New York State
Credit Union League, Inc.
and Affiliates

"Serving and supporting credit unions since 1917."

October 11, 2007

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

VIA FAX: (202) 452-3819

RE: Regulation Z
Docket No. R-1286

Dear Ms. Johnson:

On behalf of the New York State Credit Union League (NYSCUL), I would like to take this opportunity to comment on the Federal Reserve's comprehensive review of the open-end lending provisions of Regulation Z. While there are many aspects of the proposal that are consistent with credit union philosophy, the proposal would nonetheless have a pernicious and wide-ranging negative affect on the lending procedures of many of our credit unions and the members they serve. Specifically, the proposal would unnecessarily eliminate the ability of credit unions to offer consumers multiple loan advances under a single open-end lending plan. As a result, members would be denied an expeditious lending option from which they have benefited and credit unions will be confronted with additional costs in complying with these changes.

Currently, staff commentary interpreting §226.2(a)(2) authorizes lenders to offer multi-featured open-end credit plans. Credit unions are authorized to provide and underwrite several different types of loans under a single open-end plan so long as the plan as a whole is an open-end credit plan. Staff interpretation, 2(a)(20)-5, provides that creditors offering open-end lines of credit may "routinely" verify a consumer's credit information and that the reasonableness of expecting repeated transactions depends, in part, on the nature of the institution's relationship with the member.

As a result of this authority, credit unions have been able to provide a unique and important service to their members. For example, a member may go to ABC Credit Union periodically for an automobile loan. This credit union uses remote underwriting because of the efficiency and convenience it provides to members. Under the existing regulatory framework, a member can simply call up the credit union and ask for a voucher in anticipation of getting a new automobile loan and be approved within minutes of that request. In contrast, under this proposal, that same member will have to sign additional loan documents, decreasing the speed with which he or she can be approved for a loan. The result is that many consumers will lose the flexibility of quick lending decisions currently afforded by the credit unions. Nor is this an isolated practice. A poll conducted by NYSCUL in response to this proposal indicated that up

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to 84% of credit unions may use the multifeatured Loanliner lending plan. In addition to the impact on consumer services, the proposal would represent an additional financial burden on credit unions due to the additional staff training that will be required.

To its credit, the Federal Reserve has analyzed this proposal with an emphasis on increasing the usefulness of Regulation Z to consumers. Absent proof that credit union members have complained about existing practices, there is simply no need to reinterpret Regulation Z in a manner which will have a disproportionate impact on a specific industry and its members. The existing legal framework gives the Federal Reserve adequate authority to continue to authorize multi-featured lending plans consistent with the Board's existing staff interpretations.

In putting forward this proposal, the Federal Reserve is suggesting that the existing multi-featured lending plan authorization is inconsistent with the definition of open-end loans codified in 15 USCA 1602(i). However, the existing commentaries are consistent with precedent recognizing that judging whether a plan is open-end or closed ultimately depends not on a sterile application of the statute but on the context in which consumers enter into a relationship with their lenders. For example, in In Re Kennemer, 143 B.R. 275 (N.D. Ala., 1992), the district court overturned the findings of a bankruptcy judge and found that an advance request made under Loanliner constituted an open-end credit plan and that the debtor had received appropriate disclosures. In making this ruling, the court noted that the Loanliner agreement in question included language in which both the creditor and the debtor anticipated that cash advances would be made from time to time. See Id at 280, fn 7. Similarly, in Cincinnati Cent. Credit Union v. Harper, 70 Ohio Misc. 2d 80 (Ohio Mun., 1995), the court rejected an argument that a debtor in bankruptcy who executed several advances under a Loanliner plan should have received close-end disclosures. The debtor in this case argued that the credit union was not entitled to recover a delinquency representing the outstanding balance on a revolving credit loan agreement. The line of credit in question included an outstanding balance on an old automobile and an advance to purchase a new one. Even though at least two separate car purchases were made under the same credit plan, the court concluded that the credit union properly gave open-end credit disclosures because the disclosures clearly stated that the loan would be open-end and included language that the credit union would, upon approval, make one or more advances to the member. See Id at 87.

Furthermore, the Federal Reserve's authority to interpret those aspects of the regulation on which the statute does not speak is unquestioned. As the Supreme Court has said, the Federal Reserve Board plays a pivotal role in setting TILA in motion and its interpretations are entitled to great deference. See Household Credit Services, Inc. v. Pfenning, 124 S.Ct. 1741, 1746 (2004) citing Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 556 (1980), *internal citations omitted.* Given that existing staff interpretations clearly authorize multi-featured lending plans of the type used by many credit unions and that this approach has been analyzed and found proper by the courts, there is simply no reason for the Federal Reserve Board to undercut the lending practices of an entire industry where consumers enter into plans in which they do reasonably anticipate making repeated transactions, the creditor indicates that he may impose a finance charge and additional credit is generally made available to the consumer. Significantly, nothing in the language of the statute prohibits a creditor from periodically reviewing a borrower's lending history before making additional advances. In fact, the statute anticipated precisely this situation by stipulating that: "A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time." See 15 U.S.C.A. 1602(i).

In analyzing this proposal, NYSCUL sought feedback from its members regarding the amount of time required to implement these new changes. Given the magnitude of these amendments, NYSCUL recommends a phase-in period of at least one year. The reality is that while many of the sample disclosures will be helpful in guiding the implementation of these proposals, credit unions will still need time to (1) meet with their vendors and make disclosure requirements consistent with their lending products; and (2) train key staff to understand the impact that these changes may have on their lending practices.

While NYSCUL has concerns with some aspects of this proposal, we would also like to compliment the Federal Reserve Board on the consumer driven approach to derive the recommendations. As an association and a movement, we are committed to maximizing consumer empowerment by, among other things, ensuring that consumers have accurate information about the loan options available to them. The enhanced disclosure requirements, most notably the implementation of a "Schumer box" approach for account opening disclosures, will help members understand the impact that their lending decisions and will, in fact, help credit unions by providing clearer guidance about precisely what information has to be disclosed and in what form.

I would like to thank you for the opportunity to comment on this proposal.

Sincerely,

William J. Mellin
President/CEO