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November 20, 2009

Via Electronic Submission

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

**RE: Comments on Truth in Lending; Proposed Rule
12 C.F.R. Part 226, 74 Fed. Reg. 54124, October 21, 2009
Regulation Z, Docket No. R-1370.**

Dear Ms. Johnson:

Money Management International, Inc. (“MMI”)¹ and Consumer Credit Counseling Service of Greater Atlanta, Inc. (“CCCS-ATL”)² appreciate the opportunity to comment on the proposed rule (“Proposed Rule”)³ to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit Card Act”).⁴ The Proposed Rule issued by the Federal Reserve Board (“Board”) implements provisions of the Credit Card Act that are scheduled to become effective on February 22, 2010.

This comment letter focuses on proposed changes to Regulation Z to implement the amendment to the Truth in Lending Act (“TILA”) to require card issuers to disclose information about credit counseling and debt management services to consumers of open-end consumer credit on periodic statements as set forth in Section 226.7(b)(12)(iv) of the Proposed Rule.

We support the Credit Card Act and efforts to increase financial literacy, including the credit counseling information disclosure requirement. Based on the Board’s proposal, we each recognize the importance of providing consumers facing financial hardships information on how to contact credit counseling agencies that meet the standards established under 11 U.S.C. § 111(a). Nonetheless, we believe that the Board should be aware of the potential effect of the Proposed Rule on the ability of nonprofit tax-exempt credit counseling agencies to continue providing effective educational and counseling services to consumers. The new requirements and the resulting consumer inquiries may be demanding and burdensome for some approved counseling agencies. Thus, we therefore submit the following comments for the Board’s consideration in connection with this rulemaking process.

¹ For more information see <http://www.moneymanagement.org/>.

² For more information see <http://www.cccsatl.org/>.

³ 12 C.F.R. Part 226, 74 Fed. Reg. 54124 (October 21, 2009).

⁴ Pub. L. No. 111–24, 123 Stat. 1734 (2009) (hereinafter the “Credit Card Act”).

I. **Background.**

MMI and CCCS-ATL are each leading nonprofit credit counseling agencies recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.⁵ MMI and CCCS-ATL are each approved as a nonprofit budget and credit counseling agencies by the United States Trustee and bankruptcy administrators pursuant to 11 U.S.C. § 111.⁶ In addition to bankruptcy counseling, we each provide bankruptcy debtor education courses, budget counseling, money management education, debt management programs, and comprehensive housing counseling services. We each provide in-person counseling in local communities in over two dozen states, as well as counseling services via the telephone and Internet. Further, when appropriate we refer consumers to local social service providers in their communities.

As tax-exempt organizations under Code Section 501(c)(3) we provide a substantial amount of free education and counseling to the public and, among other requirements, may not refuse credit counseling services to a consumer due to the inability of the consumer to pay. In addition, our services are regulated under federal and state law, as well as standards and guidelines established by industry trade associations and independent accrediting bodies devoted to consumer protection.

In passing the Credit Card Act, Congress recognized that consumers benefit from the financial education and counseling provided by nonprofit credit counseling agencies such as MMI and CCCS-ATL.⁷ The combination of high consumer debt loads and rising unemployment have resulted in increasing numbers of consumers struggling to meet their financial obligations. Each of our agencies has responded by reaching out to consumers and making available educational sessions, educational materials and resources and providing credit counseling and, for those who are eligible and interested, assistance with debt repayment through debt management plans.

⁵ Tax-exempt status means that an organization is exempt from paying federal corporate income tax on income generated from activities that are substantially related to the purposes for which the entity was organized. Section 501(c)(3) of the Code describes “corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes... no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda...” 26 U.S.C. § 501(c)(3).

⁶ Approved to issue certificates in compliance with the Bankruptcy Code. Approval does not endorse or assure the quality of the Agency's services. For information on approval status, see U.S. Trustee Program, List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111 (*available at* http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

⁷ As the Payments Card Center of the Federal Reserve Bank of Philadelphia acknowledged, “Credit counseling organizations play an important role in the functioning of the unsecured consumer credit market in the U.S. In addition to providing financial education and budget counseling, credit counselors negotiate repayment plans with borrowers’ unsecured creditors that provide an alternative to filing for bankruptcy.” See Conference Agenda, *The Future of Consumer Credit Counseling*, Sponsored by the Payments Card Center of the Federal Reserve Bank of Philadelphia (July 30-31, 2009) (*available at* http://www.philadelphiafed.org/payment-cards-center/events/conferences/2009/agenda_consumer-credit-counseling.pdf).

II. Section 127(b)(11) of the Truth in Lending Act and Proposed Amendments to Regulation Z.

The Credit Card Act revised Section 127(b)(11) of TILA. Specifically, Section 201 of the Credit Card Act amends TILA Section 127(b)(11) to require that creditors that extend open-end credit must provide certain disclosures on each periodic statement (referred to in the Proposed Rule as “repayment disclosures”).

In particular, TILA Section 127(b)(11)(B)(iv) requires, as one of the repayment disclosures, the disclosure of “a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.”⁸ Section 201(c) of the Credit Card Act further directs the Board to issue guidelines:

(1) IN GENERAL- Not later than 6 months after the date of enactment of this Act, the Board shall issue guidelines, by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services, as required under section 127(b)(11)(B)(iv) of the Truth in Lending Act, as added by [Section 201 of the Credit Card Act].

(2) APPROVED AGENCIES- Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number referred to in paragraph (1) include only those nonprofit budget and credit counseling agencies approved by a United States bankruptcy trustee pursuant to section 111(a) of title 11, United States Code.⁹

The Board proposes to implement Section 201(c) of the Credit Card Act in Section 226.7(b)(12)(iv) of the Proposed Rule. As proposed, Section 226.7(b)(12)(i)(E) provides that a credit card issuer generally must disclose on each periodic statement a toll-free telephone number where the consumer may obtain information about credit counseling services consistent with the requirements set forth in proposed Section 226.7(b)(12)(iv). Section 226.7(b)(12)(iv) of the Proposed Rule requires that a card issuer must provide through the toll-free telephone number:

- the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. § 111(a)(1) to provide credit counseling services in the State in which the billing address for the account is located or the State specified by the consumer.¹⁰

⁸ Credit Card Act at § 201(a).

⁹ *Id.* at § 201(c).

¹⁰ Proposed Rule at § 226.7(b)(12)(iv)(A).

- upon the request of the consumer and to the extent available from the United States Trustee or a bankruptcy administrator, the card issuer must provide the consumer with the name, street address, telephone number, and Web site address for at least one organization meeting the above requirements that provides credit counseling services in a language other than English that is specified by the consumer.¹¹

III. Comments.

MMI and CCCS-ATL offer the following comments and suggestions on the Board's proposal, which we believe may help to minimize the unintended consequences of requiring card issuers to provide information about credit counseling and debt management plans to consumers based on the list of agencies approved pursuant to 11 U.S.C. § 111(a)(1).

Allowing Credit Counseling Agencies to Opt-Out

As noted above, the Proposed Rule generally requires card issuers to provide through a toll-free number the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. § 111(a)(1) to provide credit counseling services in the State in which the billing address for the account is located or the State specified by the consumer.

While we generally agree with the Board that providing information about different credit counseling agencies will enable consumers to make a choice about the organization that best suits their needs, we believe that where a counseling agency wishes not to participate in a creditor's toll-free number, the credit counseling agency should be allowed the opportunity to opt-out. There is any number of reasons that a credit counseling agency may feel that they are not able to handle increased demand as a result of the proposed process including funding, available resources and the type of services provided by the agency. As noted above, we support the Credit Card Act and encouraging consumers in financial distress to contact a counseling agency. We believe, however, that a credit counseling agency should be allowed the opportunity to affirmatively decide whether it wishes to be featured in the manner set forth in the Proposed Rule.

Limiting Information to Credit Counseling Agencies Approved under 11 U.S.C. § 111(a)(1)

The Board notes that it relied on its authority under TILA Section 105(a) to make adjustments and exceptions to effectuate the purpose of TILA or to facilitate compliance therewith, with regard to Proposed Rule § 226.7(b)(12)(iv). In particular, the Board cites this authority to clarify that creditors may provide information only regarding organizations approved pursuant to 11 U.S.C. 111(a)(1) (the approval process for credit counseling agencies) rather than also 11 U.S.C. § 111(a)(2) (the approval process for the instructional course concerning personal financial management). As nonprofit tax-exempt credit counseling agencies, we each are committed to providing holistic financial counseling for consumers in financial distress that is

¹¹ Proposed Rule at § 226.7(b)(12)(iv)(B).

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individually tailored to each individual consumer. For this reason, we support this appropriately tailored clarification since the standards and requirements for organizations to be approved under 11 U.S.C. § 111(a)(2) are dramatically different than 11 U.S.C. § 111(a)(1).

The Board also notes that it relied on its authority under TILA Section 105(a) to clarify that even though:

TILA Section 127(b)(11)(B)(iv) and Section 201(c)(1) of the Credit Card Act refer to the creditors' obligations to provide information about accessing 'credit counseling and debt management services,' proposed § 226.7(b)(12)(iv) only requires the creditor to provide information about obtaining credit counseling services.¹²

This approach by the Board is significant. We believe that Congress, as supported by the legislative history of Section 201 of the Credit Card Act, intended to have information provided to consumers on both credit counseling and debt management services, not just bankruptcy options.

Moreover, for a number of reasons, we believe the resulting limitations as proposed and carried forth throughout proposed Section 226.7(b)(12)(iv) could cause problems for card issuers and consumers. First, not all credit counseling agencies that are approved pursuant to 11 U.S.C. § 111(a)(1) provide the same services, despite each providing bankruptcy counseling. Moreover, not all approved bankruptcy counseling agencies provide budget and debt counseling and debt management services. For example, a cursory review of Florida agencies listed on the Executive Office for United States Trustees' ("EOUST") Web site identified that less than 50% provide credit counseling services. In addition, we request that the Board recognize that bankruptcy credit counseling service are almost exclusively fee based whereas credit counseling services are provided free of charge to consumers.

Second, operationally, an influx of inquiries to credit counseling agencies that are approved for bankruptcy counseling but that do not offer debt management services may be challenging and taxing on the limited resources of such agencies.

Third, a limited view by the Board of what type of information is required to be provided by card issuers can result in consumer confusion. Many consumers that contact a listed agency for counseling will be seeking debt and budget counseling and not bankruptcy counseling. While the two services are similar there are notable differences especially if the provider does not regularly provide general budget and debt counseling. Changing the scope of the information required to be provided to consumers from that which is specified in the Credit Card Act and the TILA will potentially cause hardship for consumers for both of these reasons.

Put another way, not all credit counseling agencies that are approved providers of bankruptcy counseling pursuant to 11 U.S.C. § 111(a)(1) provide the counseling services that

¹² 74 Fed. Reg. 54142 (Oct. 21, 2009).

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consumers may require when calling for “credit counseling services” based on a toll-free number made available on their monthly statement.

Accordingly, we urge the Board to revise proposed Section 226.7(b)(12)(iv) in order to give full effect to the plain language of the Credit Card Act and require information about credit counseling and debt management services be provided to consumers. In this regard, at a minimum, the Board should provide additional commentary bringing the important fact that not all approved bankruptcy counseling agencies provide debt management services to the attention of card issuers.

Verification and Update of Credit Counseling Information - Proposed Comment 7(b)(12)(iv) -2

The Board solicits comment on whether card issuers should be required to verify and update the credit counseling information they provide to consumers more or less frequently than at least annually.

The Board in proposed comment 7(b)(12)(iv)–2 clarifies that a card issuer complies with the requirements of proposed Section 226.7(b)(12)(iv) “if it provides the consumer with the information provided by the United States Trustee or a bankruptcy administrator, including information provided on the Web site operated by the United States Trustee.” The Board offers as an example the following potential scenario:

If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, at least annually, the card issuer must verify and update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.¹³

We support the Board’s proposed comment that card issuers should verify and update the credit counseling information they provide to consumers. Rather than establish a minimum frequency for such updates of a year, we believe that the Board should establish a more frequent requirement that credit issuers be required to follow to ensure that credit counseling agencies that meet the requirements of the United States Trustee and bankruptcy administrator are included as part of the toll-free number provided to consumers. We note that the Board has indicated that it has consulted with the EOUST and suggest that the Board could tailor the frequency requirement to closely track the EOUST’s schedule of updating the list of approved agencies pursuant to 11 U.S.C. § 111(a)(1).

Additionally, we urge the Board through commentary to allow and encourage card issuers to provide in their toll-free number disclosure alternative telephone and Web site information for credit counseling agencies in place of the contact information made available by

¹³ *Id.*

the United States Trustee or a bankruptcy administrator. A card issuer may be required to provide contact information, but if so, should not be limited to the information made available to United States Trustee or a bankruptcy administrator by credit counseling agencies. Some agencies may provide unique contact information that serve as a point of contact for consumers seeking bankruptcy counseling. We recognize that card issuers need an easy and convenient method of obtaining such information, but this need should be counterbalanced with the reality that some agencies have dedicated phone numbers (and possibly Web site URLs) for bankruptcy counseling services, which are the ones that are available from the United States Trustee or a bankruptcy administrator. Thus, the Board should clarify through an additional commentary example that an issuer is permitted and encouraged to seek confirmation of the contact information of each credit counseling agency and should use an alternative phone number or Web site URL, when provided by the agency. Taking this step will help to ensure that the consumer is properly routed to a representative of the agency who can provide credit counseling and debt management services and not just bankruptcy counseling.

Consideration of Disclosure About Credit Counseling Services

One potential unintended consequence of the toll free credit counseling disclosure is that consumers may mistakenly contact a credit counseling agency instead of their card issuer. We suggest that the Board consider providing card issuers with a suggested disclosure that would be compliant with the requirement of proposed Section 226.7(b)(12)(iv) and serve as notice that: “Credit counseling services are provided by independent third party organizations that do not have access to customer records or account balances of the credit issuer.” Hopefully, this will serve to inform consumers that counseling agencies cannot provide to them information about credits for items they have returned to a retailer, payments that may or may not have been received by the card issuer or disputes about late fees or interest calculations. Such a disclosure also would serve to make clear to consumers that counseling agencies are independent and separate from card issuers.

This disclosure could be provided on the periodic statement as part of the repayment disclosures, verbally in the script for any toll-free telephone number established, including as part of any IVR, and, if established by the issuer, in writing on a Web site used to provide the required information. In this regard, we note that a written version of this disclosure could be especially appropriate for instances where a card issuer decides to disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations.

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Consideration of Limited Resources of Counseling Agencies

As a general matter the Board should recognize that the economic recession has sharply increased the demand for credit counseling agency services without a commensurate increase in funding. Therefore, we request that the Board consider exploring ways to offset the potential increase in expenses by credit counseling agencies as a result of the Credit Card Act and Proposed Rule and to ensure that effective education and counseling continues to be available to the broader community at-large.

Further, concerns have been raised that the cost of maintaining the toll free number required under the Credit Card Act might result in card issuers seeking to comply with proposed Section 226.7(b)(12)(i)(E) by placing counseling agency contact information directly on periodic statements. We also have been concerned that an increase in inquiries to credit counseling agencies assisting consumers experiencing financial distress might significantly place a burden on the already strained financial resources of nonprofit credit counseling agencies at a time of unprecedented need. Therefore, we request that the Board clarify the methods by which card issuers may comply with the Proposed Rule and that the cost of compliance with the credit counseling services repayment disclosure requirement should be borne by the card issuer and not credit counseling agencies.

Lastly, we also request that our comments made above regarding allowing agencies to “opt-out,” to allow and encourage card issuers to substitute contact information for credit counseling agencies, and to provide for a “safe harbor” disclosure each be considered within the context of steps that the Board can take to limit the financial impact on credit counseling agencies while still fulfilling the intent of the Credit Card Act.

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MMI and CCCS-ATL appreciate this opportunity to comment in this proceeding. We look forward to working with the Board on these issues and in continuing to provide financial education and counseling to consumers. If you have any questions regarding these comments, please do not hesitate to contact us.

Respectfully submitted,

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