California Credit Union League
Serving Credit Unions in California and Nevada

October 12, 2007

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

Re: Docket No. R–1286—Proposed Changes to Regulation Z Open-End Credit

Dear Ms. Johnson:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to comment on the Federal Reserve Board's (Board's) proposed changes to the open-end credit rules under Regulation Z, which implements the Truth in Lending Act (TILA). The proposal includes comprehensive changes to the format, timing, and content requirements for credit card applications and solicitations, and for the disclosures that consumers receive throughout the life of an open-end account, including account-opening and periodic statements. By way of background, the California and Nevada Credit Union Leagues (the Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

The Leagues recognize and agree with the Board's position that consumers should receive key information about open-end credit (in particular, credit card) terms in a clear and conspicuous format, and at a time when it would be most useful to them. We also appreciate the significant amount of time and deliberation the Board has invested in developing these revisions, including two advance notices of proposed rulemaking and extensive consumer testing. While we believe the number and scope of the anticipated changes will require a much longer-than-normal implementation period (which we will discuss later), in general we consider the changes to be reasonable, especially in light of the fact that the Board's last comprehensive review of TILA regulations was in 1981.

However, we do have concerns that some provisions of the proposal, if implemented in their current form, are likely to be confusing, unfair, costly, and unnecessary for consumers and financial institutions. Our comments will be limited to four provisions, which are:

- The Board's approach to multi-featured open-end lending plans;
- Use of effective APR, or "fee-inclusive" APR;
- Notice requirement for rate increase due to delinquency; and
- Implementation period.

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Multi-featured Open-End Lending Plans

For multi-featured open-end plans, the proposed rule states that 1) each lending feature (i.e., sub-account) be self-replenishing, and 2) lenders are not permitted to underwrite specific loan transactions under such a plan, but are permitted to verify consumer credit worthiness from time to time. The Board believes that the application of these concepts to multi-featured open-end plans serves to distinguish open-end credit from a series of advances made pursuant to separate closed-end loan commitments.

For a variety of reasons discussed below, the Leagues object to the Board's revised approach to these types of lending plans, particularly as it comes more than 25 years after credit unions began offering multi-featured open-end lending plans (in a manner compliant with the current rules) in order to provide their members a variety of loan types in a convenient, lower-cost fashion. The Credit Union National Association estimates that over 3,500 credit unions in the U.S. now use these types of plans. In California and Nevada, there are approximately 200 credit unions using these plans. Obviously, multi-featured open-end lending has become a widely accepted and popular form of lending for credit unions and their members over the past quarter-century.

However, as a result of the proposed change, a majority of these credit unions will experience significant costs and disruption to lending processes as they are forced to either 1) considerably revamp their current open-end policies and procedures; or 2) move to closed-end lending. Either option will require training of staff, significant changes to loan documents and data processing capabilities, and may also lead to increased staffing needs. Ultimately, these increased costs could lead to higher loan rates, as well as a less efficient and member-friendly lending process for a large number of credit unions. As credit unions primarily serve consumers of modest means, this would have the effect of making credit more expensive and/or less available to those who need it the most.

The proposal does not contain any information as to why this sweeping change is necessary, other than to state that the Board is "concerned" about such plans. However, the proposal contains no relevant statistical—or even anecdotal—information as to why this concern is warranted. In our opinion, these proposed changes are a solution to a problem that does not exist. To our knowledge, credit union members have not expressed concerns with the disclosures and other information that they receive under these plans.

In addition, we would like to point out that the stated purpose of TILA, the current Regulation Z, and the Board's declared goal in proposing revisions to the regulation is to provide consumers with meaningful and effective disclosures so that they may more easily understand the costs and terms of credit. We question how the proposed change to multi-featured open-end plans addresses this purpose. Members already receive information whenever they access additional credit under these plans (generally more extensive than what would be provided if closed-end disclosures were used), so sufficient disclosures are not an issue. In effect, this proposed change seems to be mandating specific loan policies and procedures in regards to open-end lending. This is a departure from the purpose of TILA, Regulation Z, and the Board's usual approach, and one with which we disagree.

While a considerable majority of credit unions will be adversely affected by such a change to multi-featured open-end lending, a small minority of credit unions are currently using these types of plans in a way not inconsistent with the proposal. Under the programs run by these credit unions, each sub-account is self-replenishing and subsequent advances are not underwritten. The creditworthiness of each borrower is checked periodically—generally, at 18-24 months. When a subsequent advance request is made on a vehicle-secured loan, these credit unions obtain a valuation of the vehicle (e.g., Kelly Blue Book) in order to determine how much is available to advance. (Example: a member asks for a $1,000 advance 12 months after an initial advance on a vehicle-secured loan. If the current value of the vehicle, minus the current loan balance, equals at least $1,000, the member is given the advance.)

For these credit unions, and other lenders operating similar plans, we request that the Board add additional, clarifying language to Supplement I (Official Staff Commentary) of the regulation. Specifically, comment 2(a)(20)–5(ii) should include the following statement, or one substantially similar:

> *On a secured loan, a creditor may obtain a valuation of the collateral in order to determine whether a credit line may be replenished to its original amount, or whether a subsequent advance request made by a consumer will be approved for the amount requested.*

In addition, we note that there seems to be a misunderstanding held by some industry commenters that Regulation Z requires signatures from borrowers when subsequent advances are made under a multi-featured open-end plan. Obviously, this is a contract issue rather than a regulatory issue, and one that can be addressed, for example, by having the consumer sign an initial agreement and disclosure that obligates them to subsequent advances made under the plan. Accordingly, we suggest that the Board provide a clarification in the final rule (or Official Staff Commentary) that signature requirements are not addressed in the regulation, and that lenders should refer to contract law (e.g., state law and E-Sign), combined with their own institutional risk and service preferences, in setting signature requirements.

Finally, if the proposed changes to multi-featured open-end credit plans are made final in their current form, we urge the Board to delay the effective date of those changes until the Board completes its entire review of Regulation Z, including both the closed-end and open-end portions of these rules. Otherwise, credit unions that need to change from open-end disclosures to closed-end disclosures in order to address the proposed changes may need to change them again after the Board reviews and finalizes any changes made to the closed-end disclosures. To impose two costly changes within a relatively short period of time would be unnecessarily duplicative and expensive. It would be much more efficient and much less confusing for credit union members if these disclosures are only changed once during this process, if at all, given the absence of persuasive rationale.

Use of Effective APR, or "Fee-Inclusive" APR
The Board has proposed two approaches with regard to the disclosure of the "effective" Annual Percentage Rate (APR), which includes interest as well as other fees and costs. One approach is to impose uniform terminology and formatting requirements, as well as specify exactly the fees that are to be included. The other proposed approach is to eliminate the requirement to disclose the "effective" APR.

The Leagues favor eliminating the effective APR altogether. Over the years, our credit unions have found that, at best, the effective APR is confusing to most members. Many times it can be misleading. Ultimately, it is inaccurate as a tool to assist members in shopping for credit, as the APR is a backwards-looking calculation that assumes the interest and any fees included in the APR for the current period are charged continuously throughout the annual period, which is often not the case. Since one-time fees can result in a much higher APR in one statement period than for others in which these one-time fees are not incurred, the effective APR on a periodic statement will likely be much different than the one disclosed to the consumer at account opening. We believe that consumer confusion caused by this discrepancy will continue, regardless of the verbiage that creditors include in an effort to explain it.

For those fees that are required to be included in the effective APR, we wholeheartedly believe these fees should be disclosed in dollar terms. It is our opinion that the disclosure of this information in dollar terms is more useful to consumers, allowing them to understand the amounts being charged and to help them compare these costs with other credit products. This is much more in the spirit of the consumer-friendly, "apples to apples" comparative information anticipated by TILA, Regulation Z, and the Board's stated goal regarding the Regulation Z proposal.

Finally, in reference to periodic statements, the Board is proposing to eliminate the disclosure of the periodic rate. We agree with this approach, as this information provides little benefit for consumers.

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Notice Requirement for Rate Increase Due to Delinquency

The proposal will increase the notification period for change in terms from 15 to 45 days. This will include notices for increased rates due to delinquency, default, or penalties. The Board has requested comment as to whether a shorter time period than 45 days would be adequate.

Generally, we feel that a 45-day notification period is reasonable. However, we disagree that a 45-day advance notice should be required if the increased rate is due to delinquency, default, or penalties. The application and solicitation disclosures, in addition to the account-opening disclosures, provide this information at the time the account is established; therefore, it is unnecessary to provide an additional 45-day notice period if these penalty rates are imposed. This approach has been supported for years by language in the current Official Staff Commentary regarding changes to open-end plans (i.e., comment 9(c)–1).

Implementation Period

Because this proposal contains the most sweeping revisions to the open-end rules in over 25 years, we strongly urge the Board to provide creditors with significantly more time to prepare for these changes than is given for less extensive changes. Accordingly, we recommend that mandatory compliance should not be required until at least 18 months after the rule is issued in final form. This extra time will be necessary in order to allow creditors, vendors, and data processors sufficient time to revise their Regulation Z disclosures, policies, procedures, and data systems, as well as to provide adequate training to staff.

The Leagues recognize that the Board has invested a significant amount of time and effort in developing these revisions to Regulation Z. We now respectfully request that the Board provide credit unions and others with sufficient time to ensure successful implementation of these important changes.

Conclusion

In closing, the California and Nevada Credit Union Leagues would like to thank the Board for the opportunity to comment on these proposed changes to Regulation Z. In general, we approve of the changes. We appreciate your consideration of our suggested changes to the proposal, and look forward to working with the Board in ensuring that consumers are provided accurate, meaningful information in order to make more informed decisions regarding open-end credit.

Sincerely,

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues

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