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

December 16, 2005

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

Re: Docket Number R-1217
Request for Comment on Regulation Z Rules required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act).

Dear Ms. Johnson:

We are pleased to respond on behalf of our member credit unions to the advance notice of proposed rulemaking (ANPR) on how the Federal Reserve Board (Board) should implement the provisions of the Bankruptcy Act that amend the Truth in Lending Act. The Illinois Credit Union League represents over 400 federal and state chartered credit unions.

A. Minimum Payment Disclosures for Open-End Accounts

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

The problems and abuses the Bankruptcy Act intended to address emanated from practices specific to credit cards. We strongly believe that these disclosure requirements should be limited to credit cards in which the minimum payment calculation is based on the outstanding balance at the time the statement is generated. The amendments should exclude card plans requiring the consumer to pay the balance in full each month and plans requiring fixed payments that amortize the loan over a certain period of time.

Home equity lines of credit (HELOCs) should also be excluded. Consumers receive disclosures regarding the length of the draw period and the repayment period and other

payment disclosures both at the time of application and when the HELOC is consummated.

Many credit unions offer general purpose open-end plans that feature fixed payments for various subaccounts with the repayment term based on the type of advance.

It is clear that Congress intended the new minimum payment disclosures to notify consumers of the consequences of making small minimum payments that could result in extended repayment periods. This information is not necessary for the products described above and could in fact confuse consumers regarding the actual length of amortization.

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 repayment 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 plans?

As mentioned in our response to Q59, many credit unions offer such open-end plans. Members apply once for a loan and then may finance additional purchases with minimal additional paperwork. This type of open-end lending provides members with the convenience of making additional purchases with minimal effort. Subaccounts are created under the open-end plan. Each subaccount may have its own interest rate, and repayment terms, and the member pays off each balance separately.

As stated in our response to Q59, these types of accounts should not be subject to the new minimum payment disclosure requirements. The repayment is typically determined at the time of an advance and is not reduced as the subaccount's balance is reduced. These types of accounts are similar to fixed terms closed-end loans. The new minimum payment disclosures will not reflect the manner of repayment of such accounts and will serve only to confuse the consumer.

Q63: Should the Board consider revising the account balance, APR, or "typical" minimum payment percentage used in the examples for open-end accounts other than credit card accounts, such as HELOCs and other types of open-end credit?

For the reasons outlined in our response to Q59 and Q61 above, these disclosure requirements should apply only to credit card accounts in which the required minimum payment allows consumers to make very small minimum payments over a very long repayment period.

Q65, Q66, and Q67: These questions regard the format of the formulas used by the Board to generate the repayment tables required by the Bankruptcy Act.

We believe the Board should use the same assumptions used in the hypothetical examples regarding the balance calculation method, the grace period, and the assumption that there is no residual finance charge. Use of a minimum payment formula similar to the formulas used in the hypothetical examples will provide consistency between the tables and the examples disclosed on periodic statements.

Q68: When maintaining their own toll-free numbers, should creditors have the option or be required to use their actual minimum payment formula, instead of the "typical" formula used by the Board? Would the improved accuracy of the repayment estimate be outweighed by the burden of requiring the actual payment formula?

Creditors should have the option of using their actual minimum payment formula, as this will likely improve the calculation of the repayment period. However use of the actual minimum payment formula should not be required. Since the factors used to calculate the repayment period are likely to change, a calculation using the actual minimum payment formula will still not result in a completely accurate repayment period. The minimal benefit to the consumer from a slightly more accurate repayment disclosure would be outweighed by the burden on the creditor of imposing this as a requirement, as opposed to an option.

Q69: If the Board uses a typical formula that does not result in negative amortization, should the Board allow or require that creditors use a different formula if their actual formulas result in negative amortization? What guidance should the Board provide on how to disclose repayment periods when there is negative amortization?

If a creditor is using a minimum payment formula resulting in negative amortization, it may be appropriate to require a disclosure to the consumer that making minimum payments will not reduce the debt.

Q71 and Q72: The hypothetical examples assume a single APR. Would this be appropriate for accounts that have multiple APRs and, if so, what should the APR be? Should the Board instead adopt a formula that uses multiple APRs and incorporates assumptions about how those APRs should be weighed? Should the consumer receive both an estimated repayment period using the lowest APR and another period using the highest APR?

We believe the minimum payment disclosures should be to keep it as simple as possible for the consumer, while providing the information that is required under the Bankruptcy Act. We suggest that only one rate should be used, which can be the highest rate that may apply to the specific consumer. The actual repayment period will usually not be disclosed because certain assumptions will have to be made that may or may not apply to a specific consumer. Since more complicated disclosures will not achieve significantly greater accuracy, the information should be disclosed in a simple a format as possible.

Q73: One approach for multiple APRs may be to require creditors to disclose on the periodic statements the portion of the ending balance that is subject to each APR so consumers may provide this information when using the toll-free telephone number. What would be the compliance cost if creditors were required to provide this information?

The initial cost of setting up the process to provide this information would be significant. However, regardless of the cost, we believe providing multiple balances on the periodic statement will only serve to confuse consumers with respect to which balance must be paid, and when it should be paid, and may lead them to believe that they can direct their payments to a balance subject to a specific APR.

Q74: As an alternative to disclosing this information on the periodic statement, creditors could program their systems to calculate the repayment period based on the APRs applicable to the consumer's balance. Should this be an option or should it be required? What would be the compliance cost if this was required and would this cost be outweighed by the benefit of improving the accuracy of the repayment estimates?

Creditors should have the option of programming their systems to calculate the repayment period based on the APRs applicable to the consumers balance, as this will likely provide an estimate that is more accurate. We would not support imposing this as a requirement, as this may impose significant additional costs for smaller financial institutions, including many credit unions. Although this may lead to the most accurate estimate of the repayment period, it would not result in the "actual" repayment period, since circumstances may change after this repayment period is calculated.

Since this process would lead to the most accurate estimate of the repayment period, we strongly urge the Board to adopt an alternative allowing creditors to bypass the toll-free telephone requirements if they were to provide these types of estimates. Providing this information on the periodic statement would provide the consumer with information that would be at least as accurate as the information they would receive by using the toll-free telephone number and would more convenient to the consumer.

Q75: Assumptions would also have to be made as to how payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments are always allocated first to the portion of the balance with the lowest APR?

It should not be assumed that payments are always allocated first to the portion of the balance with the lowest APR. Many credit unions, as a benefit to their members, allocate payments to the portion of the balance with the highest APR.

Q76: Consumers may need to be aware of certain assumptions with regard to the repayment estimates, such as that the estimate is based on the assumption that there are no new transactions, late payments, changes to the APR, and that only minimum payments are made. Which of these, if any, should be disclosed to the consumer? Should they be disclosed on the periodic statements or when the consumer uses the toll-free telephone number? Should the Board provide model clauses for these disclosures?

We do not believe it will be necessary to disclose these assumptions. At most, a simple statement indicating the repayment period is a "good faith" estimate, based on a number of assumptions that may change over time, should be sufficient to clearly indicate that the repayment period should not be considered the "actual" period. Anything more than this will only serve to confuse consumers, which will detract from the usefulness of these disclosures. If the Board provides model clauses for these or any other disclosures that are the subject of this ANPR, we urge that they be subject to public comment before they are finalized.

Q77 and Q78: If the creditor elects to provide the actual number of months to repay the balance, instead of an estimate, what standards should be used in determining whether the creditor has accurately provided the actual number of months? Should the creditor be

considered to have provided the actual number of months if the calculation is based on certain terms and assumptions that are identified or permitted by the Board? Should the Board adopt a tolerance for error in disclosing the actual repayment periods? What should that tolerance be?

Since assumptions will have to be made on any calculation of the repayment period, any disclosure of a repayment period can only be an estimate. For this reason, there should not be any standard for determining whether the creditor has provided the "actual" repayment period.

The regulation should make it clear that creditors will be considered in compliance with the disclosure requirements as long as they are using accurate information, along with the assumptions that are permitted by the Board.

Q79: Is information about the actual number of months to repay readily available to creditors based on current accounting systems, or would new systems have to be developed? What would be the cost if new systems had to be developed?

The information is not readily available to all credit unions.

Q80: The Board is considering three approaches in calculating the estimated repayment periods, which are described above, and generally require the consumer or creditor to provide information that may not currently be included on the periodic statements. Are there any other approaches that should be considered?

We have no specific suggestions at this time, but plan to review and comment on any future proposal that is issued as a result of the comments received in response to this ANPR.

Q81: Do you offer or are aware of a web-based calculation tool that allows consumers to obtain estimates of repayment periods?

The calculation tool on www.bankrate.com appears to be an example of a relatively easy to use web-based tool that could serve as a model or be used by others in the industry. We suggest that the Board consider developing its own web-based tool. Financial institutions could then provide this on their own websites by either downloading software that the Board would provide to the industry or by linking directly to the Board's website.

Q82: Are there other alternatives to providing the repayment periods other than the toll-free telephone numbers? Should the Board encourage creditors to place the estimated or actual repayment period on the periodic statements by exempting them from maintaining the toll-free telephone numbers? What difficulties would there be in providing this information on the periodic statements?

It appears that in the near future, nearly all consumers will have Internet access. At that time, we hope the Board will consider allowing creditors to substitute web-based tools discussed in our response to Q81 above, in lieu of providing the toll-free telephone number.

Q83 and Q84: What guidance should the Board provide regarding the location or format of the minimum payment disclosures that will be required on periodic statements?

Should there be a minimum type size requirement? What model forms or clauses should the Board consider?

We do not believe that specific location on the statement should be mandated. This information should not be located or highlighted to the extent it detracts the consumer from the more important information, such as the balance and the amount currently owed on the account. Consumers will be inconvenienced if the additional disclosures make it more difficult to locate more important information.

As we previously mentioned, if the Board provides model clauses for these or any other disclosures that are the subject of this ANPR, we urge that they be subject to public comment before they are finalized.

B. Introductory Rate Disclosures

The Bankruptcy Act amends TILA by requiring additional disclosures for credit card applications and solicitations sent by mail or provided over the Internet that offer a "temporary" APR.

Q85: The Board is required to issue model disclosures and standards that provide guidance on satisfying the requirement that the introductory rate disclosures be "clear and conspicuous," which is defined as "reasonably understandable and designed to call attention to the nature and significance of the information." What guidance should the Board provide? Should there be format requirements, such as a minimum type size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

We believe that any interpretation of "clear and conspicuous" for the introductory rate disclosures should be consistent with the guidance and interpretation that currently applies with regard to Regulation Z disclosures. We would not support a minimum type size requirement, as this would require a judgment as to how important this information is for consumers, as compared to other information, such as the rate that will apply after the introductory rate expires. We believe the importance of this information will vary among consumers. As stated previously, credit unions would appreciate model disclosures, as long as there is an opportunity to comment on these disclosures before they are finalized.

Q86: The term "introductory" must be in "immediate proximity" to each mention of the introductory APR. What guidance should the Board provide in interpreting this requirement?

Including the term "introductory" within the same sentence that the introductory APR appears will clearly disclose to the consumer that the APR mentioned is an introductory rate.

Q87 and Q88: The expiration date and the APR that will then apply must be closely proximate to the first mention of the introductory APR, although the introductory APR may appear several times. What standards should the Board use to identify the first mention? For direct mail offers that include several documents, should the Board

identify one document that contains the first mention of the introductory APR or should this disclosure by included in each document that mentions the introductory APR?

The Board should clarify whether the APR printed on the envelope could be considered the first mention of the APR, since that is likely to be the first time that the consumer sees the rate. We believe an APR on the envelope should not be considered the first mention, but this may be a compliance issue if not clarified by the Board.

For direct mail offers that include several documents, we urge the Board to only require that the initial document include this disclosure with the first mention of the APR, as opposed to requiring that this disclosure be included in each document that mentions the introductory APR. This should be sufficient to ensure that the consumer sees this information.

Q89: What guidance should the Board provide for the requirement that the expiration date of the introductory APR and the rate that will apply after expiration must be in a "prominent location" that is "closely proximate" to the introductory APR?

We believe the Board should determine that as including the expiration date and the rate that will then apply within the same paragraph with the introductory APR meets the "closely proximate" standard. This will ensure that the consumer will see this information, while providing creditors with flexibility as to how to disclose it.

Q90: What guidance should the Board provide in disclosing the rate that applies after the introductory rate when a creditor uses risk-based pricing? Should all the possible rates be disclosed or should a range of rates be permitted, indicating the actual rate will be determined based on creditworthiness?

Creditors should have the option of either disclosing all the possible rates, the range of rates, the highest rate that may apply, or the lowest rate. If the lowest rate is disclosed, the term "as low as" should precede the rate. The consumer should be informed that the actual rate will be determined based on creditworthiness.

Q91: The Bankruptcy Act requires a general description of the circumstances that may result in revocation of the introductory rate, which must be disclosed "in a prominent manner" on the application or solicitation. What additional rules or guidance should be provided on what constitutes this "general description?"

We believe it should be clearly disclosed if the creditor has a policy of changing the rate when the consumer defaults on an account with another creditor.

We also believe a "general description" should specify the other situations in which the rate may increase.

Q92: The introductory rate disclosures apply to applications and solicitations that are sent by direct mail or provided electronically. Should the Board's guidance for direct mail differ from the guidance for disclosures that are sent electronically?

We do not believe the guidance for direct mail should differ from the guidance for disclosures that are sent electronically.

C. Credit Card Solicitations on the Internet

The Bankruptcy Act further amends TILA to require that the same disclosures made for applications or solicitations sent by direct mail must also be made for solicitations to open a credit card account using the Internet or other interactive computer service. Disclosures provided on the Internet must be "readily accessible to consumers in close proximity to the solicitation" and must also be "updated regularly to reflect current policies, terms, and fee amounts."

Q93: The Bankruptcy Act provisions concerning Internet offers refer only to solicitations, in which no application is required, although this may be interpreted to also include applications. Is there a reason that Internet applications should be treated differently than Internet solicitations?

We do not believe that Internet applications should be treated differently than solicitations.

Q94: What guidance should the Board provide on how these solicitation (and application) disclosures may be made clearly and conspicuously on the Internet? What model disclosures, if any, should the Board provide?

Any guidance regarding "clear and conspicuous" should be consistent with the guidance that would apply to printed disclosures. We would be happy to comment on any proposed model disclosures that the Board may want to adopt.

Q95: What guidance should the Board provide as to when disclosures are "readily accessible to consumers in close proximity to the solicitation?"

We believe the interim rules issued in 2001 provide sufficient guidance. Examples of compliance include a nonbypassable link on the application or reply form, a reference that the cost information either precedes or follows the electronic application or reply form, or having this information automatically appear on the screen when the application or reply form appears.

Q96: What guidance should the Board provide on what it means for the disclosures to be "updated regularly to reflect current policies, terms, and fee amounts?"

Updating disclosures on the Internet prior to the change in terms may be confusing for consumers. If creditors post change in terms on the Internet at the same time they are sent by mail, (Illinois requires notice 30 days prior to the change) the issue arises as to whether disclosure of both the terms currently in effect and the terms effective in 30 days must be maintained for the 30 day period.

We believe the Board should allow creditors to post the new disclosures on the Internet thirty days in advance of when they become effective and then allow creditors to either remove the disclosures that are currently posted or allow them to provide a link between the new disclosures and the ones that are about to expire. We realize this may result in a period of time, generally the following thirty days, in which the disclosures posted on the Internet that the consumer will initially see will not yet be in effect. However, we believe the consistency of posting these disclosures at the same time they are mailed to

consumers will minimize confusion for both consumers and creditors and will far outweigh the fact that they are being posted shortly before they become effective, especially since any consumer applying for the credit during that time will be covered by the new disclosures within a very short period of time.

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

The Bankruptcy Act amends TILA to require additional disclosures on open-end credit plans if a late payment fee is imposed. The periodic statement will need to disclose "clearly and conspicuously" the date on which the payment is due, or if different, the earliest date in which a late payment fee may be charged, as well as the amount of the fee.

Q97: Under what circumstances is the date in which the payment is due different than the earliest date in which a late payment fee may be charged?

Many credit unions provide an additional five or ten day "grace period" after the due date for the payment before imposing a late payment fee.

Q98: Is additional guidance needed on how these disclosures may be made "clearly and conspicuously?" Should there be specific format requirements, such as requiring the fee to be disclosed in close proximity to the due date? What model disclosures should the Board provide?

We believe the same clear and conspicuous standards that apply to the rest of the statement disclosures should apply. A "close proximity" requirement should not be imposed.

Q99: Currently, Regulation Z allows a "cut-off" hour, in which a payment does not have to be credited on the day it is received if received after a certain hour on that day. Should the cut-off hour be disclosed on the periodic statement in close proximity to the due date?

Credit unions generally do not impose "cut-off" hours, other than requiring payment by the close of the business day in order for it to be posted on that day. Credit unions will often post the payment on the day it is received, even if the payment is processed at a later time, if due to a backlog or certain other reasons that are beyond the control of the member. No disclosures should be required if payments will be posted on the date received, regardless of the time that it is received.

Q100: Should the Board require that any increased APR that would apply if a payment were late be disclosed along with the late payment fee disclosure?

The impact of making a late payment should be disclosed to consumers.

Q101: Are there any special issues applicable to open-end credit other than credit cards that the Board should consider with regard to the late payment fee disclosure?

As discussed above in response to Q58 and Q61, we believe that the disclosures required under the Bankruptcy Act should be limited to credit cards as the problems and abuses

that were intended to be addressed by these provisions emanated primarily from practices specific to credit cards.

E. Disclosures for Home-Secured Loans that may Exceed the Home's Fair Market Value

For home-secured credit, the Bankruptcy Act requires that each advertisement in which the amount of credit extended may exceed the fair market value of the home must "clearly and conspicuously" disclose the following:

- The interest on the portion of the credit greater than the fair market value is not tax-deductible with regard to Federal income taxes.
- The consumer should consult a tax adviser for further information regarding the tax deductibility of interest and other charges.

Q102: What guidance should be provided regarding the meaning of when the "amount of credit extended may exceed the fair market value of the home?" Should this apply when the extension exceeds fair market value or when this extension, combined with the existing mortgages, exceeds the fair market value?

We believe the disclosure that the "amount of credit extended may exceed the fair market value of the home" should apply when the extension itself exceeds the fair market value, not when the extension, combined with the existing mortgages, exceeds the fair market value. If the Board requires consideration of existing mortgages, then creditors should have the option of providing these disclosures on all loans, as that would be much less burdensome than having to identify the existing mortgages for each loan applicant.

Q103: When determining if the loan "may exceed" the fair market value, should only the initial amount of the loan and the current property value be considered or should other circumstances be considered, such as a possible increase in the loan amount if the loan terms allow for negative amortization?

Only the initial amount of the loan and the current property value should be considered. If the Board decides to apply a broad interpretation as to when the loan "may exceed" fair market value, then creditors should have the option of providing these disclosures on all loans, as that would be much less burdensome than having to identify the existing mortgages for each loan applicant.

Q104: What guidance should the Board provide on how to make these disclosures "clearly and conspicuously?" Should model clauses and forms be provided?

Any guidance should be consistent with the current standard that applies to TILA and Regulation Z. Credit unions would welcome model clauses and forms for purposes of complying with these requirements.

Q105: Disclosures for closed-end loans are generally provided within three days of application for home-purchase loans. Is additional guidance needed for these Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

We believe the Board should allow the Bankruptcy Act disclosures to be provided with the other disclosures within three days of application.

F. Prohibition on Terminating Accounts for Failure to Incur Finance Charges

The Bankruptcy Act amends TILA to prohibit a creditor from terminating an open-end plan before its expiration date solely because the consumer has not incurred a finance charge. This will not prevent the creditor from terminating the account for inactivity in three or more consecutive months.

Q106: What guidance should be provided on when an account expires? Should the expiration date on the credit card be considered the expiration date of the account?

For purposes of the Bankruptcy Act provisions, the expiration date on the credit card should be considered the expiration date of the account. However the Board should clarify, that the account is not considered expired for other purposes and that renewal or continuation of the credit card account by the creditor does not trigger additional disclosures.

Q107: Are there issues with open-end credit accounts other than credit cards that the Board should consider with regard to these requirements?

As discussed above in response to Q58, Q61, and Q101 above, we believe the disclosures required under the Bankruptcy Act should be limited to credit cards as the problems and abuses that were intended to be addressed by these provisions emanated primarily from practices specific to credit cards.

Q108: Should the Board provide guidance on the provisions allowing the creditor to terminate the account for inactivity in three or more consecutive months, such as what constitutes "inactivity"?

We believe the Board should provide guidance. We look forward to commenting on any specific guidance that the Board may propose with regard to these provisions.

We are pleased to be afforded the opportunity to comment on the implementation of the Bankruptcy Act amendments to the Truth in Lending Act. Please contact me at 800-942-7124 ext.4262 if you have any questions concerning the above comments.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

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