CUNA & Affiliates
A Member of the Credit Union System

Credit Union
National Association, Inc.

601 Pennsylvania Ave. NW, South Bldg.
Suite 600
Washington, D.C.
20004-2601

Telephone:
(202) 638-5777
Fax:
(202) 638-7734

Web Site:
www.cuna.org

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 Avenue, NW
Washington, DC 20551

Re: Docket No. 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:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the second advance notice of proposed rulemaking (ANPR) on changes to the open-end credit rules under Regulation Z, the Truth in Lending Act (TILA). This second notice requests comments on how the Federal Reserve Board (Fed) should implement the provisions of the Bankruptcy Act that amend TILA. These amendments include new disclosures for periodic statements and for credit card applications and solicitations. In December 2004, the Fed issued its initial request for comments on possible changes to the Regulation Z open-end credit rules. These two ANPRs represent the initial stage of a comprehensive review of Regulation Z in its entirety, with this initial stage focusing on open-end credit accounts that are not home secured, specifically general-purpose credit cards and merchant-specific credit plans. CUNA represents approximately 90 percent of our nation's 8,700 state and federal credit unions.

Summary of CUNA's Comments

- These disclosures required under the Bankruptcy Act should be limited to credit cards, and not include other types of open-end credit products, as the problems and abuses that were intended to be addressed by these provisions emanated primarily from practices specific to credit cards. For example, these disclosures should not apply to credit unions that offer open-end credit plans in which members can apply once for a loan and subaccounts are

created to finance additional purchases. Additional paperwork in these situations is not necessary.

- The disclosures regarding minimum payments should be provided to all credit card accountholders, regardless of whether they revolve their balances or make payments that are above the minimum amount.
- The annual percentage rates (APRs) that the Fed plans to require for the hypothetical examples on the periodic statements should not change over time. Changing the APR in the future will only serve to confuse consumers and will outweigh the benefit of changing it.
- For the tables that the Fed will provide creditors for use in calculating repayment periods if only minimum payments are made, it would be simpler to use a minimum payment formula that is similar to what will be used in the hypothetical examples on the periodic statements. This will result in consistency between them and be more useful for consumers.
- Calculating the actual repayment period if minimum payments are made will not be possible because assumptions have to be made that may or may not apply in each individual situation. For this reason, these repayment periods should be described as a "good faith" estimate, or some other similar terminology.
- The Fed should consider eliminating the requirement to include the effective, or "historical" APR on periodic statements, which includes the interest, as well as other fees and costs that are required under Regulation Z to be included in the historical APR calculation. The dollar amount of these fees should continue to be disclosed. However, the historical APR is confusing and can be misleading for consumers. This confusion will only be exacerbated if hypothetical examples of repayment periods are disclosed on periodic statements using a number of APRs.
- The Fed should consider allowing creditors to bypass the requirement to provide a toll-free telephone number for purposes of providing repayment periods if only minimum payments are made if the creditor provides an individualized estimate on the periodic statement, as opposed to the Fed's hypothetical example.
- The Fed should develop a web-based tool that calculates the repayment period if only minimum payments are made. Such a tool should be accessible though the Fed's home page. This should substitute for the requirement of providing the toll-free telephone number at some point in the future when the Internet is available to nearly all consumers.
- CUNA opposes minimum type size requirements for these new disclosures required under the Bankruptcy Act since it is not clear if these disclosures are more or less useful than those currently required, and there is no statutory requirement for a particular font size.
- Credit unions would appreciate model disclosures for these new requirements under the Bankruptcy Act, as long as credit unions have the opportunity to comment on them before they are finalized. The Fed should also conduct consumer testing with regard to any model disclosures that it develops.

- CUNA supports the idea of providing "clear and conspicuous" disclosures and believes that any interpretation of "clear and conspicuous" with regard to these new disclosures required under the Bankruptcy Act should be consistent with the guidance and interpretation that currently applies with regard to Regulation Z disclosures.
- The requirement that certain disclosures be "closely proximate" or within "immediate proximity" to other disclosures should be satisfied if they are within the same sentence.
- When disclosing the APRs that may apply after the introductory APR expires, 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. For the lowest rate, we agree that the term "as low as" should precede the rate and agree the consumer should be informed that the actual rate will be determined based on creditworthiness.
- For the requirement that creditors describe the circumstances that may result in the revocation of the introductory rate, 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. Credit unions generally oppose these "universal default" policies, as a default with another creditor should not be relevant to any account that is not in default.
- The new requirements for disclosing introductory rates electronically or by mail should be the same, regardless of the delivery mechanism.
- The Fed 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.
- We would have no objection to requiring the disclosure on the periodic statement, in close proximity to the due date, of the hour on the due date in which payments need to be received in order to be credited on that day. Such a disclosure should not be required if payments will be posted on the date received, regardless of the time it is received.
- We would support a requirement that any increased APR that would apply if a payment were late be disclosed along with the late payment fee disclosure.
- The disclosures required when the "amount of credit extended may exceed the fair market value of the home" should be required 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 Fed 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.

- For the prohibition on terminating a credit card account before its expiration date if finance charges are not accrued, the expiration date on the credit card should be considered the expiration date of the account. However, this should be considered the expiration date of the account only for the purposes of these Bankruptcy Act provisions.

In response to the two ANPRs that have been issued, CUNA has been actively involved in soliciting feedback from our member credit unions on how the open-end credit rules can be amended to accomplish the dual goals of making the required disclosures easier for consumers to understand, as well as minimizing additional burdens for credit unions. We are optimistic that these goals can be accomplished, and CUNA enthusiastically embraces the opportunity to participate in this process.

As part of this process, CUNA formed a working group to coordinate these efforts, which includes members of CUNA's Consumer Protection Subcommittee, as well as other interested credit unions and representatives from our credit union leagues. We are pleased at this time to provide the Fed with comments from our working group and from our other credit union members, and we would welcome the opportunity to meet with Fed staff at the appropriate time in this process.

In the second ANPR, the Fed requested comments on specific questions relating to the changes to TILA and Regulation Z that are required under the Bankruptcy Act and assigned numbers to them, beginning with Question 59, which follows the fifty eight questions outlined in the first ANPR. These are outlined below, along with CUNA's responses.

Questions Regarding Minimum Payment Disclosures

The Bankruptcy Act requires creditors that extend open-end credit to provide clear and conspicuous disclosures on the front of each periodic statement in a prominent location that describe the effects of making minimum payments. The Bankruptcy Act requires the Fed to provide model disclosures, which will include:

- 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 Fed will 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 Fed will 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 Fed must also maintain for two years the toll-free telephone number for financial institutions with assets of $250 million or less.

Question 59 – Are there certain types of transactions or accounts for which minimum payment disclosures are not appropriate. For these types of products, should there still be a warning indicating that making minimum payments will increase the amount of interest that is paid?

CUNA's Response – We strongly urge the Fed to limit these disclosures solely 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, such as American Express 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 (HELOCs) be excluded since consumers already receive disclosures regarding the length of time they have to repay the debt. Reverse mortgages should also be excluded because repayment is dependent on when the home is sold or the owner dies, which are circumstances that cannot be estimated by the creditor. Credit unions also offer certain open-end credit products that include fixed payment options, which should also be excluded, as outlined in our response to Question 61 below.

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.

Question 60 – Should creditors be able to omit these minimum payment disclosures for certain accountholders, such as those who do not revolve balances or those who make monthly payments that regularly exceed the minimum?

CUNA's Response – Subject to the limitations on the types of accounts in which these disclosures should apply, as described above in our response to Question 59, we believe these disclosures should be provided to all accountholders, regardless of whether they revolve their balances or make payments that are above the minimum amount.

Question 61 – Some credit unions and retailers offer open-end plans that also extend credit with fixed payment periods and amounts that are used to purchase

"big ticket" items. How should the minimum payment disclosures be implemented for these types of credit plans?

CUNA's Response – Credit unions offer open-end credit plans in which members can apply once for a loan and then finance additional purchases, either by way of a telephone call or visit to the credit union's website, without the need for additional paperwork. This type of open-end lending anticipates repeat activity by providing members with the convenience of adding new purchases with minimal effort. Once the account is established, subaccounts are created for additional purchases, such as automobiles, computers, vacations, debt consolidations, as well as cash advances. Each of these subaccounts has its own interest rate and payment terms, and the member usually pays off each account separately.

As described in our response to Question 59 above, we do not believe these types of accounts should be covered under the Regulation Z rules that are required by the Bankruptcy Act. These types of accounts offered by credit unions are very different from credit card accounts in which consumers have the option of making very small payments that may result in very long repayment periods.

Question 62 – The two hypothetical examples required on the periodic statements use a 17 percent APR, and the Fed has the authority to adjust this APR. Currently, data shows that the average APR for credit plans is about 13% for all credit plans and about 15% for accounts in which interest is assessed. Should the Fed change the 17 percent APR based on this data? If so, what should the APR be?

CUNA's Response – We are not concerned as to which APR the Fed should use, since the averages are likely to change over time. We encourage the Fed to select one rate for all financial institutions, whether it is 17 percent or another APR and to not change it in the future. Changing the APR in the future will only serve to confuse consumers, which will outweigh the benefit of constantly changing it.

Question 63 – Should the account balance, APR, or "typical" payment used in the hypothetical examples be used for open-end credit plans that are not credit card accounts, such as HELOCs, reverse mortgages, and other types of credit lines? If not, what information should be used?

CUNA's Response – Again, for the reasons outlined in our response to Questions 59 and 61 above, these disclosure requirements should only apply to credit card accounts in which consumers have the option of making very small minimum payments that would result in a very long repayment period.

Question 64 – The term “typical” as used to describe the minimum payment that will be used for the hypothetical example on the periodic statement may be perceived by consumers as the industry norm that they should use to compare to their own accounts, as opposed to being merely an example. Should the term “typical” be changed? If so, how can this be described as an example that does not represent the actual account term?

CUNA’s Response – We agree that the term “typical” may be perceived as the industry norm. The better approach may be to simply delete the term “typical,” without substituting similar terminology. Therefore, the hypothetical example would simply state the repayment period if the consumer makes a certain minimum payment, without indicating whether it is “typical, “average,” the “industry norm,” or otherwise.

Question 65 – The Fed must develop a formula to generate the required tables. Should the Fed use the same assumptions that are used for the hypothetical examples with regard to the balance calculation method, grace period, and the assumption that there is no residual finance charge? For example, should one of the assumptions be the average daily balance method that is commonly used by creditors?

CUNA’s Response – We have no objection with the Fed using the same assumptions. Credit unions generally use the average daily balance method. However, we believe the repayment period calculation will be very similar, regardless of whether this method or the balance calculation method is used.

Questions 66 & 67 – Should the Fed use a “typical” minimum payment formula. What should this formula be? Should one percent of the balance in addition to the finance charge be considered “typical?” Are there other approaches that should be considered?

CUNA’s Response – It is our understanding that the minimum payment formula of one percent of the balance in addition to the finance charge is becoming increasingly common for credit cards issued by banks as a result of recent guidance published by the banking regulators. However, such a formula cannot be considered “typical” since credit unions have not at this time adopted this formula on a widespread basis, as they were not covered under the guidance published by the banking regulators. We also believe it would be simpler to use a minimum payment formula that is similar to what will be used in the hypothetical examples on the periodic statements so that there will be consistency between these hypothetical examples and the tables that will be developed by the Fed.

As indicated in this and for many of the issues raised by the Fed in this ANPR, it is clear that the tables developed by the Fed 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. Although this should result in a very good estimate of the repayment period, it will not result 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 likely remain accurate as many factors will likely change over time, such as the APR, additional fees that the consumer may need to pay in the future, and the monthly amount that the consumer will pay in the future. For these reasons, we would strongly encourage the Fed 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 that requests this information. We believe the estimates provided should be labeled and disclosed as a "good faith" estimate, or some other similar terminology.

Question 68 - 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 Fed? Would the improved accuracy of the repayment estimate be outweighed by the burden of requiring the actual payment formula?

CUNA's Response – Creditors should have the option of using their actual minimum payment formula, as this will likely improve the calculation of the repayment period. We would not support imposing this as a requirement. Again, any repayment period calculated using the actual minimum payment formula will still not likely result in a completely accurate repayment period as other factors used in this calculation are likely to change, such as the APR and fees that the consumer may need to pay in the future. For this reason, we do not believe the benefit to the consumer would outweigh the burden of imposing this as a requirement, as opposed to an option for the creditor.

Question 69 – If the Fed uses a typical formula that does not result in negative amortization, should the Fed allow or require that creditors use a different formula if their actual formulas result in negative amortization? What guidance should the Fed provide on how to disclose repayment periods when there is negative amortization?

CUNA's Response – If a creditor is using a minimum payment formula resulting in negative amortization, then we would support a simple disclosure to the consumer that making minimum payments will never repay the debt.

Question 70 – What portion of credit card accounts accrue finance charges at more than one periodic rate? Are balances typically distributed in a particular manner?

CUNA's Response – The data will vary among credit unions, and we do not at this time have more specific information on this issue.

Questions 71 & 72 – 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 Fed 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?

CUNA's Response – The overriding goal of these rules regarding 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 and the rules that will be issued to implement these provisions. For this reason, we suggest that only one rate should be used, which can be the highest rate that may apply to the specific consumer. As mentioned before, the consumer will not be receiving an "actual" repayment period because certain assumptions will have to be made that may or may not apply to each specific consumer. Since a good faith estimate is the likely result, we believe it should be disclosed in a simple a format as possible, as more complicated disclosures will not achieve significantly greater accuracy. Using only one rate, whether or not it is the highest rate, will help achieve this goal of providing useful information that the consumer will understand.

Just as we did in our comment letter in response to the Fed's first ANPR regarding the open-end credit card rules, we also want to take this opportunity to again strongly urge the Fed to consider eliminating the requirement to include the effective, or "historical" APR on periodic statements, which includes the interest, as well as other fees and costs that are required under Regulation Z to be included in the historical APR calculation. As we mentioned in our previous comment letter, the historical APR is confusing, misleading, and provides little useful information for consumers.

It is confusing in that the historical APR is different than what was disclosed to the consumer at the time he or she entered into the account relationship and it also changes each month, depending on the costs and fees imposed, which further adds to the confusion. It is misleading because the historical APR implies that the included fees and costs are charged continually throughout the year. As we urged in our previous comment letter, we believe the better approach for both consumers and creditors is to provide the disclosures of the fees and costs separately in dollar terms, which could be aggregated for both the statement period and the year-to-date.

The issues raised by the Fed in Questions 71 & 72 further justify the elimination of the historical APR. Many consumers are already confused when they receive different APRs on their periodic statements, which include a combination of historical and simple interest rates. Providing a good faith estimate of repayment periods using an array of APRs will only serve to add to the confusion. Eliminating the historical APR, along with using only one APR to calculate the repayment period estimate, would help to reduce this confusion for consumers.

Question 73 – 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?

CUNA's Response – For credit unions, the compliance cost of providing this information would be significant, at least as far as the initial cost of setting up the process of providing this type of information. The ongoing, continuing cost of providing this information may not be as significant. However, regardless of the cost, we believe this information will only serve to confuse consumers, who will then see two balances instead of one. They may not understand the reason they are receiving two or more balances and may be confused as to which balance they need to pay and when they need to pay it. We are also concerned that this may mislead consumers into believing that they can direct their payments to the balance that is subject to the highest APR, even though creditors have the discretion to decide how these payments are to be applied.

Question 74 – 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?

CUNA's Response – 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 improve the calculation of the repayment period and will provide the estimate that is likely to be the most 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. For this reason, it would not be appropriate to impose this requirement on all creditors.

Since this process would lead to the most accurate estimate of the repayment period, we strongly urge the Fed to find some alternative in which creditors would be permitted 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. Under this scenario, the toll-free telephone number would be unnecessary.

Question 75 – 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?

CUNA's Response – 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.

Question 76 – 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 Fed provide model clauses for these disclosures?

CUNA's Response – 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. Credit unions generally appreciate model disclosures to help them comply with regulatory requirements. However, if the Fed were to provide 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.

Question 77 – 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 Fed?

CUNA's Response – Again, we strongly discourage the making of distinctions between the "actual" repayment period and an estimate. Assumptions will have to be made so 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.

Question 78 – Should the Fed adopt a tolerance for error in disclosing the actual repayment periods? What should that tolerance be?

CUNA's Response – Since assumptions will likely have to be made in most situations, which will make the actual calculation of the repayment period extremely difficult, if not impossible, we do not believe the Fed has to address the issue of a tolerance. Creditors should be considered compliant with these disclosure requirements as long as they are using accurate information, along with the assumptions that are permitted by the Fed.

Question 79 – 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?

CUNA's Response – We believe this information is available, although it may not be readily available to all credit unions.

Question 80 – The Fed 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?

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

Question 81 – Do you offer or are aware of a web-based calculation tool that allows consumers to obtain estimates of repayment periods?

CUNA's Response – Commercial websites are currently offering such a tool. The one 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 also suggest that the Fed could develop its own web-based tool, similar to the Electronic Deposit Insurance Estimator (EDIE) that the Federal Deposit Insurance Corporation developed for its website in which consumers can calculate the deposit insurance coverage for their bank accounts. Similar to EDIE, the Fed could develop a tool for calculating repayment periods. Financial institutions could then provide this on their own websites by either downloading

software that the Fed would provide to the industry or by linking directly to the Fed's website.

Question 82 – Are there other alternatives to providing the repayment periods other than the toll-free telephone numbers? Should the Fed 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?

CUNA's Response – At some point soon, Internet access will be universally available to nearly all consumers. At that time, we strongly urge that the web-based tools discussed in our response to Question 81 above be allowed to substitute for the requirement of providing the toll-free telephone number.

As discussed on our response to Question 74 above, we strongly urge that the Fed find some means in which creditors would be permitted to bypass the toll-free telephone requirements if they were to provide reasonable estimates of the repayment periods on the periodic statements. Providing such information on the periodic statements would be more convenient to the consumer, and the toll-free telephone number would be unnecessary under these circumstances.

Questions 83 & 84 – What guidance should the Fed 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 Fed consider?

CUNA's Response – We would agree to a requirement that these disclosures be on the front side of one of the pages of the periodic statements, along with the other useful and required information that is often located on the front side of one of these pages. We do not believe this information should be 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 frustrated and inconvenienced if the more important information is not easily located because of these additional disclosures.

For this reason, we would also not support a minimum type size requirement, as it is not clear at this time how valuable this information will be and would likely not be valuable for the large portion of consumers who make more than the minimum payments. Placing the disclosure on the front side of one of the pages should be sufficient to draw attention to those consumers who would be interested in the information.

As we mentioned in our response to Question 76 above, if the Fed were to provide 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. In conjunction with this, we also urge that the Fed conduct consumer testing to determine how all of these disclosures can be presented in a manner that will not frustrate or confuse consumers.

Questions Regarding 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. The Bankruptcy Act requires credit card issuers to use the term “introductory” clearly and conspicuously in “immediate proximity” to each mention of the temporary APR that is in the applications, solicitations, and in all accompanying promotional materials. Credit card issuers must also disclose the date this rate will expire and the rate that will apply after expiration in a prominent location “closely proximate” to the first mention of the introductory APR. Credit card issuers must also disclose clearly and conspicuously in a prominent location on or with the application or solicitation a general description of the circumstances that may result in the revocation of the introductory rate, and the APR that will apply if the introductory rate is revoked.

Question 85 – The Fed 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 Fed provide? Should there be format requirements, such as a minimum type size? Are there other requirements the Fed should consider? What model disclosures should the Fed issue?

CUNA’s Response – We support the idea of providing “clear and conspicuous” disclosures and 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. Again, credit unions would appreciate model disclosures, as long as there is an opportunity to comment on these disclosures before they are finalized. We also believe consumer testing would be very beneficial as the Fed develops these model disclosures.

Question 86 - The term “introductory” must be in “immediate proximity” to each mention of the introductory APR. What guidance should the Fed provide in interpreting this requirement?

CUNA's Response – Including the term "introductory" within the same sentence that the introductory APR appears should be sufficient for complying with this requirement and will clearly convey to the consumer that the APR mentioned is an introductory rate.

Question 87 & 88 - 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 Fed use to identify the first mention? For direct mail offers that include several documents, should the Fed 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?

CUNA's Response – The standards issued by the Fed 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 are not at this time advocating that this should or should not be considered the first mention, but anticipate this may be a compliance issue if it is not clarified in the standards that the Fed intends to issue. For direct mail offers that include several documents, we urge the Fed 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.

Question 89 – What guidance should the Fed 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?

CUNA's Response – We believe the interpretation of the term "closely proximate" should be consistent with the term "immediate proximity," as discussed in Question 86 above. Similar to our response to that question, we believe including the expiration date and the rate that will then apply within the same sentence that the introductory APR appears should be sufficient for complying with this requirement. This should ensure that the consumer will see this information, while providing creditors with flexibility as to how to disclose it.

Question 90 – What guidance should the Fed 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?

CUNA's Response – 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. For the lowest rate, we certainly agree that the term "as low as" should precede the rate. We also agree the consumer should be informed that the actual rate will be determined based on creditworthiness.

Question 91 – 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?"

CUNA's Response – 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. Credit unions generally oppose these "universal default" policies, as a default with another creditor should not be relevant to any account that is not in default. The interest rate on each account should be priced based on the payment record on that specific account. Changing a rate on an account in which the consumer is current penalizes the consumer more than once for one specific transgression. If other creditors choose to implement such a policy, then we believe it is very important that consumers be informed that the rate may be increased due to activity on an unrelated account.

We also believe a "general description" should specify the other situations in which the rate may increase. These may or may not include cancellation of the account, change in a credit score, default, exceeding the credit limit, having too much available credit, opening additional credit card accounts, excessive inquiries on the credit report as a result of new loan applications, as well as other changes in circumstances.

Question 92 – The introductory rate disclosures apply to applications and solicitations that are sent by direct mail or provided electronically. Should the Fed's guidance for direct mail differ from the guidance for disclosures that are sent electronically?

CUNA's Response – We do not believe the guidance for direct mail should differ from the guidance for disclosures that are sent electronically. We will be happy to provide additional comments if the Fed chooses to issue different guidance for these types of applications and solicitations.

Questions Regarding 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."

Question 93 – These 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?

CUNA's Response – We do not believe there is a reason that Internet applications should be treated differently than solicitations.

Question 94 – What guidance should the Fed provide on how these solicitation (and application) disclosures may be made clearly and conspicuously on the Internet? What model disclosures, if any, should the Fed provide?

CUNA's Response – 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 Fed may want to adopt. As mentioned above in response to several previous questions, we believe consumer testing of proposed model disclosures will help ensure that they achieve the goal of being "clear and conspicuous."

Question 95 – What guidance should the Fed provide as to when disclosures are "readily accessible to consumers in close proximity to the solicitation?"

CUNA's Response – In the interim rules issued in 2001, the Fed requires that the consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. Examples in which this requirement can be satisfied 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. We agree with this approach, with the examples provided, and have no additional guidance to suggest at this time.

Question 96 – What guidance should the Fed provide on what it means for the disclosures to be "updated regularly to reflect current policies, terms, and fee amounts?"

CUNA's Response – There may be situations in which updating disclosures on the Internet may be confusing for both creditors and consumers. Creditors currently provide notice of a change in terms thirty days in advance of the change. However, if those are then posted on the Internet at the same time they are sent by mail, then the issue arises as to whether both sets of disclosures have to then be posted on the Internet for the following thirty days, the ones currently in effect and the ones that will be in effect in thirty days. Creditors will be confused as to which disclosures have to be posted, and consumers will be

confused when they see two sets of disclosures on the Internet, one of which is not consistent with the change in terms notice that was sent by mail.

We believe the Fed 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.

Questions Regarding 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.

Question 97 – 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?

CUNA's Response – We do not currently have the specific information to respond to this issue.

Question 98 – 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 Fed provide?

CUNA's Response – We do not have specific suggestions at this time as to how these disclosures can be made "clearly and conspicuously," although any guidance should be consistent with the current standard that applies to TILA and Regulation Z. Again, we would be happy to comment on any proposed model disclosures that the Fed may want to adopt.

Question 99 – 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?

CUNA's Response – 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. We also do not understand the need for a cut-off hour with regard to electronic payments. These are generally posted in "real-time" so a consumer making an electronic payment at any time of the day should have their payment posted immediately.

We would have no objection to requiring the disclosure of the cut-off hour on the periodic statement in close proximity to the due date, although no disclosures should be required if payments will be posted on the date received, regardless of the time that it is received. Consumers will likely assume that the payment will be posted on the day received if no cut-off hour is disclosed. However, we caution that the usefulness of the disclosure of the cut-off hour may be somewhat limited because consumers will not know what time of day the payment is received. Even if the payment is received prior to the cut-off hour, creditors may delay posting, and the consumer will not know whether the delay is due to the mail or due to the delay in posting the payment once it is received.

Question 100 – Should the Fed require that any increased APR that would apply if a payment were late be disclosed along with the late payment fee disclosure?

CUNA's Response – Yes, we would support such a requirement, as it would be very useful for the consumer to know the impact of making a late payment.

Question 101 – Are there any special issues applicable to open-end credit other than credit cards that the Fed should consider with regard to the late payment fee disclosure?

CUNA's Response – As discussed above in response to Question 58 above, we believe that all of these 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.

Questions Regarding 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.

Question 102 – 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?

CUNA's Response – We believe the situation as to when 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 Fed 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.

Question 103 – 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?

CUNA's Response – Only the initial amount of the loan and the current property value should be considered. Negative amortization applies only to a minority of loans. For those loans, negative amortization is often only a possibility, and the borrower's decision to increase the loan amount through negative amortization is generally not within the creditor's control. Again, if the Fed 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.

Question 104 - What guidance should the Fed provide on how to make these disclosures "clearly and conspicuously?" Should model clauses and forms be provided?

CUNA's Response – We do not have specific suggestions at this time as to how these disclosures can be made "clearly and conspicuously," although 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.

Question 105 – 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?

CUNA's Response – We have no specific suggestions to offer at this time with regard to additional guidance for these Bankruptcy Act disclosures but look forward to commenting on any specific guidance that the Fed proposes in the future.

Questions Regarding the 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.

Question 106 – 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?

CUNA's Response – We would agree that the expiration date on the credit card could be considered the expiration date of the account. This would seem logical and maybe the only date that should be considered, especially since it is likely to be the only date that the consumer would be aware of since it is stated on the credit card. However, the expiration date on the card should be considered the expiration date of the account only for the purposes of these Bankruptcy Act provisions. Otherwise, there may be uncertainty as to whether additional disclosure requirements would then apply if a credit card account were considered to expire as of the date of the card, such as the requirement to provide new disclosures when the account is renewed.

Question 107 – Are there issues with open-end credit accounts other than credit cards that the Fed should consider with regard to these requirements?

CUNA's Response – As discussed above in response to Questions 58 and 101 above, we believe that all of these 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.

Question 108 - Should the Fed 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"?

CUNA's Response – We believe the Fed should provide guidance. One interpretation of inactivity could include an account in which there are no purchases, no account balance, no finance charges, no cash advances, and no

fees. There may be other interpretations, and we look forward to commenting on any specific guidance that the Fed may propose with regard to these provisions.

* * * * * * * * * * * *

Thank you for the opportunity to comment on the ANPR regarding changes to the open-end credit rules under Regulation Z that will implement the provisions of the Bankruptcy Act. If you have questions about our comments, please contact Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Jeffrey Bloch
Senior Assistant General Counsel