Georgia Credit Union
Affiliates
6705 Sugarloaf Parkway, Suite 200
Duluth, GA 30097
(770) 476-9625 • (800) 768-4282 • (770) 497-9534 (Fax)
America's Credit Unions

December 23, 2010

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

Re: Docket No. R-1390; Regulation Z - Truth in Lending

Dear Ms. Johnson:

The Georgia Credit Union League (GCUL) appreciates the opportunity to comment on the proposed rule issued by the Board of Governors (the Board) to amend Regulation Z as part of a comprehensive review of the rules for home-secured credit under the Truth in Lending Act (TILA). As a matter of background, GCUL is the state trade association and one member of the network of state leagues that make up the Credit Union National Association (CUNA). GCUL serves 160 credit unions that have nearly 1.8 million members. This letter reflects the views of our Regulatory Response Committee, which has been appointed by the GCUL Board to provide input into proposed regulations such as this.

GCUL supports a number of provisions in this comprehensive proposal but in particular does not support the proposed credit protection product disclosures because they will be misleading to consumers and it seems to come from some misguided assumptions about credit insurance.

CREDIT PROTECTION PRODUCTS

Before addressing the specific proposals regarding credit protection product disclosures, GCUL would like to share our general views about the proposed disclosures. Credit unions support fair and accurate disclosures that inform consumers about the terms of credit protection products they offer to their members consistently with their mission to promote thrift. However, in our discussions with credit unions, we believe that the Board's proposed disclosures vary considerably from TILA's goal of providing "meaningful disclosure of credit terms." GCUL and Georgia credit unions are concerned that the proposed rule and disclosures relating to credit protection products will not further educate consumers about the product but might have the effect of discouraging consumers from purchasing products that they may find useful.

GCUL believes that the proposal should not be adopted by the Board in its current form. Rather, the Board should reconsider the need for additional disclosures. If, after additional review and consultation with state insurance authorities the Board concludes that additional disclosures are appropriate, it should modify the proposed language to eliminate the overly negative tone of the proposed model forms.

We do not believe that the disclosures the Board is proposing provide meaningful disclosure of credit. It would seem that the proposed language has nothing to do with terms of credit. Rather, the negative tone of the language of this portion of the proposal will serve simply to deter consumers from considering the purchase of credit protection products that many credit union members have relied upon to prevent financial disaster resulting from the disability or the death of a loved one. In many instances, the proposed language fails to fully inform consumers about the features of credit protection products.

As a result, the proposal, if adopted, will mean that consumers who may be in need of the product will decline coverage. This would be an unfortunate result due to the fact that credit protection coverage is available in many instances to those who would not otherwise have access to such protection because insurance companies typically do not provide individual coverage in relatively small amounts. Moreover, coverage is also available to consumers regardless of age, sex, weight, status as a smoker, occupation or involvement in high risk activities, as well as to others who may not otherwise qualify for coverage. GCUL believes that credit protection in such forms as credit life, disability, accident, health, loss-of-income insurance and debt cancellation and debt suspension products provide meaningful benefits to credit union members.

With regard to specific provisions of concern relating to credit protection products, below are additional comments.

PROPOSED § 226.4(D)(1)(I)(B):
The Board's proposal requires creditors to provide a statement that the consumer should stop to review the disclosure, together with a statement that the consumer does not have to buy the product to get or keep the loan. GCUL believes that the use of this language is not appropriate because it represents a negative warning rather than a meaningful disclosure. The Board presents no evidence that suggests the need to single out credit protection products for a disclosure that employs such extreme warning language. We recommend that the Board reassess the need for such language and use less negative and possibly inflammatory language that informs consumers that credit protection being offered is optional and does not have to be purchased in order to obtain the loan.

PROPOSED § 226.4(D)(1)(I)(D)(1):
The Board's proposal would require creditors to provide the statement that, if the consumer already has enough insurance or savings to pay off or make payments on the debt if a covered event occurs, the consumer may not need the product. We think that this proposed disclosure is an over-simplification that will mislead consumers and discourage thrift in a manner that may ultimately harm consumers. Credit protection benefits are provided upon occurrence of the protected event whether or not the consumer maintains other insurance coverage. Even if the consumer has insurance, credit protection provides additional coverage that ensures that consumers will not deplete other insurance coverage they have to meet other needs.

PROPOSED § 226.4(D)(1)(I)(D)(2):
The Board's proposal requires creditors to provide the statement that other types of insurance can give the consumer similar benefits and are often less expensive. The Board's model language is as follows:

Other types of insurance can give you similar benefits and are often less expensive. GCUL believes that this disclosure is potentially misleading to consumers. First, we are not aware of any other products available that have costs and protection benefits tied directly to the amount of the outstanding loan. Unlike “other types of insurance,” the benefits provided by credit protection products will pay all or part of the outstanding loan balance directly, and the cost of protection declines as the outstanding loan balance is reduced. And from our discussions with industry insurance experts, “other types of insurance” are typically more expensive if purchased in the same amount and structured in a manner so as to decline over time. Finally, other types of insurance are typically underwritten, and the premium will depend upon the applicant’s circumstances like age, etc. As a result, it does not seem appropriate for the Board to require the above disclosure when other types of insurance are not directly comparable to credit protection products. Accordingly, GCUL requests that the Board not adopt the proposed disclosure.

PROPOSED § 226.4(D)(1)(I)(D)(3):
The Board also proposes that creditors disclose the maximum premium or charge per period, together with a statement that the cost depends on the consumer’s balance or interest rate, as applicable. We believe that the proposed language is not accurate because it suggests that consumers will pay the stated amount each month. This disclosure will mislead consumers because the cost of the product will decline as the consumer’s loan balance decreases. Accordingly, the statement should be modified to reflect the first month’s cost of the product based upon the original amount of the loan, and that the cost will decrease as the balance of the loan declines.

PROPOSED § 226.4(D)(1)(I)(D)(5) & (6):
The Board’s proposal requires creditors to make the following disclosure as indicated in the model form:

> You may not receive any benefits even if you buy this product. You meet the age [employment] eligibility requirements, but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the [period] premium.

It is our belief that this disclosure is also misleading because it suggests that credit protection products are of little value to consumers. All insurance policies will not pay benefits unless an unfortunate event occurs, such as the death of the policyholder. We believe that the appropriate way to address the Board’s concerns is to require a disclosure that indicates any applicable eligibility requirements, exceptions, limitations and exclusions.

COMMENTS ON OTHER PROVISIONS

INTEREST RATES FOR VARIABLE RATE HELOCS
The Board has requested comment on whether the commentary for credit cards offerings should also apply to HELOCs.

GCUL opposes applying the Commentary to HELOCs. In general, rates on HELOCs change only once each calendar quarter, which is far less frequent than rate changes typically applicable to credit cards. In addition, changes in HELOC rates are typically capped at not more than 0.5%. Applying the Commentary to HELOCs is also complicated by the fact that HELOC rates are reflected in the consumer's mortgage note accompanying the HELOC. Unlike credit card agreements, which can be amended by the card issuer by sending notice of a change in terms to cardholders, mortgage notes can only be amended by obtaining new notes from consumers that incorporate the changes to the Commentary. The process of obtaining new notes from members would impose a significant burden on financial institutions and the issuance of a new note or a modification to an existing note may jeopardize the financial institution's lien position in relation to other secured creditors.

ARM LOAN INDEX

TILA does not prohibit using an index within a creditor's control for purposes of closed-end ARMs. As the Board notes, use of an index within a creditor's control for closed-end mortgages, such as a creditor's own cost of funds, has not been common in recent years. The Board asks whether for closed-end ARM mortgage loans lenders should be required to use an index that is outside their control and publicly available. From discussion with credit unions, it is our understanding that credit unions do not typically use indexes within the institution's control in connection with closed-end ARMs. In view of the fact that the use of an index within the creditor's control is infrequent, we believe that this is not an issue that the Board needs to address at this time.

ARM DISCLOSURE REQUIREMENTS

The Board proposes to not require ARM program disclosures in § 226.19(b) for reverse mortgages. GCUL believes that such an exemption is appropriate in view of the fact that reverse mortgages are already subject to the disclosure requirements set forth in § 226.33(a) of Regulation Z.

SUBSEQUENT DISCLOSURE REQUIREMENTS FOR REFINANCINGS

The Board is proposing a new standard for determining when new TILA disclosures will be required for refinancings of closed-end mortgage loans. New disclosures will be required when parties to an existing closed-end mortgage loan agree to modify key terms, such as the interest rate, the loan amount, the monthly payment, the loan term and other features. Exceptions would apply in the event of modifications occurring in connection with court proceedings, the consumer's default or delinquency (unless the loan amount or interest rate is increased or fee imposed) or modifications that decrease the interest rate (with no additional modifications other than a decrease in payment amount or extension of the loan term).

GCUL believes that new TILA disclosures should not be required in connection with an advance of additional funds. Requiring a full set of TILA disclosures under such circumstances will have the unintended consequence of diverting the consumer's attention away from the important changes that are part of refinancing. The key changes will undoubtedly be lost in the sea of other disclosures that are merely repetitive of information previously provided to the consumer. There may be additional waiting periods that apply, further delaying a transaction which the consumer is anticipating.

DISCLOSURES TRIGGERED FROM ADDITIONAL FEES

The Board proposes that when the creditor and consumer modify a term or add a condition that does not otherwise trigger new TILA disclosures, such a modification is not a new transaction and new TILA disclosures are not required. However, where a fee is imposed on the consumer in connection with the modification, a new transaction requiring new disclosures occurs, regardless of whether the fee is reflected in any agreement between the parties.

We are concerned that treating a modification as a new transaction simply because a fee is imposed will discourage creditors from making minor modifications to credit arrangements for fear that the fee will trigger the requirement of providing new TILA disclosures. As a result, it is likely to encourage the parties to take the opportunity to modify other terms as well, thereby increasing the complexity of the transaction and perhaps delaying the receipt of benefits by consumers. Because of these concerns, GCUL believes that the Board should not require new TILA disclosures simply because a fee is imposed in connection with a modification of loan arrangements.

STREAMLINED DISCLOSURES

The Board proposes that modifications for borrowers in default or delinquency would not require new TILA disclosures unless the loan amount or interest rate is increased or if a fee is imposed. The Board asks whether it should instead require some form of streamlined disclosures that highlight changed terms in order to assist borrowers in understanding the impact of the modifications.

As we expressed above, GCUL believes that new TILA disclosures should not be required simply because a fee is imposed in connection with a modification of loan arrangements. But if the Board does not adopt this position, it should establish a *de minimis* fee threshold such that the imposition of a fee below the threshold would not trigger the requirement for the creditor to provide full TILA disclosures. It would seem that such an approach would encourage loan modifications at an earlier date and would be of benefit to consumers.

THE SAFE ACT

The Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act provides that those who modify existing loans are not "mortgage loan originators" and therefore are not required to register under the SAFE Act. However, under the Board's approach, most loan modifications would trigger the requirement for new TILA disclosures. We would request that the Board and the other agencies charged with administering the SAFE Act agree that the delivery of new TILA disclosures will not affect the exception in the SAFE Act for individuals who engage in loan modifications or allow existing loans to be assumed.

TOLERANCES

The Board proposes to model the tolerances for the loan amount, the total settlement charges, the prepayment penalty, and the payment summary on the tolerances provided in 1995 for the disclosure of the finance charges. The loan amount would be considered accurate if the disclosed loan amount is understated by no more than 0.5% percent of the face amount of the note or $100, whichever is greater, or is greater than the amount required to be disclosed. In a refinancing with no new advance, the loan amount would be considered accurate if the disclosed loan amount is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. The total settlement charges, the prepayment penalty, and the payment summary would be considered accurate if each of the disclosed amounts is understated by no more than $100; or is greater than the amount required to be disclosed. The Board asks whether the tolerance should be higher or lower. It would seem to us that the amount of the tolerance should be raised to at least $250 and perhaps as much as $500. Credit unions find it increasingly difficult to estimate costs associated with certain settlement charges. While it may be possible for an institution to take a conservative approach and use amounts that are at the far end of the range of anticipated costs, that approach does a disservice to consumers, who are entitled to a fair estimate of what their costs will be. In addition, the tolerances should be uniform for all transactions, including foreclosure actions. Further, we would recommend the tolerance amount be indexed to increases in the general price index in order to keep current with price changes.

MATERIAL DISCLOSURES

Some of the proposed new "material disclosures" proposed by the Board for closed-end mortgages do not apply to reverse mortgages and would not be required. For example, for reverse mortgages, the loan amount, loan term, loan features and payment summary would not be material disclosures because the disclosures do not apply to, and would not be required for, reverse mortgages. The Board requests comment on whether any of these, or other, disclosures should be material disclosures for reverse mortgages.

At this time, few credit unions offer reverse mortgages. However, we anticipate that the product may be more widely requested as the population continues to mature. Accordingly, GCUL supports the Board's approach to defining those items that should not be considered "material disclosures" in connection with reverse mortgages.

We also urge the Board to consider removing the differences between open-end and closed-end credit within respect to early disclosures proposed under Section 226.33 because a credit union may not know whether a consumer wishes to open an open-end or closed-end reverse mortgage. In addition, many reverse mortgages are hybrid closed/open-end products and a disclosure specifically tailored to reverse mortgages may reduce consumer confusion resulting from the differences between a hybrid product and traditional open- or closed-end loans.

RESCISSION RIGHTS

Closed-End and HELOC Provisions

The Board proposes that Regulation Z rescission provisions be consistent for closed-end mortgages and HELOCs with regard to whom the borrowers notify when exercising their right to rescind.

We agree that consistency would be desirable in this area because it would assist credit unions in achieving compliance. GCUL also supports providing institutions with the flexibility to provide such notices either in the final TILA disclosures that are provided three business days before loan closing or any time before loan closing.

Timing
The Board proposes to require a creditor to provide the calendar date on which it reasonably and in good faith expects the three-business day period for rescission to expire. It is often difficult to predict precisely when the loan transaction will close, thereby calling into question the accuracy of the date provided to the consumer. If the closing date were changed, a new disclosure would be required, thereby resulting in a delay in disbursement of the loan proceeds. GCUL recommends that creditors not be required to provide a specific date on which the rescission right terminates. An alternative solution would be for the Board to permit creditors to provide the date at closing, which would enable creditors to specify a precise date by which the consumer must rescind the transaction.

Language
The Board proposes model language for informing consumers that their rescission rights may be extended beyond the three-day period, as well as how and to whom to contact if the consumer chooses to exercise these extended rights. The Board indicates that consumers may send rescission notices to servicers that may not own the loan. Permitting consumers to send rescission notices to servicers has the potential to result in considerable confusion for consumers, lenders and servicers. Servicers generally are not equipped to address operational issues that arise in connection with rescission notices. There will undoubtedly be misdirected and lost notices. Moreover, if servicers are required to process such notices, they will find it necessary to charge higher fees in view of the additional risk they assume. Because of these concerns, GCUL recommends that the Board not require that consumers be permitted to send rescission notices to loan servicers.

Delivery
This aspect of the proposal should not result in compliance problems or operational difficulties for credit unions – so we do not oppose it.

Termination of Rescission Rights
We support the clarification and think that these events are reasonable and appropriate.

Additional Security Interests
It is our understanding that credit unions rarely accept additional security interests in connection with existing loans. Accordingly, we see little need for a separate model rescission form to address this rare circumstance.

Acknowledgement of Rescission
The Board proposes that if a creditor receives a consumer's notice of rescission, the creditor is required to send a written acknowledgement of the consumer's request within 20 days after receipt of the notice and must indicate whether the creditor will cancel the loan. The creditor's statement must also give a reasonable date for the consumer to tender the funds or property he or she received. The Board indicates that it regards 60 days as reasonable.

A more reasonable timeframe in which creditors should respond is 30 days. This will provide sufficient time to identify the transaction, research the facts, review the file, make a decision, obtain appropriate signoffs and provide a timely response to the consumer. On the other hand, providing consumers with 60 days in which to tender the funds or property seems quite lengthy.

Because the consumer knows that he or she is rescinding the transaction and should have the funds or property available to provide to the creditor, we believe that a consumer should be able to respond also within a 30-day period. Accordingly, we encourage the Board to establish a 30-day period for both creditors and consumers.

FEES

The Board proposes that creditors may not charge fees until the consumer receives early disclosures. This would prohibit charging fees even if they are later refundable. Creditors would not be permitted to take a consumer's post-dated check or place a hold on a debit or credit card account. Creditors would be permitted to gather card information from the consumer so long as the creditor does not initiate a charge to the account. We do not object to the above proposal regarding fees.

REFUND OF FEES

The Board proposes to require mortgage lenders to refund fees paid by a consumer, other than the credit report fee, if the consumer determines not to proceed with the transaction and requests the refund within three business days after receiving the early disclosures.

The right to a refund should not include such fees as appraisal fees and other amounts that constitute disbursements to third parties that had been made prior to receipt of the consumer's notice. These fees are similar in nature to credit report fees. There is little reason why a creditor should be required to absorb out-of-pocket expenses incurred for the consumer's benefit. If such fees are required to be refunded, creditors will either delay the expenditure until the right to a refund has expired, or will require the consumer to make the payment directly to the third party who is not subject to the consumer's refund right. Such a result will only serve to delay processing of the transaction. In addition, fees paid in order to obtain a locked-in rate of interest should not be refundable because it would be unfair to require a creditor to obligate itself to a specified rate but leave the consumer free to walk away from the transaction and receive a refund.

WAIVER OF WAITING PERIOD

The Board's proposal provides guidance and examples as to what constitutes "bona fide" personal financial emergency circumstances under which consumers may waive the waiting period between the time creditors provide disclosures and the time of transaction closing. GCUL supports the ability of consumers to waive the three-day waiting period under the circumstances set forth in the Board's proposal.

ANNUAL PERCENTAGE RATE

The Board's proposal replaces the Annual Percentage Rate (APR) as the rate that is compared to the average prime offer rate (APOR) for purposes of determining whether the loan is a "higher-priced" mortgage loan. Under the proposal, creditors would calculate a different, internal rate that would then be compared to the APOR for purposes of making this determination. The Board asks whether this approach should be optional, even though this would result in inconsistent results among lenders. It would seem that the Board's proposal will be extremely burdensome and difficult to implement. First, loan origination systems would be required to calculate two different APRs. Staff would likely find it difficult to process transactions and ensure that two APRs are kept separate for their respective purposes. We believe that a better approach would be to raise the threshold so it is higher than 1.5% or 3.5% for second liens to account for the overall higher APRs that would result if the Board's prior proposal were adopted. In any event, the proposal for using a different, internal rate should not be optional because it will likely result in confusion among consumers.

HELOC ADVERTISING

The Board proposes to prohibit certain advertising practices for HELOCs. The proposal mirrors the limitations established on closed-end mortgage advertisements.

GCUL generally supports the restrictions proposed by the Board. GCUL believes that creditors that send such letters should be prohibited from mentioning the current lender's name under all circumstances. Indicating the name of the current creditor serves no useful purpose other than to confuse consumers. Prohibiting the use of the name of the current creditor in letter or advertisement will avoid such practices that serve only to confuse consumers.

In closing, GCUL appreciates the opportunity to express our views on this important proposed rulemaking. If you have any questions about our letter, please do not hesitate to call me at 770-476-9625. Thank you for your consideration of our concerns.

Sincerely,

Cindy Connelly

Cynthia A. Connelly
Sr. Vice President Government Influence