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March 28, 2005

Ms. Jennifer J. Johnson  
Secretary, Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20551

Re: Docket No. R-1217 – Review of Regulation Z Open-end Credit Rules

Dear Ms. Johnson,

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on the Federal Reserve Board's (FRB) advance notice of proposed rulemaking (ANPR) requesting comments on possible changes to the open-end credit rules under Regulation Z, specifically rules applying to credit cards and merchant-specific credit plans. The FRB plans to review Regulation Z in stages over the next few years. The ANPR is the first stage of this review.

GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves approximately 200 credit unions that have over 1.7 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

**Background.**

Truth in Lending Act (TILA) is intended to promote the informed use of consumer credit by providing for disclosures about its terms and cost. TILA requires lenders to disclose the cost of credit as a dollar amount and as an annual percentage rate (APR) in a uniform manner. This uniformity is intended to assist consumers in comparison-shopping for credit. Regulation Z implements TILA, which contains official staff commentary that interprets the regulation and provides guidance in applying the regulation to specific transactions.

The FRB has issued an ANPR that will review the open-end credit rules under Regulation Z, which differ somewhat from the rules that apply to closed-end, or installment, loans.

Open-end credit generally refers to a revolving line of credit, such as a credit card account in which repeated transactions are expected, the available credit is replenished as unpaid balances are repaid, and finance charges are assessed on unpaid balances. This also includes "charge cards" that typically require balances to be paid in full at the end of each billing cycle. The ANPR requests comment on numerous, specific issues related to the following broad categories with regard to open-end credit, as well as any other issues that should be considered:

- The format of open-end credit disclosures.
- The content of the disclosures.
- The substantive protections provided under the rules.

The FRB has requested comment on numerous issues with regard to open-end credit in the form of specific questions. The FRB has numbered these questions and grouped them in specific categories, as outlined below. Our responses to many of the questions follow.

### **Summary of GCUL's position.**

#### **Scope of Regulation Z Review**

*Question 1 — Should the review of Regulation Z be in stages, which begins with this review of open-end credit? Are some issues with regard to open-end credit so intertwined with other TILA issues such that another approach to this review should be considered? If so, what are those issues and what other approaches should be considered?*

GCUA Response: We feel that a staged review is preferred and more manageable and the current segregation (credit card/open lending/home equity) is satisfactory.

#### **Account-opening Disclosures**

*Question 2 — What formatting rules would enhance the ability of consumers to understand account-opening disclosures? Should certain key disclosures be segregated from contractual terms or other information so that these disclosures are more clear and conspicuous? Should certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements necessary and what should those requirements be?*

GCUA Response: We encourage the Fed to consider including a "Schumer Box" type of disclosure within these initial account-opening disclosures that is similar to the current ones used for credit card solicitations and applications. We believe these prominent boxes on solicitations containing key information about rates and fees have proven helpful for consumers to understand these key terms and to compare them with other offers that they receive.

Question 3 — *What formatting or other navigational aids will make the account-opening disclosures more effective throughout the life of the account? One idea may be a table of contents that a consumer could refer to on an as-needed basis throughout the life of the account.*

GCUA Response: A table of contents would be very burdensome to create and even harder to track and update as the disclosures change during the course of the account relationship. We believe that with the new Schumer Box for initial disclosures, there may not be a need for a table of contents or other such formatting or navigational aids.

### **Periodic Statements**

Question 4 — *Are there disclosures on the periodic statement that should be grouped together on the same page that would help consumer understanding? One idea may be to group together the "due date" and "please pay by date," which is the suggested date to submit payment in order for it to be received by the due date. Some consumers may now be confused and consider the "please pay by date" as the "due date" if these two dates are on different parts of the statement.*

GCUA Response: While we feel more requirements could further confuse consumers, we agree that the “due date” and “please pay by date” should be grouped together in an effort to minimize such consumer confusion.

Question 5 — *Could the cost of credit be more effectively presented on the periodic statement if less emphasis were placed on how the fees are labeled and all fees were grouped together? What other approaches should the Fed consider?*

GCUA Response: We urge the Fed to consider eliminating the requirement to include the effective, or “historical” APR on periodic statements, which includes the interest, as well as other fees and costs that are required under Regulation Z to be included in the historical APR calculation. The historical APR is confusing because if these fees are incurred by consumers, the APR on the periodic statements will be much different than the APR that may have been reflected in the account-opening or other disclosures that the consumer may have relied upon at the time he or she entered into the account relationship. This confusion will always continue, regardless of the verbiage that creditors include in an effort to explain this discrepancy.

### **Credit Card Application Disclosures/"Schumer Boxes"**

Question 7 — *For credit card applications, certain disclosures must be presented in the form of a table, known as the "Schumer Box" (the Fed provides a model form for Schumer Boxes.) Is the Schumer Box effective, as currently designed? What format improvements should the Fed consider?*

GCUA Response: GCUA feels current design is satisfactory.

Question 8 — *Should balance transfer fees be included in the Schumer Box? (Under current rules, this is optional, as long as the fees are clearly disclosed elsewhere on or with the application.)*

GCUA Response: For ease of understanding, GCUA believes all fees should be included in the Schumer Box.

### **Model Forms and Clauses**

Question 10 — *The Fed provides model forms and clauses to facilitate TILA compliance. How can the existing clauses and forms be revised to improve their effectiveness?*

GCUA Response: GCUA believes that one model for each situation be utilized in lieu of the Fed providing two or three.

Question 12 — *What additional information is available regarding the navigability and readability of different formats or ways in which the formatting can improve the effectiveness of disclosures? (For example, certain studies suggest that using bold headings is helpful, while the use of all capital letters is not helpful.)*

GCUA Response: We suggest that consistent headings among the various documents involved in open-end credit may be helpful for consumers, such as among the credit card solicitation, application, and credit card agreement.

### **Improving the Rules for Classifying Fees as "Finance Charges" and "Other Charges"**

Question 13 — *How can the Fed provide greater clarity with regard to categorizing fees as either "finance charges" or "other charges?" What types of fees should not be included as a "finance charge" and why should they be excluded? How should these fees be disclosed in order to provide uniformity with regard to disclosures and to facilitate compliance?*

GCUA Response: GCUA believes that all fees should be disclosed and labeled as fees and the same for finance charges. Special designation seems to complicate the issue.

Question 14 — *How do consumers learn about open-end credit fees and about any changes in these fees?*

GCUA Response: Fee schedules are provided with initial acceptance of open-end agreement and changes in these fees are communicated via statement messages, newsletters, etc., as permitted and required by the regulation.

Question 15 — *What significance do consumers attach to the term "finance charge," as opposed to "fee" or "charge?"*

GCUA Response: We feel consumer perception of a finance charge is that it is a requirement and that a fee is optional.

Question 19 — *What other issues should be considered with regard to classifying fees? For example, do home equity lines of credit present unique issues?*

GCUA Response: We believe that any changes the Fed may consider in response to this problem should not necessarily impact other types of open-end credit, such as HELOCs or multi-feature home equity loans.

Question 20 — *How important is it that the classification of fees for open-end accounts mirrors the classifications for closed-end loans? For example, excluding certain charges from the APR for open-end accounts is not consistent with a Fed recommendation in 1998 that "all required fees" be included in the APR for closed-end loans.*

GCUA Response: Due to the differences between open-end and closed-end lending, we believe it is not important that the classifications mirror one another.

### **Over-the-limit Fees**

Question 21 — *Fees for exceeding a credit limit are not considered "finance charges" but are considered "other charges." Should these fees always be excluded as a "finance charge," such as when a creditor does not require the consumer to bring the account balance below the established credit limit and then imposes the over-the-limit fee each month on a continuing basis?*

GCUA Response: Over limit fees should not be considered as part of the finance charge, as the condition is at the control of the consumer and no fee is imposed when the consumer maintains a proper account balance.

Question 22 — *Credit card transactions may be authorized in situations in which the merchant or creditor cannot at that time determine if the credit limit will be exceeded by that transaction. How do card issuers explain their practice of approving transactions that may result in exceeding the credit limit and would, therefore, incur over-the-limit fees? Are these fees imposed at the time of the approved transactions or later, such as at the end of the billing cycle? Are additional disclosures needed regarding the circumstances in which these fees will be imposed?*

GCUA Response: Simple, clear communication in the initial disclosures would be the best approach for explaining the approval process. GCUA feels over limit fees should only be imposed at the end of the billing cycle.

### **Use of the "Effective" or "Historical" APR Disclosures on Periodic Statements**

Question 24 — *Are there ways to improve consumers' understanding of the effective APR by providing additional context? For example, should the consumer be informed*

*that the effective APR includes interest, as well as fees, and that the calculation assumes the fees relate to credit that was extended only for a single billing period, which results in an APR substantially higher than the interest rate?*

GCUA Response: GCUA feels the use of an ‘Effective APR’ would not be helpful for consumer understanding. Please see our response to Question #5.

Question 25 — *Are there other methods for disclosing the costs of credit on periodic statements that may be more effective than disclosing the individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of fees imposed during the billing cycle, or a total dollar amount of fees by type? Would a cumulative year-to-date total of certain fees be useful for consumers?*

GCUA Response: Please see our response to Question 5 above, in which we explain how the fees should be disclosed on periodic statements in a manner that achieves the goal of providing this information to consumers so that it is simple and easy to understand.

### **Disclosures of Rate Changes**

Question 26 — *Certain changes to the terms of an open-end plan require additional notice. For these change-in- terms notices, the general rule is that 15 days’ advance notice is required to increase the finance charge (including the interest rate) or an annual fee. Is this adequate to provide timely notice to consumers?*

GCUA Response: We believe a 15-day notice is sufficient.

Question 27 — *There are exceptions to the 15-day notice requirement. If the interest rate or other finance charge increases due to default or delinquency, notice is required, but does not have to be given in advance. Also, a change-in-terms notice is not required if the creditor specifies in advance the circumstances in which an increase will occur. How are account-holders alerted to interest rate increases due to default on the account or on another account that the consumer has with another creditor? Are the existing rules for disclosing increases in interest rates and other finance charges adequate and timely for the consumer? How can they be improved?*

GCUA Response: If the interest rate or other finance charge increases due to a default or delinquency, then notice should be provided at the time of the default or delinquency, since that is the time the information will be of most value and relevant for the consumer. If the information is provided in advance, then it should be incorporated in the new Schumer Box that we suggest should be developed for credit card agreements, as described in our response above to Question 2.

## **Balance Calculation Methods**

Question 28 — *Under TILA and Regulation Z, consumers receive information about how account balances are calculated, although there is no requirement as to which methods creditors must use. How significantly does the balance calculation method affect the cost of credit, given typical use patterns?*

GCUA Response: Changing the calculation method can result in changes to the cost of credit. Some formulas benefit the creditor more than others. An example would be if the rate were applied to the highest balance during a statement period, as opposed to an average balance. One method that credit unions often use is calculating the average daily balance for the specific statement period and then uses the applicable APR to calculate the interest cost for that period. We view this as a fair calculation method, although we recognize this can be manipulated by other creditors in a manner that further increases the cost of credit.

Question 29 — *Do consumers understand that different balance calculation methods affect the cost of credit and do they understand which methods are more or less favorable to them? What additional disclosures would be helpful for consumers?*

GCUA Response: We believe consumers generally do not understand how different balance calculation methods affect the cost of credit or which ones may be more or less favorable to them. Due to the various options already available for balance calculation, we feel that additional disclosures would simply add to the likelihood of causing confusion (rather than clarity) for the consumer.

Question 30 - *Precise explanations with regard to balance calculation methods are required on account-opening disclosures and on periodic statements, which can be very complex. Should the Fed permit more abbreviated descriptions on periodic statements, with a reference to where consumers can obtain further information, such as the credit agreement or a toll-free telephone number?*

GCUA Response: Existing explanations are satisfactory. However, we feel that abbreviated disclosures, with reference where to locate precise calculation methods, should be permitted.

## **Disclosing the Effects of Making Only Minimum Payments**

Question 31 — *Should Regulation Z be amended to require: 1) that periodic statements should disclose the effects of making only the minimum payment, such as how long it will take to pay the balance or disclosing that making the minimum payment may result in additional penalty fees for exceeding the credit limit if the payment does not bring the balance under the limit?*

GCUA Response: No. However, if the Fed were to require disclosures regarding the effects of making minimum payments, we believe it should take the form of an example,

using a sample dollar amount and a sample rate that the creditor may realistically impose, as opposed to a customized example for each consumer.

Question 32 — *Is information about amortization periods for an account readily available or would new systems need to be developed?*

GCUA Response: Significant software changes would be necessary to implement these changes.

Question 33 — *Is there data on the percentage of cardholders that regularly or continually make only the minimum payments on open-end credit plans?*

GCUA Response: We do not believe the data is available, as most credit unions do not monitor minimum payment accounts.

### **Payment Allocations**

Question 35 — *Do creditors typically disclose their allocation methods and how are they disclosed?*

GCUA Response: Credit unions generally do not charge different rates for purchases, cash advances, and balance transfers so different payment allocation methods would not impact their members' cost of credit.

Question 36 — *Should Regulation Z require disclosure of the allocation method on the periodic statement? Would this benefit consumers and avoid consumer confusion or misunderstanding? (Misunderstandings often occur when consumers accept low promotional rates for cash advances for a limited time and payments are allocated to the cash advance before allocated to purchases that have a higher APR.) What would be the cost of providing the disclosure? What level of detail would provide useful information while avoiding information overload?*

GCUA Response: We believe it would be very difficult to disclose the allocation method in a manner that consumers would easily understand. We also question the usefulness because consumers would not likely be able to compare allocation methods among creditors. Consumers primarily care about the amount of interest they pay and that their payments are applied correctly.

### **Tolerances**

#### **Other Questions Regarding the Content of Disclosures**

Question 38 — *For any changes suggested regarding disclosures, what would be the costs and benefits of these changes, including one-time costs?*

GCUA Response: Aside from our comments expressed above, we believe the costs would be significant and benefits minimal. Our experience is that the general consumer does not read ‘change in term’ notices because the wording is not clear and concise.

Question 39 — *Are there particular types of open-end accounts, such as sub-prime or secured credit card accounts, that should require special disclosure rules to ensure that consumers have adequate information about these products?*

GCUA Response: We do not believe there are any specific types of accounts that would need specialized disclosure rules.

Question 42 - *Should the Fed exercise its authority to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?*

GCUA Response: No. We believe it would be very difficult to determine the income and asset level of borrowers for purposes of providing such a waiver. Even if such amounts could be determined, they would have to be continually indexed and changed to take into account future inflation.

### **Modifying the Rules Regarding Substantive Protections**

Question 43 — *The Fed is requesting comment on revising TILA’s substantive provisions for open-end accounts. These include provisions regarding billing disputes, cardholder liability for unauthorized card use, issuing cards only upon the consumer’s request or for renewal or substitution of an accepted card, and the manner that consumers make and the manner that the creditor post payments. Are these provisions adequate and are the creditors’ responsibilities clear?*

GCUA Response: Yes. We believe these substantive provisions are adequate as they are generally favorable to the consumer.

*Do these provisions need to be updated to address particular types of accounts, practices, or to address technological changes?*

GCUA Response: We believe these could be updated to address technological changes.

### **Accessing Credit Card Accounts**

Question 44 — *The Fed is requesting information on the extent that the industry has developed open-end credit plans allowing consumers to conduct transactions using only account numbers and that do not involve physical devices, such as an actual credit card. For these types of plans, what are the policies for resolving accountholder claims when disputes arise?*

GCUA Response: We generally believe that the requirements for these types of open-end credit plans should be the same as those involving the physical device.

## **Convenience Checks**

*Question 45 — TILA's protections regarding merchant disputes, unauthorized use of the account, and prohibition against unsolicited issuances does not apply to convenience checks that are offered by credit issuers. Have consumers experienced any problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should all of TILA's protections be extended to other extensions on credit card accounts, such as convenience checks?*

GCUA Response: Several credit unions are very concerned about the current use of convenience checks as there have been a number of problems regarding these types of checks. Convenience checks are often forged, counterfeit, or otherwise unauthorized and are often returned when there is a billing dispute. This problem is facilitated because these checks can be easily stolen from the consumer's mailbox. A common problem that credit unions experience is when these checks are altered to make them appear as cashiers' checks, which are then instantly credited to the member's account, and then it is later discovered that these checks are counterfeit. Until the appearance of convenience checks, credit unions were comfortable in relying on cashiers' checks and crediting them to the members' account upon deposit. Because of these and other problems, we suggest that financial institutions should be permitted to place a long hold time when these types of checks are deposited at the institution.

If the use of convenience checks continues, then we believe they should be subject to the rules that apply to checks, as opposed to being treated as credit card payments, since they are processed through the check payment system. These checks should not be considered credit card transactions and should no longer be subject to error resolution rights or other protections that apply to credit card transactions.

## **Unsolicited Issuance of Credit Cards**

*Question 46 — TILA generally prohibits creditors from issuing credit cards, except in response to a request or application. There is an exemption for cards issued as renewals or substitutions to replace an accepted card in which more than one card may be replaced, subject to certain conditions. This allows issuers to use new formats and technologies to issue cards to supplement the traditional card. Should Regulation Z be revised to allow creditors to issue additional cards at anytime, even if it is not for the renewal or substitution of the previously issued card?*

GCUA Response: Yes.

*Should conditions or limitations be attached in these situations, such as a requirement that the card be sent unactivated or providing written, prior notice to the consumer that additional cards will be sent?*

GCUA Response: Yes.

### **Prompt Crediting of Payments**

Question 47 — *TILA requires that a payment made on an open end-credit plan must be credited to the account as of the date the payment is received by the creditor and that creditors may impose reasonable payment requirements. Creditors may also specify a "cut-off" hour for the payment to be received in order to be credited on that day. What are the cut-off hours used by most card issuers? How do issuers determine cut-off hours?*

GCUA Response: Most credit unions do use cut-off hours for payments. Credit unions will often post the payment on the day it is received, even if the payment is processed at a later time, if due to a backlog or certain other reasons that are beyond the control of the member.

Question 49 — *Do the rules and creditor disclosures clearly inform cardholders of the date and time that payments must be received in order to avoid additional fees? How can the disclosure requirements be improved?*

GCUA Response: We feel the current rules are adequate.

Question 51 — *Some creditors' service centers are open 24 hours a day, 7 days a week, to receive mail delivery and electronic payments continuously. Should the Fed issue a rule requiring creditors to credit a payment as of the date it is received, regardless of the time?*

GCUA Response: No. We realize that electronic payments can be processed after the close of the business day and still be posted on that day if received prior to midnight. However, in these situations, payments received by mail after the close of business can be received, but are often stored overnight and not processed until the next day.

### **Request for Comment on Additional Issues**

Question 57 — *Are there nonregulatory approaches that may improve the effectiveness of TILA's disclosures and substantive protections, such as best practices or consumer education efforts? For example, how might calculation tools that are widely available on the Internet be used to provide better education to consumers regarding the effect of making only minimum payments? Is there data as to the extent to which consumers use these and other types of calculation tools?*

GCUA Response: We believe non-regulatory consumer education efforts are preferred.

Question 58 — *Are there other areas of Regulation Z, in addition to the rules on open-end credit, that should be included in this initial stage of review? For example, creditors must provide new disclosures when a closed-end loan is refinanced, which occurs when an existing obligation has been satisfied and replaced by a new obligation based on the contract and applicable law. Different states may take different approaches as to when the obligation is "satisfied and replaced." Should the Fed adopt a different definition of "refinancing" that would lead to a more uniform approach as to when these new*

*disclosures are needed? Also, Regulation Z specifies classes of transactions that are not covered under TILA. These include: 1) business, commercial, agricultural, or organizational credit; 2) credit over \$25,000 that is not secured by real property; 3) public utility credit; 4) securities or commodities accounts; 5) home fuel budget plans; and 6) student loans. Should these be updated?*

GCUA Response: Credit unions do their best to comply with Regulation Z and all of the other regulatory requirements that are imposed on them. For the smaller credit unions, complying with Regulation Z and these other requirements is particularly difficult because they do not have sufficient staff to ensure compliance and they often have to rely on outside counsel. This imposes a significant cost burden on these credit unions, as compared to larger financial institutions that can more easily absorb the cost of in-house staff or outside counsel. Also, penalties can be more easily absorbed by larger institutions that earn significant profits, as opposed to smaller financial institutions that do not earn such profits.

To help smaller financial institutions, we suggest the Fed consider reducing penalties for those smaller institutions that inadvertently violate Regulation Z. This is not to suggest that these institutions should be exempt from Regulation Z, as all credit unions take their responsibilities seriously with regard to Regulation Z and understand the need for their members to have adequate disclosures before they enter into loan transactions. However, we believe penalty relief is warranted to help ensure that these smaller institutions can survive inadvertent violations of Regulation Z.

Thank you for the opportunity to comment on the ANPR requesting comments on possible changes to the open-end credit rules under Regulation Z. If you have questions about our comments, please contact Cynthia Connelly or me at (770) 476-9625.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Ellis". The signature is written in a cursive style. To the right of the signature is a vertical red line.

Richard Ellis  
Vice President/Credit Union Development