures (Q2-Q3)

We believe that the current requirements of §226.6 provide adequate disclosure to consumers. However if segregated disclosures are required, the disclosures to be segregated should be limited to finance charge (APR) and the charges required to be disclosed in the Schumer box. Financial institutions should be allowed to comply with the segregated disclosures by providing the consumer with a copy of the Schumer box disclosures either printed on the open-end agreement or enclosed with the agreement. The disclosure of security interests and the billing rights statement should excluded from disclosures required to be segregated. Since the purpose of the change is to address confusion with respect to credit card terms, we believe types of open-end credit other than credit cards should not be subject to segregated disclosures.

Periodic Statement Disclosures (Q4-Q6)

Grace Period (Q4). There may be some value to consumers in specifically stating the grace period on the first page of the statement. However, financial institutions should not be required to state the grace period if the payment due date on the statement is the same as the grace period or there is no grace period.

Grouping and Formatting Requirements (Q5 and Q6). Section 226.7 of Regulation Z requires disclosure of 11 separate items on the periodic statement. The Board mentions "information overload, which can impair the disclosures' effectiveness" in the ANPR's discussion of account-opening disclosures (69 FR 70928). We believe the Board's characterization is even more applicable to periodic statement disclosures. Consumers wishing to review the items required to be disclosed can locate them on the periodic statements with relative ease. Most consumers are not inclined to review all the items required to be disclosed and imposition of grouping and formatting requirements will not change their interest in the disclosures. As discussed below in the "Consumer Use of Effective APR" section, we believe the disclosure of the APR inclusive of all finance charges serves only to confuse consumers.

Credit Card Application Disclosures (Q7-Q8)

We believe the Schumer box is effective as currently designed. With respect to the Model Forms of the Schumer box contained in G-10 of Appendix G, the Official Staff Commentary should clarify that if the cash-advance APR and balance-transfer APR are the same the box in the left column may state "Cash-Advance APR and Balance-Transfer APR" and the right column need not repeat the APR twice.

E.g., / Cash-Advance APR and / 12.9% /
/ Balance Transfer APR / /

The rule should also clarify that in the case of a range of rates, with the rate for a specific consumer based on evaluation of the consumer's creditworthiness, the box may contain the range (e.g., 7.9% to 13.9%) with a footnote explaining that the rate obtained by the consumer is based on the consumer's credit worthiness.

The current rule requires the APR for purchases to be disclosed in 18 point type. We suggest that the rule be amended to provide that the type size for the APR for purchases be at least one or two type sizes larger than the other disclosures in the Schumer box.

The current rule allows four fees (set forth in §226.5a(b)(8) through (11)) to be disclosed outside the Schumer box "clearly and conspicuously elsewhere on or with the application" (§226.5a(a)(2). Comment is requested on whether one of those fees should be disclosed in the Schumer Box.

Most applications issued by credit unions currently disclose the four fees not required to be disclosed in the Schumer box either in the Schumer box or immediately below the Schumer box.

We do not believe that the current rule should be amended. However, if the rule is amended, the amendment should provide that the four fees may be disclosed in the Schumer box or immediately below the Schumer box.

<u>Subsequent Disclosures (Q9)</u>

We are not aware of any need for formatting tools or navigational aids with respect to subsequent disclosures.

<u>Model Forms and Clauses (Q10-Q12)</u>

Appendix G provides a substantial number of "early disclosure" model forms and clauses. However, other than the statement of billing rights, it provides no models for the various "account-opening disclosures" required by §226.6. We believe such disclosures would be helpful, particularly with respect to the additional disclosures required for variable rate plans.

Note: The title of Section 226.6 is "Initial Disclosure Statement." Given that "earlier" disclosures are required for two major open-end products, credit cards and HELOCs, the Board may wish to consider renaming §226.6. Perhaps the term used in the ANPR ("account-opening disclosures") should be used.

<u>Classifying and Labeling Fees as Finance Charges and Other Charges (Q13-Q20)</u>

We believe the most important question regarding classification and labeling of fees is Q15. (*What significance do consumers attach to the label "finance charge" as opposed to "fee" or "charge"?*) We believe the average consumer does not differentiate between finance charges and other charges. The average consumer is interested in the amount of the charge and when it is imposed. The only effect of the distinction between finance charge and other charges is to enable plaintiffs' attorneys to sue financial institutions for inadvertently failing to disclose a charge as a finance charge. Section 226.6 of Regulation Z should specifically set forth the fees and charges that must be disclosed in the disclosures required by §226.6. Indicating that certain fees are finance charges is of no value to the consumer.

We do not believe that there is a need for uniformity in disclosures between open-end and closed-end credit (Q20). There are significant differences between them. Providing the consumer with clear and concise information about the particular type of credit should be the main concern, not whether there is uniformity in disclosures between disparate types of credit.

Over-the-Credit-Limit Fees (Q21-Q22)

We believe fees that the consumer can avoid should not be considered finance charge. A consumer can avoid the continued imposition over-the-limit fees by ceasing use of the credit card until monthly payments have reduced the balance below the credit limit. The fact that a consumer chooses not to do so should not render an over-the-limit fee a finance charge.

Consumer use of "Effective" APR (Q23-Q25)

The effective APR (calculated based on the interest plus certain other charges classified as finance charge) required to be disclosed on periodic statements serves only to confuse consumers. Some consumer advocates believe that a sharp rise in APR may alert consumers to the imposition of a fee. In fact, as soon as the consumer learns that the increased APR is the result of inclusion in the APR calculation of a fee that the consumer is willing to pay for the service provided (e.g., a cash advance), the consumer is no longer interested. The APR that actually matters to the consumer is the "nominal" APR reflecting the interest rate charged.

Rendering the effective APR even more meaningless and confusing is the fact that it is greatly affected by the outstanding balance in the account. E.g.,

- If the interest rate for cash advances is 10% APR, the cash advance fee is $10, and a consumer with a $0 cash advance balance obtains a $100 advance at the beginning of the monthly statement period, the increase in effective APR would be 120% ($10/$100x12) and the effective APR resulting from the cash advance fee would be **130%.**
- If, however, the same interest rate (10% APR) and cash advance fee ($10) apply but the consumer had a $900 balance at the beginning of the monthly statement period, a $100 cash advance the beginning of the statement period would increase the effective APR by 12% ($10/$1,000x12) instead of 120% and the effective APR resulting from the cash advance fee would be **22%** instead of 130%.

Given the great disparity in effective APRs even though the additional finance charge in both examples is $10, the disclosure of the effective APR is not only confusing but also inaccurate and misleading.

The only APRs of interest and value to the consumer are APRs deriving from interest rates. Disclosure of the dollar amount of fees including fees that are finance charge is useful to consumers in determining the cost of credit and enables consumers to make a meaningful comparison of fees.

We realize that our recommendations on this issue and on labeling fees as finance charge, discussed above, may require amendments to the Truth in Lending Act ("TILA").

Disclosure of Rate Changes (Q26-Q27)

We believe the current disclosure requirements are sufficient and that prior notice should not be required if the increase in rate is due to default or delinquency on the open-end account. We believe it is appropriate to require advance notice if the penalty rate is triggered due to default or delinquency on a credit account not held by the card issuer.

Balance Calculation Methods (Q28-Q30)

As the Board states in Q30, explanations of balance calculation methods are complex. We believe that most consumers do not understand which balance calculation methods are more or less favorable. We do not believe that the choice of calculation methods materially affects the cost of credit of most consumers. (Most credit unions in Illinois use the same balance calculation methods.)

Given the complexity of the calculations, we do not believe that consumers would be assisted by additional balance calculation disclosures at the time the account is opened. We believe that the precise explanation of the balance calculation need only be provided with the §226.6 disclosures. The periodic statement disclosure requirements should be amended to allow an abbreviated description of the balance calculation methods, with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement.

Effects of Making only Minimum Payments (Q31-Q33)

We do not believe that disclosure of amortization periods for minimum payments should be required. We agree with the comments of credit card issuers that such disclosure would not be helpful to consumers because it is based on the assumption that the consumer will cease using the credit card or otherwise not obtain any additional extensions of credit. It may be appropriate however to notify consumers if the required minimum payment is so low that negative amortization occurs.

We note that a consumer can easily determine whether minimum payments will have a material effect on the outstanding balance by reviewing information contained in the periodic statement. Section 226.7 requires disclosure of the amount of payments in the previous statement period, and the amount of interest, fees and other charges imposed. A consumer with a modicum of interest in the level of amortization of the line of credit can determine whether a minimum payment will materially reduce the outstanding balance.

Payment Allocation (Q34-36)

We believe that consumers will not benefit from disclosure of how payments are allocated. In the past credit agreements contained written descriptions of allocation of payment that were complicated and difficult to understand (almost rivaling disclosure of balance calculation methods in their complexity). Concerned consumers may easily determine the actual allocation of their payments by reviewing their periodic statement.

Tolerances (Q37)

We believe the Board should expressly permit overstatement of finance charges on open-end credit. There are fees that are difficult to classify. A national card issuer has recently determined that it will charge card issuers a 1% currency conversion fee on transactions made in foreign countries. If the card issuer passes the fee on to the consumer, is the fee a finance charge? We hope the issue will be addressed in an Official Staff Commentary. Until the Federal Reserve provides guidance on this issue, some credit unions would prefer to disclose the fee as a finance charge. Such disclosure should not be considered a violation of Regulation Z if the Federal Reserve subsequently issues a clarification that the fee is not a finance charge.

Other Questions Regarding Content of Disclosures (Q38-Q42)

With respect to the costs of any mandated change to disclosures, we urge the Board to provide a substantial period from the time final amendments are published to the date the revised disclosures are mandatory. We suggest at least one year. Given that the main emphasis of the ANPR is various issues regarding credit card disclosures, we urge the Board to carefully consider whether other types of open-end credit plans should be subject to additional disclosures.

Modification of Rules Implementing TILA's Substantive Protections for Open-End Accounts (Q43-Q45)

Section 226.12(c)(3) provides that a cardholder's right to assert claims or defenses against the card issuer applies only if the disputed transaction occurred within the state in which the cardholder resides or, if not in the same state, within 100 miles from the cardholder's address. The Official Staff Commentary should be amended to clarify that the right to assert claims or defenses against the card issuer applies only if the transaction is with a card acceptor that is located within 100 miles of the cardholder's residence or in the State in which the cardholder resides. E.g., a transaction initiated by a cardholder from his/her residence in Illinois via telephone or Internet with a merchant located in Maryland would not be deemed to be a transaction that occurred within Illinois and therefore would not be subject to the assertion of claims or defenses under §226.12(c).

Unsolicited Issuance of Credit Cards (Q46)

We believe that financial institutions should be allowed to issue more than one credit card for an existing account at any time, provided the additional card may not be used until it is activated by the consumer and the consumer is provided with prior notice before the card is sent.

Prompt Crediting of Payments (Q47-Q51)

We believe the current disclosure requirements are adequate.

Additional Issues (Q52-Q58)

We are not aware of any issues at this time with respect to questions Q52, Q53, Q54, Q55, and Q57.

With respect to the Board's request for recommendations for legislative change (Q56)--as discussed above, we believe finance charges other than interest should not be included in the calculation of the APRs disclosed on periodic statements and that disclosing certain fees or charges as "finance charge" is a meaningless distinction for most consumers. If the Board believes that amendments to TILA are necessary to effect these changes, we would support such legislation and suggest the Board recommend the appropriate amendments to Congress.

In response to the Board's question as to whether other aspects of Regulation Z should be included in the initial review (Q58)--we suggest the Board consider whether penalties should be reduced for smaller financial institutions. Of the 488 state and federal credit unions located in Illinois, 78% had assets of less than $20 million and 64% had assets of less than $10 million as of December 31, 2004. The small staff of such credit unions makes it more difficult to ensure compliance. We believe that penalties should be reduced for small financial institutions that inadvertently violate Regulation Z. We suggest the Board consider basing penalties for smaller financial institutions on a sliding scale based on assets or net worth.

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We appreciate the opportunity to respond to the Board's ANPR regarding the open-end credit requirements of Regulation Z. We will be happy to respond to any questions regarding these comments or otherwise discuss our concerns with agency staff.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

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