

March 28, 2006

Laura N. Pringle, Esquire  
Pringle & Pringle  
4101 North Classen Boulevard, Suite A  
Oklahoma City, OK 73118-2432

Re: Skip-A-Payment Disclosures.

Dear Ms. Pringle:

You requested guidance regarding the disclosure requirements under the Truth in Lending Act (TILA) and Regulation Z for a credit union that offers its eligible members the option to skip a payment on their loans. 15 U.S.C. §1601 *et seq.*; 12 C.F.R. part 226. The Board of Governors for the Federal Reserve System (the Federal Reserve) promulgates the rules that implement TILA. As the enforcement authority under Regulation Z for federal credit unions, and after consultation with the Federal Reserve, we provide the following guidance.

A credit union you represent intends to offer a "Skip-A-Payment" option on loans to its members. The option will be available to some members based on their credit and payment history and other criteria, and will cost a fee for eligible members who use it.<sup>1</sup> Additionally, the credit union plans to market the option to eligible members and allow them to accept the offer in person or online.

The disclosure rules for open-end credit differ from the disclosure rules for closed-end credit. Subpart B of Regulation Z contains the disclosure rules for open-end credit. 12 C.F.R. §§226.5-226.16. Subpart C contains the disclosure rules for closed-end credit. 12 C.F.R. §§226.17-226.24.

A credit union's addition of an option to defer or skip a payment to an open-end loan after giving the initial disclosures may trigger additional disclosure requirements. No additional disclosures are necessary if the credit union adds the feature within 30 days after providing the initial disclosures, and the finance charge is the same. 12 C.F.R. §226.9(b)(1). The member must receive additional disclosures before using the option for the first time if the credit union adds the option after the 30 days, and it is not part of a renewal, resupply, or the original extension of credit. *Id.* The credit union may combine these disclosures

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<sup>1</sup> We understand the credit union is currently developing the criteria to determine a member's eligibility to use the option and caution you that the credit union must comply with fair lending requirements in the Equal Credit Opportunity Act and other applicable laws. 15 U.S.C. §1691 *et seq.*

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with the skip payment offer. See 12 C.F.R. Part 226, Supp. I, §226.9(c)(2). A fee charged for a member's use of the option is generally not a finance charge, but, if the finance charge terms are different from the initial disclosures, a credit union must give disclosures regarding the finance charges applicable to the option. 12 C.F.R. §§226.4(c)(4), 226.9(b).

Skip payment offers for closed-end credit after the initial extension of credit do not require additional disclosures. Regulation Z only requires subsequent disclosures if: (1) initial disclosures are rendered inaccurate before the consummation of the loan; (2) the loan involves certain residential mortgages and variable rate transactions; or (3) a member refinances, assumes, or incurs a variable rate adjustment to closed-end credit. 12 C.F.R. §§ 226.17, 226.19, 226.20. While the disclosure rules for closed-end credit do not specifically address supplemental features or changes in its terms, the official staff interpretations to Regulation Z state that deferral of individual installments will not constitute a refinancing, for which subsequent disclosures are required, unless it is accomplished by the cancellation of the original obligation and the substitution of a new one. 12 C.F.R. Part 226, Supp. I, §226.20(a)(1). Additionally, an appellate court has held that "[n]o specific duty arises [with closed-end credit] to make post-consummation disclosures under the statute or regulations, and each payment deferral cannot be construed as a new credit transaction, triggering TILA's disclosure requirements." *Begala v. PNC Bank*, 163 F.3d 948, 951 (6th Cir. 1998).

We hope you find this guidance helpful. If you have additional questions on this matter, please feel free to contact Staff Attorney Tonya Green or me.

Sincerely,

Sheila A. Albin  
Associate General Counsel

OGC/MIG:bhs  
05-0903