

July 30, 2009

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chairman Bernanke:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association that exclusively represents the interests of our nation's federal credit unions, I am writing to express our concerns regarding the 21 day requirement which was included in section 106 of the *Credit Card Accountability, Responsibility, and Disclosure Act of 2009* (P.L. 111-24). As you are well aware, the Federal Reserve recently issued an interim final rule implementing this section of the bill.

While the CARD Act applies, in almost all instances, exclusively to credit card accounts, the 21 day notice requirement in section 106 applies to all "open end consumer credit plans." As we have communicated previously, this section is exceedingly problematic for credit unions, as well as any other financial institution that offers open-end credit account. In fact, in the past two months, we have spoken to more than half of our members on this very issue.

Many credit unions use multi-featured open-end lending systems. Under a master open-end agreement with each member, credit unions can offer several sub-accounts, including open-end automobile loans. The practice complies with existing Regulation Z requirements, and the Federal Reserve has indicated that credit unions will be able to use multi-featured open-end lending programs in the future, as outlined in the final regulations to amend Regulation Z, which will take effect July 1, 2010. 74 Fed. Reg. 5244.

Credit union members must first establish a share account to become members. Subsequently, the member may add share draft (checking), share certificates and loan products to their membership relationship. The credit union membership, rather than a single product, drives the members-credit union relationship. For that reason, many credit unions send a combined member statement, which includes information about the

member's savings accounts, checking account, and loans. (Note that credit unions do issue separate credit card statements.)

Therefore, if a member has an open-end automobile loan, the loan's periodic statement is normally included with the members monthly share statement. Credit unions mail these statements early in the month to reflect activity from the previous month. For open-end automobile loans, members often choose their due date, based on what makes sense for their personal situation. The Truth in Lending Act requirement that periodic statements be mailed at least 14 days before the expiration of a grace period does not apply, as open-end automobile loans have no grace period. They are simple-interest loans with no advances and no retail-purchase component. For that reason, credit unions can mail these statements any time for these accounts after the billing cycle closes.

Section 106 of the Credit CARD Act, and the interim final rule to Regulation Z which becomes effective August 20, 2009, places the following restriction on lenders:

“A creditor may not treat a payment on an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement...is mailed or delivered to the consumer not later than 21 days before the payment due date.”

This prohibition is problematic for a number of reasons. Assume a credit union has an existing open-end automobile loan with a member with a due date of the 15th of each month. Further, assume the credit union normally mails its combined statement on the fifth of each month. Following is a list of problems that section 106 creates.

- The credit union cannot comply with the 21-day requirement under its current situation. The due date would need to be shifted back to at least the 26th of the month to meet the 21-requirement.
- If the credit union chooses keep the same due date, it may not treat any payment as late “for any reason” after 21-day requirement becomes effective. The credit union cannot charge a late fee, increase a rate under a “penalty rate” system, or report a loan as delinquent to a credit bureau. In addition, the credit union may not be able to collect on that loan or repossess a car should Member B stop paying after the 21-day requirement goes in to effect (I have had several credit union CEOs ask me this precise question about repossessions).
- In addition, the August 20 deadline provides little time to deal with the complexities created by this situation. Shifting due dates is not only a reputational nightmare, but the short timeline makes the change-in-terms process disruptive to back-office functions, which were already gearing up for changes to Regulation Z, RESPA, and UDAP.

We are aware of individual credit unions with more than 100,000 loans that will be affected by the 21-day issue.

Finally, some credit unions actually have weekly or bi-weekly due dates for their open-end automobile loans. Our members have indicated that meeting the 21-day

requirement for these loans will be a two-step process. First, monthly payments must be changed from weekly or bi-weekly to monthly. Second, due dates must be shifted back. Consumer confusion is inevitable.

With this in mind, NAFCU urges you to work with Congress to help resolve this issue. Your assistance is absolutely necessary in addressing this problem. Additionally, we would urge you to consider issuing a new interim final rule supplanting the rule that was published last week to address this issue.

Finally, I would like to respectfully request that the Board act on this issue as soon as possible. With the deadline for compliance fast approaching, credit unions are already beginning to make important and quite costly decisions about how to best comply with the 21 day provision. Consequently, if a solution cannot be found relatively quickly, it will be too late, as credit unions will need to take steps to ensure compliance with the Federal Reserve's interim rule.

Thank you for the opportunity to share NAFCU's view on this important issue. If you have any questions or if we can be of further assistance to you or your colleagues in the consideration of this issue do not hesitate to contact NAFCU's Director of Regulatory Affairs, Carrie Hunt at (703) 842-2234 or me at (703) 842-2215.

Sincerely,

Fred R. Becker, Jr.
President and CEO

Cc Sandy Braunstein