NAVY FEDERAL Credit Union

Office of the President

October 1, 2007

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

Re: Dockets R-1286 Truth in Lending

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments in response to the Federal Reserve Board's (the Board) proposed amendments to open-end credit rules under Regulation Z, Truth in Lending. Navy Federal is the nation's largest natural person credit union with over $30 billion in assets and nearly 3 million members.

The Board proposes to revise Regulation Z to improve the effectiveness of consumer disclosures from application through the life of the open-end credit plan. Navy Federal understands the obligation to implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 concerning minimum payment disclosures. However, we believe other proposed revisions to Regulation Z provide little, if any, beneficial information for consumers while significantly increasing the compliance burden for lenders. Compliance costs associated with the proposal will ultimately be passed on to consumers as higher fees and rates for prudent and necessary credit for family living and personal needs.

The Board states it believes that this proposed rule will have significant economic impact on a substantial number of small entities.[1] We believe this economic impact will negatively and adversely affect the viability of many small credit unions as they struggle to maintain reasonably priced lending programs for their members. The Board's regulatory analysis also states, "The effect of the proposed revisions to Regulation Z on small entities also is unknown." According to National Credit Union Administration data, the number of federally insured credit unions dropped from 9,688 to 8,326 from year-end 2001 to 2006 for an average attrition rate of nearly 300 per year. Anecdotal information[2] suggests that regulatory burden and compliance costs contribute significantly to credit unions' decisions to merge or otherwise go out of business. The Board's proposal will surely accelerate the pace of credit union disappearance. In the absence of evidence that the proposed changes will offset increased burden and cost, Navy Federal strongly urges the Board to withdraw all portions of the

[1] 72 FR 33033
[2] "Comply or Die," Credit Union Times, p. 98, June 14, 2006.

proposal unrelated to the statutory provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

When Congress enacted the Truth in Lending Act (TILA) in 1968, it believed economic stability would be enhanced and competition among creditors would be strengthened by its provisions for the informed use of credit. TILA purports to provide protections against unfair credit practices and requires disclosures that would allow consumers to make informed decisions as they shopped for credit products. However, after almost 40 years of various regulatory implementations, legal opinions, staff interpretations, and follow-up statutory and regulatory amendments, TILA's effectiveness remains highly questionable. As an example, a significant number of consumers routinely patronize lenders who disclose and charge exorbitant fees and APRs in excess of 700 percent. Despite the Board's disclosure requirements and the widespread educational efforts of many organizations, including credit unions, consumers remain drawn to high-cost, high-turnover transactions for funds. Perhaps this suggests new and innovative approaches to consumer credit needs should be explored.

Not-for-profit credit unions have a long tradition of providing reasonably priced credit for essential family living needs. To keep the cost of credit down, many credit unions (including federal credit unions whose rates are limited by statute[3] – now 18%) currently use open-end credit plans involving multiple advances with specific repayment features. This was an innovative approach that has worked well for many years. However, the Board's proposed amendments to the staff commentary at § 226.2(a)(20)(Comments 2 and 5) would restrict the abilities of credit unions, particularly those under the 18% rate cap, to offer low-cost alternatives to a variety of high-cost and abusive lending products. For example, the requirement that any repayment automatically replenish credit line availability precludes the use of open-end lending documents to offer low-cost payday loan alternatives. Under the proposed language, many "payday" borrowers would simply keep their low-cost credit lines "maxed out" and revert to a cycle of high-cost payday loans offered by others. We believe the plain language of the Truth in Lending Act's definition of "open end credit plan" anticipates considerable flexibility and does not require the restrictions proposed by the Board. The Board provides no justification for the additional restrictions on open-end credit plans and we are not aware of abuses involving the particular features prohibited by the proposal. We strongly urge the Board to retract this proposal that unnecessarily curbs the availability of low-cost credit for consumers. Additionally, the Board should clarify that open-end plans, which include agreements with borrowers to repay some or all of an advance of funds before making a new advance, are permissible.

The Board's initial notice[4] on December 8, 2004 involving the current proposal to revise Regulation Z, cites a 2001 survey which found that two thirds of consumers questioned said it was easy to obtain information about credit terms, yet three quarters of the respondents stated that they also found disclosures confusing and overly complicated. Consistent with this finding, we often hear

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[3] 12 U.S.C. 1757(5)(vi).
[4] 69 FR 70928.

complaints from our members about the complexity and volume of mandated disclosures. More disclosures and regulatory burden are simply not the answer.

Navy Federal appreciates the Board's consumer testing of selected disclosures as a part of its current proposal. We have advocated consumer testing in previous comment letters. We believe too little emphasis is placed on ensuring that disclosure information is understood by the consumers to whom it is ultimately directed. Effective consumer testing, however, must transcend current regulatory and *statutory* requirements. Until all public policymakers, including lawmakers, embrace the concept of consumer testing, we believe its effectiveness will be limited. We encourage the Board to broaden its approach to consumer testing to include information that could be used by lawmakers as a basis for statutory changes that would be beneficial for consumers and our economy.

The Board's proposed rules include technical revisions intended to make the regulation easier to use. These include incorporating the substance of most footnotes into the regulation or the commentary, as appropriate. We believe this approach improves the readability and understanding of the regulation. However, the footnote numbering system was left intact and most footnotes only contain the word "Reserved." To avoid confusion and further improve readability, we ask the Board to remove unused footnote numbers throughout the regulation. Additionally, the proposed amendments to Regulation Z do not improve the readability of an already difficult rule. Examples include many additional cross references and the repeated use of the word "certain" as an adjective meaning something unspecified at that particular point in the regulation (see §§ 226.4 and 226.13). We encourage the Board to consider Federal Plain Language Guidelines as it promulgates the final rule.

Proposed changes to the Staff Commentary at § 226.4(a)(Comment 4) would require a credit card issuer to treat any transaction charge in its entirety, regardless of comparable fees charged for withdrawals from an asset account, as a finance charge. This change may simplify the determination of a finance charge as stated by the Board. However, in many cases, it would negate the ability of federal credit unions to charge cash withdrawal transaction fees initiated by credit cards comparable to those initiated by debit cards since they must comply with the statutory rate ceiling referred to on the previous page of this letter. The National Credit Union Administration (NCUA) has opined that it looks to Regulation Z for guidance on what constitutes a finance charge for purposes of the Federal Credit Union Act's (FCUA) interest rate ceiling.[5] Consequently, under the proposed rule, very modest fees on low balance accounts held by federal credit unions would constitute a violation of the usury rate established by the FCUA. We believe it is grossly unfair to penalize the only group of lenders that are held to an interest rate cap of 18% by federal statute. We encourage the Board to seek other ways to simplify its regulations that avoid adversely impacting the only group of lenders that are already held to higher statutory lending standards than most – federal credit unions.

The proposed rules would extend the requirement to provide a 15-day notice for a change in terms to 45 days, as described in § 226.9(c)(2). We understand the Board wants to ensure consumers

[5] NCUA Legal Opinion Letter 00-1217, January 25, 2001. Also, see Legal Opinion Letter 91-0412, April 30, 1991.

have sufficient time to take appropriate action before the change becomes effective. However, from the practical standpoint, currently many financial institutions give consumers a 30- day notice of change in terms by including the notice with the periodic statement. Since many financial institutions issue monthly periodic statements, the requirement to provide 45 days notice would result in an actual notification of 60-90 days before the change becomes effective. This may not be practical for financial institutions trying to make changes based on overall market conditions. Furthermore, according to the background information provided in the Federal Register, the Board has received industry comments not opposing increasing the notice period from 15 days to 30 days. Navy Federal urges the Board to consider requiring that the change in terms notice be provided to consumers 30 days prior to the effective day of the change. This would simplify compliance with the regulation since many lenders already follow this practice.

While Navy Federal supports disclosure of the fees that are part of the effective APR calculation in dollar terms on periodic statements, we believe the effective APR is confusing to consumers. We believe the effective APR is confusing to consumers because it may reflect a much higher APR than the APR originally disclosed at account opening. Further, the disclosure of the effective APR may actually prompt consumers to seek credit with different terms. For example, if a consumer incurs a fee that is included in the calculation of the effective APR for the periodic statement, the effective APR disclosed in the statement may be substantially higher than the APR originally disclosed to the consumer at account opening. Such a difference may prompt the consumer to seek credit elsewhere at a rate lower than the effective APR, but at a rate higher than the APR the consumer would have otherwise received. Therefore, we strongly support the Board's proposal to eliminate the requirement to disclose an effective APR under Alternative 2 of § 226.7(b)(7).

We also agree with the Board's optional approach to provide consumers the actual pay-off time in the Notice about Minimum Payment, as described in proposed § 226.7(b)(12)(ii)(B). Navy Federal believes the actual pay-off information is much more beneficial than hypothetical examples to help consumers manage repayment of their debts. We also believe this is an excellent example of the Board's use of its exception and exemption authority provided in Section 105 of the TILA.

Navy Federal appreciates the opportunity to comment on the proposed rules amending the open-end credit sections of Regulation Z. If you have any questions on our comments, please contact Elizabeth Salazar, Senior Policy Analyst and Compliance Officer, at (703) 206-2404.

Sincerely,

Cutler Dawson
President/CEO

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