Credit Union
ASSOCIATION
New York

November 20, 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 members 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 proposed regulations to implement those portions of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 ("CARD Act") to take effect on February 22, 2010. The proposal will also move up the effective date on certain regulations which are currently slated to take effect in July 2010.

Credit unions are proud of the fact that we do not engage in many activities which necessitated the CARD Act. For example, we do not engage in "double-cycle" billing or impose punitive penalty rates. Nevertheless, compliance with the CARD Act's provisions will impose a substantial compliance burden on credit unions; many of which are already increasingly overwhelmed by a wide range of quickly evolving compliance mandates. Consequently, the Federal Reserve should exercise the flexibility it does have in implementing the provisions of the CARD Act to maximize flexibility and minimize the burden imposed on credit unions.

Over-the-Limit Protections
Under the CARD Act, members must affirmatively "opt-in" before financial institutions can impose a fee for authorizing credit transactions that exceed a member's credit limit. The Federal Reserve has interpreted the statute as applying not only prospectively but to existing members, as well. It has also requested comments on whether financial institutions should be given the opportunity, in advance of the effective date of February 22nd, to obtain over-the-limit opt-ins from existing members.

The Association would strongly support any proposal that would give us the opportunity to obtain opt-ins from our credit union members prior to the effective date of this regulation. We also feel the Federal Reserve should reconsider its position that the opt-in requirement applies to existing account holders.

The fundamental reason why members need to be given the opportunity to opt-in to over-the-limit protection for credit card charges is to ensure that they are aware of the services they are paying for before they access them. Therefore, the statute mandates that members be given the opportunity to affirmatively opt-in to the provision of over-the-limit protections for credit card charges before receiving the protection of such services. However, it is inconsistent with this statute to apply these same provisions to existing members who have already chosen to utilize over-the-limit services provided by their credit unions. Existing members already know simply by reviewing their statement that there have been occasions where their financial institution has included charges which would otherwise exceed their authorized charging limit.

Nevertheless, under the proposed interpretation of the statute, those existing members would have to reaffirm their interest in obtaining the service. This interpretation is likely to create more confusion than benefits the consumer. A consumer who is aware of his or her credit card transactions who neglects to opt-in and reaffirm his desire to obtain the service will find himself suddenly unable to gain access to a service on which he already relies.

A compromise approach the Board should consider if it feels that existing members require additional protection is to make financial institutions notify existing members of their right to opt out of over-the-limit protection. This approach would ensure that existing members already relying on the service would not have it taken away, while ensuring that members have more than adequate notice that over-the-limit services are being provided.

With regard to the suggestion that financial institutions, including credit unions, be allowed to obtain opt-ins from existing consumers prior to the effective date of this regulation, this is a proposal that we will strongly support. As well intentioned as the opt-in requirement is, it is likely to cause substantial confusion and may, in fact, result in members desirous of over-the-limit protection services being denied such services. Maximizing the amount of time credit unions have to educate their members about the provisions of such services and their need to reaffirm their interest in such protections will allow regulators to help minimize this inevitable confusion.

Consistent Payment Date

Section 127(o) of the CARD Act mandates that the due date for a credit card account is the same day each month. The Board is proposing to implement this proposal by amending Section 226.7 and adding accompanying commentary interpreting that provision as requiring that the due date must be the same day of the month for each billing cycle. This interpretation precludes payments being required to be made on the 29th, 30th, or 31st of a month. The Board requests comment on the operational burdens imposed by this interpretation.

Given enough time, the operational rule of mandating that credit cards be paid on the same date each month would not provide an operational hurdle for credit unions. However, because of the short timeframe involved with implementing these regulations, as well as the fact that many credit unions already have a standardized date by which member payments are due in anticipation of the open-end lending changes, this regulation may inconvenience some credit unions. The Association suggests that financial institutions be given greater flexibility than currently contained in this proposal.

By way of background, prior to a recent technical amendment, the CARD Act imposed a three-week payment deadline for all forms of open-end credit, including credit cards. In order to comply with this legislation, many credit unions have already gone through the expense of working with their vendors to establish standard dates. Some of those credit unions presumably had payment dates that fall between the 29th-31st of the month. This regulation would effectively mandate that those credit unions go back to the vendors and go through the expense of changing payment dates.

Accessing Credit Counseling Services
Under the CARD Act, periodic statements must include a toll-free number that would provide information about credit counseling services. In implementing this proposal, the Board proposes that the credit union be able to provide information about at least three approved counselors. [See proposed 12 C.F.R. 236.7(b)(12)(iv)(A)].

As the Board notes, this information is readily available on existing Web sites. Nevertheless, it would be inappropriate and impractical to require that more than three such agencies and their contact information be provided. For many rural areas it is difficult to find more than a handful of qualified credit counseling agencies. It is unrealistic to think that additional counselors should or could be made available.

In addition, requiring financial institutions to periodically confirm the accuracy of credit counseling contact information could be administratively difficult. The final regulation should make clear that financial institutions should have to do no more than ensure that the information they are providing is consistent with information provided on Government websites. This update should have to be done no more than once each year.

Charging Fees on Estates
A final provision of the CARD Act on which I would like to comment deals with its requirement that procedures be in place to allow administrators to pay off credit card accounts in a timely matter. This mandate is carried out through Section 226.11(c). Under this regulatory proposal, creditors would be prohibited from imposing fees or charges on a deceased member's account upon the request of any balance inquiry from the administrator of the estate.

While this provision is well intended, it overlooks some of the operational hurdles related to estate accounts, many of which credit unions have no control. Anecdotally, there is strong evidence to suggest that because a married person's administrator has requested information on an account does not mean that the administrator is quickly going to take steps to pay off any remaining debts. In fact, estate proceedings can take several years and it is not uncommon for the Association to receive questions on how best to deal with estate accounts that have not been touched in several years.

Consequently, in crafting the final regulation, the Board should ensure that while an administrator's phone call could freeze the imposition of fees and penalties on the account, this freeze is not open-ended. For example, a one-year period provides more than enough time for administrators to begin to resolve most issues related to an account. Longer time

periods would create operational problems for credit unions because they would have to keep accounts open indefinitely without being able to recoup the costs associated with such maintenance.

The CARD Act imposes interesting challenges for regulators, policy-makers and financial institutions alike. These regulations represent a fine effort on the part of the Federal Reserve to comply with the provisions of the CARD Act. It is hoped that these suggestions will help facilitate implementation of the legislation in a manner that is true to its underlying spirit, while avoiding unnecessary operational burdens on credit unions and all financial institutions.

Sincerely,

William J. Mellin
President/CEO