August 14, 2009

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

RE: 12 CFR Part 226
Regulation Z; Docket No. R-1364
Truth In Lending

Dear Ms. Johnson:

On behalf of the Credit Union Association of New York ("the Association"), I would like to take this opportunity to comment on the Federal Reserve Board's interim final regulations implementing the Credit Card Accountability, Responsibility and Disclosure Act of 2009 ("CARD Act"), which amended the Truth in Lending Act. Although the Board is accepting comments on these regulations until September 21, 2009, given the urgent concerns that credit unions across the state have expressed about the impact of these regulations on their operations, it is incumbent on me to relay these concerns to you before these regulations officially take effect on August 20th.

Because of the unique lending structure many credit unions offer to their members, a 21-day advance notice requirement simply cannot be implemented by many credit unions by August 20th. Furthermore, Congress clearly did not intend loans offered under these programs to be subject to this new mandate.

Credit unions, unlike most banks, offer multi-featured open-end credit plans typified by consolidated statements. For example, a member joining a credit union may receive a line of credit and a sub-loan might be given to him under the same plan to obtain a car. Since the loan as a whole was opened up under an open-end plan, credit unions have traditionally been authorized to treat car loans as open-ended loans. In fact, the Federal Reserve considered eliminating the ability of credit unions to offer these lending programs, but ultimately recognized that such lending flexibility offers unique benefits to credit union members. See, Federal Register, Vol. 74, No. 18, pp. 5258-5260.

Given the broad range of lending products and the highly technical nature of insuring meaningful and accurate lending disclosures, Congress has given the Board broad power and responsibility to elaborate on the application of the Truth in Lending Act in those circumstances not directly addressed by statute. As explained by the Supreme Court:

Because of their complexity and variety, however, credit transactions defy exhaustive regulation by a single statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit. The Board executed its responsibility by promulgating Regulation Z, 12 CFR Part 226 (1979), which at least partly fills the

1021 WATERVLIET-SHAKER RD., ALBANY, NY 12205 — P.O. BOX 15118, ALBANY, NY 12212-5118
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statutory gaps. See Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 559-560 (1980) (citations omitted); See also 15 USC 1604.

Multi-featured open-end lending plans have long been recognized as a unique lending product and there is no indication that Congress considered the unique lending plans offered by credit unions, let alone intended that loans made under these plans were to come within the scope of this legislation. After all, can it seriously be argued that in making legislation regulating open-end loans that Congress intended car loans, for example, to be subject to these requirements? . Therefore, the Federal Reserve Board should insure that the CARD Act is implemented consistent with its underlying purpose and exclude multi-feature open-end credit plans from the 21-day requirement.

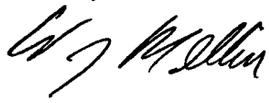
Even if the Board is unwilling to exclude these credit plans from the statute's 21-day requirement, it should give credit unions adequate time to formally comply with these new requirements. Because of our unique lending plans one statement may contain multiple due dates. Consequently, unlike many banks, in order to comply with this proposal credit unions, some of which have been using this system for approximately three decades, are making a good faith effort to comply with these regulations. However, they face operational hurdles such as reprogramming computer systems, considering the feasibility of uniform due dates, and making all these decisions while trying to implement regulations which are far from clear in certain areas. As a result, a substantial number of credit unions contacted by the Association in preparation for this comment letter indicated that they simply would not be able to comply with the August 20th deadline. Fortunately, the Federal Reserve recognized that for a short period of time, financial institutions will not have to be in formal compliance with these regulations. In promulgating final regulations, financial institutions should explicitly be given at least six months to comply with these regulations, at least for multi-featured open-end credit plans.

While the 21-day requirement is the most urgent issue, it is by no means the only issue that should be considered in finalizing these regulations. A large majority of the credit unions contacted for this letter indicated that they have members who make loan payments more than once a month. Many members no doubt consider this a prudent way of efficiently paying down debt. The primary purpose of the CARD Act's 21 day requirement is to insure that members have adequate time to pay revolving debt in a timely manner. The final regulation should make clear that so long as members are given the requisite statement 21 days prior to the first due date and choose to have a credit union make multiple withdrawals in a month, the member should have the right to do so and credit unions should not be considered out of compliance for offering this option.

A final issue relates to Section 106 of the Act, which provides that a creditor may not treat a payment on an open-end consumer credit plan as late for any purpose unless the creditor has adopted reasonable procedures for complying with the 21-day mailing requirement. In implementing this language, the regulation should clarify that this provision applies solely to the ability of financial institutions to impose fees, penalties and other charges otherwise authorized under the Truth in Lending Act. Keeping in mind that credit unions offer open-end loans for products such as cars, the failure of a credit union, or any financial institution for that matter, to comply with the statute should not preclude it from, for example, taking actions to collect a debt as authorized by state law. The purpose of the CARD Act is to adequately protect consumers against unscrupulous credit practices, not to provide them a shield against the legitimate application of state laws.

Many credit unions have stressed that sending out statements 21 days in advance for credit card statements does not present difficulties and many have expressed support for other aspects of the legislation, such as providing members with increased notice of substantial changes to a credit card account. In writing this letter, it is our hope that we can aid the Federal Reserve in promulgating federal regulations that aid members by giving credit unions clear guidance about how they can implement these regulations consistent with the unique lending practices of our institutions.

Sincerely,



William J. Mellin
President/CEO