

## **FREQUENTLY ASKED QUESTIONS – CARD ACT REQUIREMENT TO PROVIDE PERIODIC STATEMENTS AT LEAST 21 DAYS BEFORE THE DUE DATE**

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Over the past several weeks, CUNA has been responding to a range of questions regarding the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act's provisions that require periodic statements to be provided at least 21 days before the payment due date for all open-end credit, effective August 20.

In our previous memorandum, dated August 5, 2009, CUNA addressed a number of these issues in a series of frequently asked questions (FAQs). Since that time, CUNA has continued to receive compliance questions on this issue and below are additional FAQs that address additional, significant issues.

While we have been aggressively pursuing relief for credit unions on several fronts, the Federal Reserve Board has signaled that it will not provide relief to credit unions beyond the "short period of time" approach addressed in the Supplementary Information to the interim final rule. (As described in our earlier memo, that approach allows credit unions to comply with the rule even if periodic statements disclose payment due dates that are technically inconsistent with the rule. However, this relief is only available if a disclosure is provided on or with the periodic statement that the consumer's payment will not be treated as late for any purpose if received within 21 days after the statement was mailed or delivered AND the credit union does not treat the payment as late for any purpose if received within that time period.) This issue is discussed further in the first question below.

Our primary focus for relief now is Congress and as indicated in the update yesterday, we will be working diligently throughout the recess and when Congress returns to achieve passage of an amendment to limit the scope of the 21-day rule to credit cards. Meanwhile, we continue to pursue other avenues of relief, including enforcement flexibility from the regulators.

**1. If a credit union provides the alternative notice, which the Federal Reserve Board indicated in the Supplementary Information to the interim final rule would be acceptable for a "short period of time," can the credit union charge a late fee if**

**a member's payment is not made within 21 days of when the statement was provided?**

Yes, a late fee may be charged in this situation, as we have discussed with one of the Fed attorneys working on the interim final rule. In order to be able to charge the fee, the credit union must provide the "special notice" as provided in the Supplementary Information that accompanied the Federal Reserve Board's interim final rule. This is the statement on or with the periodic statement that indicates the credit union will not consider a member's payment as late for any purpose if it is received within 21 days of the date the statement is mailed or delivered, regardless of the member's actual due date that is reflected on the statement. The fee may then be charged if payment is not received within this 21-day period.

For example, if a credit union mails its periodic statements on September 3<sup>rd</sup> and the member's due date that is reflected on the statement is the 10<sup>th</sup>, the member's payment will not be considered late if it is paid any time before the 24<sup>th</sup>. If the member makes the required payment by the 24<sup>th</sup>, the credit union may not charge a late fee, impose a penalty rate, or report the account as delinquent to credit bureaus. However, a fee may be imposed if the payment is received after the 24<sup>th</sup> or not received at all. The credit union in this situation may also take all the other actions it would otherwise take when payments are late, including reporting the late payment to credit bureaus, imposing a penalty rate, and taking the necessary collection actions.

**2. In the CUNA memo, dated August 5, 2009, CUNA advised in FAQ #11 that the "special notice" could say "We will not consider your payment late if it is received within 21 days of the date on the postmark, regardless of payment due date printed on this statement." But what if the postmark on a credit union's statement envelopes does not contain the date the statement is mailed. What other options do credit unions have?**

The interim final rule states that a creditor is not required to determine the specific date on which periodic statements are mailed or delivered to each individual consumer. A creditor complies if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and it may then add that number of days to the 21-day period when determining the payment due date or the end of a grace period.

For example, assume the first day of the billing cycle is August 1<sup>st</sup> and the ending date of this billing cycle is August 31<sup>st</sup> and also assume the credit union has procedures in place in which statements are mailed three days after the end of the billing cycle. In this

situation, the credit union could set the due date as 24 days after the end of the billing cycle. The credit union could then provide a special notice on its periodic statement that would state "We will not consider your payment late if it is received within 24 days of the ending date of your statement period, regardless of payment due date(s) printed on this statement."

**3. For all delinquent open-end loan accounts, other than credit card accounts, some credit unions' statement processors only print the delinquency due date on members' statements. There is no option to print the due date for the month in which the statement is provided. For example, a member's account (with payment due dates on the 27<sup>th</sup> of each month) is current through July 27<sup>th</sup>; but no payment has been made as required by August 27<sup>th</sup>; the due date printed on the periodic statement provided on September 5<sup>th</sup> is August 27<sup>th</sup>, rather than September 27<sup>th</sup>. Does that comply with the 21-day timing requirement?**

Yes, technically, but the Fed does not favor this approach. Fed staff has stated that the 21-day requirement is a "timing rule" regarding when a late charge may be assessed, not a "disclosure rule" regarding which due date should be printed on the statement. Therefore, a credit union only needs to ensure that no late fees are assessed if a payment is received within 21 days after the statement is mailed or provided. However, due to the potential for member confusion, the Fed staff has also stated that it is not an ideal situation to print a delinquency due date on the statement, rather than the next successive payment due date, for the month in which the statement is printed.

Regardless of which due date is on the periodic statement, a credit union should be in compliance if it ensures that no additional late fees are assessed when a payment is received within 21 days after the statement is mailed or provided. Also, the obligation to provide the 21-day notice only applies to the current payment that is due. A credit union does not have to comply again with the 21-day requirement for that same payment if it becomes delinquent.

**4. Is a prior notice or any notice at all required when a grace period is lengthened, for example, from 21 days to 25 days, in order to comply with the 21-day timing requirement?**

After August 20, 2009, the interim final rule generally requires a 45-day advance notice for credit card accounts (that are not home-secured) when the annual percentage rate is increased, when the minimum payment is increased, or when any other "significant change" to an account term is made. The interim final rule identifies the "grace period"

as being “significant.” This means a notice would be required when the grace period is either increased or decreased. However, paragraph (c) (2) (v) clarifies that no notice is required when any component of a finance or other charge is reduced (a change which is beneficial to the member). Unfortunately, there is no similar exception for a change to a grace period, even when the change is beneficial to the member such as when the grace period is lengthened. So based upon the current interim final rule a credit union would be required to provide a 45-day advance notice prior to increasing the length of a grace period on a credit card account.

Credit unions that provide a grace period for open-end loans (including HELOCs) other than credit card accounts would also be required to provide an advance notice of change-in-terms if they change the length of their grace period. However, they would currently only be required to provide a 15-day advance notice (which would change to a 45-day notice requirement on July 1, 2010).