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USAA FEDERAL SAVINGS BANK

December 16, 2005

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

Re: Docket No. R-1217 (Notice of Proposed Rulemaking Re. Reg Z)

Dear Ms. Johnson:

This letter is submitted on behalf of USAA Federal Savings Bank ("USAA") in response to the second advance notice of proposed rulemaking (ANPR) by the Board of Governors of the Federal Reserve System (the "Board") regarding the open-end credit rules of Regulation Z. USAA is a federal savings bank and an indirect subsidiary of United Services Automobile Association, a reciprocal inter-insurance exchange. Both USAA and its parent serve the needs of the U.S. military and their families. This ANPR is the result of the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act"), which amended the Truth in Lending Act ("TILA"). USAA appreciates the opportunity to comment further on the Board's efforts to improve the disclosure requirements of Regulation Z.

A. Introduction

The Bankruptcy Act amended TILA to require creditors to provide new and additional disclosures relating to the following:

- Minimum payments on open-end accounts
- Introductory rates
- Internet-based credit card solicitations
- Payment deadlines and late payment penalties
- Home-secured loans that may exceed the dwellings fair market value

Additionally, the Bankruptcy Act amended the TILA to prohibit an open-end creditor from terminating an account solely because the consumer has not incurred finance charges on the account.

B. Minimum Payment Disclosures

The Bankruptcy Act will require creditors that extend open-end credit to make minimum payment disclosures on each periodic statement. The disclosures include a "minimum payment warning" on the front of the statement indicating that making only the minimum payment will increase the interest paid and the time it will take to pay back the balance on the account.

USAA Federal Savings Bank
10750 McDermott Freeway
San Antonio, TX 78288-0544
(800) 531-2265 (210) 456-8000
FDIC INSURED

USAA Savings Bank
3773 Howard Hughes Pkwy Ste 190N
Las Vegas, NV 89109
(800) 922-9092
FDIC INSURED

USAA Relocation Services, Inc.
10750 McDermott Freeway
San Antonio, TX 78288-0553
(800) 531-7741

Additionally, creditors must provide either:

- A hypothetical example on the front of the statement regarding how long it will take to pay off an assumed balance if only minimum payments are made each month, and a toll-free number for consumers to call to get an "estimate" of time it would take to repay an actual account balance ("OPTION A"); or
- A toll-free number for consumers to call to obtain the "actual" number of months that it will take to repay the consumers' outstanding balance making only minimum payments ("OPTION B"). Creditors choosing this option may provide the minimum payment warning and toll-free number anywhere on the statement.

As a preliminary matter, the purpose of the minimum payment disclosures must, of course, be considered. In amending TILA to require minimum payment disclosures, Congress intended to make consumers aware that making minimum payments on a credit card account will increase the amount of interest paid and repayment time. The disclosures were not intended to provide consumers with an exact payoff date. Indeed, no disclosure of the repayment period can be exact, because the time it takes to repay a balance will depend on many unknown factors (e.g., when the consumer makes each payment during billing cycles and the variable rates on the account). Moreover, even if these factors were known, the disclosure assumes that consumers will not make any further transactions. The nature of open-end credit, however, contemplates repeated transactions that will extend any estimated repayment period. Therefore, it is clear that Congress could not have intended the minimum payment disclosures to provide consumers with an exact payoff date. Rather, the disclosures can be designed to make consumers understand that paying only minimum payments will result in a long payoff period and increased finance charges without specifying the exact payoff date or month. If the Board becomes overly concerned with the exact date of payoff in the disclosures, the cost to creditors will increase without providing a meaningful benefit to consumers.

1. <u>Exemptions from the Minimum Payment Disclosures</u>

The Board asks if it should consider exemptions from the minimum payment disclosures for certain types of accounts or accountholders. USAA believes at the following exemptions should be made:

(a) The minimum payment disclosures should not apply to home equity lines of credit. As the Board notes in its ANPR, Congressional concern in enacting the minimum payment disclosures, as reflected in the Bankruptcy Act's legislative history, was exclusively with credit card accounts. Credit cards tend to have higher interest rates and lower minimum payments than home equity loans. The result is that a consumer making only minimum payments could take longer to payoff a credit card than the mortgage on a consumer's home. Considering that consumers tend to use credit cards for everyday purchases such as groceries, clothing, gasoline, car repairs, dining out, and similar expenses, a long payoff period greatly increases consumers' costs for such goods and services. Consumers do not use home equity lines of credit (HELOCs) like credit cards. Consumers use HELOCs for significant expenses that are amenable to being financed over a long period, such as home improvements and education expense. Additionally, HELOCs tend to have much lower interest rates than credit cards and are

amortized over a stated period. Finally, the minimum payment on a HELOC can be a significant percentage of a borrower's monthly income. Credit card minimum payments generally are small dollar amounts relative to home equity loans. Therefore, providing HELOC borrowers with minimum payment disclosures would not provide any meaningful educational benefit and would not likely cause any change to consumers' payment behavior. USAA urges the Board to exempt HELOCs from any minimum payment disclosures.

(b) The Minimum Payment Disclosures should not be required when an account has a low APR or a relatively short repayment period such as 5 years or less. When the minimum payment required is high enough to amortize the balance in a relatively short period, the reasons for the minimum payment disclosures simply do not exist. Indeed, warning consumers that making only the minimum payment will result in a long repayment period could mislead consumers when their repayment period is short. And warning consumers that making minimum payments will increase the interest the consumer pays may be particularly inappropriate if the consumer's APR is low. Instead of a cost to making minimum payments, consumers with a low APR may benefit by delaying repayment on the account while they repay higher-rate accounts. Warning consumers to effectively make more than the minimum due is unnecessary and bad policy. USAA urges the Board to exempt accounts with quick payoff periods or APRs below 10% from the minimum payment disclosures.

(c) The Board Should Provide an Exemption For Statements that Contain an Estimated or Actual Repayment Period of the Current Balance. If a creditor discloses an estimated or actual repayment period directly on a billing statement that is based on the actual account balance, the creditor should be exempted from providing a toll-free number. The disclosure of the repayment period on the statement would be more convenient for consumers than calling a toll-free number in order to obtain the information. Creditors should be encouraged to provide such a statement disclosure by being rewarded with an exemption from developing a toll-free number.

2. OPTION A: Providing "Estimated" Repayment Periods

Creditors selecting Option A must also disclose a toll-free number that consumers may call to obtain an "estimate" of the repayment period of actual account balances. The Board must develop tables creditors may use for the purpose of determining these estimates. A creditor can develop its own toll-free number or use a third-party vendor, either individually or collectively with other creditors, for the purpose of delivering the estimates. Additionally, the Board and the FTC are required to develop toll-free numbers that certain creditors can use.

(a) The Toll-Free Number Developed by the Board and the FTC Should Prompt the Consumer to Input Certain Account Terms; if the Consumer Does Not Have the Account Terms, the System Should Default to Assumed Terms.

The Board and FTC are required by the Bankruptcy Act to develop a toll-free number that consumers of certain lenders may call to obtain estimates of the time it would take to repay actual account balances. (The Board is required to maintain its toll-free number for two years.)

As the Board notes, since the Board and the FTC will not have access to account information, consumers will be required to input account information such as the outstanding balance, APR and minimum payment. USAA supports the Board's proposal to require consumers to input account information. USAA strongly opposes any requirement that creditors provide actual account information to the Board or the FTC to be used in connection with their toll-free numbers. Such a requirement would be costly to creditors and would not materially further the goal of the minimum payment disclosures. Moreover, this unnecessary communication of account information could provide data security issues that both creditors and the Board or FTC would need to safeguard against in order to protect consumers.

The Board's proposal to request basic account information from consumers is very workable. Where the consumer has all the account information required to calculate a repayment period, the Board's proposal will provide a reasonable estimate. In circumstances where a consumer may not have all the necessary account information (such as the minimum payment calculation used by the card issuer), basic calculations could be done to assist the consumer. For instance, if a consumer has a billing statement showing the APR but not the formula for determining the minimum payment, the consumer could be requested to input the account balance and minimum payment due from the statement. The system could then calculate a minimum payment percentage and use it to calculate the repayment term. For example, if the consumer enters an outstanding balance of $2,000 and a minimum payment due of $40, the system could easily determine that the minimum payment percentage that month was 2%. The system could then use the 2% as a reasonable estimation of the minimum payment formula. (The system should use the same payment floor of $20 used in the hypothetical example to provide consistency and avoid consumer confusion if the consumer enters the same information as in the hypothetical.) If the consumer does not have any information, the system could either suggest that the consumer call back with the information, allow the consumer to select estimated account terms, or default to assumed terms that are disclosed to the consumer in providing the estimated repayment period. While this approach may not provide consumers with "exact" payoff dates, it will fulfill the requirement of providing an estimate of the repayment period. Nothing more is required by the Bankruptcy Act.

(b) With Respect to Toll-Free Numbers Developed by Creditors, Creditors Should Have an Option to Use Account Information from its Database or to Require Consumers to Enter Account Information.

In order to provide "estimated" repayment periods, a creditor has an option to develop its own toll-free number or to use the toll-free number established by a third party. Creditors can join together to retain a third party to make the estimated repayment disclosures. The Board notes that creditors could estimate repayment periods based on information in the creditor's database. While this is an option, the cost of importing account information from an account database into the repayment period calculator may be expensive depending on a creditor's system. USAA does not yet know the cost for this option, however it will depend on many factors such as what system would be used to perform the required repayment period calculation. USAA strongly believes that creditors should have the option to build a toll-free number that works similarly to the Board/FTC toll-free numbers based on a consumer's input of terms. This would be no more

burdensome on consumers than would the Board/FTC's toll-free number. Moreover, if creditors decide to use a vendor to provide the minimum payment disclosures, the vendor may not have access to specific account information and creditors may understandably prefer not to give system access to the vendor because of security and cost considerations. In short, USAA believes it is unnecessary to require creditors to provide account-specific information when the only requirement in the statute is to provide consumers with "estimates" of how long it will take to repay an account balance. Nothing in the legislative history of the Bankruptcy Act suggests such a requirement.

(c) Creditors Should Be Able to Use the Actual Account APR on the most recent statement to determine the Payoff Period.

To calculate a repayment period, an APR must be used. Virtually all credit cards today offer multiple rates. Section 226.7(g) of Regulation Z requires creditors of open end plans to provide the "annual percentage rate(s)" whenever a finance charge is imposed. A consumer making only minimum payments, unless the account balance is subject completely to a 0% interest rate, will have a finance charge. According to the Commentary to Regulation Z, a creditor may provide the APR as a composite for the whole plan or may provide a separate APR for each feature. Creditors who provide a composite APR should be able to use that APR to calculate the repayment period for the minimum payment disclosure. The composite APR takes into consideration the different rates and balances on the account and will be the most effective and relatively accurate way for creditors to determine an APR for purposes of the minimum payment disclosures. Requiring creditors to disclose the portion of the ending balance that is subject to each APR for the account is unnecessary and will confuse consumers. In order to obtain repayment period estimates when calling the appropriate toll-free number, consumers may have to find all the ending balances on their statements and then enter them through the telephone. For many consumers this will be difficult and subject to error. Instead, USAA believes a single ending balance and account APR would be the best and easiest approach for both consumers and creditors. (For creditors who do not provide a composite APR or where the actual APR is inflated due to finance charges other than periodic interest, USAA suggests that consumers be asked to provide either the highest APR or the APR with the largest balance.)

(d) The Board Should Make the Following Assumptions in the Tables Developed for Making "Estimated" Repayment Period Disclosures.

The Board asks what assumptions it should use in determining "estimated" repayment periods under its tables. USAA believes the Board should use the same assumptions made by the statute: (1) no grace period applies to any balances; (2) the balance computation method is the previous balance method; (3) there is no residual finance charge; (4) the minimum payment formula is 2% (5% for accounts issued by creditors regulated by the FTC) and includes a payment floor of $20 ($15 for FTC-regulated creditors); and there will be no new transactions, charges, or fees added to the account other than finance charges resulting from the periodic rates. In addition to the statutory assumptions, the Board will need to require additional assumptions in order to calculate estimated repayment periods. For example, the Board will need to assume that payments are made on a specified day such as the last day of each billing cycle, payments will be applied in a

certain order such as to the lowest APR first (since this is what most creditors do), and variable rates will not change during the repayment period.

3. OPTION B: Providing "Actual" Repayment Periods

If a creditor selects Option B, instead of providing an "estimate" of how long it will take to repay a consumer's actual account balance, the creditor's toll-free number must provide consumers with the "actual" repayment period. If the creditor chooses this option, the creditor need not provide the hypothetical example and may provide the minimum payment disclosures anywhere on the statement.

(a) The Board Should Provide Safe Harbors

The Board has asked whether it should provide a safe harbor to creditors who provide an "actual" repayment period to consumers. USAA strongly supports the Board granting safe harbors to creditors who attempt to provide consumers with an "actual" repayment period.

The Board should encourage creditors to choose the option of providing consumers with the "actual" number of months to repay an outstanding balance rather than the estimated number of months using tables established by the Board. In this regard, it is important for the Board to keep in mind that no disclosure of the repayment period will be completely accurate. Therefore, Creditors will not select the "actual" option if such selection will likely result in liability or lawsuits due to inaccuracy. Therefore, it is important for the Board to define "actual" in this context to mean "estimates based on certain actual account information." As long as creditors use the "actual" account information required, and the assumptions permitted, by the regulations, the Board should provide creditors with safe harbors that protect them from claims of making inaccurate minimum payment disclosures. The safe harbors should prohibit liability against a creditor that in good faith attempts to comply with the minimum payment disclosure requirements.

USAA believes the Board should require creditors to use actual account APRs, balances, and minimum payment formulas to determine the repayment period. However, creditors should be allowed to make the following assumptions: (1) no grace period applies to any balances; (2) the balance computation method is the average daily balance (or the actual method used by the creditor if the creditor chooses to do so); (3) there are no new charges or fees added to the account other than finance charges resulting from the periodic rates applicable to the account; (4) payments are made on the payment due date or other date specified in the regulations; (5) payments are applied to the lowest APR first (or by the actual payment allocation method used on the account if the creditor chooses to do so); (6) there is no residual finance charge; and (7) variable rates will not change during the repayment period.

4. **Issues Relating to Both Options of Providing Consumers With "Estimated" or "Actual" Repayment Periods**

(a) Creditors should be allowed to provide a website for the Minimum Payment Disclosures in Addition to a Toll-Free Number.

In addition to providing a toll-free number for consumers to call to obtain the estimated or actual repayment periods, creditors should also be permitted to direct consumers to a website. The Board should allow creditors providing such a website to modify the minimum payment disclosures on the billing statements to provide both the toll-free number and the website address. This will provide consumers with increased flexibility and assist them in obtaining a repayment calculation.

(b) Creditors Who Have a Minimum Payment That Could Result in Negative Amortization Only If Late Fees or Similar Fees for Default are Charged Should Be Permitted to Assume that the Consumer Will Not Default.

The Board has asked how the minimum payment disclosures should handle negative amortization. USAA believes that creditors should be able to assume there will be no negative amortization if the minimum payment percentage is greater than the effective monthly periodic rate on the account. In other words, if the monthly periodic finance charge is less than the required minimum payment, there is no negative amortization. On the other hand, when the opposite is true and the monthly periodic finance charge exceeds the required minimum payment, negative amortization occurs. In that case, there simply is no repayment period that can be disclosed since the consumer's balance will increase each month instead of decrease. When that occurs, consumers need to understand that they cannot pay off their balance by paying only the minimum payment. Creditors could disclose that paying the minimum will not pay off the balance at current interest rates. Alternatively, they could disclose that by paying the minimum payment plus $X (where X represents $1 more than the amount of negative amortization), the balance would be paid off in Y months. Either message will effectively communicate to consumers that the minimum payment is insufficient to pay down the balance.

C. Introductory Rate Disclosures

The Bankruptcy Act requires creditors to make additional disclosures on applications and solicitations and on all accompanying promotional materials sent by direct mail or provided over the Internet that offer a temporary rate. Creditors must clearly and conspicuously:

- Use the term "introductory" in "immediate proximity to each listing of the temporary annual percentage rate;"
- State the time period in which the temporary rate will end and the "go to" rate in "a prominent location that is closely proximate to the first listing of the temporary annual percentage rate;" and
- Describe the circumstances in which the temporary rate could be revoked "in a prominent manner."

The Board asks if it should impose format requirements such as a minimum font size. USAA does not believe any font requirement should be required. The Bankruptcy Act already provides that the disclosures must be clear and conspicuous. This is the same standard used throughout the Board's Regulation Z yet there are no font size or format requirements for most other Regulation Z disclosures. Since the introductory rate disclosures will appear in the text of the solicitation copy, USAA strongly opposes a requirement to make the font type or size more conspicuous than the font of the temporary rate or the language used with the temporary rate, whichever is less conspicuous.

Regarding the placement of the word "introductory" so that it appears in "immediate proximity to each listing of the temporary annual percentage rate," USAA believes creditors should have the option to place the term before or after the APR. For example, "0% Introductory APR," "Introductory 0% APR," or "0% APR Introductory rate" should all be acceptable. Additionally,

USAA believes creditors should be able to locate the word "introductory" in a preceding or following sentence so long as it is clear that the rate is a temporary or introductory rate. For example, the following sentences should be acceptable: "Enjoy a 0% APR for 12 months on your purchases. With this introductory APR, you'll pay no interest until next year." USAA also believes that creditors should be able to shorten the word "introductory" to "intro" since consumers understand that "intro" means "introductory."

For purposes of determining the first mention of the temporary rate in order to provide the end date and the go-to rate "closely proximate" thereto, USAA believes the requirement should be limited to solicitation letter (or primary marketing piece if there is no solicitation letter). The Board should clarify that "closely proximate" is not the same as "immediately proximate" and therefore creditors will comply by proving the end date and go-to rate anywhere in the text of the letter. Creditors should not be required to include this information at the top of the letter in the so-called "Johnson Box" since this would make the "closely proximate" standard the same as the "immediately proximate" standard that applies to the placement of the term "introductory." Since Congress used each standard in different contexts, it is clear that the "closely proximate" standard is less restrictive than the "immediately proximate" standard.

D. <u>Internet Based Credit Card Solicitations</u>

The Bankruptcy Act requires credit card solicitations to contain the Schumer-box disclosures. We note that section 226.5a(a)(2)-2 of the Board's Commentary to Regulation Z already specifies the methods required to prominently locate electronic Schumer box disclosures. Specifically, the Commentary provides that electronic disclosures are prominently located if:

A. They are posted on a website and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form; or
B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

USAA provides the electronic Schumer box disclosures through a link on the credit card solicitation pages. Additionally, when a USAA member completes an online acceptance of a preapproved offer made on the internet or an online application, USAA requires the member to go through the Schumer box before the acceptance or application can be submitted. USAA supports maintaining the current provisions in section 226.5a(a)(2)-2 of the Commentary. Any changes to these requirements would cause USAA to have to change its current processes. Such changes are unnecessary, time consuming, costly, and not required by the Bankruptcy Act.

The Bankruptcy Act requires a creditor to update information on its website "regularly." USAA supports requiring changes no more frequently than 30 to 60 days after the creditor makes a change (depending on the term being changed). USAA has many systems that are impacted by changes to its website. In order to protect data security and integrity, USAA needs time to make the required changes and test its systems to ensure there are no unintended consequences.

E. <u>Disclosures Related to Payment Deadlines</u>

The Bankruptcy Act will require creditors to disclose on monthly billing statements the earliest date on which a late payment fee may be charged (if different from the payment due date) and the amount of the late fee if payment is not received by that date.

The Board asks under what circumstances would the payment due date be different from the earliest date on which a late payment fee may be charged. Some creditors, such as USAA, provide a grace period beyond the payment due date during which time if payment is posted no late fee will be imposed. USAA has significant concerns with being required to disclose to members that it will allow payments to be made after the payment due date without incurring a late fee. Credit Card Agreements generally provide that a late fee may be charged if payment is not received on or before the payment due date. The payment due date is always disclosed on each billing statement. USAA strongly believes creditors should be allowed to provide a period of time after the payment due date during which payment can be received without imposing a late fee. Consumers benefit from the grace period and creditors should be encouraged to provide one. USAA believes the Board should clarify that the requirement to disclose the date a late fee will be imposed if different than the due date applies only if such date is sooner than the payment due date. Alternatively, USAA believes a creditor should be permitted to disclose a due date and still be permitted to allow an undisclosed late fee grace period.

The Board also asks if it should require creditors to credit payments as of the date they are received, regardless of what time during the day they are received. USAA strongly opposes this type of requirement. Regulation Z currently allows creditors to set reasonable cut-off times. We believe this is essential because creditors need time to process payments and to post them to accounts. It is unreasonable to expect creditors to process payments received at 11:59 p.m. as of that day. Instead USAA supports the Board defining a "reasonable cutoff time" under the current regulation provided it is not too late in the day.

Finally, the Board asks if it should require creditors to set forth on each billing statement any penalty rate that could apply as a result of a late payment. USAA strongly opposes such a

disclosure. It is not required by the Bankruptcy Act and it will be difficult to implement for creditors like USAA who charge a penalty APR only after an account becomes two payments past due. For members who are current, no disclosure would be required since their late payment would not result in the application of any penalty APR. However, for members who are one payment past due, the disclosure would be required. The programming required for such a disclosure would be significant compared to creditors who impose the penalty APR after just one payment past due and could simply pre-print the disclosure. While USAA's programming expense would be higher than the other creditors, USAA's revenue from the penalty APR would be significantly less since it would impose the penalty APR much less frequently. In short, USAA opposes any requirement to disclose the penalty APR on a statement when that penalty APR is not in effect.

Thank you again for giving USAA the opportunity to comment on this ANPR. If you have any questions concerning USAA's comments, please contact me at (210) 498-1095.

Sincerely,

USAA Federal Savings Bank

Ronald K. Renaud /s/
Assistant Vice President and
Banking Counsel