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December 21, 2009

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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-1360: Proposed Rule on Regulation Z
Closed-End Credit Secured by Real Estate

Dear Ms. Johnson:

I am writing on behalf of Aon Integramark, a debt cancellation service provider for the lending industry. Our comments relate to the proposed revisions to Regulation Z that impact the offering of debt cancellation on closed-end real estate secured credit. Aon is requesting that the exclusion from the finance charge for voluntary debt cancellation fees continue to apply to closed-end real estate secured credit for the reasons explained below. While we have discussed our comments in regard to debt cancellation, our comments apply equally to debt suspension.

In the closed-end real estate secured proposed revisions to Regulation Z the Board attempts to address concerns with the current "some fees in, some fees out" approach to the finance charge. The Board states that consumer groups and others believe that the current approach obscures the true cost of credit and contend that this approach creates incentives for creditors to shift the cost of credit from the interest rate to ancillary fees excluded from the finance charge. Currently under Regulation Z, the charges excluded from the finance charge by regulation include charges for debt cancellation or debt suspension coverage if the coverage is not required by the creditor, certain disclosures are provided to the consumer and the consumer affirmatively requests the coverage in a writing signed or initialed by the consumer. 12 C.F.R. § 226.4(d). As a matter of logic the existing approach makes sense, if the debt cancellation fee is required, the fee it is part of the finance charge as the fee is part of the cost of credit. If the consumer can choose whether or not to purchase debt cancellation (as illustrated by compliance with the procedure in Section 226.4(d)), the fee is not part of the finance charge as it is not part of the cost of credit. Under the current approach there is no incentive to charge a "debt cancellation fee" in place of a higher interest rate because if the fee is required it is included in the finance charge.

In explaining the reason for the proposed change to include certain fees currently excluded from the finance charge in the finance charge for closed-end real estate secured credit, the Board cites a 1998 Joint Report stating that one fundamental problem is that there are two views of what is meant by the "cost of credit." Bd. of Governors of the Fed. Reserve Sys. and U.S. Dep't of Hous. and Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998). According to the Joint Report, from the creditor's perspective the cost of credit means the interest and fee income that the creditor receives or requires in exchange for providing credit to the consumer. From the consumer's perspective, however, the cost of credit means what the consumer pays for the credit, regardless of the persons to whom such amounts are paid. The Joint Report states that the statute uses both of these approaches in designating the fees that are and are not included in the finance charge. The Board illustrates the conflict as follows:

Many services provided in connection with real estate loans are performed by third parties, such as appraisers, closing agents, inspectors, public officials, attorneys, and title companies. Some of these services are required by the creditor, while others are not. In either case, the fees for these services generally are remitted in whole or in part to the third party. In some cases, the creditor may have little control over the fees imposed by these third parties. From the creditor's perspective, the creditor generally does not receive and retain these charges in connection with providing credit to the consumer. From the consumer's perspective, however, these third-party charges are part of what the consumer pays to obtain credit.

The above discussion illustrates that the current determination of whether or not debt cancellation fees are included in the finance charge do not pose the same issues that required real estate related fees create. The above real estate related fees are all required fees.

In discussing the proposed revision, the Board also referred to confusion surrounding the APR versus interest and the practice of creditors imposing "junk fees." The Board states that in the 1998 Joint Report, the Board and HUD recommended that the Congress adopt a more comprehensive definition of the finance charge. In the Joint Report the Board and HUD recommended adopting a "required-cost of credit" test that would include in the finance charge "the costs the consumer is required to pay to get the credit." The Joint Report stated that under this approach, the finance charge would include (and the APR would reflect) costs required to be paid by the consumer to obtain the credit, including many fees currently excluded from the finance charge, such as application fees, appraisal fees, document preparation fees, fees for title services and fees paid to public officials to record security interests. Under the proposed "required-cost of credit" test, fees for optional services, such as premiums for voluntary credit insurance, would be excluded from the finance charge. Thus, the Joint Report recommended the continuation of excluding optional fees from the finance charge.

In the proposal the Board states its intent to retain the APR as a benchmark for closed-end transactions secured by real property or a dwelling and to replace the "some fees in, some

fees out” approach for determining the finance charge with a simpler, more inclusive approach for determining the finance charge. The Board states that adoption of a more inclusive finance charge also would simplify compliance, reduce regulatory burden and reduce litigation risk for creditors.

Aon expresses no opinion on the inclusion of required real estate related fees in the finance charge and reflected in the APR on closed-end real estate secured loans. However, Aon believes that including non-required debt cancellation fees in the finance charge on closed-end real estate secured transactions would undermine any attempt to make the APR more meaningful. Including voluntary debt cancellation fees in the finance charge does not follow from the concerns noted by the Board, but rather would create an inconsistency in the calculation of the finance charge that would make the APR less useful to consumers.

The Board states that excluding fees from the finance charge because they are voluntary or optional is not consistent with the statutory purpose of disclosing the “cost of credit,” which includes charges imposed “as an incident to the extension of credit.” According to the Board a test that depends upon whether a service is “voluntary” inherently requires a factual determination. The Board states that it believes that drawing a bright-line to include in the finance charge both voluntary and required charges that are imposed by the creditor would eliminate the difficulties posed by this type of fact-based analysis and provide a more consistent measure of the cost of credit. Aon does not agree that a charge for the purchase of voluntary debt cancellation is a charge imposed “incident to the extension of credit.” Rather, the charge represents the cost of an additional credit feature voluntarily purchased by the consumer and not part of the cost of the extension of credit. The current safeguards in Section 226.4(d) for determining whether debt cancellation is voluntary are working well and are an appropriate method for determining when to include the debt cancellation fee in the finance charge. In Aon’s experience, creditors do not find compliance with Section 226.4(d) to be difficult. If the appropriate disclosures are given, the fee is excluded from the finance charge. If the disclosures are not given, the fee is included in the finance charge.

A footnote to the explanation of the proposed change indicates that the definition of finance charge is not dependent on whether a charge is voluntary or required. The footnote states that as a practical matter, most voluntary fees are excluded because they coincidentally are payable in a comparable cash transaction, not specifically because they are voluntary. *See, e.g.*, 61 FR 49237, 49239; Sept. 19, 1996 (charges for voluntary debt cancellation agreements). However, in the 1996 explanation issued by the Board explaining the revision to Regulation Z to permit exclusion of voluntary debt cancellation fees from the finance charge, although the Board refers to the fact that most voluntary fees are payable in comparable cash transaction, the Board states that “[d]ebt cancellation fees are credit-related fees that are not payable in comparable cash transactions.” 61 Fed. Reg. 49237. In adopting the exclusion for voluntary debt cancellation fees when certain disclosures are given, the Board states that the revision will effectuate the purpose of the Truth-in-Lending Act and promote comparison shopping and informed use of credit. Aon believes this is a correct statement that is still true. Excluding

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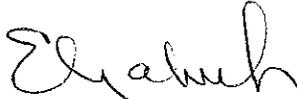
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voluntary debt cancellation fees from the finance charge gives consumers a more accurate picture of the cost of credit to use when comparing the cost to other credit products.

Aon requests that the current regulatory scheme for determining whether or not debt cancellation fees are included in the finance charge continue to apply. Specifically, Aon supports the current Regulation Z requirement that debt cancellation fees be included in the finance charge unless the fee is voluntary and the creditor has complied with the safeguards in Section 226.4(d). This approach will treat debt cancellation fees consistently for closed-end real estate secured credit, open-end real estate secured credit, closed-end non-real estate secured credit and open-end non-real estate secured credit. Treating debt cancellation fees consistently for all types of credit will improve the ability of both creditors and consumers to understand and use the scheme established by Regulation Z to accurately disclose the cost of credit in a meaningful way that can be used for comparison shopping.

Aon Integramark and I appreciate your consideration of this comment letter as part of the Board's review of the closed-end real estate secured credit provisions of Regulation Z. Please do not hesitate to contact me if you have any questions or would like additional information.

Very truly yours,



Elizabeth L. Anstaett

cc: Tom Ostenson, Esq.
Darrell L. Dreher, Esq.