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December 23, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th St & Constitution Ave, NW
Washington, DC 20551

Re: Docket No. R-1367 – Proposed Changes to Regulation Z HELOC Disclosures

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the proposed amendments to Regulation Z. The proposal, which appeared in the Federal Register on August 26, 2009, would make substantial changes to the disclosure requirements for home equity lines of credit (HELOCs), including both the content and timing of the disclosures. By way of background, CUNA is the largest credit union trade organization in this country, representing 90 percent of our nation's 7,900 state and federal credit unions, which serve approximately 93 million members.

We understand that the Federal Reserve Board (Board) has issued these and other rules to address the high-cost and abusive loans that certain brokers and financial institutions have made to unsuspecting borrowers. However, credit unions have not engaged in these practices, primarily because their mission and incentives are to serve their members, not to achieve and maximize profits. We urge the Board to take this credit union difference into account as it reviews the comments outlined below.

Summary of CUNA's Comments

- CUNA opposes the proposed change to require that the borrower be given an early HELOC disclosure three days after the application is

submitted and then be given an account-opening disclosure at the time the account is opened. We believe the preferable approach would be to require lenders to provide the early HELOC disclosure but not to require the account-opening disclosure if the terms and conditions have not changed since the borrower was given the early HELOC disclosure.

- CUNA supports the Board's decision to exclude the changes to the finance charge calculation for HELOCs that were included in the recently issued Regulation Z closed-end mortgage loan proposal. In addition, we strongly support the elimination of the requirement to disclose the "effective" APR on the periodic statement. However, we believe the treatment of finance charges should be consistent and our very strong preference would be for the Board to adopt the approach outlined in the HELOC proposal for both proposals.
- CUNA supports the proposed change to increase the notification period for a change-in-terms from 15 to 45 days. This will benefit consumers and the burdens on credit unions will not be very significant, especially since the range of terms of a HELOC that can be changed is narrower than for other types of open-end credit, such as credit card accounts.
- CUNA supports the proposed change that would allow a creditor to terminate a HELOC plan for payment related reasons only if the consumer fails to make the minimum payment within 30 days of the due date. We believe it strikes the appropriate balance between a creditor's need to protect itself against risk and adequate protection to the consumer by preventing unwarranted constraint on his or her access to credit.
- The proposal would require both the early HELOC and account-opening disclosures to include the loan originator's unique identifier, which the originator will be required to obtain under the Secure and Fair Enforcement for Mortgage Licensing Act. We believe the loan originator's unique identifier should not be required for the early HELOC disclosure that is provided three days after the loan application is submitted since the application may not have yet been assigned to an employee who will be acting as the originator. However, CUNA agrees that the identifier should be provided on the final disclosure that is provided at the time the HELOC account is opened.
- CUNA opposes the change that would require both the early HELOC and the account-opening disclosures to include the highest and lowest values over the past fifteen years of the index that will be used to determine the rate of the HELOC. We believe this information will not be helpful or beneficial for consumers, and they may actually be more confused by this additional information.
- We support the proposed change to require that all fees assessed during the billing cycle for HELOC accounts be grouped together. Our support is based partly on our understanding that there are typically much fewer

transactions associated with HELOC accounts than with other types of open-end lending, such as credit cards. We believe grouping the fees together will make them easier to locate on the periodic statement, and will also increase a consumer's confidence that he or she has not overlooked any fees when reviewing the periodic statement.

- CUNA supports the Board's decision that creditors offering HELOCs do not have to comply with the provision regarding same-day crediting of payments. Although many credit unions currently credit payments the same day, we urge the Board to consider the potential challenges presented to all creditors—many of which may not currently credit same-day.
- Because this proposal incorporates such extensive and far reaching revisions to the Regulation Z rules for HELOCs, we believe credit unions and others should be given a significant amount of time to prepare for these changes. For this reason, we believe that mandatory compliance should not be required until at least eighteen months after these changes are issued in final form.

Discussion

General Disclosure Issues

Under the proposal, the borrower must be given an early HELOC disclosure three days after the application is submitted and then be given an account-opening disclosure at the time the HELOC account is opened. Although not the same, these disclosures are substantially similar to each other.

We believe the preferable approach is to require lenders to provide the early HELOC disclosure and not require them to provide the account-opening disclosure if the terms and conditions have not changed between the time the early disclosure is provided and the time the account is opened. We are concerned borrowers will be confused if they receive a disclosure that is not in the same format as the early HELOC disclosure in that this may lead them to mistakenly believe that certain terms have changed.

We believe it would be less burdensome for the lender and less confusing for the borrower if he or she is merely told that these terms have not changed. In these situations, credit unions will be more than happy to provide a copy of the early HELOC disclosure if the borrower requests it or if it appears that this will help the borrower at the time the account is opened. Providing a copy of the same information that was provided earlier in the same format will help reinforce that the terms and conditions have not changed. However, we do agree that an account-opening disclosure, or similar information, should be

provided if the terms and conditions have changed after the early HELOC disclosure has been provided.

As for the content of the account-opening disclosures, we note that information on fees is located in two separate locations, one under the heading of "Fees" on the first page and the other on the second page under the heading "More Information about Fees." We believe all of this information about fees will be easier for consumers to understand if it is combined in one location under one heading.

We also have a specific concern with one of the account-opening disclosure samples that was provided with the proposal, labeled "G-15(B)." On the first page, there is language indicating that the full amount of the balance will not be paid by the end of the repayment period if only minimum payments are made; in which case, a balloon payment will be due at that time. However, there is language that follows to indicate that each payment during the ten-year repayment period must be equal to the interest plus one percent of the balance. If one percent of the balance is paid each month, then the entire amount will actually be paid before the end of the ten years and there will be no balloon payment. The Board should either revise the balloon payment language or the amount of the payments due during the repayment period in order to eliminate this inconsistency.

Calculation of the Finance Charge

For HELOCs, the Board has decided to exclude the changes to the finance charge calculation that are included in the Regulation Z closed-end mortgage loan proposal also issued recently. Under the closed-end mortgage loan proposal, the disclosed finance charges and the APR calculation will now encompass most fees and costs paid by borrowers in connection with the loan transaction. This will include charges payable directly or indirectly by the borrower that are imposed as a condition of the extension of credit. This will also include charges by third parties if the lender requires the use of a third-party as part of the loan process, even if the borrower chooses the service provider.

In our comment letter in response to the Regulation Z closed-end mortgage loan proposal, we express concerns with this change to the finance charge calculation. Our primary concern focuses on the reaction of those consumers who apply for loans after this rule becomes effective. The APRs disclosed to these consumers will be noticeably higher than for those who applied for identical loans prior to when the rule becomes effective, solely because of the change in the calculation of the APR. Those consumers with higher APRs may be upset with the lender if they mistakenly perceive that the increase is due to

higher rates and fees, as opposed to a change in the calculation that is mandated under new regulatory requirements. For these reasons, we strongly support the Board's decision to not adopt these changes in the HELOC proposal as well as the elimination of the requirement to disclose the "effective" APR on the periodic statement (which is the APR calculation that incorporates various finance charges, in addition to the underlying interest rate).

However, we believe the treatment of finance charges should be consistent as between closed-end mortgage loans and HELOCs. Our very strong preference would be for the Board to adopt the approach outlined in the HELOC proposal for both proposals. Credit unions will face staggering costs and burdens as they struggle to comply with both the HELOC and closed-end mortgage loan rules, in addition to all the other new regulatory requirements that have been issued in recent years. These compliance burdens will be somewhat reduced if the Board adopts a similar approach with regard to the finance charge and APR disclosures for both the HELOC and closed-end mortgage loans rules.

Timing Requirements

The proposal would increase the notification period for change-in-terms from 15 to 45 days. The Board requested comment as to whether 45 days is an appropriate period or whether it should be another time period, such as 30 days.

We support the proposed change to increase this time period to 45 days, similar to what would be required for other types of open-end credit under the Regulation Z rules issued earlier this year. This will benefit consumers and the burdens on credit unions will not be very significant, especially since the range of terms of a HELOC that can be changed is narrower as compared to other types of open-end credit, such as credit card accounts.

In addition, the proposal would permit a creditor to terminate a HELOC plan for payment related reasons only if the consumer fails to make the minimum payment within 30 days of the due date. The Board is requesting comment as to whether a delinquency threshold of 30 days is appropriate. (This is in contrast to the current rule under Regulation Z that permits a creditor to terminate a HELOC for payment related reasons if the consumer "fails to meet the repayment terms of the agreement for any outstanding balance.")

We support the proposed delinquency threshold of 30 days. We believe it strikes the appropriate balance between the needs of creditors to protect against risk and the consumers from unwarranted constraints on their access to credit.

Disclosure of the Loan Originator's Unique Identifier

The proposal would require disclosure of the loan originator's unique identifier, which the originator will be required to obtain under the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act. This would be required for both the early HELOC and account-opening disclosures.

There are a number of credit unions and other lenders that use an automated system for loan applications, such as through the lender's website. In these situations, an application is processed by the system but is then assigned to an employee who would be considered the originator. However, the assignment to the employee may not occur until after the early HELOC disclosures are required to be delivered to the borrower.

For this reason, the loan originator's unique identifier should not be required for the early HELOC disclosure that is provided three days after the loan application is submitted since the application may not have yet been assigned to an employee who will be acting as the originator. However, we acknowledge that the identifier can be provided on the final disclosure that is provided at the time the HELOC account is opened if that is required when these rules are finalized.

Disclosure of the Historical Changes to the Interest Rate Index

Under the proposal, both the early HELOC disclosures and the account-opening disclosures would include the highest and lowest values over the past fifteen years of the index that will be used to determine the rate of the HELOC. We believe this information should be deleted from these disclosures as it will not be helpful or beneficial for consumers and they may actually be more confused by this additional information.

In our view, it is the current value of the index that is most relevant for consumers. This value is based on current economic conditions and it is simply not relevant what the value of the index was over the past fifteen years as that information would be based on different economic conditions and interest rate scenarios, which in no way can be interpreted to forecast the value of this index in the future. The rates reflected by the past values of the index are not available to current borrowers, but we are concerned borrowers may believe otherwise if this information is provided.

Not only will this information not be relevant, and likely confusing, but also this disclosure requirement will impose substantial burdens on lenders as this information will need to be updated on a periodic basis. It is also unclear how often lenders will be required to update the information. If this disclosure

requirement is not eliminated, we urge the Board to clarify that this will not have to be updated more frequently than on an annual basis. To update this information more frequently will impose onerous administrative burdens and costs.

Although we oppose this disclosure requirement, we understand the intent of this information, which is to inform consumers that the APR for variable rate HELOCs changes over time due to changes in the underlying index. If the Board continues to believe such a disclosure is necessary, the better approach would be to include a simple statement in the disclosure that interest rates change over time, which will cause the APR for the HELOC to change as well.

Board's Website for Additional Information on HELOCs

For both the early HELOC and account-opening disclosures, the Board has provided sample language directing consumers to the Board's website where they may receive more information on HELOCs. In the proposal, the Board has requested comment as to what should be included.

A wealth of information currently exists with regard to HELOCs and other financial products and services. Instead of recreating this information, the Board's website could provide links to existing information as to how a HELOC operates, how to choose a HELOC, and the circumstances in which it should be used as a financing tool.

Another feature the Board may want to consider for its website would be a calculator that consumers may use to determine what their payments would be based on various rates, margins, and indices. In addition, although we urge the Board to delete the information in the disclosures with regard to the historical changes in the applicable index rate over the past fifteen years, another option may be to include similar information on the Board's website on the general trends in interest rates for those who may find the information useful.

More importantly, the website should provide information on all types of creditors that provide these types of financial services, including credit unions. As not-for-profit financial institutions, credit unions often provide financial products, including HELOCs, at the lowest costs and rates that are generally available. They also provide a high level of service to ensure their members are informed on all the options available to them with regard to financial services. Specifically, the Board should include information comparing rates offered by credit unions with those offered by other types of financial institutions.

Limitations on HELOC Terms

The proposal includes a number of significant modifications to the rules that outline the specific changes that may be made to HELOC accounts. We understand the Board may consider including a standard for changes that would be considered "insignificant," which would allow certain changes to be made by the lender if they result in substantially similar payments, rates, fees and overall loan costs. The Board has requested comment as to whether it should pursue such an approach.

We do not believe the Board should adopt this approach, unless it provides a specific list of factors that may be changed, along with a specific numerical tolerance for each factor. However, this would not be optimal as this list could be quite cumbersome, and we do not believe the Board would be able to anticipate and define all the circumstances that should be covered under this type of standard.

Furthermore, we believe a definition as to what change would be "significant" or "insignificant" that would lead to "substantially similar" payments, rates, and fees would in many situations depend on the line of credit. For example, a slight change in the payment on a $100,000 advance on a HELOC could, in dollar terms, have a greater effect than a significant change in connection with a $10,000 advance.

HELOC-Specific Periodic Statements

In the Regulation Z rules issued earlier this year, the Board provided creditors offering HELOCs with the option to comply with the periodic statement requirements for open-end (not home-secured) credit and indicated it would revisit the issue in its HELOC proposal. As noted in the preamble to the proposed rule, the Board allowed the option to comply with either set of rules based, in part, on the Board's understanding that some creditors use a single processing system to generate periodic statements for all open-end products, including HELOCs. The proposal will remove this flexibility and require specific rules applicable to periodic statements of HELOC accounts. The Board has requested comment as to whether creditors that currently use a single processing system to generate periodic statements for all of their open-end products would be able to continue to do so under the proposal.

We believe the proposed change would require creditors, at a minimum, to upgrade the existing systems used for processing HELOCs, and require some to replace or supplement their single processing systems. In addition, we believe many credit unions that currently process HELOC accounts internally would be required to seek outside expertise—similar to their processing of

credit card accounts—in order to comply with multiple sets of rules for periodic statements.

Thus, we encourage the Board to thoroughly consider the burdens on creditors the change may impose, especially on smaller credit unions. As discussed in more detail below, we ask that the Board allow sufficient time for credit unions to prepare for these changes between the date it adopts the final rule and the date on which compliance is mandatory.

Grouping Together Transactions and Fees on Periodic Statements

The proposal will require all fees assessed on a HELOC account during the billing cycle to be grouped together under a single heading and will prohibit fees from being interspersed with transactions. As noted in the preamble to the proposal, the Board has included this requirement based on the results of consumer testing on credit card disclosures which indicated that grouping fees together on periodic statements for unsecured credit cards helped consumers find fees more easily. The Board is seeking comment as to whether such grouping will make it easier for consumers to find fees on HELOC accounts and how any benefit to consumers would compare to the burdens on creditors.

We support the proposed requirement that all fees assessed during the billing cycle for HELOC accounts be grouped together. Our support is based partly on our understanding that there are typically much fewer transactions associated with HELOC accounts than with other types of open-end lending, such as credit cards. From the consumers' perspective, we believe grouping the fees together and not allowing them to be interspersed with transactions will make them easier to locate on the periodic statement. This will also increase a consumer's confidence that he or she has not overlooked any fees when reviewing the periodic statement.

We believe the burden imposed by this requirement will generally be outweighed by the benefit to the consumer. In addition, since credit unions tend to be consumer-centric and not in the practice of assessing excessive fees, the burden on many will be even less. However, all creditors are different and some may encounter greater difficulty in complying with the grouping requirement than others. We encourage the Board to be mindful of such differences as it proceeds in the rulemaking process, such as by providing credit unions and others with sufficient time to comply with these new requirements, consistent with our suggestions below with regard to the implementation of these new rules.

Disclosure of Late-Payment Penalties on Periodic Statements

The proposed rule would not require creditors of HELOC accounts to provide full disclosure of late-payment fees on periodic statements, or require them to comply with the provision on same-day crediting of payments made at a financial institution's branches or offices, as set forth in the Credit Card Accountability, Responsibility and Disclosure Act of 2009. Creditors offering HELOCs generally are restricted by state law and/or the terms of the account agreement from imposing late-payment fees until a payment is late by a certain number of days, typically 10–15. The Board solicits comment as to whether these requirements should apply to creditors offering HELOCs.

We support the Board's decision that creditors offering HELOCs should not have to comply with the provision on same-day crediting of payments. As noted, even if crediting of payments received at branches or offices is delayed for up to five days, such delay would not likely result in late-payment fees since HELOCs typically have a 10–15 day late-payment threshold. Although many credit unions currently credit payments the same day regardless of where the payments are received, we urge the Board to consider the potential challenges presented to all creditors—many of which may not currently credit same-day.

Implementation Period

Because this proposal incorporates such extensive and far reaching revisions to the Regulation Z rules for HELOCs, we believe credit unions and others should be given a significant amount of time to prepare for these changes. For this reason, we believe that mandatory compliance should not be required until at least eighteen months after these changes are issued in final form. This time will be necessary in order to allow credit unions and others sufficient time to revise the required disclosures, provide appropriate staff training, and implement the necessary data processing changes.

Although eighteen months is a significant period of time, we believe it is warranted for this proposal, especially since credit unions and others will also need sufficient time to comply with the very extensive changes to the Regulation Z mortgage loan rules that we anticipate will be issued at approximately the same time as the final version of these rules for HELOCs. Over the years, the Board has issued numerous revisions to its consumer protection rules and has often delayed mandatory compliance for one year, or more, in order to provide financial institutions sufficient time to implement the necessary changes.

This proposal incorporates changes that are more comprehensive than many of the proposals that the Board has issued previously, which warrants delaying

the mandatory compliance date for a longer time period, at least eighteen months. The Board has invested a significant amount of time in developing these extensive revisions to the Regulation Z rules for HELOCs to ensure that they serve the needs of consumers. We now request that the Board provide credit unions and others with the amount of time they will need to ensure successful implementation of these changes.

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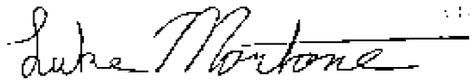
Thank you for the opportunity to express our views on the proposed changes to the HELOC disclosure rules under Regulation Z. If you have any questions about our letter, please do not hesitate to give Senior Vice President and Deputy General Counsel Mary Dunn or the undersigned a call at (202) 508-6732.

Sincerely,

Counsel



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