



Credit Union National Association

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April 8, 2008

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

Re: Docket No. R-1305 – Proposed Rule to Amend the Home Mortgage Provisions of Regulation Z

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Federal Reserve Board's (Board's) proposed rule on possible changes to Regulation Z, the Truth in Lending Act (TILA), that will establish new protections for consumers from unfair and deceptive home mortgage lending and advertising practices. These will include a number of additional requirements for certain "higher-priced mortgage loans," which would include those with annual percentage rates (APRs) that exceed the yield on Treasury securities of comparable maturity by at least three percentage points for first-lien loans, or five percentage points for subordinate-lien loans. The proposal will also include additional requirements that will apply to most other mortgage loans, as well as prohibit certain misleading and deceptive advertising practices. CUNA represents approximately 90% of our nation's 8,400 federal and state-chartered credit unions, representing approximately 90 million members.

This comment letter was developed under the auspices of the CUNA Consumer Protection Subcommittee, which held a number of conference calls to review the proposal. Our letter also reflects concerns raised by credit unions and credit union leagues from around the country.



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## Summary of CUNA's Comments

- Although CUNA generally supports the proposed restrictions for “higher-priced mortgage loans,” we are concerned that the proposed threshold will cover significantly more loans than what the Board may have intended. We also believe that the Treasury securities to be used should mirror the requirements under the Home Mortgage Disclosure Act (HMDA).
- CUNA agrees that lenders should consider the borrower’s ability to repay the loan, although we believe lenders should have significant flexibility for making this determination. We also agree that a subprime loan resulting in a debt-to-income ratio of more than 50% should be considered unaffordable.
- CUNA believes credit unions should be permitted to make loans under limited circumstances when third-party documents are not available, as credit unions have proven to be responsible lenders and should be given flexibility to make these determinations.
- Escrow accounts are the most appropriate means in which to ensure that tax and insurance payments are made on a timely basis, and they are essential for subprime loans. These accounts should not be canceled after a short period, such as twelve months as contemplated in the proposal.
- CUNA would support restrictions on prepayment penalties that are more stringent than the restrictions proposed by the Board and would also support prohibiting these penalties for loans that target subprime and first-time borrowers.
- CUNA supports enhanced disclosures for yield spread premiums and believes a broker should not be permitted to keep the yield spread payment without providing a benefit to the borrower.
- CUNA agrees with the provisions in the proposal in which lenders and mortgage brokers will be prohibited from pressuring an appraiser to misrepresent the value of the home. This is consistent with current requirements in which credit unions and other financial institutions are already required to ensure that appraisers are independent and not subject to undue influence, and we support expanding these provisions to mortgage brokers.
- CUNA supports the provisions that address servicing abuses. These include requiring payments to be credited on the date received; providing a specific schedule of servicing fees and charges, upon request of the borrower; prohibiting a late fee or delinquency charge when it is due only to the borrower’s failure to include a similar charge that was imposed on an earlier payment; and requiring servicers to provide an accurate payoff statement within a reasonable time after the request is made.
- CUNA generally supports the proposed advertising restrictions, with the exception of the provision that will prohibit using the name of the borrower’s current lender in a letter or other advertisement if it is not sent by the current lender, unless it discloses with equal prominence the name of the creditor who is submitting the advertisement, along with a clear and conspicuous statement that the creditor is not associated with the current lender. We

believe the current lender should not be mentioned in these letters and there should be no exceptions to this prohibition.

- As an alternative to the proposal that will require lenders to provide a good faith estimate of loan costs within three days after application and before a fee is charged, with the exception of the credit report fee, CUNA believes credit unions should be able to charge additional fees at the time of application, as long as they are refundable up to three days after the consumer has received the disclosures. This is similar to the current requirements for home equity lines of credit.
- CUNA suggests that the required compliance date for this proposal be the same as the required compliance date for the final version of the additional closed-end lending changes that the Board expects to propose later this year.

## **Discussion**

CUNA supports the Board's use of its authority under TILA and the Home Ownership Equity Protection Act (HOEPA) to issue rules that will protect consumers from unfair and deceptive home mortgage lending and advertising practices. We recognize this proposal is issued partially as a result of hearings that are required under HOEPA in which the Board examined a number of home equity lending issues and the adequacy of existing regulatory and legislative provisions in protecting the interests of consumers.

We also recognize that the Board is not acting in a vacuum and that this proposal is intended to address issues associated with the current subprime mortgage lending crises, an issue that is also being addressed by Congress, both in legislation that has been passed by the House of Representatives and a pending bill currently being considered by the Senate Banking Committee. CUNA has been working closely with the House of Representatives and the Senate to develop meaningful legislation that will curtail further subprime mortgage lending problems, without placing unnecessary burdens on credit unions, which have not been the source of these problems. Although CUNA supports meaningful reform, it is unfortunate that the current subprime mortgage lending crisis has been precipitated by the overly complex and inappropriate loans that have been offered by certain banks and mortgage brokers.

This proposal incorporates extensive revisions to the home mortgage loan provisions of Regulation Z. As part of the process of developing our response, CUNA has been actively involved in soliciting feedback from our member credit unions regarding these proposed changes to the rules and the Official Staff Commentary in order to develop comments that are consistent with the Board's dual goals of facilitating consumer understanding while minimizing additional burdens for regulated lenders. We are optimistic these goals can be accomplished, and CUNA appreciates the opportunity to participate in this process.

As part of our review, CUNA formed a working group to coordinate our comments, which included members of CUNA's Consumer Protection Subcommittee, as well as a number of other credit unions and representatives from our credit union leagues. Below are CUNA's comments on the issues raised in this proposal.

## **I. Proposed Restrictions for Higher-priced Mortgage Loans**

### *Determination of "higher-priced" threshold*

Although CUNA generally supports the proposed restrictions for "higher-priced mortgage loans," we are concerned about the proposed threshold for making this determination, which would be loans with APRs that exceed the yield on Treasury securities of comparable maturity by at least three percentage points for first-lien loans, or five percentage points for subordinate-lien loans. Our concern is that this will cover significantly more loans than what the Board may have intended.

In recent months, the rate on the ten-year Treasury security has generally been in the 3.5 – 4.0% range. Under the proposal, the ten-year Treasury security would be the comparable security for the traditional 30-year mortgage loan, in which case a higher-priced mortgage loan during this time period would be any 30-year loan that is above 6.5 – 7.0%. This would cover more than just the subprime and a portion of the market between prime and subprime (commonly referred to as the "alt-A" mortgage market), as intended by the Board. For example, prime jumbo mortgage loan rates generally still exceed 6.5% so nearly all jumbo mortgage loans would exceed the proposed threshold. Although loan rates for certain prime conventional mortgage loans may be somewhat lower, the rates on many of these loans may also exceed the threshold, such as those that may require the borrower to pay significant interest and fees at the time of closing, which would result in a higher APR. Certainly, the threshold would cover a very sizable portion of the alt-A mortgage market for conventional loans and more than what the Board may have intended.

This problem may be even more significant in that the pricing of Treasury securities can be quite volatile, as we have seen in recent months. For example, Treasury securities may increase precipitously based on reactions to political, economic, or other events, which would cause a corresponding decrease in the interest rate on these securities. This may result in even more loans exceeding the higher-priced mortgage loan threshold. Also, these political and economic events may be temporary, and the pricing of Treasury securities may then move quickly in the opposite direction. This means that a loan at a specific rate may or may not be a higher-priced mortgage loan, depending on if the loan is made at a time when the Treasury market is moving significantly in a certain direction.

We believe this problem can be ameliorated by incorporating another threshold, based on recent conventional mortgage rates. This additional threshold has been incorporated in the North Carolina predatory lending law that was enacted several years ago and is included in a pending California predatory lending bill.

Under this approach, a higher-priced mortgage loan for a first-lien loan would be one that exceeds the yield on Treasury securities of comparable maturity by at least three percentage points, as outlined in the Board's proposal, and exceeds by 1.75% the contract interest rate on commitments for fixed-rate first mortgages, as published in the recent Federal Reserve Statistical Release on selected interest rates, commonly referred as the "H-15 release." A higher-priced mortgage loan for subordinate mortgage loans would be one that exceeds the yield on Treasury securities of comparable maturity by at least five percentage points and exceeds by 3.75% the contract interest rate on commitments for fixed-rate first mortgages, as published in the H-15 release. We believe this will help achieve the Board's goal of ensuring that the higher-priced mortgage loan threshold will cover the subprime market and only a portion of the alt-A market, while not affecting prime mortgage loans.

As for Treasury securities that are to be used for purposes of determining if a loan is a higher-priced mortgage loan, the timing requirements under this proposal will be different than what is required under HMDA, for determining whether APR information is to be reported under the HMDA requirements. Under the proposal, the Treasury security yield that would be used would be the yield as of the 15<sup>th</sup> of the month preceding the month in which the application is received. This differs from HMDA, which refers to the month before the rate is locked.

We oppose the use of a different date for making these determinations under this proposal and the HMDA requirements. We believe there are many advantages of using consistent dates, without any significant disadvantages for consumers. The means for making the determinations under the HMDA requirements are already well developed and can be adapted for use under this proposal if these dates were the same, which would be the 15<sup>th</sup> of the month before the rate is locked. Significant and unnecessary programming changes would be needed if these dates were to be different, as currently proposed. The simplicity of using consistent dates should also minimize compliance errors.

We note that these provisions only apply to the consumer's principal home. We would support expanding these provisions to second homes and investment properties, subject to our suggested changes, as outlined above.

### *Borrowers' Ability to Repay*

The proposal will prohibit a lender from engaging in a pattern or practice of making higher-priced mortgage loans without regard to the consumer's

repayment ability at the time the loan is made. This repayment ability includes the consumer's current and reasonably expected income, current and reasonably expected obligations, employment, and assets other than the collateral. Whether a lender has engaged in a prohibited pattern or practice will depend on the totality of the circumstances in the particular situation.

We agree that lenders should consider the borrower's ability to repay the loan and understand that these provisions are targeted to the proliferation of stated income, no documentation loans in recent years in which lenders provided mortgage loans based on statements made by borrowers, without further inquiry as to whether they were affordable. We agree that these types of loans are generally inappropriate. However, for all other types of loans in which there is some level of documentation, we believe lenders should have significant flexibility for determining if the borrower has the ability to repay the loan and are concerned that certain aspects of the proposal will unnecessarily limit this flexibility.

For example, the proposal will require lenders to consider whether the borrower will have sufficient "residual" income, which is the income that may be used to pay for ordinary living expenses after the mortgage loan and other obligations are paid. We do not believe this is necessary if lenders are using other legitimate and commonly used methods for determining the borrower's ability to repay the loan, such as the borrower's debt to income ratio.

The proposal will require lenders to consider the borrower's repayment ability for the first seven years of the loan. This would appear to require lenders to consider possible changes in the borrower's financial situation, which may include possible changes in property taxes, homeowners' association dues, and insurance premiums. We do not believe lenders should be required to speculate as to the extent these expenses may change over time, especially if they are not foreseeable at the time the loan is made, just as lenders are not expected to foresee whether the borrower's income will drop due to a job loss or career change. The repayment ability should be based on current income and expenses, which would also include consideration of the fully-indexed rate for variable loans, based on the current margin and index that would apply at the time the loan is made.

The Board has also requested comment as to whether there should be a rebuttable presumption that a loan is unaffordable if the debt-to-income ratio exceeds 50%. We certainly believe this presumption is generally appropriate for subprime borrowers. This presumption would also be appropriate for prime loans in many situations. However, we envision that there may be situations in which such a limit would not be necessary, such as when the borrower has a very high level of income or significant investments.

### Verification of Income and Assets

The proposal will require lenders to verify the income and assets they rely on with reliable third-party documents, such as the IRS W-2 form, tax returns, payroll receipts, financial institution records, or other documents. We understand that the purpose is to eliminate the problem of lenders providing stated income, no documentation mortgage loans that were provided to borrowers who were ultimately not able to repay these loans.

However, we believe certain loans would be appropriate, even if third-party documents are not provided. For example, self-employed borrowers may not be able to provide tax or payroll information but may have an unblemished credit history. We believe providing a mortgage loan would be appropriate in these situations under certain circumstances, such as if the loan-to-value ratio is less than eighty percent.

We understand that focusing on collateral has also been associated with providing borrowers with inappropriate loans. However, credit unions are by nature very conservative with high lending standards, as demonstrated during the recent subprime mortgage crisis that has affected other lenders, and they should be permitted to make these types of loans if there are other favorable factors, such as a reasonable loan-to-value ratio and an outstanding credit history. We believe this is one example in which the proposal is attempting to target inappropriate lending that unfortunately may have the unintended consequence of limiting loans for certain borrowers who are very well-qualified.

### Requirements for Escrow Accounts

Under the proposal, escrow accounts will be mandatory for first-lien, higher-priced mortgage loans and permit, but not require, lenders to offer borrowers an option to cancel escrow accounts twelve months after consummation of the loan. The Board has requested comment on this requirement and the lender's option to cancel the account, as well as whether the borrower should have the right to cancel the escrow account after twelve months.

We believe that sound underwriting of mortgage loans requires consideration of the borrower's ability to pay the taxes and insurance. An escrow account for these payments is the best approach for ensuring that they are made on a timely basis, and we agree that escrow accounts are essential for subprime loans, especially those in which the loan-to-value ratios are high and the mortgage payments represent a relatively large percentage of income. We also note that both Fannie Mae and Freddie Mac require escrows for the mortgages they purchase that have loan-to-value ratios that exceed 80%.

Without escrow accounts, borrowers with unexpected expenses may decide or be forced to use funds that would otherwise be used to pay their tax and

insurance payments. This is especially true for subprime borrowers who may have lower incomes than prime borrowers. Overall, loans with escrow accounts are likely to perform better than loans without these accounts. Both the lender and the borrower benefit if the loan performs and the borrower can make the payments and remain in the home.

For this reason, we support escrow accounts for subprime loans and also believe that the borrower should not have the right to cancel the account. If the escrow account is appropriate at the time the loan is made, then it is often appropriate keep the escrow account throughout the life of the loan, although there may be exceptions, such as if the loan-to-value ratio decreases significantly from the time the loan is made. It would also be burdensome to require lenders to cancel them after a relatively brief period of time, such as twelve months.

However, escrow accounts should not be mandated for all loans. For prime loans, the decision to place tax and insurance payments in escrow accounts is best determined by consumer and lenders, based on their specific needs.

We also agree with the provision in the proposal that will exclude subordinate lien loans from the escrow requirements. However, we believe this exclusion for subordinate lien loans should be expanded to a certain extent. Many borrowers may own their homes free and clear and may have a need to borrow funds. Although these borrowers have many loan options, they may choose to use their home as collateral in order to take advantage of the associated tax benefits. Although these are not subordinate lien loans since there are no other loans associated with the home, and would therefore be required under the proposal to have escrow accounts if they are higher-priced mortgage loans, they are very similar to subordinate lien loans in that the purpose is generally to use the home equity for other financial purposes, as opposed to a typical first lien loan that is used to purchase the home. In these situations, as with subordinate lien loans, we believe it should not be necessary to require an escrow account.

We also believe it is essential that any disclosure of loan payments clearly indicate whether they include tax and insurance payments. These tax and insurance payments are very significant and borrowers need to understand their significance as they proceed with obtaining a mortgage for their new home. We would support both written and verbal disclosures by the lender to emphasize the borrower's responsibilities with regard to these payments.

### Prepayment Penalties

The Federal Credit Union Act prohibits federal credit unions from imposing prepayment penalties on loans to their members. The practice of imposing prepayment penalties is also uncommon among state-chartered credit unions. We do not believe that the prohibition of prepayment penalties is a barrier to the effective delivery of mortgage loans by federal credit unions.

The purpose of providing subprime loans should be to provide borrowers with blemished credit with an opportunity to obtain a loan, as well as an opportunity to improve their credit so they may then qualify for a prime loan. Prepayment penalties hinder this process to the extent they discourage or prevent borrowers from refinancing to a prime loan when the opportunity arises.

For this reason, CUNA would support restrictions on prepayment penalties, and would support prohibiting these penalties for loans that target subprime borrowers. These penalties are very common for subprime loans and are often not prominently disclosed. Even if borrowers are aware of them at the time the loan is made, they rarely anticipate that they would ever actually have to pay the penalties, which may amount to thousands of dollars.

However, many borrowers with adjustable rate mortgages (ARMs) are currently facing sharply higher payments, as the interest rates on these loans have increased. Many of these borrowers would benefit from refinancing into a fixed rate loan, but many are not able to do so because of these prepayment penalties and, therefore, face much higher loan payments that may escalate further if rates continue to increase.

For this reason, to the extent these penalties would be permitted, we would support limitations as to how long these penalties may remain in effect after the loan is made. The proposal will require that the prepayment penalty for higher-priced mortgage loans must expire at least sixty days prior to the date in which the payment may increase. We agree with this approach and would even support an expiration date that is up to ninety days prior to the date the payment may increase.

The proposal provides an overall limitation in that prepayment penalties for higher-priced mortgage loans must be limited to no more than five years. We would support a shorter time period and believe that prepayment penalties should be limited to two years. Lenders generally claim that prepayment penalties are necessary in order to compensate for the costs and risks associated with loans that are repaid within a short period of time. We believe two years would be a sufficient period of time in which to recoup these costs.

CUNA would also support enhanced disclosure of prepayment penalties for covered loans. Unlike most fees, this penalty is not paid at the time the loan is made and, therefore, borrowers may not be aware of or understand that these are very substantial penalties that would be incurred if the borrower later decides to refinance the loan. Enhanced disclosures would help borrowers understand the consequences and the extent of these prepayment penalties. However, we strongly encourage that any new disclosures be subject to consumer testing before they are approved for use by lenders. This will be the only means to ensure that these new disclosures will be effective.

### Bridge Loans and Home Equity Lines of Credit (HELOCs)

The Board has requested comment as to whether the proposed restrictions for higher-priced mortgage loans should include bridge loans. We do not believe the restrictions should apply to these types of loans. The interest rates on these loans will often trigger the higher-priced mortgage loan thresholds. However, bridge loans are generally repaid within twelve months, and it is simply not necessary to impose these restrictions on loans of such a short duration.

Although the restrictions in the proposal will not cover HELOCs, the Board has requested comment as to how to apply these restrictions to HELOCs so that it would target the subprime market without affecting the prime market. Our suggestion would be to set a threshold based on the prime interest rate that is charged by financial institutions, which is generally three percentage points higher than the Board's federal funds rate. Under this approach, the restrictions in this proposal could apply to HELOCs that are priced at the prime rate plus five percentage points, which should serve to target the subprime market.

Although HELOCs are excluded from this proposal, lenders will not be permitted to structure mortgage loans as open-end transactions in order to evade the requirements of the proposal. The Board has requested comments as to whether this evasion should be assumed for HELOCs in which the borrower draws all or most of the credit line immediately after the account is opened. We do not believe the borrower's behavior should be a factor in determining whether the lender intended to evade the requirements of the proposal as the lender should not be responsible for, or be required to control, how the borrower uses the HELOC funds.

## **II. Proposed Restrictions for All Mortgage Loans**

### Yield Spread Premiums

For yield spread premiums, the proposal will prohibit such fees to the extent they exceed the amount that the broker and consumer had agreed in advance would be the broker's total compensation. This agreement between the borrower and broker must disclose that the consumer will pay the entire compensation, even if all or part is paid directly by the lender to the broker, and it must also disclose that the lender's payment may influence the broker to offer loans less favorable than other loans that the borrower could obtain. This agreement must be entered into before the consumer pays a fee or submits a loan application, whichever comes first.

Credit unions generally do not use brokers in the mortgage lending process to the extent they are used by other types of financial institutions. Within the credit union industry, originator compensation is often straight salary, with occasional commission income, which is either a flat dollar amount per loan or a small

percentage of the origination fee. However, there are instances in which credit unions may be considered a “broker” under the proposed definition outlined in Section 226.36(c). For example, larger credit unions will facilitate funding for smaller credit unions that provide mortgage loans for their members, which would likely be considered a broker relationship, as outlined in the proposed definition.

Although credit unions do not often participate in broker relationships, as defined under the proposed definition, we do agree that disclosures regarding yield spread premiums need to be improved to ensure that consumers clearly understand how brokers and lenders are compensated and how this affects the interest rate and closing costs they pay. The proposed requirement should help achieve this goal.

Unfortunately, in the current market place, yield spread premiums are often not in the consumers’ best interest. Yield spread premiums are certainly appropriate if the borrower receives a benefit for paying a yield spread, such as when the market interest rate is 6% and the borrower agrees to a 6½% rate in exchange for the lender paying some or all of the closing costs. However, the broker should not be permitted to keep the yield spread that should be passed on to the consumer, which is often the case when the broker is working with an uninformed borrower.

### Appraisals

Under the proposal, lenders and mortgage brokers will be prohibited from pressuring an appraiser to misrepresent the value of the home. A lender will also be prohibited from making a loan if it has reason to know the broker had pressured the appraiser, unless the lender determined that the appraisal was accurate or made the loan based on another appraisal.

We agree with this approach and that this should apply to mortgage brokers. However, credit unions and other financial institutions are already required to ensure that appraisers are independent and not subject to undue influence. In 2003, the Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (NCUA) issued a joint statement to this effect, which clarifies the Interagency Appraisal and Evaluation Guidelines that was issued in 1994. Both the joint statement and the guidelines were intended to clarify the appraisal regulations that the federal financial institution regulators issued as required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

In our view, the Board’s proposed changes for appraisals do not appear to impose any significant, additional burdens on credit unions beyond what is covered under the 2003 joint statement or the 1994 interagency guidelines, both of which emphasize the need for appraisals to be independent and not subject to undue influence and interference. Therefore, we believe credit unions should

already be in compliance with the appraisal requirements that are outlined in the current proposal and support the expansion of these requirements to mortgage brokers.

### Servicing Abuses

Under the proposal, loan servicers will be required to credit the borrower's payment as of the date it is received, unless the delay does not result in a finance charge, late charge, or result in negative information being reported to a credit bureau. Servicers will be permitted to specify reasonable repayment requirements in writing, and the Board has requested comment as to whether this could include imposing a "cut-off" time, such as 5 PM, after which the payment would be credited on the next business day.

For credit union mortgage loans, it generally does not matter on which date the payment is received as late charges are generally not imposed unless the payment is received after a certain date. In most situations, mortgage loan payments are due on the first of the month and late charges are not imposed until fifteen days after the due date. The other circumstance in which the payment date is important is when there is a loan payoff, in which case interest accrues daily until the payoff funds are received, although a finance charge or late fee would not be imposed.

In these limited circumstances in which the payment date may trigger a finance charge or late fee, we question whether imposing a cut-off time in certain instances is a reasonable requirement. Credit unions generally do not impose "cut-off" times, other than requiring payment by the close of the business day in order for it to be posted on that day. Therefore, a 5 PM "cut-off" time may be acceptable, although we would oppose any other time that is significantly before the end of the business day. However, credit unions will often post the payment on the day it is received, even if the payment is processed at a later time, if due to a backlog or certain other reasons that are beyond the control of the member. We also do not believe there is a need for a cut-off time with regard to electronic payments. These are generally posted in "real-time" so a consumer making an electronic payment at any time of the day should have their payment posted immediately, and the payment should be considered timely if it is made at any time on or before the due date.

The Board requested comment on the proposed requirement that servicers provide a specific schedule of servicing fees and charges, upon request by the borrower, which must also include the dollar amount and explanation of the fee. We support this requirement, as well as the other provisions in the proposal that address servicing abuses. These include prohibiting a late fee or delinquency charge when it is due only to the borrower's failure to include a similar charge

that was imposed on an earlier payment and requiring servicers to provide an accurate payoff statement within a reasonable time after the request is made.

### **III. Advertising Restrictions**

The proposal outlines seven advertising practices that will be prohibited or restricted for home-secured loans. We generally support these restrictions, as proposed, with the exception of the provision that will prohibit using the name of the borrower's current lender in a letter or other advertisement if it is not sent by that current lender, unless it discloses with equal prominence the name of the creditor who is submitting the advertisement, along with a clear and conspicuous statement that the creditor is not associated with the current lender.

We believe creditors that send these letters should be prohibited from mentioning the current lender's name, and there should be no exceptions to this prohibition. Mentioning the current lender is almost always confusing to the borrower. Credit union members will usually contact the credit union, if it is the current lender, when they receive these letters and are very confused as to reason they received these letters and to whom they should address their concerns. Eliminating the current lender from the letter will help clarify that the sender should be contacted with regard to any questions or concerns. Idaho enacted a law last year that prohibits the mention of the current lender, and we believe the Board should impose a similar prohibition.

The proposal will also implement certain provisions of the 2005 bankruptcy law. For loans secured by the principal home in which the amount may exceed the fair market value of the loan, these provisions will require that any advertisements for these loans must include a statement that the interest on the portion of the loan exceeding the fair market value is not tax deductible for Federal income tax purposes. This statement must also advise the consumer to consult a tax advisor for more information on this issue.

We support these provisions as it will provide useful information for consumers. Not only will this information alert consumers that their tax savings may not be as significant as they had originally contemplated, but it should also assist them in preparing accurate tax returns and help them avoid interest and penalties that may result from the filing of an inaccurate return.

The proposed changes to the advertising rules will require certain information to be in "close proximity" to other information. For electronic advertisements, the Board has requested comment as to whether this should require that it be available without requiring the consumer to use a link. We believe the

information should be available without the need to use a link as it will help ensure that the consumer has received this additional information.

Unless specified, the proposed changes to the advertising rules for closed-end home loans will not apply to radio and television advertisements, and the Board has requested comment as to whether this approach is appropriate. We agree with this approach. Otherwise, radio and television advertisements will be too cumbersome as it will contain more information than consumers can comprehend within the short period of time that they see the television or hear the radio advertisement. We support the Board's general approach, which is to provide some important information and then provide a toll-free telephone number for the consumer to use if he or she needs additional information.

The changes to the advertising rules for variable-rate transactions assume a single index and margin, and the Board has requested comment as to whether different rules may be needed for loans that use multiple indexes and margins. We believe these rules may need to be clarified to address certain situations in which multiple indexes and margins are used. For example, with mortgage loans, a different index and margin may be used, depending on the loan-to-value ratio or other factors, with a common example being the use of a higher margin if the loan-to-value ratio is above 80%. In these situations, we believe all possible indexes and margins should be disclosed in advertisements for these types of loans.

#### **IV. Early Mortgage Disclosures**

Under the proposal, lenders would have to provide a good faith estimate of the loan costs within three days after a consumer applies for a mortgage loan secured by a consumer's principal home and before the consumer pays a fee in connection with the application, with the exception of a reasonable fee for obtaining the consumer's credit report. The Board has requested comment on this approach.

Under the provisions in Regulation Z for home equity lines of credit (12 CFR § 226.5b), creditors are not permitted to impose nonrefundable fees until at least three days after the consumer receives the required disclosures and booklets. We believe a similar approach should apply with regard to the proposed good faith estimates in that lenders should be permitted to collect fees at the time of application, in addition to the credit report fee, as long as these additional fees are refundable until three days after the consumer receives the good faith estimate.

Collecting the fees at one time at the time of application will be more convenient for both the lender and consumer, as opposed to collecting the fees at a later time after the loan application is submitted. The consumer will also not be disadvantaged, as compared to the current proposal, since these fees would be

refundable at any time until three days after he or she receives the good faith estimate.

Finally, we note that these provisions only apply to the consumer's principal home. We would support expanding these provisions to second homes and investment properties, subject to our suggested changes, as outlined above.

## V. Compliance Dates

We recognize that the process to review Regulation Z has become significantly more complex in recent months and will become even more complicated when additional proposed rules are issued shortly that are intended to address certain credit card practices. As originally contemplated, the process to review Regulation Z began last year when the Board issued proposed rules that would amend the open-end credit rules. The expectation at the time was that these changes would be finalized sometime this year, at which time the Board would issue additional proposed changes to the rules that apply to closed-end credit.

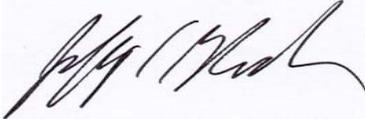
However, the current subprime mortgage crisis and other factors have appeared to accelerate the Board's plan to issue this current proposal that establishes new protections from unfair and deceptive home mortgage lending and advertising practices. To complicate matters further for credit unions and other financial service providers, Board Chairman Ben Bernanke recently announced that more rules will be proposed shortly to address unfair and deceptive credit card practices, which will be separate from the "open-end" credit proposal that was issued last year. However, it appears this new proposal will be issued under the Federal Trade Commission Act and will only apply to banks, but it is expected that similar rules will be issued by NCUA, which will apply to federal credit unions, and by the Federal Trade Commission, which will apply to state-chartered credit unions as well as other financial service providers.

This very complicated process raises the question as to when compliance should be required for all of these new regulatory changes. Ideally, all changes to both the open-end and closed-end credit rules should be effective at the same time. At a minimum, we suggest that the required compliance date for this current proposal for mortgage lending and advertising practices be the same as the required compliance date for the final version of the additional closed-end lending changes that the Board expects to propose later this year. Credit unions and others will be required to invest significant resources in revising current disclosures, providing appropriate staff training, and implementing the necessary data processing changes. This burden will be significantly alleviated if all closed-end credit changes are effective at the same time.

\* \* \* \* \*

Thank you for the opportunity to comment on the proposed changes to Regulation Z, the Truth in Lending Act (TILA), that will establish new protections for consumers from unfair and deceptive home mortgage lending and advertising practices. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey P. Bloch", written over a light blue rectangular background.

Jeffrey P. Bloch  
Senior Assistant General Counsel