William M. Klewin
Associate General Counsel
Telephone: 608/231-7009
E-mail: bill.klewin@cunamutual.com

CUNA Mutual Insurance Society

November 20, 2009

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

RE: Regulation Z: Docket No. R-1370

Dear Ms. Johnson:

Thank you for the opportunity to submit comments on behalf of CUNA Mutual Group and our credit union customers. We recognize and appreciate the Board's extensive efforts to provide a thoughtful and comprehensive approach to the various regulatory requirements from the January 2009 open-end rules, the Unfair and Deceptive Acts and Practices (UDAP) rules, and the Credit CARD Act or 2009.

CUNA Mutual Group provides a broad range of insurance and related financial services to credit unions and their members within the United States and internationally. Under the trademark of LOANLINER®, CUNA Mutual supplies consumer, credit card, real estate and home equity lending documents to almost 6500 credit unions. In addition, approximately 90% of all credit unions are covered by an insurance product sold by CUNA Mutual to protect credit unions for loss due to inadvertent non-compliance with federal consumer disclosure laws including the Truth in Lending Act (TILA). Our comments are based on our extensive knowledge and experience working as recognized compliance experts within the credit union system.

SUMMARY

1. We request the Board further clarify the effect of the requirement of 226.5(b)(2)(ii). While it appears this rule will need to be amended based on passage of HB 3606 so as to apply only to "credit card accounts under an open-end (not home-secured) consumer credit plan", it is still unclear as to the effect of the section. We request clarification as to whether it is the passage of 21 days from the mailing or delivering of the periodic statement that "tolls" any activity on the part of a lender, or does a due date that is not 21 days after the delivery of a periodic statement preclude ANY activity by a lender? We urge the Board to specifically clarify that the 21 day period "tolls" any activity, rather than prohibits activities.

   We also request greater definition regarding the meaning of "late for any reason". While it appears this phrase is limited to charging certain fees, credit union staff is concerned this could be interpreted to mean taking any action at all, including collection contacts and activities. In the event of litigation, without clear definition of the term "late for any reason",

lenders will be subject to differing interpretations and uncertainly as to what activities are contemplated by the above phrase. Clarification as to the exact activities covered will bring a safe harbor for lenders.

2. We agree that the listing of three counseling service providers is sufficient under 226.7(b)(12). Additional listings would be confusing and redundant.

3. We believe the change in terms rules under 226.9 are so voluminous and unwieldy as to make compliance next to impossible. We urge the Board to rethink the entirety of the section to create a less complex and more uniform approach to changes-in-terms for all aspects of open-end lending.

4. With regard to section 226.58, many smaller credit unions do not have a website. We request the Board create an alternative for those lenders that do not have a website. We suggest that posting of a notice in a lender's lobby that a borrower may receive a copy of their card agreement from the lender is an appropriate alternative.

Section By Section Comments

1. 226.5(b)(2)(ii) Effects of 21 Day Rule

While this provision will need to be amended due to the passage of HB 3606, as noted above, the provision requiring a periodic statement at least 21 days prior to a payment due date may be deemed late for any reason remains unclear. We have had many credit union staff ask as to the meaning of this provision. The Regulation provides:

> "Creditors must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date on which any grace period expires. A creditor that fails to meet this requirement shall not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of such failure."

The relevant section of the Commentary provides:

> "2. *Treating a payment as late for any purpose and collecting any finance or other charges.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibition in §226.5(b)(2)(ii) on treating a payment as late for any purpose or collecting finance or other charges applies only during the 21-day period following mailing or delivery of the periodic statement."

These provisions leave unanswered two questions:

(1) Is the failure to provide at least 21 days between the delivery of the periodic statement and deeming a consumer to be late for any reason curable? In other words, if the due date is not 21 days after the delivery of the periodic statement but the lender does not take any steps that evidence that the lender is deeming

the borrower to be late (such as charging fees) for at least 21 days after the delivery of the periodic statement, after the 21 day period has passed, may the lender then treat the borrower as late? We believe the Board should clarify this provision.

(2) The proposed Commentary states that "Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date." Is the list of items in this Commentary section an absolute list or is intended to be representative of some, but not all, activities which are prohibited? For example, does it include collection letters or repossession of collateral? We request that the Board clarify whether prohibited activities are limited to the listed activities or if they are intended to be examples only of prohibited activities.

2. 226.7(b)(12) Credit Counseling Agencies

You asked for comment on an appropriate number of credit counseling agencies a lender would need to list. You have proposed three as an appropriate number. We agree three is an appropriate number. Three gives a range of choices to consumers, but is not so large a number of choices that would cause consumers to become overwhelmed and confused by the options available.

3. 226.9 Change-in-Terms Rules

The change-in-terms provisions of Regulation Z have traditionally been extremely challenging to credit union lenders due to the complexity of the rules, including the different timing provisions (15 days, notice before effective date of change, no notice required). The proposed rules create an even greater layer of complexity that will make compliance with the regulation extremely difficult. To demonstrate, the proposed rules contain a table identifying what sections of the rules apply to what type of open-end lending plans. That table is reproduced in part, below.

§ 226.9(c)(2)	All open-end (not home secured) plans
§ 226.9(e)	Credit card accounts subject to 226.5a
§ 226.9(g)	All open-end (not home secured) plans
§ 226.9(h)	Credit card accounts under an open-end (not home-secured) consumer credit plan.

Within 226.9, at least four different sets of rules apply to change-in-terms in this set of proposed rules alone. In addition, change-in-terms rules for HELOC's are not included and would add a fifth variation on change-in-terms rules. (It should be noted the HELOC change-in-terms provisions have been proposed in a separate set of proposed rulemaking.) Further, within the change-in-terms rules, the complexity of when and how the rules apply has increased. An example of this complexity is contained in 226.9(c)(2)(v), which provides when no change-in-terms notice is required. In that section, there are at least 10 exceptions to the rule that a change-in-terms notice is required, and there are subparts and exceptions to those exceptions.

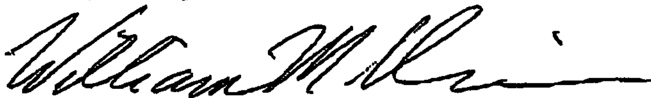
We urge the Board to review and simplify these change-in-terms rules. Lenders will likely be caught in a web of complexity that will result in "technical" violations of the rules due to the difficulty in creating repeatable processes to create and send the "correct" change-in-terms notices to their borrowers.

4. 226.58 Posting Agreements to Websites-Small Institutions

This section presupposes that all lenders have a website. Many smaller credit unions do not have a website. We believe the spirit of the law is that a borrower may easily obtain a copy of the agreement that governs their credit card lending relationship with the lender as well as allowing borrowers to shop for credit. We believe an appropriate alternative to posting agreements on a website is a rule requiring a credit card lender without a website post a notice in the lobby of the lender that a copy of the institution's credit card agreements may be obtained from the lender. This rule could also provide for an appropriate number of business days (three days would be appropriate) to provide copies to anyone requesting those agreements.

Thank you for this opportunity to comment on this proposal. We welcome the opportunity to visit further with the Board about suggestions included in this letter. Questions about our comments may be directed to William M. Klewin, Associate General Counsel, at 608-231-7009.

Respectfully Submitted,



William M. Klewin
Associate General Counsel
CUNA Mutual Group