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Public Comments on Truth in Lending:========

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Comment Info: =================

General Comment:

October 12, 2007

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

Re: Docket No. R-1286

Dear Ms. Johnson:

The National Association of State Credit Union Supervisors (NASCUS) appreciates the opportunity to comment on the Board of Governors of the Federal Reserve (Board) proposed amendments to Regulation Z on behalf of state credit union regulators. We further appreciate the detailed suggestions in the proposed amendments.

Open-End Credit, Section 226.2(a)(20)

First, we note the proposed change in the definition of open-end credit. Open-end credit continues to be consumer credit extended under a plan that meets all

three
criteria set forth in the regulation to enforce the Truth in Lending Act (TILA). In
addition, Comment 2(a)(20)-2 reinforces a long-standing practice that ?advances
and payments may be allocated to different sub-accounts for the purpose of
prescribing different terms ? for those advances.?

Proposed comment 226(a)(20)-2 provides that repayments of an advance for any
sub account must generally replenish a single credit line for that sub-account so
that the consumer may continue to borrow and take advances under the plan to
the extent that he or she repays outstanding balances. This section establishes
that the consumer may take advances without having to obtain separate approval
for each subsequent advance.

State credit union regulators believe this provision may be problematic. Under
some credit union lending programs, the institution may make a separate closed-
end advance under a multi-featured, open-end loan agreement, typically for auto
loans. Under the proposed regulation, a consumer would be able to take a further
advance without having to obtain separate approval or without separately applying
for the funds. This does not promote safety and soundness from a regulatory
perspective.

State credit union regulators believe the revised provision clarifies that a multi-
featured, open-end lending program, as it is currently used, may not be truly open-
end credit, and may present safety and soundness concerns if the revised
provision is enacted. For example, state regulators believe that auto loans should
be made as closed-end loans with set terms and full disclosure of terms and not
as replenishing sub-accounts. Hypothetically, on a replenishing line of credit, the
value of the collateral will decline until it is worth less than the credit limit. If an
auto loan is replenishing, a financial institution may not receive proper
compensation for the increase in risk as the value of the automobile depreciates.
The financial institution may also face greater exposure if separate underwriting is
not permitted and the debt ratio of the consumer is significantly impacted as they
continue to add to the existing loan sub-account.

There are several other features, too, that state credit union regulators wish to
identify about closed-end lines of credit. One, in closed-end credit, the term and
total cost can be calculated by the consumer. With a self-replenishing, open-end
plan, the costs cannot be calculated and there is no set term for a collateralized
loan. This could result in upside down loans where the value of the collateral

is
less than the credit limit. In this case, the consumer is never certain of the total
cost of the credit or whether the loan is paid in full.

Additionally, in community property states, closed-end credit requires that a spouse is notified of a new loan. (Nine states are community property states representing about 25 percent of the U.S. population.) In community property states, spouses are liable for any debt accrued during the marriage. In an open-
end credit account, the spouse only receives notice at inception, not every time
an advance is made. Spouses could be liable for debt that they do not know about. This is an ongoing concern in these states.

We acknowledge, too, the additional cost for credit unions to comply with the amendments in the proposed regulation. The proposed change in the definition of
open-end credit would mean that credit unions can no longer underwrite individual
advances on the plan and may have to write large ticket collateralized loans as
separate closed-end loans. This change would require new disclosures and additional training, which would increase costs. We believe a more robust multi-
featured open-end lending regulation permitting separate underwriting would benefit consumers, credit unions and other financial institutions in the long term.

Consumer Protection Concerns

Universal Default Provisions

NASCUS acknowledges the proposed extended notice requirement of at least 45 days prior to the effective date of a change; this is a change from the current 15-
day notice requirement. We appreciate that this provision is consumer friendly;
however, we remain concerned about other practices that negatively impact consumers. A universal default provision permits a creditor to raise a consumer?s
interest rate to the penalty rate if the consumer is delinquent on any account,
even an unrelated account to that creditor.

NASCUS understands that universal default provisions are uncommon in credit union consumer lending products. Unfortunately, there are financial institutions
that continue to use this practice in spite of the adverse consumer impact.

Hypothetically, a credit union member could have loan accounts with universal default clauses unrelated to their credit union account. If the member were to default on any one of those accounts, the interest rate or other terms of all those
accounts could increase and ultimately prevent timely payment of the credit union
account.

While NASCUS regulators believe that universal default provisions are not prevalent in credit union lending products, we firmly believe that universal default provisions deserve further review and consideration by the Board. These provisions, in our opinion, represent an unfair business practice that is extremely unfriendly to consumers.

Opt Out Provision

Again, NASCUS acknowledges that the proposed rule suggests a 45-day notice requirement before a rate increase takes effect. This provides time for a consumer to avoid the rate increase by paying off the balance or moving it to another card. However, this provision might be insignificant if a consumer does not have the means to pay off the balance or find another lender willing to lend the outstanding balance. NASCUS proposes that the consumer in jeopardy of a rate increase be allowed to opt out unless the rate increase was part of a low initial rate plan or due to default or performance problems on the same account. We believe that a consumer should be able to freeze the account at the lower rate and not be penalized with a higher rate for purchases already made on the card. However, the lender could prevent the creditor from making additional purchases on the account; this would prevent the consumer from being subject to an increased rate. NASCUS believes these suggestions are consistent with the stated purposes of TILA.

In closing, we appreciate the opportunity to comment on the proposed changes to Regulation Z. We are available to discuss our thoughts in depth and assist in finding workable solutions for consumers using multi-featured open and close-end credit products.

Respectfully,

[signature redacted for electronic publication]

Sandra Troutman
Executive Vice President, Government Relations