



November 20, 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-1370 – Proposed Rule on Implementation of the CARD Act

Dear Ms. Johnson:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to provide comments on the Federal Reserve Board's (Board's) proposed rule that will implement provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) that are effective as of February 22, 2010. By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

While we believe some crucial amendments and exceptions should be made to the proposal, the Leagues are supportive of the fair and reasonable approach the Board has taken regarding the implementation of these significant CARD Act provisions. We commend the Board and staff on producing workable and generally balanced regulations from the far-reaching scope and the short timeframes mandated by the CARD Act.

Our comments cover eight areas addressed in the proposal:

- Retention of the July 1, 2010 effective date for the January 2009 Regulation Z Rule
- Minimum payment warnings on periodic statements
- Requirement that payment due dates on credit cards must be the same day each month
- Timely settlement of estates
- The requirement that a creditor evaluate a consumer's ability to make payments
- Limitations on issuing credit cards to consumers under age 21
- Opt-in requirements for over-the-limit transactions and fees
- Internet posting of credit card agreements

Retention of July 1, 2010 Effective Date for January 2009 Regulation Z Rule

The Board has requested comment as to whether the required compliance date for the Regulation Z rules published in the Federal Register in January of 2009 should continue to be July 1, 2010 for those provisions not directly addressed by this proposal (i.e. those

required by the CARD Act). The alternative being considered by the Board would be to change the July 1, 2010 effective date to February 22, 2010 for these January 2009 Regulation Z provisions so that they coincide with the CARD Act provisions.

The Leagues firmly oppose changing the July 1, 2010 effective date for the January 2009 rule. As the Board indicates in the proposal, creditors—including credit unions—are already in the process of updating their systems in order to comply with the July 1, 2010 effective date. Many of these changes involve extensive re-formatting and printing of tables, account opening disclosures, periodic statements, and change-in-terms notices. To expedite these changes by more than four months would be extremely expensive, disruptive, and burdensome to all credit unions, especially to small credit unions that are endeavoring to keep up with the already challenging compliance and economic environment.

We would also like to point out that the Board is undertaking the CARD Act rulemaking process in stages by issuing rules at three different points in time, based on the three different effective dates that are outlined in the CARD Act. The Leagues believe that credit unions should be provided the same opportunity to prepare for compliance in stages, as opposed to being required to comply with all these provisions at the same time.

Minimum Payment Warnings

The proposed rules implement the provisions of the CARD Act requiring minimum payment warning disclosures to be provided on periodic statements. These disclosures are intended to provide information about the time it takes to repay the balance if only minimum payments are made, as well as the total interest that will be assessed. The disclosures are also required to include a specific disclosure of the amount of the monthly payment required in order to repay the balance in 36 months, along with the total amount of interest.

We applaud the Board for limiting these minimum payment warning disclosures to credit cards instead of all open-end credit accounts. This limitation is consistent with the Board's approach to similar disclosure requirements under the Bankruptcy Reform Act of 2005, while still preserving the intent of Congress to provide consumers with meaningful, useful credit card disclosures. In addition, by limiting the disclosure to credit cards only, many credit unions and their members who use multi-featured, open-end lending programs will avoid confusing, redundant, and expensive disclosures. Therefore, the Leagues strongly encourage the Board to retain this limitation to credit cards in the final rule.

However, we do have a concern about the requirement under this provision that will require card issuers to provide a toll-free telephone number in which the consumer may receive information about credit counseling. Card issuers must provide consumers the

name, street address, telephone number, and website address of at least three credit counseling services that have been approved by the United States Trustee or a bankruptcy administrator. These must be in the same state as the billing address on the account, unless the consumer requests otherwise.

While the Leagues realize that the proposal will allow creditors to obtain this information from the Trustee's website (or the relevant bankruptcy administrator's website), who may then disclose the website information to the consumer, a review of the Trustee's website quickly illustrates the difficulty in providing this required information in the manner prescribed in the proposal. For example, although a user has the option of narrowing the scope of the search for a credit counseling agency by selecting a specific State, the result of the search will be a list of approved agencies for that State, some of which may not be located within the State selected. The creditor would then have to review this list to select only those agencies that are actually located within the selected State. In light of this, we respectfully urge the Board to work with the Trustee's Office to improve search results as appropriate so that creditors may more easily comply with the requirements of the proposal.

However, the Leagues are of the opinion that a better option would be to provide the Trustee's website address on the periodic statement itself and not require the toll-free number. This will not only reduce burdens for creditors, but would also be beneficial for consumers as they could get this information directly from the statement and not have to undertake the unnecessary action of calling the toll-free number. While we realize that the toll-free telephone number is required under the CARD Act, we recommend the Board use its authority under Section 105(a) of the Truth in Lending Act (TILA) to eliminate the toll-free telephone number requirement in these situations by recognizing that this would benefit both consumers and card issuers. 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."

As an alternative, the Leagues recommend that the Board provide an exception to the toll-free telephone number requirement for smaller financial institutions. Without an exemption, credit unions that currently do not operate a toll-free number—primarily small credit unions—will face significant additional costs and burdens. Members who belong to credit unions that do not have toll-free numbers generally live and/or work near their credit union, and would therefore would not be charged for the local calls they would make when requesting information related to credit counseling. It is our belief that the costs and burdens of maintaining and staffing a toll-free telephone number would altogether outweigh the benefits that would accrue to the small percentage of members who would use this number.

Payments Due on Same Day Each Month

The CARD Act requires that payment due dates for credit cards must be the same day each month. The Board's proposal implements this provision to clarify that the "same day each month" means the same numerical day each month, such as the 25th of each month and not the same relative date, such as the "third Tuesday of each month." In effect, this means that creditors will not be able to set due dates for credit cards that are on the 29th, 30th, or 31st, since not all months have these dates.

The Leagues understand and agree with the intent of this CARD Act provision to promote predictability and to enhance consumer awareness of due dates in order to encourage timely payments by consumers. However, we believe that proposal is too inflexible, confusing, and unhelpful for consumers. Many credit unions and other financial institutions serve members/consumers who receive their paychecks on the last business day of each month. The application of a "same numerical date" standard regarding due dates would create a hardship for those members, as their due date would have to be no later than the 28th of each month, yet in most months they would not receive their pay until the last day of the month. Obviously, such an inflexible standard is contrary to intent of the CARD Act—and the long history of credit unions—to provide consumers with predictable, convenient, and helpful financial services.

To address this issue, we strongly recommend that the Board revise the proposed language regarding this provision as follows:

"The payment due date for a credit card account under an open end consumer credit plan shall be the same numerical day of each month or the last day of each month."

Timely Settlement of Estates

As required under the CARD Act, the proposal will prohibit creditors from charging fees after receiving a request for the balance from the administrator or executor of a deceased accountholder's estate. In such situations, the Leagues believe creditors should be able to resume charging fees in the event the administrator or executor fails to pay the balance within a reasonable time after the balance information is provided. Regarding what constitutes a reasonable time, as the proposal indicates that the creditor should provide the balance information within 30 days after receiving the request from the administrator or executor, we believe that this would be an appropriate and reasonable period to use in these situations.

Evaluation of Consumer's Ability to Make Payments

The CARD Act prohibits creditors from opening a new credit card account, or increasing the credit limit for an existing account, unless the creditor considers the consumer's ability

to make the required payments. The proposed rules interpret this to mean the ability to make the required minimum payments, and permit creditors to estimate this ability based on the consumer using the full credit line and the minimum payment formula and interest rate that applies to the account.

The Leagues believe that, for joint accountholders, creditors should be permitted to analyze this ability by reviewing either or both joint accountholders, which would mean these provisions would be satisfied if one accountholder demonstrates the ability to make the minimum payments, even if the other accountholder would not have this ability. Further, with regard to increasing the credit limit, we believe the proposal should clarify that creditors should be able to consider payment history on the account—as well as any other relevant information—when making this determination, as in some situations income may not be the best predictor as to whether the consumer will make the required minimum payments.

Provisions Applicable to Underage Consumers and College Students

The proposal also implements the provisions of the CARD Act that prohibit creditors from offering students at an institution of higher education any tangible item to induce them to apply for open-end credit if the offer is made at or near the campus or at an event sponsored by or related to the institution. The proposal indicates “at or near” will mean within 1,000 feet of the campus.

The Leagues respectfully urge the Board to reconsider the 1,000 foot threshold. For example, at an urban university, the 1,000 foot threshold could easily encompass nearby, established businesses. This may include branches of financial institutions at or near a campus that may have a history of providing small gifts for both students and other residents (e.g., pens, calendars, water bottles, etc. given to open a savings account) that have not resulted in the problems these provisions of the CARD Act are intended to address. We believe that a more equitable approach would be to prohibit these inducements only within school boundaries.

Further, the Leagues believe these provisions should not even apply to established, permanent branches of financial institutions that are already located on the campus of a college or university. We believe the intent of these provisions is to address tables and booths that card issuers temporarily set up on the campus, especially at the beginning of the school year. It is our understanding that those who visit established branches are specifically seeking the services provided by credit unions, as opposed to being the focus of direct marketing in the form of solicitations from tables and booths. In addition, established branches have the ability to provide a wide-range of financial services for students, as well as financial education and counseling, which is a relationship that goes well beyond simply signing them up for a credit card at a booth or table.

For the reasons outlined above, we urge the Board to use its authority under Section 105(a) of TILA to provide flexibility with regard to these CARD Act provisions that apply to college students. This would include limiting the restrictions on providing tangible items to the boundaries of the school itself, as well as allowing established branches of financial institutions within the school boundaries to continue to provide these types of small gifts as a means to introduce students to the wide range of responsible financial products that credit unions and others offer.

Opt-in for Over-the-Limit Transactions and Fees

The proposal will prohibit a creditor from assessing a fee for paying an over-the-limit transaction, unless the consumer is given notice and a reasonable opportunity to opt-in to the creditor's payment of these transactions. Currently, consumers often assume their over-the-limit transactions will be covered by the creditor, especially if they have previously made these types of transactions. In order to comply with this provision of the CARD Act, it is our understanding that many financial institutions, including credit unions, will likely either block these transactions, or will allow certain transactions that exceed the credit limit to proceed but will not charge a fee. (Either of these options is viewed as preferable to the added burden of setting up an opt-in process and sending opt-in notices to consumers.)

While consumers may receive information about these changes from their financial institution, we are concerned that, given the short compliance window and the increased number of year-end notices and information returns financial institutions must provide their consumers, many consumers may not receive and sufficiently understand this information prior to the February 22, 2010 effective date. Therefore, the Leagues urge the Board to undertake an effort to educate consumers about this change and to begin this process well before the February 22, 2010 effective date. The advance notification will help consumers prepare for situations in which their over-the-limit transactions would be blocked, as opposed to being allowed to proceed. Without this additional consumer awareness effort, our concern is that consumer frustration will be unfairly directed at creditors.

Internet Posting of Credit Card Agreements and Submission to the Board

As required under the CARD Act, the proposal will require issuers of credit cards to post the agreements for each plan they currently offer to the public on their websites and also to submit the agreements to the Board for posting on its publicly-available website. We recognize there is an exception to the requirement for submitting agreements to the Board if the creditor has fewer than 10,000 credit card accounts. However, the exception does not apply to the requirement of issuers to post these agreements on their own website.

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For this requirement, the Leagues urge the Board to provide an exception for very small financial institutions that currently may not have a website.

We also note that creditors must provide a toll-free telephone number in which consumers may request their credit card agreement. For reasons similar to the ones we noted regarding the toll-free telephone number requirement for the minimum payment disclosures, we urge the Board to consider similar flexibility in the proposal for those creditors that do not currently maintain a toll-free telephone number.

As for the requirement to submit credit agreements to the Board, which will then be posted on the Board's publicly available website, the proposal requires a creditor that makes changes to an agreement previously submitted to the Board to resubmit the entire revised agreement, even if the changes are non-substantive. We question the efficacy of such a requirement, which will be significantly more burdensome on creditors, and will not provide useful information to consumers. Therefore, we ask that the Board reconsider this approach, and not require the resubmission of non-substantive changes.

In closing, I would like to thank the Agencies for the opportunity to comment on this important issue. We appreciate your consideration of our views as you work to craft reasonable, fair, and effective regulations for consumers and financial institutions.

Sincerely,

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues