December 16, 2005

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

SENT BY E-MAIL

RE: Docket No. R-1217 – Second Advance Notice of Proposed Rulemaking regarding the open-end credit rules of Regulation Z and amendments on implementing the Bankruptcy Act amendments to TILA

Dear Ms. Johnson:

Thank you for the opportunity to submit on behalf of our company and our customers suggestions for improving the format and content of open-end credit disclosures required by Regulation Z.

CUNA Mutual Group provides a broad range of insurance and related financial services to credit unions and their members both within the United States and internationally. Under the trademark of LOANLINER® CUNA Mutual sells consumer, home equity, deposit and operational disclosures and other documents to almost 6500 credit unions. In addition, approximately 90% of all credit unions are covered by an insurance product sold by CUNA Mutual to protect credit unions for loss due to non-compliance with federal consumer disclosure laws including the Truth in Lending Act.

Our response is based on our extensive knowledge and experience working as the compliance experts for credit unions. We sell open-end lending documents that are used for credit cards, multi-featured open-end lending and HELOC's. Your request for public comments was carefully reviewed by a comprehensive committee of CMG professionals who provide high-level assistance to credit unions with open-end credit disclosures.

In our response to the first ANPR, dated March 28, 2005, we included examples of how we believed periodic statements should be structured to be meaningful. We would encourage the Board to develop proposed regulations for the bankruptcy amendments in conjunction with our suggestions for making the periodic statement more meaningful to consumers.

We expect that the response to this ANPR will be at least as large as the response to your first request. We have chosen to respond only to those questions in which we have substantial knowledge and expertise. For easy reference each of our responses is prefaced by the question number and a portion of the text of the question. The question number appears in red text and the CUNA Mutual response is identified by the blue introductory sentence.

Q59: Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate?

CUNA Mutual Group Comment: It is our belief that the intent of the minimum payment disclosures is to inform a consumer how long it could take to pay off credit in which there is no stated term or maturity date. Many forms of open-end credit have a final payment date or maturity date. For example, HELOC's have a specific repayment period (it is a disclosure required by 226.5b. In addition, with the exception of what are commonly known as "evergreen" plans, HELOC's usually have a final payment date or maturity date stated. CUNA Mutual provides HELOC lending documents to approximately 2000 credit unions throughout the country. All of those plans have a stated final payment date which is a clear disclosure to the consumer on the longest time it would take to pay off the loan

The other reason for this payment disclosure requirement is that the consumer makes a relatively small payment which will take a long time to pay off the balance. It is our experience with credit unions that many balances under open-end credit plans are paid off by essentially amortizing payments. All auto loan advances and other loans secured by titled or other personal property are almost always amortizing payments.

We recommend that any open-end credit which has a stated final date, maturity date or similar designated term or otherwise has a fixed payment (which always implies a term) should be exempt from these disclosures. This would mean that the only types of credit for which the minimum payment example would be required would be a payment which is based on the percentage of the outstanding balance each month.

Q60: Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?

CUNA Mutual Group Comment: Based on our knowledge of how data processors produce statements, we believe that making exceptions based on the accountholder, rather than the type of credit payment, will be very difficult. If the member does not have a balance s/he would not receive a statement. If the member does not revolve a balance, the disclosure would still be appropriate if there is a balance to be paid off: in fact it might be an incentive to continue to pay the balance in full. As to a consumer who makes more than the minimum payment, there does not appear to be any compelling reason to exempt this group of consumers due to date processor issues, definition of "regularly exceed", etc.

Q61: Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed repayment periods and payments amounts, such as loans to finance the purchase of motor vehicles or other "big-ticket items." How should the minimum payment disclosures be implemented for such credit plans?

CUNA Mutual Group Comment: As suggested in the comment to Q59, these types of loan advances are normally amortizing payments and they should be exempt from the disclosure requirements.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

CUNA Mutual Group Comment: Credit unions traditionally charge APR's on credit cards much below the 17% rate used in the Act. When the disclosure is based on an APR that bears no relation to the consumer's actual circumstances it makes the disclosure meaningless. We suggest that the Board provide examples based on ranges of interest rates and then the statement would include the disclosure based on the APR that falls within that range.

An example might be;

10% and below – 10% would be used as the disclosed APR

Over 10% ---15% - 15% would be used as the disclosed APR

Over 15% and above - 17% would be used as the disclosed APR

Q67: If the Board selects a "typical" minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit cards (such as retail credit cards, HELOCs, and other lines of credit)?

CUNA Mutual Group Comment: Credit unions commonly use amortized payments for HELOC's and other multi-featured open end credit plans. Other common payment types for credit cards are the outstanding balance including finance charges. We also see interest only payments and a fixed payment based on a percentage of the outstanding balance at the time of the advance.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board?

CUNA Mutual Group Comment: We do not believe creditors should be required to base the disclosure on the actual payment formula. If the disclosure is to be meaningful at all, there should be a standardized method for making disclosures.

Q69: Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle .What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?

CUNA Mutual Group Comment: Credit unions traditionally do not offer credit plans which permit negative amortization. Whether a payment negatively amortizes is a function of the APR and the percentage of outstanding balance used to calculate the payment. . For example the 2% suggested in Q 69 does not always result in negative amortization. Credit card payments offered by the credit unions are normally a percentage of the outstanding balance regardless of interest rate. Other charges beyond principal and interest are added to the standard payment instead of being paid out of the standard payment. For example, if the payment is 2% of the outstanding balance each month and the balance is 1000, the payment is $20 plus any other outstanding charges.

While the Board's concern about negative amortization is valid, to require a payment example that reflects negative amortization will be difficult to do operationally. Using the home equity line of credit regulations as a guideline, if the Board is concerned about negative amortization, it would seem more appropriate to require a generic disclosure like that required for home equity early disclosures as shown below.

226.5b (d) (9) Negative amortization. A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

Q102: What guidance should the Board provide in interpreting when an "extension of credit may exceed the fair-market value of the dwelling?" For example, should the disclosures be required only when the new credit extension may exceed the dwelling's fair-market value, or should disclosures also be required if the new extension of credit combined with existing mortgages may exceed the dwelling's fair-market value?

CUNA Mutual Group Comment: Due to operational concerns, it may be easier to require that such a disclosure be given for any loan that is secured by a dwelling. It would be quite simple to add model language for this disclosure and we would recommend that the Board consider drafting safe harbor language for this purpose.

Q103: In determining whether the debt "may exceed" a dwelling's fair-market value, should only the initial amount of the loan or credit line and the current property value be considered? Or should other circumstances be considered, such as the potential for a future increase in the total amount of the indebtedness when negative amortization is possible?

CUNA Mutual Group Comment: If a standardized approach is used, this will not be an issue. However if an alternative approach is adopted the only practical way would be based on the initial loan amount and property value.

Q104: What guidance should the Board provide on how to make these disclosures clear and conspicuous? Should the Board provide model clauses or forms with respect to these disclosures?

CUNA Mutual Group Comment: Model language would be very helpful. For Helot's we would suggest that a sentence be added to the Tax Advice paragraph. For other dwelling secured loans please provide guidance on how and when these disclosures should be made. See our comment to Q105 next.

Q105: With the exception of certain variable-rate disclosures (12 CFR §§ 226.17(b) and 226.19(a)), disclosures for closed-end mortgage transactions generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. 15 USC 1638(b). Is additional compliance guidance needed for the Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

CUNA Mutual Group Comment: One of the difficulties of implementing this disclosure is that creditors will likely not know if this disclosure applies at the time of application. The only information that the creditor will have at the time of application is the consumer's estimate of the fair market value. The statute requires a disclosure about the fair market value of the dwelling although most consumers will only know the fair market value of the property – land and dwelling. In many cases, the fair market value will only be determined at the time of the appraisal which will occur some time after application.

The notice, whether generic or specific to each applicant, is only meaningful when the consumer has been approved for the loan. The disclosure has no meaning to an applicant for which no credit is granted. Therefore including the disclosure at application time is not meaningful at all. We would suggest that the FRB provide guidance that this disclosure should be given <u>no later than when the consumer's</u> <u>application is approved.</u> In addition, the disclosure should be permitted to be made on or with any other required document (TIL disclosure, Good Faith Estimate, ARM disclosure) given to the member at or before the time the application is approved as long as the statement is set out on the first page and separate from other disclosures.

Sincerely,

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