



Credit Union National Association

cuna.org

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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:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Federal Reserve Board (Board) in response to the proposed rule that will implement provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) that will be effective as of February 22, 2010. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 8,000 state and federal credit unions, which serve 92 million members.

Summary of CUNA's Comments

- CUNA strongly opposes changing the July 1, 2010 effective date for provisions of the Regulation Z rules issued earlier this year that are not directly related to these CARD Act rules. It should be the credit union's decision as to whether it is feasible or desirable to comply with certain of these Regulation Z provisions prior to July 1st, based on its own timetable and resources.
- CUNA strongly commends the Board for limiting the minimum payment warning disclosures to credit cards by recognizing these provisions should not apply to other types of credit in which these minimum payment warnings were not intended. CUNA encourages the Board to use its authority to interpret Regulation Z to achieve this result, and we urge the Board to continue this approach in the final rule.



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- With regard to the minimum payment warning provisions, the proposal will require creditors to indicate on the periodic statement the amount the consumer will save if he or she pays the balance in 36 months, as compared to only making the minimum payments. CUNA opposes this requirement as it will not provide meaningful information because the factors that comprise this calculation will constantly change.
- Creditors will be required to maintain a toll-free telephone number in which consumers may use to obtain information on credit counseling agencies, and creditors will be permitted to use information obtained from the website of the United States Trustees (Trustees) Office or the relevant bankruptcy administrator. We believe the preferable approach for both consumers and creditors will be to allow creditors to disclose this website address on the periodic statement, in lieu of the toll-free telephone number.
- CUNA opposes the provisions requiring creditors to provide information for a credit counseling agency that offers services in another language, as specified by the consumer. This will impose significant burdens without additional benefits for consumers as they will be able to access this information for themselves from the website of the Trustees Office.
- CUNA believes there should be an exemption to the minimum payment warning provisions when there is a specified repayment period in the account agreement and the minimum payment will amortize the balance over this period.
- For the requirement that creditors cannot impose over-the-limit fees unless the consumer agrees in advance to these fees, we strongly urge the Board to undertake an effort to educate consumers about this change. The advance notification will help consumers prepare for situations in which their over-the-limit transactions will now be blocked. We also request the Board to provide an exception that will allow creditors to impose the fee in certain situations that are not under their control, such as when the transaction exceeds the previous amount submitted for authorization.
- For the requirement that consumers under the age of 21 demonstrate the ability to make minimum payments on a credit card account or obtain a co-signer, we believe these consumers should be permitted to open and maintain share-secured accounts as these types of accounts will guarantee the payments.
- As for the provisions prohibiting creditors from offering inducements to open accounts “at or near” the college or university, we believe the prohibition should not extend beyond the school grounds and should not apply to permanent branches that are located on campus.
- The proposal will prohibit creditors from charging fees after receiving a request for the balance from the administrator of the deceased accountholder’s estate. Under these circumstances, we believe creditors should be able to resume charging fees if the administrator or executor fails to

pay the balance within a reasonable time after the balance information is provided.

- When opening an account or increasing the credit limit, the proposal will require creditors to determine if the consumer can afford the minimum payments. For joint accounts, creditors should be permitted to analyze this ability by reviewing either or both joint accountholders, which means these provisions would be satisfied if only one accountholder demonstrates the ability to make the minimum payments.
- With regard to increasing the credit limit, we believe the proposal should clarify that creditors would be able to consider payment history on the account and any other relevant information when making this determination. Creditors should not be required to verify the information when making these determinations.
- For the requirement that creditors provide credit card agreements to consumers upon request through their website and through a toll-free telephone number, we urge the Board to provide an exception for credit unions without a website and also allow flexibility with regard to the toll-free telephone number for smaller credit unions. We also believe these provisions should only require creditors to provide existing documents and should not be interpreted to require the creation of new or reformatted disclosures.
- For the provisions requiring certain creditors to submit credit card agreements to the Board, we believe creditors should not have to resubmit the agreement if only nonsubstantive changes are made.
- When a creditor substitutes or replaces an existing credit card in situations in which the card is lost or no longer operative, the Board should clarify that this situation should not require a change-in-terms notice or be considered a new account.
- CUNA supports the provisions that prohibit cut-off times before 5 PM on the due date, based on the time zone of the location in which payments are received and supports the provisions for in-person payments that require the cut-off time to be the same as the time that the branch or office closes.

Changing the July 1, 2010 Effective Date for Certain Regulation Z Changes

In the proposal, the Board requested comment as to whether the required compliance date for the Regulation Z rules issued earlier this year should continue to be July 1, 2010 for those provisions not directly addressed by this proposal. The alternative being considered by the Board would be to change the July 1, 2010 effective date to February 22, 2010 for these Regulation Z provisions so that they coincide with the CARD Act provisions.

We strongly oppose changing the July 1, 2010 effective date. We recognize that certain Regulation Z provisions with this effective date are intertwined to some extent with various CARD Act provisions that are effective on February 22nd.

However, we believe it should be the credit union's decision as to whether it is feasible or desirable to comply with certain of these Regulation Z provisions prior to July 1st, based on its own individual timetable and resources.

We also emphasize 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. 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.

Furthermore, credit unions are well underway in their process of ensuring that they comply with the Regulation Z rules by July 1st and their budgets, resource allocation, and other plans for implementation have been based on this effective date. To accelerate this date at this late stage in the process would completely disrupt credit unions' budgets and planning processes in this area.

Minimum Payment Warnings

The proposal implements the provisions of the CARD Act requiring that minimum payment warnings be provided on periodic statements. These warnings will be statements that provide information with regard to the time it takes to repay the balance if only minimum payments are made, as well as the total interest that will be assessed. This will also 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 strongly commend the Board for limiting these minimum payment warning disclosures to credit cards by recognizing that these provisions should not apply to other types of credit for which these minimum payment warnings were not intended. This limitation to credit cards will also benefit many credit unions and their members who use multi-featured, open-end lending programs and consolidated periodic statements.

Under these multi-featured plans, a credit union member has one account with the credit union with a number of subaccounts that are also available. This arrangement allows the member to access a variety of different types of open-end credit under a single plan, including loans for automobiles and other vehicles. Limiting these minimum payment warnings to credit card accounts will eliminate the confusion and information overload that would ensue if multiple warnings were provided on these consolidated statements, as well as the additional preparation and mailing costs that credit unions would incur. For these reasons, we strongly encourage the Board to retain this limitation to credit cards in the final rule.

However, we do have concerns with the proposal as it pertains to these minimum payment warnings for credit card accounts. We note the proposal will require the card issuer to disclose on the periodic statement the savings estimate for repaying the balance in 36 months, which will be the difference between the total cost estimate of repaying the balance by making minimum payments and the total cost estimate by making the payments required to pay off the balance in 36 months.

This information is not required under the CARD Act, and we do not believe this disclosure is necessary since consumers can easily calculate this savings with the figures already provided. We also believe this information will not be helpful for consumers since it is based on assumptions, such as a constant annual percentage rate (APR) that will likely change, especially if the APR is a variable rate. The result will be a savings estimate that will constantly fluctuate and would thus be of little value, if not meaningless.

The proposal also implements provisions of the CARD Act that will require card issues to provide a toll-free telephone number in which the consumer may receive information about credit counseling. Card issuers must provide the name, street address, telephone number, and website address of at least three credit counseling services that have been approved by the Trustee or a bankruptcy administrator. These must be in the same state as the billing address on the account, unless the consumer requests otherwise.

We realize the proposal will allow creditors to obtain this information from the Trustee's website, or the website of the relevant bankruptcy administrator, who may then disclose the website information to the consumer. However, it is very difficult to properly navigate the Trustee's website. For example, although the user may narrow the scope of the search for credit counseling agencies 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. The creditor will then have the burden of carefully reviewing this list to identify only those agencies that are actually located within the selected State. We urge the Board to work with the Trustees Office to incorporate the modifications necessary so there is a means in which such a search will only result in a list of agencies that are located within the specific State.

However, we believe the better alternative with regard to implementing the toll-free telephone requirement would be to provide the website address of the Trustee's office on the periodic statement itself and not require the toll-free number. This will not only reduce burdens for creditors, but also would 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.

For this reason, we request that the Board allow credit unions and others to provide this website directly on the periodic statement as an alternative to the toll-free telephone number, especially for smaller financial institutions. The toll-free number requirement will impose significant costs and burdens for those credit unions that currently do not operate or maintain toll-free numbers. The members of credit unions that do not have toll-free telephone numbers often live and work near their credit union, which means they would not be charged for the local calls they would make when requesting information related to credit counseling. The overwhelming costs and burdens of maintaining and staffing a toll-free telephone number completely outweigh the benefits that would accrue to the small percentage of members who would use this number.

If requested by the consumer, the proposal will require a card issuer to provide information for a credit counseling agency that provides services in another language, as specified by the consumer. This is not required under the CARD Act, and creditors are not currently required to provide other services in different languages, as specified by the consumer.

We recognize that the Trustee's website allows the user to search for credit counseling agencies that offer services in a specific language. However, we note that the resulting information is very sparse, and mostly consists of only a telephone number or a website and it would, therefore, be very difficult to determine if the agency is actually located in the indicated State or whether it is approved by that State but located elsewhere. Again, we believe the preferable approach would be to allow the Trustee's website to be listed on the periodic statement so the consumer may decide how to search for a counseling agency that will best meet his or her needs, along with improvements to the website so that it is more useful for consumers.

The Regulation Z rules issued last year provided an exemption to the minimum payment warnings when there was a specified repayment period in the account agreement and the minimum payment will amortize the balance over this period. The proposed rule eliminates this exemption. However, we believe the exemption should be retained for situations in which the consumer does not have the option to make smaller minimum payments, especially since they will already receive information as to these payment amounts. Specifically, the 36-month disclosure would not be helpful if the fixed period is more than 3 years, and it would actually be very confusing for consumers in these situations.

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. Although consumers may receive information about this change, they may not review it or understand it, in which case they will likely be concerned and frustrated when this prohibition goes into effect and future over-the-limit transactions are rejected.

We are concerned that this will be a common occurrence as 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 will be preferable to the burdens of setting up an opt-in process and sending opt-in notices to consumers.

For these reasons, we strongly 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 will now be blocked, as opposed to being allowed to proceed. Otherwise, consumer frustration and anger will be directed to creditors, which would be misplaced. We believe creditors also have a role in preparing consumers for these changes by providing information prior to the February 22, 2010 effective date.

Furthermore, the Board should consider an exception to this prohibition in certain, limited situations, such as when a merchant does not submit credit card transactions for authorization. Under the proposal, if the transaction exceeds the credit limit, no over-the-limit fee may be assessed in these situations if the consumer has not opted-in. Similarly, no fee may be assessed if the final transaction amount exceeds the amount submitted for authorization and results in an over-the-limit transaction. However, creditors may not be able to block these transactions and for this reason we believe a limited exception would be warranted.

CARD Act Provisions Applicable to Underage Consumers and College Students

Consistent with the CARD Act, the proposal will prohibit creditors from issuing a credit card to a consumer under the age of 21 unless:

- He or she has obtained the signature of a cosigner who is at least 21 and has the means to make the minimum payments and agrees to joint liability; or
- The consumer under the age of 21 provides information indicating he or she has the ability to make the required minimum payments.

In our view, it is unclear whether a consumer under the age of 21 may open a credit card account if the account is secured by deposits in other accounts held

by the consumer. For example, credit unions offer “share-secured” credit card accounts that are secured by shares or deposits that the member has in other accounts at the credit union. We believe a member under the age of 21 with these types of accounts has demonstrated that he or she has the ability to make the required minimum payments to the extent the secured shares can be used to make these payments, and we request that the Board include this clarification in the final rule.

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.

We 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 that may have a history of providing small gifts for both students and other residents that have not resulted in the problems these provisions of the CARD Act are intended to address.

We understand from Board staff that this threshold was adopted from rules regarding tobacco sales at schools, in which restrictions on sales of these products extend 1,000 feet from the campus. However, an unhealthy and harmful product, such as tobacco, should not be equated to credit cards or other financial services provided by not-for-profit credit unions, which charge reasonable rates and fees. For these reasons, we believe the preferable approach that would be the most easy to comply with would be to prohibit these inducements only on the school grounds or, as an alternative, to reduce significantly the proposed 1,000 feet threshold. We believe the benefit to consumers of extending this to 1,000 feet beyond the boundaries would be speculative, at best.

Furthermore, we do not believe these provisions should 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.

Although we understand the need to provide additional protections to college students, it is our view that those who visit established branches are specifically seeking the services provided by credit unions, as opposed to being directly marketing to by those who solicit students from tables and booths. In addition, these branches have the ability to provide a wide-range of financial services for

these students, as well as financial education and counseling, which is in sharp contrast to just signing up college students for credit cards at booths and tables.

Under these circumstances, it would not be unreasonable for a credit union with an established branch on campus to provide a small gift to encourage students to educate themselves on the financial products and services that would be appropriate them. Since the prohibition on inducements does not apply to all services available at the branch, it will be very difficult for credit unions to monitor the circumstances in which an inducement may or may not be provided. Furthermore, those students under the age of 21 in these situations would also have the further protection under the requirement to demonstrate the ability to make minimum payments or to obtain a co-signer when a credit card account is opened.

For the reasons outlined above, we urge the Board to use its authority under Section 105(a) 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.

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 the deceased accountholder's estate. Under these circumstances, we believe creditors should be able to resume charging fees if the administrator or executor fails to pay the balance within a reasonable time after the balance information is provided, assuming there are sufficient funds in the estate. The proposal also indicates that the creditor should provide the balance information within 30 days after receiving the request from the administrator or executor, and we agree that this would be appropriate.

Evaluation of Consumer's Ability to Make Payments

When opening an account or increasing the credit limit, the creditor must determine whether the consumer can afford the minimum payments. 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. We urge the Board to make this change in the final rule.

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. In these and other situations, it may very well be that income would not be the best predictor as to whether the consumer will make the required minimum payments.

Under the proposal, creditors will not be required to verify information, such as that obtained from the consumer or from credit reports. We agree there should not be a requirement to verify this information as this would impose significant, additional costs and burdens on creditors that would far outweigh any possible benefits for consumers.

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, this does not apply to the requirement of issuers to post these agreements on their Internet website. For this requirement, we urge the Board to provide an exception for very small financial institutions that currently do not have an Internet 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 noted above with regard to the toll-free telephone number requirement for the minimum payment disclosures, we urge the Board to consider similar flexibility in these provisions for those creditors that do not currently maintain a toll-free telephone number.

The proposal generally defines "agreement" as a written document evidencing the terms of the legal obligation between an issuer and a consumer for a credit card account. This would also include certain information, such as APRs and fees, even if the issuer does not otherwise include this information in the specific document evidencing the terms of the legal obligation.

We have no objection to this proposal or to the definition of "agreement." However, we urge the Board to clearly indicate that these provisions will not require creditors to create new documents or to reformat current disclosures. For example, it should be sufficient for a creditor to provide the original credit card agreement, the latest periodic statement, and an addendum that includes other changes in fees and rate that have been imposed since the time of the original

agreement. Taken together, these current documents provide the information required under these provisions and should be sufficient.

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 will require a creditor that makes changes to an agreement previously submitted to the Board to resubmit the entire revised agreement, even if the changes are nonsubstantive. We do not see the need to require submissions of nonsubstantive changes. This will create undue burdens for creditors and will not provide useful information to those who may access these agreements on the Board's website.

Substitution or Replacement of Credit Cards

When a card issuer substitutes or replaces an existing credit card account with another, the proposal will provide guidance as to whether the issuer must consider this a new account or provide a 45-day change-in-terms notice. This determination will be made by considering a specified list of factors that are outlined in the proposal.

We have no objection to any of the listed factors. However, we believe replacing a credit card in situations in which the card is lost or is no longer operative should not be considered either a change-in-terms or a new account. For this reason, we request clarification from the Board that neither of these situations would require new disclosures.

Late Payments

The CARD Act and the proposal will prevent a creditor from treating a payment as late if it is received before 5 PM on the due date, based on the time zone of the location specified by the creditor for receipt of payments, including those payments not made by mail. Also, under the proposal, somewhat different rules will apply for in-person payments in that the cut-off time will be the time the branch or office closes. We agree that this timing guidance from the Board is appropriate with regard to these late payment provisions.

Thank you for the opportunity to comment on the proposed rule that will implement the provisions of the CARD Act that will be effective as of February 22, 2010. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Bloch", is written over a light gray rectangular background.

Jeffrey P. Bloch
Senior Assistant General Counsel