Credit Union
ASSOCIATION
New York

December 21, 2010

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551
Docket No. R1390

Re: Regulation Z proposal on debt suspension contract disclosures and loan modifications

Dear Ms. Johnson,

On behalf of the Credit Union Association of New York (hereinafter "the Association"), I would like to take this opportunity to comment on provisions in the Federal Reserve's most recent proposed amendments of Regulation Z [R1390]. This proposal would have a negative impact on credit unions and their members in general, and New York State credit unions, in particular. Specifically, by redefining loan modifications, this proposal would actually deter credit unions in New York State from modifying loans. In addition, the proposal would discourage buyers from purchasing products such as accidental death and disability insurance, even when it is in their best interest.

Disclosures for Debt Cancellation Contracts

The regulations would mandate that lenders provide enhanced disclosures for unemployment and accidental death and disability insurance. While credit unions wholeheartedly support providing pertinent information to members, these regulations actually discourage members from buying these products when, in fact, they are in many cases a benefit to them. Furthermore, this proposal is a solution in search of a problem, given the paucity of information indicating that consumers don't understand what they are purchasing.

As drafted, credit unions would not only have to inform members about debt suspension products, something they already do, but also give disclosures to members discouraging them from buying the very product about which they are being informed. For example, proposed form H-17(A) provides that the very first thing members would be told is that they do not have to buy the product if they already have enough insurance; that they may not need this product and that they may not receive any benefits even if they purchase this insurance.

At its core, the proposed disclosures reflect the fact that some regulators do not see the value in these products. Not only does this go beyond the Federal Reserve's mandate to insure that consumers have accurate information, but it misconstrues the value of debt suspension products. In Bellco Credit Union v. U. S., 2010 WL14352 (D.Colo, 2010), the IRS argued the profits on debt suspension contracts should not be exempt from the UBIT tax since such products do not promote thrift. The district court rejected this analysis, pointing out those insurance products permit borrowers to guard against certain difficult circumstances, and to know that in the case of a death or serious disability, the borrower's family or assets will be protected. As summarized by the court, the borrower pays for peace of mind.

When credit unions in New York State provide debt suspension coverage, they do so only after members receive adequate information. We are not against informative disclosures. In contrast, the proposed disclosures are not informative. Instead, they are advocacy pieces used to discourage members from buying a product that the Federal Reserve has decided is never in their best interest.

Redefining Refinances

One of the goals of the regulation is to greatly restrict the number of mortgage modifications that can take place without providing new Truth in Lending Act disclosures. This proposal will have a disproportionate impact on New York - a fact noted by the Federal Reserve. New York has one of the highest mortgage recording taxes in the country, and is experiencing a spike in troubled mortgages.

Operationally, this is yet another compliance burden on home lending that has the potential, in combination with other new requirements, to drive all but the largest lenders out of the mortgage business. Not only do employees have to be federally registered under the S.A.F.E. Act, but they must deal with a flood of new and increasingly complex mortgage regulations at the very time they are trying to keep members in their homes. This is simply not the time to place additional obligations on lenders.

Once again this is a solution in search of a problem. The Federal Reserve is putting this proposal forward in the name of uniformity, arguing the reliance on state law and judicial interpretation leads to inconsistent application among states. However, national consistency for its own sake is not necessarily advantageous, providing that each state fairly and consistently applies its law.

Another concern we have with this proposal is that it would likely increase litigation and raise questions to the underlying validity of liens. By mandating new circumstance under which new loan disclosures will have to be issued, credit unions will have to decide whether the modified mortgage should be recorded, thereby imposing increased expenses on the member, or instead risk the security of its collateral by raising questions as to (1)whether the modified mortgage should loose its position to junior lien holders and (2)providing a potential defense to delinquent homeowners who will argue that proper mortgage disclosures were not given. (See Home Savings Bank of America v. Weinberg, 670 NYS2nd 426 (First Department 1998)).

The proposal would also mandate that new disclosures be given anytime a fee is charged in connection with modifying an existing loan. This blanket rejection of fees overlooks the fact that there are legitimate expenses associated with modifying existing loans. This regulation should be amended to permit the recovery of legitimate costs associated with modifying loans that do not constitute refinances. In reviewing this section, the Federal Reserve should be mindful of the continued economic difficulties that members face in meeting loan obligations. Any proposal that negatively impacts the flexibility that lenders and borrowers have, including legitimate costs associated with such flexibility, isn't prudent at this time.

Credit unions remain committed to ensuring that our members enter into only those loans that make sense for them, given their financial condition. Credit unions also remain more committed than any other financial institution to see what they can do to modify existing loans. Unfortunately, as drafted, this proposal would drive up lending costs for our members as well as all financial consumers, while discouraging them from using insurance products that often play a valuable role in giving them peace of mind in these financially difficult times.

Sincerely,

William Mellin
President/CEO