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VIA E-MAIL: regs.comments@federalreserve.gov

October 11, 2007

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-1286 – Proposed Regulation Z Open-end Credit Rules

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Federal Reserve Board's (Board's) proposed rule on possible changes to the open-end credit rules under Regulation Z, the Truth in Lending Act (TILA). The proposal includes comprehensive changes to the format, timing, and content requirement for the five main types of open-end credit disclosures that are required under Regulation Z. These include credit card application and solicitation disclosures, account-opening disclosures, periodic statements, change-in-term notices, and advertising provisions. CUNA is the largest credit union trade association in this country, and represents approximately 90 percent of our nation's 8,400 state and federal credit unions, which serve over 87 million members. This comment letter was developed under the auspices of the CUNA Consumer Protection Subcommittee, which held a number of conference calls to review the proposal. Our letter also reflects concerns raised by credit unions and credit union leagues from around the country.

Summary of CUNA's Comments

- CUNA strongly objects to the proposed changes that would severely curtail the ability of credit unions to use multi-featured, open-end lending plans. These changes address a problem that does not exist and will be needlessly costly for credit unions. The disclosures credit unions currently provide under these plans include the information members need about their loan accounts, and it is provided on a timely basis.

- For the proposed changes to the application and solicitation disclosures, CUNA agrees that the table format and 10-point font size may be easier for consumers to understand. However, CUNA recommends several changes to reduce the redundancy of certain terms. As for disclosing possible annual percentage rates (APRs) that may apply, we do not believe listing only the highest possible APR would be appropriate, as consumers may very likely believe this would be the APR that would apply to them.
- CUNA generally supports the changes that will apply to electronic application and solicitation disclosures. We also agree there may be instances when consumer consent may not be necessary for certain electronic disclosures, such as the disclosure of fees when the consumer is making payments online.
- Many of our comments on the proposed application and solicitation disclosures also apply to the proposed account-opening disclosures. In addition, financial institutions should have the flexibility to amend and reduce these disclosures if substantially similar information is also in the cover letter a credit union provides to consumers when the account is opened.
- The model language for the account-opening disclosures and the application and solicitation disclosures should be identical, as opposed to substantially similar. This will reduce confusion for both consumers and financial institutions that choose to use these model disclosures.
- CUNA supports the Board's proposal to provide additional information on credit cards on its website. We provide a number of suggestions for the specific information that should be provided. This includes information based on the specific needs of certain individuals and information on the various types of card issuers, such as credit unions.
- CUNA strongly supports eliminating the requirement to disclose the "effective" APR on the periodic statement, which is the APR that incorporates certain fees and costs. The effective APR is confusing and difficult for consumers to understand, since it may vary greatly from month-to-month and may significantly differ from the interest rate that has also been disclosed to the consumer. However, we do agree that the dollar amount of these fees and costs should continue to be disclosed. CUNA also supports eliminating the requirement to disclose the periodic rate.
- With regard to the proposed periodic statement model form, the Board's consumer testing seems to indicate that grouping transactions by type, such as purchases, cash advances, balance transfers, fees, and interest, is easier for consumers to understand. However, credit unions have generally been grouping transactions chronologically and have heard very few complaints from their members with regard to this format. Thus, we

do not support the Board's proposed changes regarding how transactions may be grouped.

- With regard to the proposal that will include information on the effects of making minimum payments, as required under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act), creditors should be permitted to describe this information as a "good faith" estimate, or similar terminology, since it is based on assumptions that may or may not apply in each specific situation. We also support the flexibility provided under the proposal that will allow creditors to bypass certain requirements if they provide actual repayment information on the periodic statement or through the toll-free telephone number, instead of the required hypothetical repayment information.
- CUNA supports a change to require a 30-day advance notice before changing certain terms of an open-end credit plan, instead of the current 15-day requirement, as we believe this will be useful for consumers.
- CUNA supports the additional guidance that is provided for debt suspension coverage, which is comparable to the guidance for debt cancellation coverage.
- Because this proposal incorporates the most extensive and comprehensive changes to the Regulation Z open-end rules since the early 1980s, credit unions and others should be given a significant amount of time to prepare for these changes. For this reason, mandatory compliance should not be required until at least two years after these changes are issued in final form.

Discussion

This proposal incorporates the most extensive and comprehensive revisions to the Regulation Z open-end rules since the early 1980s. As part of this process, CUNA has been actively involved in soliciting feedback from our member credit unions regarding the proposed changes to the open-end credit rules and the Official Staff Commentary in order to develop comments that are consistent with the Board's dual goals of facilitating consumer understanding while minimizing burdens for regulated lenders. We are optimistic that these goals can be accomplished, and CUNA appreciates the opportunity to participate in this process.

As part of our review, CUNA formed a working group to coordinate our comments, which included members of CUNA's Consumer Protection Subcommittee, as well as a number of other credit unions and representatives from our credit union leagues.

In general, our experience has been that credit union members are generally satisfied with the disclosures they currently receive, including disclosures in connection with credit cards. Credit union data clearly demonstrates that credit card lending can be done without misleading costs, terms, and conditions. Although credit unions operate under a different structure than banks, this difference does not completely explain why credit unions charge much lower rates and fees, as well as offer much simpler credit terms, than do banks.[1] Although we support efforts to simplify the Regulation Z disclosures, it is unfortunate that this effort is driven by the complex disclosures issued by banks and other financial institutions, as opposed to the simpler disclosures offered by credit unions.

Multi-Featured, Open-End Lending – Official Staff Commentary to Section 226.2(a)(20)

CUNA strongly objects to the proposed changes that would severely curtail the ability of credit unions to use multi-featured, open-end lending plans. Under these plans, a credit union member has one account with the credit union with a number of features, or subaccounts, that are available to the member. This arrangement allows the member to access a variety of different types of loans under a single credit plan, which may include separate loans with fixed repayment periods, such as automobile loans.

Under the current Official Staff Commentary, such a credit plan is permissible as a single multi-featured, open-end plan if the plan as a whole is "self-replenishing," meaning that the member may borrow funds under one of the subaccounts of credit available under the plan, repay it, and then borrow again under the same or a different subaccount of the plan. The Official Staff Commentary allows credit unions to provide open-end disclosures in connection with these types of credit plans.

The proposed rule would fundamentally change the structure of these plans by amending the Official Staff Commentary to require that each feature, or extension of credit provided under the plan, be "self-replenishing." These changes to the Official Staff Commentary would also severely curtail the credit union's ability to evaluate each request for credit by indicating that a plan is "self-replenishing" only if the consumer may obtain further advances or funds without being required to separately apply for those advances and without undergoing a separate review by the creditor of the consumer's credit information. Unless these conditions are satisfied, separate closed-end disclosures will need to be provided for loans with fixed repayment periods that are provided under these plans.

[1] Tom Westrich and Malcolm Bush, "Blindfolded into Debt: A Comparison of Credit Card Costs and Conditions at Banks and Credit Unions," Woodstock Institute, July, 2005.

For over 25 years, credit unions have used these types of multi-featured, open-end credit plans to provide a wide variety of different types of loans for their members. Our latest information indicates that over 3,500 credit unions now use these types of plans. However, these proposed changes to the Official Staff Commentary will jeopardize the continued existence of these plans in their current form, which are widely used within the credit union system.

In our view, the Board has not documented the necessity for this change or why it feels the change is required under the TILA, since the Board currently holds that the Official Staff Commentary is fully consistent with TILA. Also, these proposed changes to the Official Staff Commentary address a problem that does not exist. Credit union members have not expressed concerns with the disclosures and other information that they receive under these plans. If these changes are finalized in their current form, credit unions will be forced to retrain staff, change their documents and data processing capabilities, and may also need to increase staff in order to accommodate these changes.

As a result, these changes will sharply increase expenses for those credit unions that use these plans. Based on recent data from the CUNA Mutual Group, expenses may exceed $100,000 per credit union, with total expenses of at least $350 million for all credit unions and their members. As not-for-profit financial institutions, credit unions will have no choice but to pass on these significant costs to their members, in the form of higher loans rates or lower rates on savings. Again, all this is unnecessary, considering that credit unions and their members have successfully used these plans for over a quarter of a century, and during that period the Board has not indicated this practice is in variance with TILA.

Also, certain states impose specific taxes or other costs on creditors. Whether the tax is imposed may be a function of whether the credit is open or closed-end. For example, Florida imposes a documentary stamp tax at a rate of $.35 per $100 that is borrowed. The documentary stamp tax is an excise tax imposed on documents, including promissory notes or any written obligation to pay a specific amount of money that is executed by the borrower. Open-end credit agreements are not subject to documentary stamp taxes because they are not written as a promise to pay a specific amount of money. Therefore creditors, and ultimately consumers, do not have to pay the documentary stamp tax on advances under an open-end credit plan, which otherwise may add over $100 to the cost of the credit for loans that exceed $30,000.

We also question why these changes are being considered in connection with the overall proposal on the Regulation Z open-end credit rules. The primary purpose of the Board's comprehensive review of Regulation Z, for both open and closed-end credit, is to improve the disclosures that are required under Regulation Z so consumers may more easily understand the costs and terms of credit. There is no indication that the current disclosures are in any way inadequate and, therefore, we believe the changes do not fulfill this purpose.

The proposed change that would affect multi-featured, open-end credit plans also seems to imply that providing closed-end disclosures is preferable to the current disclosures that are provided under these plans. We disagree with this assumption. Both periodic statements and notification when terms are changed are provided to members who use these plans, which would not be the case if closed-end disclosures are provided. The periodic statements provide timely information regarding the payments that are made, the rates that are in effect, as well as other useful information.

Members also receive account information whenever they access additional credit under these plans. The complete terms of this additional credit are disclosed on vouchers and receipts that are provided whenever new credit is extended, which is generally more extensive than what would be provided if closed-end disclosures were used. We also observe that in other parts of this proposal on closed-end credit, the Board acknowledges that it may be preferable to provide certain information when the credit is used, as opposed to when the credit plan is opened. We believe this also applies when these vouchers and receipts are provided to the members.

We question the proposed requirement that a separate review by the creditor when additional advances are extended under these plans would disqualify them from being considered open-end plans. It is our understanding that some form of underwriting is undertaken by credit card issuers when credit cards are used by consumers. This includes some form of review by the issuer, even if the credit extended does not exceed the credit limit. This is especially true for retailers that offer in-store credit cards. These retailers may review any significant purchase made with these cards, even if the credit limit is not exceeded.

Card issuers are permitted to undertake this type of informal underwriting whenever credit cards are used by consumers. Therefore, we believe credit unions should be permitted to continue to offer multi-featured, open-end plans with the same ability to review transactions, without the requirement to provide closed-end disclosures.

We believe the need to change the current disclosures and treatment of multi-featured, open-end plans under Regulation Z and the Official Staff Commentary has not been sufficiently demonstrated. However, if the Board is determined that changes are required by TILA, in order to allow credit unions to continue offering these plans with as little disruption as possible, we offer a possible alternative for the Board's consideration. We propose that the Board require only that the closed-end disclosures be provided for any credit that is not "self-replenishing." Under this alternative, a signature would not be required each time the member receives credit under the overall plan and the ability of credit unions to review each advance separately would not be changed. The member would receive the disclosure information when the credit plan is set up and then continue to receive information about the credit he or she requests in the future. Members would continue to be able to access credit through a variety of means, such as requesting it by telephone, by Internet, or in person at the credit union. While we are not aware of disclosure deficiencies, we would welcome the opportunity to work with the Board in reviewing the current information that is provided when members access credit under these plans to ensure this documentation provides the information that the Board believes would be appropriate.

If the Board proceeds with these changes to multi-featured, open-end credit plans as proposed, we strongly urge that the effective date of these changes be postponed until the Board completes its entire review of Regulation Z, including both the closed-end and open-end portions of these rules. Otherwise, credit unions will be required to change disclosures to the current closed-end disclosures for the credit features that would no longer be considered "self-replenishing" and would then need to change them again after the Board reviews and finalizes changes that will likely be made to the closed-end disclosures. To require credit unions to change these disclosures twice within a relatively short period of time would be very expensive and quite unfair. It would be much more efficient and much less confusing for credit union members if these disclosures are only changed once during this process.

In addition to these comments, we strongly urge the Board to consider the comments that have been submitted by CUNA Mutual Group (CMG). CMG is the primary architect and provider of these multi-featured, open-end credit plans for credit unions, and its views and expertise will be invaluable as the Board considers whether to finalize these changes. CMG has also conducted significant research and surveys on the value of these programs for credit unions and their members that we believe will also be very useful as the Board continues to consider this issue.

Credit Card Applications and Solicitations – Section 226.5a

We appreciate the Board's efforts and the extensive consumer research that has been undertaken to develop the proposed model forms and sample language for the application and solicitation disclosures to make them easier to understand. We agree that the 10-point font size and dividing the disclosures into boxes within the table may help consumers understand the information better. However, we have a number of suggestions that we believe would further improve these disclosures.

A number of credit unions charge the same APR for purchases, cash advances, and balance transfers that are completed after the introductory period, if one is provided. Under the proposal, there is a separate box in the table for each of these rates. We believe credit unions, and other financial institutions that impose the same APR for these products, should have the flexibility to combine the disclosures within these three boxes. For the disclosure of the purchase APR, we believe credit unions will prefer to disclose the range of possible rates if such rates will be determined based on the member's creditworthiness, as opposed to specific rates that may apply. We think this will be a more useful disclosure for consumers.

The Board has also requested comment as to whether creditors should be permitted to list only the highest APR that may apply. We do not believe this would be an appealing alternative. Consumers would likely assume that this rate would be the one that applies to them. Although credit unions certainly encourage consumers to explore all options with regard to financial services, we believe this should be based on complete information. Providing only the highest APR would not be complete, since the consumer may very well qualify for a lower rate.

As for the disclosure of the APR for balance transfers, we believe the last sentence in the paragraph entitled, "Notice Regarding Interest Charges" is confusing and should be clarified. This is the sample language indicating that payments are applied to the transferred balance before they are applied to purchases, under the assumption that the balance transfer APR is less than the purchase APR. We believe the last sentence can be improved by indicating the specific APR that will apply to purchases. For example, the sentence that now reads "[y]ou will be charged interest on all purchases until your entire account has been paid off completely…." could be changed to read "[y]our APR for all purchases will be between 8.99 – 19.99% until your balance has been paid off completely…."

We also envision that credit unions may need to change this sample language since many apply payments to balances that are being charged the lowest APR, which in certain situations may not be the transferred balance. There may also be card issuers who offer introductory rates on purchases, instead of on balance transfers. In these situations, it may be preferable to include the paragraph title "Notice Regarding Interest Charges" within the APR for Purchases box, as opposed to the APR for Balance Transfers box.

As proposed, the disclosure for the grace period reads "[i]f you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance on purchases without being charged interest." We believe this disclosure will be more clear by eliminating the phrase "[i]f you pay your entire balance in full each month," as it appears to be unnecessary.

The sample language indicates that the penalty APR is a specific rate. For at least some credit unions, the penalty APR may actually be a rate that is indexed to the purchase APR, such as five percentage points above the purchase APR. In these situations, the penalty APR would change in concert with changes to the purchase APR. Credit unions want to ensure that they may continue to disclose the penalty APR in this manner.

For the disclosures of penalty fees, the parenthetical "[y]our APRs may also increase; see Penalty APR section above" is repeated three times. We believe this is redundant, and it would be more concise to place this language at the top, above the various dollar amounts that are listed.

For applications and solicitations, the proposal incorporates a number of the changes that were included in the electronic disclosure proposal that the Board issued earlier this year. This includes the requirement that the disclosures be provided electronically if the consumer accesses the application and solicitation electronically; the methods in which these disclosures may be provided; and the requirement that a variable APR disclosed electronically will be accurate if it was in effect within thirty days before being posted or sent electronically.

As indicated in the comment letter we submitted in response to the earlier electronic disclosure proposal, we support these changes, with the caveat that the delivery of electronic disclosures promises to be a rapidly changing area as technology evolves. For this reason, we encourage the Board to clarify that other means of providing these disclosures electronically may develop in the future, which may also be appropriate.

In the proposal, the Board also requested comment as to whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive electronic disclosures, such as when consumers seek to make online payments and the creditor imposes a fee for this service. We would agree that there may be situations in which cost disclosures in electronic form would be appropriate, such as the situation described, as well as other situations in which the consumer is already using electronic means to access financial services. In these situations, a screen prompt disclosing the fee with an icon that the consumer could click to acknowledge receiving the disclosure should be considered sufficient for purposes of providing the disclosure and receiving consent from the consumer.

Account-opening Disclosures – Section 226.6

As with the application and solicitation disclosures, we also appreciate the extensive efforts and consumer research that have been undertaken in developing the model form and sample language for the account-opening disclosures. However, many of our comments and concerns with regard to the application and solicitation disclosures would also apply to the proposed account-opening disclosures. These include combining the APR boxes when these rates are the same; our suggested changes described above with regard to the "Notice Regarding Interest Charges" paragraph in the APR for Balance Transfers box; as well as our suggested changes to the Grace Period box and the Penalty Fee box.

We also believe there will be some redundancy between the proposed account-opening disclosures and the cover letter that credit unions currently send to their members at the time the account is opened. The cover letter is generally in the form of a "welcome" letter that already includes various information about the account, some of which may duplicate the information in the proposed account-opening table. We encourage the Board to recognize the validity of the disclosures in the cover letter and allow creditors some flexibility to amend the table to reduce the duplication or to permit the cover letter to satisfy certain disclosure requirements, as long as the table with the remaining required disclosures is also provided.

As the Board has indicated, the model application and solicitation disclosures are nearly identical to the model account-opening disclosures. Although the Board has provided flexibility in allowing creditors to use the account-opening table in place of the proposed table that would otherwise be used for applications and solicitations, we believe the Board should create two identical sets of model disclosures that would be used for both the application and solicitation, and the account-opening disclosures. This will simplify and reduce compliance costs for creditors who choose to use these model disclosures, and help reinforce to consumers that the disclosures have not changed since the application was submitted.

However, we do note that both of these disclosures are geared to credit cards. Other types of open-end lending besides credit cards may have different terms and features. For this reason, we encourage the Board to consider developing additional model disclosures for these other types of open-end credit.

Both the application and solicitation disclosures and the account-opening disclosures reference the balance computation method that will be used. The current rules list four balance computation methods that may be disclosed without explanation. These include: 1) average daily balance; 2) two-cycle average daily balance; 3) adjusted balance; and 4) previous balance.

Model clauses are provided on how to describe these methods, and the Board has requested comment as to whether the clauses should be deleted as obsolete. Since the Board has not determined any of these are obsolete, we encourage the Board to retain these clauses.

Board's Website for Additional Information on Credit Cards – Section 226.5a(b)(17)

For both the application and solicitation disclosures and for the account-opening disclosures, the Board has provided sample language directing the consumer to the portion of the Board's website that provides additional information on credit cards. The Board has requested comment as to what types of information should be included.

A wealth of information currently exists with regard to credit cards and other financial products and services. Instead of recreating this information, the Board's website could provide links to this existing information. This could include links to information on how to protect credit card information in order to minimize the chances of being a victim of identity theft, as well as links that educate young people on the appropriate use of credit cards and other types of financial services.

The additional information provided on the Board's website should be specific to the needs of certain individuals. This could include providing information on how to choose and use credit cards, based on an individual's specific behavior. For example, there should be information on how to shop for a credit card for those who always pay their balance each month, as well as for those who revolve their balance. Another example would be to encourage consumers to focus on the fees and rates for services or behaviors that would apply to them, such as late fees and penalty APRs, if they are unlikely to make timely payments on a regular basis.

Most importantly, the website should also provide information on all types of creditors that provide these types of financial services, including credit unions. As not-for-profit financial institutions, credit unions often provide financial products, including credit cards, at the lowest costs and rates that are generally available. They also provide a high level of service to ensure their members are informed on all the options available to them with regard to financial services.

Periodic Statements – Section 226.7

The Board has proposed two approaches with regard to the disclosure of the "effective" APR, which includes the interest as well as other fees and costs. One approach is to impose uniform terminology and formatting requirements, as well as specify exactly the fees that are to be included. The other proposed approach is to eliminate the requirement to disclose the "effective" APR.

We strongly prefer the approach of eliminating the effective APR altogether. For those fees that are required to be included in the effective APR, we believe these fees should be disclosed in dollar terms, as discussed below. However, the disclosure of the effective APR, which expresses these fees in percentage terms, in addition to the interest cost, does not necessarily provide useful information to consumers. In certain cases this disclosure will be misleading and confusing for consumers.

The effective APR is confusing because if these fees are incurred by consumers, the APR on the periodic statements will be much different than the APR that may have been reflected in the account-opening or other disclosures that the consumer may have relied upon at the time he or she entered into the account relationship. This confusion will always continue, regardless of the verbiage that creditors include to explain this discrepancy.

The effective APR can also be misleading. One-time fees can result in a much higher APR for one statement period than for others in which these one-time fees are not incurred. This is not only confusing, but is inaccurate because the APR is a calculation that assumes the interest and fees included in the APR are charged continuously throughout the annual period. Therefore, when a one-time fee is included in the effective APR during a particular statement period, the APR assumes the fee will be charged throughout the annual period, which is often not the case.

The Board in the past has excluded charges from the APR calculation in recognition of the effect that such charges can have on the calculation. Examples are certain fees in connection with home equity lines of credit, such as fees to open the account and an annual fee when there is no balance. The Board should now use this approach and eliminate the effective APR in its entirety.

Instead of disclosing certain fees and charges as part of the effective APR calculation, we believe the disclosure of such information will be more useful to consumers if expressed in dollar terms. This approach will allow them to understand the amounts being charged and help them compare these costs with other credit products. This is the Board's purpose with regard to the entire Regulation Z proposal, and we believe eliminating the effective APR will help the Board achieve this goal.

If the Board decides to continue requiring the disclosure of the effective APR with the changes as proposed, we agree that renaming it the "Fee-inclusive" APR may better describe this concept. However, credit unions are concerned that their members will continue to be confused by this calculation, regardless of what it is named. Not only have members been confused in the past, but many have expressed frustration as they believe their APR has been increased above what was disclosed when the account was opened, not realizing that the effective APR includes certain fees, while the APR disclosed when the account was opened does not.

We are concerned that proposed changes to the Official Staff Commentary will result in a credit card issuer having to treat any transaction charge in its entirety, regardless of comparable fees charged for withdrawals from an asset account, as a finance charge. This will pose problems for federal credit unions as it would impact their ability to charge cash withdrawal fees initiated by credit cards that are comparable to those initiated by debit cards. Incorporating these types of charges into the new "Fee-inclusive" APR may cause federal credit unions to exceed the statutory interest rate ceiling under the Federal Credit Union Act, as the National Credit Union Administration Board follows the Board's interpretation of "finance charge" for purposes of usury compliance.

With regard to the proposed periodic statement model form, we understand that the Board's consumer testing seems to indicate that grouping transactions by type, such as purchases, cash advances, balance transfers, fees, and interest, is easier for consumers to understand. Credit unions have generally been grouping transactions chronologically and have heard very few complaints from their members with regard to this format. We believe that listing transactions chronologically allows consumers to track their transactions in a relatively easy manner and do not see how grouping by type provides improvement. We are encouraged that the Board will conduct further testing in this area before finalizing these changes to the periodic statements.

We also notice that many of the listed fees are followed by the term "transaction fee," which we believe will be confusing for consumers. These are already described as "cash advance fees" or "balance transfer fees" on the proposed statement, and adding the term "transaction fee" does not provide any useful, additional information.

We have also heard from our members and others regarding the size of paper on which these disclosures should be printed. Some believe or have inquired as to whether they should be printed on 8 ½'' by 14'' paper, as opposed to 8 ½'' by 11''. It is our understanding that there is no paper size requirement, but would appreciate clarification from the Board that our understanding is correct.

As part of this proposal, the Board requested comment as to whether additional guidance is needed in a number of areas with regard to the Regulation Z open-end credit rules. This includes guidance for determining when accounts are "uncollectible" and when an open-end plan is deemed satisfied and replaced with a closed-end obligation for situations in which there is a workout arrangement. These are situations in which periodic statements would no longer be required. We believe more guidance is needed in these areas and would be pleased to work with Board staff on the development of additional guidance on these issues.

Finally, with regard to periodic statements, the Board is proposing to eliminate the disclosure of the periodic rate. We agree with this approach as this information provides very little benefit for consumers

Minimum Payment Disclosures – Section 226.7(b)(12)

The proposal will also implement the provisions under the Bankruptcy Act that require creditors to provide clear and conspicuous disclosures on the front of each periodic statement describing the effects of making minimum payments. The Bankruptcy Act requires the Board to provide the following model disclosures, which have been included in this proposal:

- A warning statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it will take to repay the balance.
- A hypothetical example of how long it will take to pay off a specified balance if only minimum payments are made. The Board must provide examples using two "typical" payments.
- A toll-free telephone number that consumers may call to obtain an estimate of how long it will take to repay their actual account balance if only minimum payments are made.

The Bankruptcy Act also requires the Board to prepare tables outlining the number of months it will take to repay a balance if only minimum payments are made, which may be used by the operators of the toll-free telephone numbers when providing the repayment period estimates to consumers. The Board must maintain for two years the toll-free telephone number for financial institutions with assets of $250 million or less.

We believe these disclosures should generally be limited to credit cards in which the consumer has an option to vary the payments that are made. This would exclude certain types of charge cards in which the consumer is obligated to pay the balance in full each month, as well as all other plans in which there are fixed payments that amortize the loan over a certain period of time. We also urge that home equity lines of credit be excluded since consumers already receive disclosures regarding the length of time they have to repay the debt.

The intent of the Bankruptcy Act is to provide information to consumers regarding the consequences if they choose the option of making the small, minimum payments that may lead to very long repayment periods. Consumers do not need this information for the products described above, either because they do not have the option to make small, minimum payments or because they already receive this information. However, subject to these exclusions, we believe these disclosures should be provided to all credit card accountholders, regardless of whether they revolve their balances or make payments that are above the minimum amount.

It is clear that the tables developed by the Board will invariably need to make certain assumptions that will not necessarily apply to all creditors, whether it is the minimum payment formula or some other factor. Thus, the tables will not provide an actual repayment period that will apply to all consumers who use the toll-free telephone number.

This should not be of concern because providing consumers with a good estimate will accomplish the goal of providing consumers with useful information regarding the consequences of making only minimum payments on their credit cards, even if the repayment period is not absolutely accurate. This should also not be of concern because even if an actual repayment period could be calculated, it would not remain accurate as many factors will likely change over time, such as the APR, any additional fees the consumer may need to pay in the future, and the monthly amount the consumer will pay in the future. For these reasons, we would strongly encourage the Board to refrain from representing, or requiring creditors to represent, that any repayment period calculations are or will likely be the "actual" repayment period for any specific consumer who requests this information. We believe the estimates provided should be labeled and disclosed as a "good faith" estimate, or some other similar terminology.

The proposal will allow creditors to bypass the requirement to provide a toll-free telephone number for purposes of providing repayment periods when only minimum payments are made if the creditor provides an individualized estimate on the periodic statement, as opposed to the Board's hypothetical example. We support this flexibility, and believe credit unions will want to take advantage of that option, especially if they use vendors that can make these changes. We also support the other proposed option that will allow creditors to bypass the need to provide the hypothetical example on the periodic statement if the creditor provides the actual repayment information through the toll-free telephone number.

Change-in-Terms – Section 226.9

The proposal will increase the notification period for change in terms from 15 to 45 days. This will include notices for increased rates due to delinquency, default, or penalties. The Board requested comment as to whether a shorter time period than 45 days would be adequate

We would support a change that would require a 30-day advance notice before changing certain terms of an open-end credit plan, instead of the current 15-day requirement. We agree that the current 15-day period is not enough time for consumers to analyze these changes and switch their account if they do not want to accept the new terms. Changing the requirement to 30 days will benefit consumers by providing them with the additional time needed so they may shop around to determine if it would be beneficial to close their account and open a new account with another creditor. Also, from an operational perspective, credit unions generally provide these notices along with the periodic statements and, therefore, are already giving their members a 30-day notice.

If the Board proceeds with the 45-day advance notice period, we request that it not be applied to increased rates due to delinquency, default, or penalties. The application and solicitation disclosures and the account-opening disclosures already provide this information at the time the account is established and, therefore, it is unnecessary to provide an additional 45-day notice period if these penalty rates are imposed.

Credit Card Checks – Section 226.9(b)

For credit card checks, the proposal will require disclosure of the actual interest rate and fees that will apply. The Board has requested comment as to whether other alternatives would be preferable, such as providing a reference to the type of rate that will apply, along with a toll-free telephone number that the consumer may use to obtain the specific rate information.

We believe credit card checks should specifically include the APR and the fees that will be incurred if they are used, as opposed to providing a reference to a toll-free telephone number. Consumers need to be aware of the costs and fees associated with the use of these products and should not be burdened with having to use a toll-free telephone in order to receive this information. Providing a toll-free telephone number for consumers to call to receive the information would be burdensome for smaller financial institutions, and we believe they would prefer providing this information along with the credit card check.

For the sample language for the disclosures that would be required for credit card checks, we note that for the fees the language states "[e]ither $5 or 3% of the amount of each transfer…" We believe the term "transfer" should be changed to "transaction." The term "transaction" is both more accurate and is consistent with the other sample language that is used in this disclosure.

Debt Suspension Coverage – Section 226.4

The proposal provides additional guidance with regard to debt suspension coverage, which is comparable to current guidance that applies to debt cancellation coverage. The guidance outlines the events that are covered, the treatment of the costs as a finance charge, as well as various disclosure requirements. We agree and support this new guidance that is now being provided.

Liability for Unauthorized Use – Section 226.12(b)

The proposal will clarify that if a cardholder gives a credit card to another person and that person exceeds the given authority, the cardholder will be liable for the transactions, unless he or she notifies the creditor that the use of the card is no longer authorized. The proposal will also indicate that an unauthorized use will include circumstances in which a person has obtained the card or initiated a transaction through robbery or fraud.

The Board has requested comment as to whether these clarifications are necessary. Although we believe these situations would be covered under the current interpretation of "unauthorized use," we welcome this additional guidance from the Board.

Conspicuous Disclosures

The Board had considered a proposal to prohibit the terms "finance charge" and "annual percentage rate" from being disclosed more conspicuously than other required disclosures, except when the regulation so requires. This is to address criticism that emphasizing certain terms has caused confusion. However, the Board has recognized that is difficult to do without creating detailed exceptions and has requested comment on whether to continue to develop such a proposal.

We believe the Board should not develop such a proposal. To define "more conspicuously" would be very problematic, in addition to the Board's concern about creating detailed exceptions.

Implementation Period

Because this proposal incorporates such extensive and far reaching revisions to Regulation Z open-end rules, we believe credit unions and others should be given a significant amount of time to prepare for these changes. For this reason, we believe that mandatory compliance should not be required until at least two years after these changes are issued in final form. This time will be necessary in order to allow credit unions and others sufficient time to revise the Regulation Z disclosures, provide appropriate staff training, and implement the necessary data processing changes.

Although we realize that two years is a significant period of time, we believe it is warranted for this proposal. Over the years, the Board has issued numerous revisions to its consumer protection rules and has often delayed mandatory compliance for one year in order to provide financial institutions sufficient time to implement the necessary changes. This proposal incorporates changes that are much more comprehensive, which warrants delaying the mandatory compliance date for a longer time period, at least two years.

The Board has invested a significant amount of time in developing these extensive revisions to the Regulation Z open-end rules to ensure that they serve the needs of consumers. We now request that the Board provide credit unions and others with the amount of time they will need to ensure successful implementation of these changes.

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Thank you for the opportunity to comment on the proposed changes to the open-end credit rules under Regulation Z. 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,

Jeffrey P. Bloch
Senior Assistant General Counsel