NAVY FEDERAL
CREDIT UNION

Office of the President

PO Box 3000 • Merrifield VA • 22119-3000

January 22,2004

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

Re: Dockets R-1167, R-1168, R-1169, R-1170, and R-1171

Dear Ms. Johnson:

Navy Federal Credit Union provides the following comments in response to the Federal Reserve's proposed changes to the "clear and conspicuous" disclosure standards in Regulations B, E, M, Z, and DD, as well as additional proposed amendments to Regulation Z. Navy Federal is the nation's largest natural person credit union with over $20 billion in assets and 2.4 million members.

Proposed "Clear and Conspicuous" Disclosure Standard

Navy Federal appreciates the Federal Reserve Board's (FRB) effort to make disclosures financial institutions provide to their customers clearer and more conspicuous. Navy Federal believes that disclosures made to our members should be clear, readily understandable, and designed to call attention to their significance, and we strive to meet this objective in our daily business practices. The proposed standardization of disclosures, however, causes us some concern and could present substantial compliance challenges.

Navy Federal notes that the FRB modeled the proposed "clear and conspicuous" disclosure standard after the standard contained in the recently finalized privacy regulations. We have some concerns about the use of this model. For example, it is our understanding that the purpose of the required annual distribution of a financial institution's privacy policy is to inform consumers of the institution's privacy and information sharing practices, and to provide consumers an opportunity to opt out of sharing in certain circumstances. Transaction and credit-related disclosures, however, which this proposal addresses, are by their nature more technical, contain information about rates, terms, and conditions, and usually are specific to a particular product. Due to the nature of these types of disclosures, it may be extremely difficult to conform their formats to the format of institutions' privacy policies, which are provided to all members and do not include the many terms and conditions associated with transaction and credit products.

Specifically,the proposal suggests that disclosures are "designed to call attention to the nature and significance" of the disclosed information if they use plain language headings, wide margins, ample line spacing, and boldface or italics for key words. Again, these guidelines may be more appropriate for institutions' privacy policies than for transaction and credit-related disclosures. For example, federal regulations require financial institutions to include a substantial amount of information in their transaction and credit-related disclosures. As a result, it could be difficult for institutions to determine which aspects of these disclosures are "key," which the proposal would require, and therefore should be bolded or italicized. In frustration, many financial institutions may decide to simply highlight every provision in an attempt to be in compliance with the standard, which could substantially lengthen the actual size of institutions' disclosures. Further, lengthening the size of disclosures would arguably not make them any clearer or more conspicuous for consumers.

It is important to note that the federal financial institution regulatory agencies are currently considering possible changes to the content and format of financial institutions' privacy notices to determine whether shorter, simpler notices may be more useful to consumers, as published in the December 30,2003 ***Federal Register.*** We understand that the regulators are considering shortening the mandatory privacy notices financial institutions must distribute because the notices are still difficult for consumers to understand and have not proven to be as useful to consumers as previously expected. With changes to the content and format of the model privacy notices under consideration, we do not believe it would be wise to change the existing "clear and conspicuous" disclosure requirements in Regulations B, E, M, Z, and DD to conform to a standard that may change in the future and apparently has not proven useful enough to consumers to date.

Navy Federal is also concerned about the compliance costs that would be associated with the proposed disclosure standard. The FRB states in its proposal that "these revisions would not increase the paperwork burden of creditors." However, it is quite possible to believe that many financial institutions would have to make substantial changes to many of their disclosures to bring them in line with the proposed eight point font standard, and would also have to review their disclosures for ample line spacing and wide margins. Navy Federal, for example, has conservatively estimated that it would take the equivalent of one full time employee to initially review and redesign some of our disclosures that do not appear to meet the proposed standard.

In addition, financial institutions could also incur substantial ongoing costs associated with lengthier disclosures, such as increased postage rates and increased printing and other reproduction costs. For example, we have conservatively estimated that compliance with this proposal will cost Navy Federal an additional $250,000 annually. Navy Federal strongly believes that this proposal will impose both an initial and ongoing monetary and compliance burden on many creditors, and encourages the FRB to take this burden into consideration.

The proposal states "In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures." The proposal describes the term "other information" as contractual provisions, state disclosures, translations, and promotional materials. Apparently, the intent of the proposal is to require financial institutions to clearly illuminate the federally-required disclosures. We are concerned, however, that this may result in financial institutions highlighting federally-required disclosures to the detriment of state and local requirements and, perhaps more importantly, obscuring contractual agreements that bind consumers to the terms of predatory lenders and other unscrupulous operatives.

It is our understanding that the proposed "clear and conspicuous" standard applies to all disclosures required under Regulations **B,** E, M, Z, and DD. We note, however, that the FRB did not revise its model forms, notices, and clauses currently contained in the appendices of these regulations to comply with the proposed standard. Because of the necessary flexibility, the potential for inconsistent interpretation, and ambiguity in the language of the proposed "clear and conspicuous" standard, we encourage the FRB to reissue the proposal with conforming model forms and language. The addition of conforming model forms and language to the proposal would greatly improve the ability of financial institutions to comment, and improve the FRB's base of information from which to promulgate a final rule. We urge the FRB to revise its model forms, notices, and clauses to comply with the standard and then reissue the proposal for another comment period.

If this proposal is finalized, we strongly encourage the FRB to allow an implementation period of 18 months or longer before compliance becomes mandatory. This would provide financial institutions necessary time to comply with these changes, and would be particularly beneficial to the many institutions that regularly print 12 month supplies of required disclosures.

Additional Proposed Amendments to Regulation Z

The proposal would further amend Regulation Z to clarify that the term "amount" used in the regulation refers to a numerical amount. Usage of the term "amount" to refer to anything other than a numerical amount could cause confusion for consumers. The proposal also would clarify that a consumer may send notice of rescission to someone other than the creditor, if the creditor fails to designate an address to which the consumer should send the notice. Navy Federal supports these clarifications.

Although the issue is not directly addressed in the proposal, we would like to take this opportunity to comment on a consumer's right to rescind certain types of home-secured credit. In many cases, the right of rescission, as currently required, penalizes borrowers. For example, under the current rules credit union members who choose to refinance to a lower interest rate are required to pay interest at a higher rate for at least three extra business days. Further, if the

transaction is a cash-out refinance, borrowers are delayed from tapping into their own equity for three business days. Our members frequently complain about waiting three business days to receive their loan proceeds. We believe that the right of rescission requirement for refinanced loans and equity loans is burdensome and ineffective as a consumer protection regulation. As such, we encourage the FRB to consider supporting any future legislation that would eliminate the right of rescission requirement.

Alternatively, we believe that the right of rescission requirement could also be simplified to make it easier for borrowers to waive their right. At a minimum, we believe that financial institutions should be allowed to permit borrowers to waive the right of rescission for any reason, not just for a bona fide financial emergency, by providing a waiver option and a brief explanation of the consequences of the option to borrowers. In order to facilitate processing, the option to waive the right of rescission could be given to a borrower at an appropriate time between the receipt of the application and loan closing. This would allow each borrower, at his or her informed discretion, to indicate whether or not the right of rescission would apply to the transaction. If future legislation is not introduced to eliminate the right of rescission requirements, we encourage the FRB to consider supporting legislation that would at least allow financial institutions to give consumers the option to waive their right to rescind.

Request for Information on Debt Cancellation/Suspension Programs

As part of this proposal, the FRB also requests information on debt cancellation and debt suspension programs. Navy Federal realizes that debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) are becoming more and more popular, and supports the FRB's general effort to obtain more information on these programs.

Although we do not currently offer DCCs or DSAs to our member-borrowers, we are planning to implement such an offering in the future. We plan to make a DCC and a DSA option available to members initially for credit card loans, and then to expand the option to closed- and open-end consumer loans. Navy Federal tentatively plans to offer these options as a package covering multiple events (e.g., for disability and for loss of life), as opposed to offering separate options for many different events. We anticipate that the option to enroll in these programs will be available to our members both at and after loan consummation.

We believe that the current regulations governing disclosure of DCCs and **DSAs** are sufficient. Section 226.4(d) of Regulation Z allows a financial institution to exclude fees for voluntary DCCs and DSAs from the finance charge, if it informs the consumer of the fee for the initial term of coverage, informs the consumer that enrollment in the DCC or DSA is not required, and obtains the consumer's affirmative consent if he/she chooses to enroll in the program. In addition, we also consider the Office of the Comptroller of the Currency's final rule on DCCs and DSAs to be helpful guidance.

In addition, Navy Federal would not support a rule requiring fees for voluntary debt protection products to be included in the finance charge. First, Regulation Z defines the term "finance charge" as the cost of consumer credit, and includes any charge payable by the consumer and imposed by the creditor as a condition of the extension of credit. It is our belief that fees for voluntary debt protection products would not fall within this definition, and should not be included in the finance charge calculation if financial institutions meet the disclosure requirements of Regulation Z Section 226.4(d). Second, requiring fees for voluntary debt protection products to be included in the finance charge would pose substantial compliance challenges. Besides reprogramming efforts which would be required to recalculate annual percentage rates and finance charge amounts, we would have finance charge calculation concerns for consumers who wish to enroll in debt protection programs after loan consummation. For example, if fees for debt protection products are included in the finance charge and a member adds a debt protection product to his/her loan sometime after closing, we would conceivably have to draft an entirely new note with a new rate and finance charge to accommodate the change. Further, federal credit unions are subject to an interest rate cap on loans, which is currently set at 18%. If the inclusion of a debt protection product fee pushes the loan rate beyond legal limits, members could be inadvertently barred from adding such options to their loan agreements.

Navy Federal appreciates the opportunity to comment on the FRB's proposed changes to the "clear and conspicuous" standard, as well as the additional changes to Regulation Z.

Sincerely.

W.A. Earner
Acting President/CEO

WAE/slb