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December 20, 2010

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

RE: Docket No. R-1390

Dear Ms. Johnson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Federal Reserve Board's (the Board) request for comment regarding proposed changes to Regulation Z for closed-end mortgage lending. As a preliminary matter, NAFCU remains concerned with the pace and scope of proposed changes to Regulation Z. In addition to this comprehensive proposal, the Board recently proposed changes to the rules for home appraiser independence and escrow requirements for higher priced mortgages, as well as an interim final rule implementing the Mortgage Disclosure Improvement Act (MDIA). At the same time, the newly created Consumer Financial Protection Bureau (CFPB) is working to modify and harmonize the TILA early disclosures and the disclosures required under the *Real Estate Settlement Procedures Act* (RESPA).

Credit unions are concerned that one set of major revisions to Regulation Z may be followed soon after by a second, and possibly even third set, of changes affecting the same provisions. NAFCU understands that the law is never static and that some changes to Regulation Z are required by statute. Nonetheless, NAFCU encourages the Board to use its discretion, to simplify and streamline the amendment process going forward and to use its authority to ensure there is a smooth transition as the CFPB takes over authority for consumer protection regulations.

Given the breadth of the proposed rule, this letter focuses on the most important changes as they relate to federal credit unions. Given the scope of the rule, I have chosen to focus our concerns on a few primary issues. NAFCU has serious concerns regarding the proposed disclosures for credit protection products. We are similarly concerned with the proposal to eliminate interest rate floors for home equity lines of credit (HELOCs). Other matters of concern include the provisions on rescission, reverse mortgages and loan modifications.

Credit Protection Products

The proposed disclosures for credit protection products are alarmist and potentially misleading. It appears that the Board would like to eliminate credit protection products from the market entirely and has chosen to do so by proposing disclosures that would lead virtually any consumer not to purchase the product. Indeed, the Board's own consumer testing indicates that, based on the proposed disclosures, no consumer would buy the product. ICF Macro, the firm the Board employed to perform consumer testing, used a draft form during one round of consumer testing that lead every participant involved to decline to purchase the credit protection product.[1] The proposed disclosures very closely reflect the form used during the testing process which led all eight participants to decline to purchase the product. In fact, the proposed disclosures are arguably even more adversarial than the forms used during the consumer testing process.

NAFCU is particularly concerned with three of the proposed disclosures. First, the disclosure "If you already have enough insurance or savings…you may not need this product"[2] clearly illustrates that the product is disfavored by the Board. The same could be said for several different types of insurance products. Yet, credit protection products are the only products that are singled out for such obvious – though implicit – negative treatment. NAFCU supports full and fair disclosures. This proposed disclosure, however, seems to be aimed at ensuring consumers do not purchase the product, rather than ensuring consumers receive adequate, accurate information about the product.

Next, NAFCU is concerned with the proposed disclosure that reads, "Other types of insurance can give you similar benefits and are often less expensive."[3] Although it is not entirely clear exactly what type of other insurance the Board is referencing, presumably, the statement refers to term life insurance. Credit protection products and term life insurance, however, are only similar in a few limited ways. Further, implying that term life insurance is "often less expensive" is potentially misleading.

First, the differences between credit protection products and term life insurance outweigh their similarities. Most credit protection products are available without the extensive underwriting required for term life insurance. Credit protection products are available to the vast majority of consumers. Term life insurance on the other hand usually involves filling out a lengthy questionnaire covering medical history, finances, occupation, recreational habits and a number of other matters. Credit protection products are priced based on the amount of insurance, whereas term life insurance is based not only on the amount of coverage but also on

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[1] Summary of Findings, Design and Testing for Periodic Statements for Home Equity Lines of Credit, Disclosures about changes to Home Equity Line Credit Limits, and Disclosures about Credit Protection Products at 16 (July 2010), (hereafter Summary of Findings) available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20100816_MacroBOGReportOtherDisclosures(7-10)(FINAL).pdf.
[2] Truth in Lending, 75 Fed. Reg. 58539, 58715 (Sept. 24, 2010).
[3] Id.

all of the other factors listed above that the insurer is likely to examine. Credit protection products cover only the cost of the loan, whereas term life insurance is generally for a lump sum payment. Moreover, term life insurance is often not available for less than $50,000. In fact, it often may be difficult to find term life insurance for less than $100,000.

Second, the statement that other insurance is "often less expensive" is misleading. In some cases some other insurance may indeed be available. However, including the word "often" might unfairly lead a consumer to believe that the product is overpriced and that other similar, cheaper products can be easily found. In fact, there will many instances where a consumer would not be able to obtain alternative coverage at a better price. The consumer's health, monthly disposable income and the amount of insurance required might all preclude the consumer from obtaining coverage elsewhere. Given that the statement is misleading and potentially inaccurate, NAFCU recommends eliminating this proposed disclosure altogether. If, however, the Board believes this disclosure is absolutely necessary, NAFCU recommends, at the least, modifying the proposed disclosure to state, "Other types of insurance can give you similar benefits and may be less expensive." This disclosure would inform consumers that there are other options available. However, stating alternative coverage "may be" less expensive is (1) more accurate and (2) eliminates the implicit inference that credit protection products are overpriced, relative to similar products on the market.

Finally, the proposed disclosure stating, "**You may not receive any benefits even if you buy this product**"[4] appears designed to dissuade consumers from purchasing the product, rather than providing full and fair disclosures. Again, this same statement could be made regarding virtually all types of consumer insurance products. Indeed, most consumers hope the event they are insuring against never occurs. This disclosure may also be intended to ensure consumers are aware of eligibility requirements. If that is the case, the proposal should simply state as much. Alternatively, the Board could adopt the same language currently required by the Office of the Comptroller of the Currency (OCC) for these types of products. The OCC's regulation requires the following disclosure: "There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under this product. You should carefully read our additional information for a full explanation of the terms of this product."[5] This disclosure would achieve the Board's goal of informing consumers that there are eligibility requirements and would also address concerns regarding the propriety of the disclosure as proposed.

In conclusion, the three disclosures discussed above do not provide full and fair disclosures regarding the product. Instead the disclosures seem aimed at eliminating the product from the marketplace via unfair and potentially misleading or outright inaccurate statements. NAFCU requests the Board replace the proposed disclosures with more balanced disclosures that would provide consumers the necessary information without the implicit criticism contained in the proposed disclosures.

In addition to the substantive concerns addressed above, NAFCU is also concerned with the process behind these new proposed disclosures. The dramatic changes to the disclosures

[4] Id.
[5] 12 C.F.R. § 37, Appendix A (2010).

came after consumer testing on just eighteen individuals.[6] Additionally, the model form in the proposal most closely resembles the form used during the second round of consumer testing. The most significant difference between the first form and the second form appears to be that after reading the second form, every single participant said he or she would not purchase the product. Given that several thousand institutions sell hundreds of thousands of these products on a yearly basis, it is unusual that the Board would approve a disclosure that is so one-sided that every single consumer would choose not to purchase the product. Further, there does not appear to be any pressing need for reform. Complaints regarding this type of insurance product are not significant, yet this proposed disclosure would likely result in the product virtually disappearing from the market.

Home Equity Lines of Credit

NAFCU strongly opposes any effort to eliminate interest rate floors for HELOCs, similar to 12 C.F.R. § 226.55(b), which prohibits interest rate floors for credit cards. Eliminating the floor makes little sense for credit cards and it will be even more problematic in the context of HELOCs.

- The credit limit for HELOCs is generally much higher than for credit cards. Accordingly, the overall amount of credit an institution is liable to extend at any time for HELOCs is much greater. Eliminating the floor for HELOCs consequently increases the creditor's interest rate risk exponentially.

- Long term interest rates are not always easy to predict. Interest rate floors are a valuable tool for managing and mitigating the risk that comes with long term lending. Without this tool lenders will inevitably find it much more difficult and much more expensive to manage the risk, and ensure their own cost of funds does not exceed the interest they are receiving on the loan.

- Prohibiting interest rate floors will have unintended consequences. As mentioned above, eliminating floors will make managing interest rate risk much more difficult. Consequently, some lenders will curtail this type of lending while others will exit the market altogether. Further, eliminating the floor will likely lead to higher interest rates for consumers, in much the same way that it did in the credit card market. If the Board eliminates creditors' ability to manage the risk, they will simply charge a higher up-front interest rate in order to ensure that the rate does not eventually dip below their cost of funds.

Obviously the Board considered all of these concerns prior to promulgating its final rules implementing the Credit Card Accountability, Responsibility and Disclosure Act (CARD Act). Nonetheless, NAFCU would like to stress that given the credit limit available on a HELOC, as opposed to a credit card, eliminating the floor is much more problematic in this context.

[6] Summary of Findings at 14-15.

Rescission

Overall, NAFCU supports the proposed changes to the rescission provisions in Regulation Z. In particular, the proposed revisions designed to simplify the process when the right to rescission is exercised after the initial three day period are helpful. As the Board is well aware, the timing between the creditor releasing its security interest in a property and the consumer providing tender has been the subject of much litigation. NAFCU believes the Board's proposal to require tender prior to the release of the security interest is a sensible way to address creditors' legitimate concerns regarding lien priority. NAFCU also supports requiring tender of the property or payment within 60 days of the creditor providing notice that it will accept rescission. Sixty days provides consumers ample opportunity to make the arrangements necessary to provide tender. Further, any consumer who does exercise the right to rescind will, in most cases, consult an attorney. Consequently, the consumer will likely begin the process with a sound understanding of the timeline for the process.

NAFCU also supports revising the material disclosures that give rise to the right of rescission. Simply put, the material disclosures are somewhat dated. Consequently, terms that are, today, relatively unimportant may give rise to the right to rescind. Conversely, an inaccurate or incomplete disclosure of an important term, which may have been less significant in 1980, does not give rise to the right to rescind. The proposal ensures the somewhat extraordinary right to rescind during the extended three year period may only be exercised when the creditor failed to disclose significant terms. At the same time, the proposal provides consumers protection by ensuring the most important terms are the ones which trigger the right.

NAFCU's only major concern with this aspect of the proposal concern allowing borrowers to exercise the right by notifying loan servicers, who would, in turn be required to notify the mortgage holder within one business day. There are several practical concerns with such a short timeframe. First and foremost, one day simply is not much time to forward the notice. Second, this obviously raises the question of which party is responsible if the notice is not forwarded to the mortgage owner before the right to rescind terminates. For example, if the servicer receives the notice on the second to last day the consumer may rescind and takes two days to forward the notice, would that serve as a defense for the mortgage owner? Moreover, would the servicer then be responsible for making the borrower whole? These are not insurmountable problems; however, they are practical issues that will need to be addressed either by regulation or by contract between the servicer and the mortgage owner. It may be preferable for the Board to consider these issues and promulgate appropriate regulations to address likely scenarios.

Reverse Mortgages

The provisions relating to reverse mortgages will help simplify the process for lenders and borrowers. Overall, the proposed new forms and disclosures are reasonable and should not be unduly burdensome. The counseling requirement is also a reasonable and common sense addition, and one which many credit unions already require. NAFCU supports the Board's decision to allow any fee for counseling to be financed as part of the reverse mortgage.

The advertisement disclosures for reverse mortgages are somewhat lengthy and will likely prove cumbersome. Under the proposal, seven different types of statements would trigger a corresponding disclosure. Additionally, a website must be provided in certain circumstances. Simply put, some of these disclosures are not necessary in the context of an advertisement. For example, if an advertisement states that the government limits fees, the proposal would require an accompanying statement that fees may vary among creditors and loan types and that less expensive options may be available. That fees may vary among creditors or that other options may be available that are less expensive is so intuitive that there is little, if any, reason to include such a disclosure in an advertisement. Accordingly, NAFCU opposes including this disclosure in the final rule. In short, we are skeptical that so much information needs to be disclosed in each advertisement. Some information, important though it may be, is better disclosed once a potential borrower actually expresses interest in the product.

Loan Modifications

NAFCU supports the Board's efforts to set universal standards for when a loan modification requires new TILA disclosures. NAFCU is generally supportive of the proposal, with one exception. New TILA disclosures should not be required anytime a fee is imposed in connection with a modification. Modifying loans is a time consuming, labor intensive process. A modification requires most of the same elements as the original mortgage transaction with the added difficulty of working with borrowers who are, generally, in poor financial condition and who, often times, have already fallen behind in making payments. Accordingly, the Board should consider authorizing a modification in some circumstances without new TILA disclosures. First, the Board should consider the imposition of a de minimis fee which would not trigger new TILA disclosures. For example, any fees which total $250 or less should not trigger new TILA disclosures. Second, the Board should consider exempting certain types of fees from triggering new TILA disclosures. Specifically, basic underwriting fees associated with the modification, and fees incurred for collection and legal fees should not trigger new TILA disclosures. Additionally, back interest, for nonpayment, which is added to the principal during the modification process, should not trigger new TILA disclosures. The Board could authorize a de minimis exemption, exempt certain fees or use a combination of the two methods to achieve a result that will benefit borrowers, protect lenders and promote mortgage modifications. However, a strict requirement for new TILA disclosures any time a fee is imposed will only discourage lenders from making modifications and will ultimately, make the modification process more expensive.

NAFCU supports new TILA disclosures for modifications that add potentially risky features such as an adjustable rate or a prepayment penalty. Those sorts of new features undoubtedly warrant new disclosures.

The Board requested comment regarding whether borrowers who receive a modification should receive the existing TILA form or a new form, which the Board would design, that would compare the terms and conditions of the original mortgage and the modified mortgage. NAFCU supports keeping the TILA disclosures as they are currently written, requiring disclosure of only the new modified loan, without a complicated comparison to the old loan. Requiring a new TILA form for modified mortgages that compares the old and new terms would require new training and software and, again, would make the process more expensive and, consequently, less attractive to lenders. Further, in the case where a borrower is seeking a modification he or she almost certainly is well aware of the most important terms and conditions of the existing loan. Consequently, consumers should already have little trouble comparing those terms and conditions against the terms and conditions that he or she will receive in connection with the modification. Additionally, an apples-to-apples comparison in this context might be difficult to achieve and could mislead the consumer. For example, the original lender might have offset the annual percentage rate (APR) by charging a number of fees. Consequently, comparing the APR on the two loans may not be instructive and may mislead the consumer regarding the relative cost of the two mortgages.

Conclusion

NAFCU appreciates the opportunity to share our thoughts on the proposal. Again, I would urge the Board to reconsider the proposed disclosures for credit protection products. I also respectfully request the Board permit creditors to include an interest rate floor for HELOCs. Finally, I would also ask the Board use its authority to simplify the amendment process going forward. Given the role that the mortgage market had in the current economic crisis NAFCU understands that the Board and the CFPB will continue to revise Regulation Z. Nonetheless, it would be helpful to the credit union industry and the 90 million credit union member owners if regulatory changes are carried out in a thoughtful, methodical and unified fashion that does not require creditors to continually make changes to the same products and services. Should you have any questions or require additional information please call me or Dillon Shea, NAFCU's Associate Director of Regulatory Affairs, at (703) 842-2212.

Sincerely,

Fred R. Becker, Jr.
President/CEO