The Huntington National Bank
Legal Department
Huntington Center
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December 24, 2009

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

Attn: Docket Number R-1367

Re: Proposed Rule Regarding Home Equity Credit Lines under Regulation Z
74 FR 43428 (August 26, 2009)

Dear Ms. Johnson:

This letter is submitted on behalf of The Huntington National Bank[1] in response to the above-referenced rule proposed by the Board of Governors of the Federal Reserve System (the "Board") with respect to changes in Regulation Z applicable to home equity lines of credit ("HELOCs"). We appreciate the opportunity to provide the comments set forth below with respect to the proposed rule.

In general, we support the proposal as an improvement over current requirements applicable to HELOCs, both in the type of information and manner and timing of providing it and in eliminating several disclosure requirements which are unnecessary or do not provide useful information. The major issue with the proposal is the time, effort and cost it will take for creditors to change systems, documentation, procedures and the like in order to be able to implement what is essentially a complete overhaul of the disclosure process for HELOCs under Regulation Z, as well as certain changes to the substantive provisions applicable to HELOCs. Thus, it is most important for the Board to provide sufficient lead time for implementation. We

[1] The Huntington National Bank ("Huntington Bank") is a national bank and the principal subsidiary of Huntington Bancshares Incorporated, which is a $53 billion regional bank holding company headquartered in Columbus, Ohio. Huntington Bank has more than 143 years of serving the financial needs of its customers, and together with its affiliated companies provides a full range of financial services, including checking, loans, savings, insurance and investment services. Huntington Bank also offers retail and commercial financial services online at huntington.com; through its technologically advanced, telephone bank; and through its network of nearly 1,400 ATMs.

are concerned about the recent trend, both in Congress (for example, with attempts to move up the implementation date of the Credit Card Accountability Responsibility and Disclosure Act of 2009) and at the Board (for example, with only a six-month implementation period for the Regulation E changes with respect to overdraft practices), to minimize the time, effort and costs of implementation of major changes, and thus we strongly urge the Board to recognize the difficulties of implementation and allow at least 24 months for creditors to implement the new "early" disclosure, account opening disclosure, and periodic statement disclosures. We recommend that creditors be permitted to replace the current HELOC booklet with the "Key Questions" disclosure within six months. It would probably also be feasible to implement the revised termination, suspension and reinstatement rules, change-in-terms rules and optional insurance rules within 6-12 months.

Applicability of HELOC Rules to Credit Lines Secured by Rental Properties

We appreciate that Board Staff has addressed in proposed comment 5-1 the applicability of the HELOC rules under Regulation Z to HELOCs secured by rental properties. We believe this issue needs to be addressed, but we are concerned that the proposed commentary provision makes the choice of which set of rules to follow depend on the knowledge of the creditor and how that knowledge may change over time. This knowledge test is a potential trap for creditors, since (i) it is not always clear what will constitute knowledge by the creditor of how the property is being used, (ii) the creditor can never be sure it knows how the property is being used, (iii) property use can change back and forth from rental to owner-occupied during the outstanding term of the HELOC (which in our case is a 10-year draw period and a 20-year repayment period), and (iv) it is not clear how, and under what timing rules, the creditor would be required to switch from one set of rules to another, and possibly back again, because of a change in the creditor's knowledge or imputed knowledge.

Because all of the rules applicable to HELOCs are generally more restrictive of the creditor and more beneficial to the consumer than the rules for non-HELOC open-end credit, it would be appropriate for Board Staff to provide an option pursuant to which the creditor always has the right to elect to treat HELOCs secured by rental property as subject to the HELOC rules. We believe it is likely that most creditors are doing this already, since it is generally not practical to have two different sets of HELOC documents and procedures depending on whether the property is the consumer's dwelling or is used as a rental property.[2] Such an option would avoid the potential knowledge trap mentioned above and would provide creditors with certainty as to which set of rules to use. We therefore recommend that Board Staff add to this proposed commentary provision an option that for either existing or new accounts a creditor always has the right to choose to comply with the HELOC rules whether or not the HELOC is secured by rental property and whether or not the creditor knows the property is rental property.

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[2] Creditors may have different pricing for HELOCs secured by rental property than for HELOCs secured by owner-occupied property, but that typically does not require different documentation and creates only minor differences in process.

Other Comments

"Key Questions" Document. We generally support replacement of the current HELOC booklet provided at application with the one page "Key Questions" document that the Board is now proposing. Item 6 in that document, however, does not reflect the prevalent practice of creditors to provide HELOCs that have no account opening fees. Additionally, the tone of the "Key Questions" document tends to appear to favor home equity loans over HELOCs, when in fact HELOCs are often a better product for the consumer, providing stand-by liquidity, more flexibility on borrowing only what is actually needed when it is needed, and allowing the consumer to pay interest-only until the consumer is ready to pay the balance. We believe the "Key Questions" document should be a little more balanced in its comparison between HELOCs and closed-end home equity loans.

"Early" Disclosures Not Needed When HELOC Closes Within the Three-Business Day Period. The Board is proposing to require transaction-specific "early" disclosures within three business days after application, but no later than account opening. These would be in a tabular format. Likewise, the Board is proposing to require the account opening disclosures to be in tabular format, with content similar to what would be required in the "early" disclosures. We believe it would be unnecessary duplication and confusing to the consumer if the HELOC is opened within the three-business day period after application and the creditor would be required to give both the "early" disclosures and the account opening disclosures. Thus, we recommend that the "early" disclosures not be required if the HELOC is opened within the three-business day period, in which case the consumer would receive only the account opening disclosures (in addition to the one page "Key Questions" disclosure required at the time of application).

Problems With the Transaction Specific "Early" Disclosure. With respect to the Board's proposal that the "early" disclosure be transaction specific, we have several concerns. First, we are concerned that this document may mislead consumers into believing the terms disclosed are committed and not subject to change, particularly once consumers start to get used to the newly required disclosures for closed-end mortgage loans under the Real Estate Settlement Procedures Act ("RESPA") beginning as of January 1, 2010. Consumers may incorrectly think that the "early" HELOC disclosure is like the RESPA good faith estimate, with the various limitations on changing fees, etc., that are now incorporated in that disclosure. This conclusion is actually encouraged by the required language in the account opening disclosures that the consumer should use the account opening disclosures "to confirm that these are the terms for which you applied", as if terms should not have changed from application to account opening. At a minimum, the creditor should be able to include language in the "early" disclosure that it is not a commitment and that the rate, fees and other terms disclosed may change. Additionally, the statement required in the account opening disclosure about confirming the terms applied for should be revised to be a statement about confirming that "these are the terms to which you have agreed". We are also concerned about the feasibility of being able to obtain all of the account-specific information required to be in the "early" disclosure—essentially the same terms for the most part as is required to be in the account opening disclosure—within the three-business day period, and how useful that information will be if it cannot be all that accurate as of that time. Moreover, while the information may not be available within the three-business day period, HELOCs generally close within a week or less of application, and thus under the Board's proposal consumers will be getting two very similar disclosures within a relatively short period of time, which is neither all that helpful to consumers and is inefficient and costly for creditors. We thus recommend that the Board consider keeping the early disclosure more generic, rather than require it to be transaction-specific. This could be done differently than the current "early" disclosure by requiring a tabular format that included examples based on sample rates and amounts.

No Obligation to Accept the Terms. The requirement in proposed §226.6(a)(2)(xxiv)(A) that the consumer has no obligation to accept the terms disclosed in the table in the account opening disclosures is confusing in the context of providing that disclosure at account opening and when read together with the requirement in §226.5(b)(1)(i) that account opening disclosures must be provided prior to the first transaction under the plan. We are concerned that this could (we think wrongly) be interpreted to mean that the consumer has a right to rescind the HELOC agreement (no obligation to accept the terms) until the first transaction without having to pay any fees, and that could be several years after the HELOC account is opened. The fees (including, for example, an early termination fee) are required to be disclosed in the table in the account opening disclosures, and it is the terms in this table that this particular disclosure indicates the consumer has no obligation to accept. This disclosure is being given to the consumer at the same time the consumer is signing the HELOC agreement (which will presumably now be a separate document from the account opening disclosures), or perhaps even after the HELOC agreement is signed (the account opening disclosures are required to be given before the first transaction under the plan, not prior to consummation of the HELOC transaction). We have similar concerns with the requirement in §226.6(a)(2)(xxiv)(C) to disclose that any customer signature on the account opening disclosures only confirms the receipt of the disclosure statement. When this requirement is read together with the required disclosure under §226.6(a)(2)(xxiv)(A), it could be argued to support the interpretation of (A) as a right of rescission. We believe that the provisions of (A) and (C) are confusing and unnecessary in the context of the account opening disclosure and should be deleted from the Board's final version of this rule.

Fees Not Imposed As Part of the Plan. Proposed §226.6(a)(3)(iii) requires specified disclosures with respect to fees that are "not imposed as part of the plan". There are several problems with the disclosure requirements in this provision. Provision (A) requires disclosure of charges imposed on a "cardholder" by an institution other than the "card issuer" for use of the other institution's ATM in a shared or interchange system. Use of the terms "cardholder" and "card issuer" in this provision applicable to HELOCs is odd, since those terms are generally used in Regulation Z to refer to required credit card disclosures from which HELOCs are excluded. Furthermore, the "card issuer" will have no way of knowing what other institutions may charge at their ATMs all over the world, and this appears to be a disclosure requirement that is not reasonably feasible to comply with. We believe the Board should delete this provision (A) from the final rule. Provision (B) requires disclosure of a charge for a package of services that includes an open-end credit feature if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature. It is unclear, at best, what fees this is intended to cover with respect to HELOCs. Would it, for example, require disclosure as part of the HELOC disclosures of fees charged to a deposit account for accessing a HELOC for overdraft protection? Provision (C) requires disclosure of security interest charges, and it is odd that this is included as fees that are not imposed as part of the plan. Presumably, fees charged in connection with taking a mortgage to secure a HELOC would, in fact, be fees that are imposed as part of the plan. Thus, this requirement appears to be in the wrong place in the proposed rule.

Fees to Pay by Phone or Internet. Comment 6(a)(3)(ii)-2.iii requires disclosure of fees to pay by telephone or via the Internet. This language could be construed as broad enough to cover fees charged on a deposit account for access to online or telephone billpay services, or perhaps even maintenance or other access fees for the deposit account itself which is necessary to have in order to have access to the institution's billpay services. We do not believe that fee disclosures for HELOCs should require disclosure of fees so remotely connected to the HELOC itself. The Board should either delete this commentary provision or qualify it by clarifying that such fees are not intended to include fees charged in connection with deposit accounts for billpay services or fees charged for access to the deposit account that is required in order to utilize billpay services.

Historical APR and "Finance Charge". We strongly endorse the Board's elimination of the historical or effective APR from periodic statement disclosures for the reasons stated by the Board, as well as elimination of the term "finance charge" as a label for certain disclosed fees.

45-Day Change-in-Terms. We do not believe there is any reason to extend the proposed 45-day change-in-terms advance notice requirement proposed for HELOCs to be for a period longer than 45 days. Unilateral changes in terms by creditors for HELOCs are significantly limited under the HELOC substantive rules in Regulation Z, and generally are permitted only for changes that are insignificant or are unequivocally beneficial to the consumer. Thus, changes in terms that would most likely cause a consumer to seek a new HELOC from another creditor, such as rate or fee increases, are generally not permitted for HELOCs without the consumer's specific agreement in writing to the change.

Preferential Rates. However, we are concerned about the Board's apparent proposed requirement for change-in-terms notices to be given when a preferential rate ends (such as loss of an employee rate when no longer employed by the creditor or loss of a lower rate given for ACH debit of payments when the consumer ends ACH debit) and the Board's treatment of such an increase as a penalty rate increase. Current law does not require a change-in-terms notice when the consumer no longer qualifies for a preferential rate as long as the conditions for obtaining and keeping the preferential rate were disclosed to the consumer at the time the preferential rate went into effect. In the preamble (74 FR at 43518, col. 2), the Board indicates that it is deleting commentary language excluding such preferential rate changes from change-in-terms notice requirements because such loss of preferential rates would require notice under proposed §226.9(*i*) which requires special notices for an increase in rates "due to delinquency or default or as a penalty". It is far from intuitive that the surrender by the consumer of a preferential rate is a penalty imposed by the creditor on the consumer. Preferred rates are typically given to employees or to customers who maintain certain other accounts with the creditor or who arrange to have payments debited through ACH, and the terms and conditions of the preferential rate status are clearly disclosed in the promotional materials through which these benefits are offered. Moreover, whether or not the consumer continues to obtain the benefit is not a unilateral action of the bank, and typically is within the consumer's control. Even if the loss of the benefit is not within the consumer's control (such as, for example, involuntary loss of employment with the creditor), that loss of the benefit is not the result of the action of the creditor as creditor. The Board here is treating the consumer's surrender of a gratuitous benefit provided by the creditor as the imposition by the creditor of a penalty against the consumer. It is often difficult even to track these benefits for the creditor to know when the conditions for granting them have expired, and now the Board is adding to that a 45-day delay (which in practice is a 60-day delay) and a notice requirement, which also requires special tabular disclosures on the first page of the periodic statement if the notice is sent on or with the periodic statement. The triggering event for these notices are not the usual creditor imposed set of changes impacting a specified class of customers, but will be one-off consumer-by-consumer triggers as a particular consumer triggers the expiration of the particular benefit that consumer has been using, making compliance all that more difficult since it will be on a case-by-case basis. The Board's proposal appears to be creating a material disincentive against creditors continuing to offer these kinds of benefits to consumers, and it is not clear that there is any real harm to consumers being addressed as a trade-off. Instead, the Board should retain its current approach to preferential rates.

Fees Charged for Reinstatement. Proposed §226.5b(g)(2)(iii) and (iv) and §226.9(j)(1)(iii)(C) prohibit charging the consumer any fees for investigating the consumer's first request for reinstatement after a suspension of advances or a reduction in the credit limit, and apparently limit fees that may be charged after the first reinstatement request to bona fide and reasonable property valuation and credit report fees actually incurred by the creditor. This has the potential to lead to frivolous reinstatement requests and will require creditors to incur costs that cannot be recovered. For example, §226.5b(g)(3) requires the creditor to provide, upon the consumer's request, a copy of the documentation supporting the property value where the suspension or reduction was based on a significant decline in the property value and for a first reinstatement request, the creditor would not be able to pass on to the consumer the cost of obtaining the property valuation. Furthermore, these fee limitations appear to apply to existing HELOCs which may contain contractual provisions allowing the creditor to charge fees that would not be in compliance with these new limitations. We believe the Board should delete the prohibition on charging property valuation and credit report fees for the first reinstatement. Furthermore, the Board should clarify that HELOC agreements originated prior to the mandatory compliance date for the final HELOC regulation that provide for fees that would be limited or prohibited by these provisions will not be in violation of the regulation as long as the creditor does not actually charge such fees after the mandatory compliance date.

Termination for Fraud. We have encountered situations where we had reason to believe there was fraud, identify theft, or other illegality in connection with a HELOC account which was not necessarily fraud or material misrepresentation by the consumer, and it is not clear under existing Regulation Z if that is a basis for termination or suspension of the account. Thus, we recommend that the Board include a provision allowing for suspension of advances where the creditor has reason to believe there is fraud, identity theft or other illegality in connection with the account without limiting that to fraud or misrepresentation by the consumer.

Insignificant Changes. We support Board Staff's inclusion in comment 5b(f)(3)(v)-2 as an example of an insignificant change the elimination of a means of access to the HELOC as long as one or more means of access available at account opening remain available to the consumer on the original terms. This is particularly useful in the context of an acquisition where the acquired portfolio has additional means of access that are difficult or costly for the acquiring institution to continue to support.

Federal Law Exception. We appreciate the Board's inclusion of proposed §226.5b(f)(3)(vi)(G) which permits freezing or reducing the credit line if federal law prohibits extensions of credit or requires reductions in the credit limit. We agree that this should be limited to federal law so that a creditor may be able to rely on federal preemption and not be required to determine each and every possible state law which may be inconsistent with substantive limitations of Regulation Z. We also support the similar change to the termination provisions in proposed §226.5b(f)(2)(iv).

30-Day Payment Default. The Board is proposing in §226.5b(f)(2)(ii) to prohibit termination of the credit line and/or acceleration of the outstanding balance for failing to make required payments unless the payment default exceeds 30 days. We believe the Board Staff needs to make clear in the commentary, however, that this 30-day limitation does not mean that the creditor may not freeze or reduce the credit limit pursuant to §226.5b(f)(3)(vi) within that 30-day period if the conditions for invoking such freeze or reduction are applicable under any of the provisions of §226.5b(f)(3)(vi). The proposed commentary in comment 5b(f)(2)(ii)-1 only refers freezing or reducing within the 30-day period with respect to a default of a material obligation pursuant to §226.5b(f)(3)(vi)(C). For example, it may be that the property has been declining in value and happens to reach the point at which the condition in §226.5b(f)(3)(vi)(A) is triggered at the time when it so happens that a payment under the HELOC is due, but is not yet 30 days past due. The language in comment 5b(f)(2)(ii)-1 could be interpreted to prohibit freezing/reducing the credit line based on a decline in the property value unless at the exact point in time the freeze/reduction is imposed, there is no payment due on the HELOC that is not at least 30 days past due. We do not believe Board Staff is intending such a result. Similarly, the trigger for exercising freeze or reduction of the credit line based on a material change in the consumer's circumstances could also occur at a time a payment is due, but not yet 30 days past due. Thus, we recommend that Board Staff expand the language in proposed comment 5b(f)(2)(ii)-1 to include any of the conditions for freeze/reduction in §226.5b(f)(3)(vi).

Default Charges. We support the addition of new proposed comment 5b(f)(3)-3 clarifying that the creditor may charge the consumer for typical bona fide and reasonable charges actually incurred by the creditor in connection with the consumer's default.

Decline in Property Value. We support the Board's deletion of "appraised" from proposed §226.5b(f)(3)(vi)(A) and the further safe harbor clarifications by Board Staff with respect to how to apply this condition for freezing/reducing the credit line in comment 5b(f)(3)(vi)-4 & -5. However, we are concerned that the requirements of this provision may not provide the flexibility needed by a financial institution working in conjunction with its primary safety and soundness regulator in balancing appropriate management of credit risk with protecting consumers from default and loss of their home. Board Staff should make clear that these safe harbor rules do not mean that a creditor that utilizes other means consistent with safety and soundness to evaluate the impact on a particular transaction of a decline in property value is in violation of this requirement.

Material Change in Financial Circumstances. We believe Board Staff should include in comment 5b(f)(3)(vi)-6 additional reasons for determining a material change in financial circumstances based on credit score declines that the creditor reasonably utilizes as a credit risk management tool for prediction of potential default.

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Thank you for the opportunity to provide these comments.

Very truly yours,

Daniel W. Morton

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