SchoolsFirst™
FEDERAL CREDIT UNION

December 16, 2010

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

Re: Docket No. 1390

Dear Ms. Johnson,

SchoolsFirst Federal Credit Union serves school employees in Southern California. We have more than 440,000 Members and over $8.0 billion in assets. SchoolsFirst FCU is pleased to have the opportunity to comment on the Federal Reserve Board's proposal to amend various provisions of Regulation Z, which implements the Truth in Lending Act.

We would like to address several of the specific issues which the Federal Reserve Board has requested comment on with relation to the proposed changes:

Credit Insurance and Debt Cancellation and Suspension Products

We do not agree with the suggested changes to the credit insurance disclosures that go so far as to state the product may not be necessary. It is obvious that the intent of these disclosures is to prohibit or limit the sale of these voluntary products offered to our Members who wish to protect their families or estates, and we do not believe that is a proper regulatory role nor is it required by any legislation.

One of the proposed disclosures advises that a consumer is not guaranteed to receive any benefits even if they buy the insurance product. The same disclosure could be made for all insurance products sold in the United States. You would be hard-pressed to come up with one type of insurance policy which a consumer purchases with the hope of ever collecting on it. People do not purchase homeowner's insurance in the hope that their home burns down. No one buys automobile insurance hoping that they get into a car accident. Does someone purchase term life insurance hoping to die before it matures so that their family can enjoy the proceeds? Clearly not.

Consumers who opt to purchase credit life, unemployment, and/or disability insurance are well aware that, like all other insurance policies, no benefits will be paid out unless the triggering event occurs. Obviously, none of those same consumers would want to become unemployed, disabled or die in order to reap the benefits of the policy. Consumers purchase these products to provide them and their families with peace of mind and the knowledge that the financial well-being of their families will not be thrown into complete turmoil should a triggering event occur.

We believe that there is an effective alternative to the language proposed by the Board. A more appropriate disclosure could read as follows:

> "There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under this product. You should carefully read our additional information and/or the contract for a full explanation."

This language is required by the OCC under its debt protection rules. It is objective and factual and tells the consumer where to find additional information, without sounding biased and alarmist.

Credit unions in particular are well known for selling low-priced, well-featured credit insurance and debt cancellation policies and the disclosures already required insure that the product is voluntary and disclosed properly.

SchoolsFirst FCU has been offering a credit disability and credit life product for nearly 11 years. During this period of time we have assisted 877 Members who have become disabled and unable to work to keep their accounts current. On average, the insurance has paid $3,625 on behalf of each of those 877 Members. The total paid to date on our credit disability product is a remarkable $3,179,395.

Over the same period of time, we have assisted the families of 159 Members who have passed away through our credit life insurance product. Those families received an average payout of $8,926 and a cumulative total of $1,419,162.

Three years ago, we introduced an involuntary unemployment component to our credit insurance program. To date, we have assisted 29 Members who have lost their livelihood with an average payout of $1,113 and a total amount paid of $31,521.

These figures make clear the fact that these types of programs represent a great value to those who choose to take advantage of them. By requiring disclosures so onerous and intimidating that consumers will reject these products outright, the Board would be doing a great disservice to the very consumers which it is entrusted to protect.

One of our Members had credit life protection on three of his loans with our credit union, including a $62,000 balance on an auto loan. He also had approximately $50,000 on deposit with us. When the Member unexpectedly passed away, the insurance paid off all of the existing debt except for $12,000 on the auto loan (because it was over the maximum value of the policy). The Member's family paid off the balance of the auto loan with the deposit balance, thus resulting in all of the loans being paid off, clear title on the car, and a total of $38,000 left for the family.

Another Member who had purchased credit disability insurance as well as credit life on her credit card account was diagnosed with cancer and was off work for a year prior to her passing. For the entire year, credit disability took care of the minimum payments on her credit card, thus allowing her to use that money for other expenses. Upon her passing, the balance of the card balance was paid by the credit life component.

Currently, we have a Member who became unemployed several months ago. She had purchased credit unemployment insurance on 4 of her loans with the credit union, including her auto loan. For five months, she has been relieved of the burden of making payments on these 4 loans by the insurance policy. As a result her payments are current and her credit rating is intact. She has her vehicle and has been able to focus on her job search.

Throughout the years, there have been countless other stories of Members who have used this coverage to assist their families as a result death, unemployment or personal injury which has not allowed them to continue to generate the household income to which they had grown accustomed. Without the coverage, they might have been faced with the loss of their auto and other personal possessions.

Another of the proposed disclosures reads: "If you already have enough insurance or savings to pay off this loan if you die, you may not need this product."

Purchase of credit protection products provides valuable coverage even to consumers who already have their own insurance, because they will not have to deplete their other coverage in order to pay off their debts. For example, a borrower may have a $100,000 term life policy.

However, purchasing credit insurance on her $30,000 auto loan provides $30,000 in additional benefits, and ensures that the vehicle loan is paid off and that the lien on the vehicle is extinguished. In such a scenario, the borrower's beneficiary will net $100,000 in life insurance proceeds <u>and</u> a fully paid-for vehicle with no lien. Without credit insurance, the borrower's family would have to continue making payments on the vehicle or risk repossession. This nets the borrower's family only $70,000 of life insurance, and does not eliminate the burden of making monthly payments on the loan.

These proposed disclosures are a clear warning to consumers that the purchase of these products may not be beneficial to them. Such a statement is inconsistent with the advice given by financial planning experts that most American families, especially middle-class families, need more, not less life insurance.

If the proposed disclosures are adopted, many consumers will forego the opportunity to purchase credit insurance, only to learn later than the alternative coverage referred to in the government-mandated disclosures is either unavailable to them or only available at a higher monthly cost.

In addition to benefiting borrowers who choose to take advantage of the products, credit insurance contributes to the safety and soundness of the financial institution holding the loan as well. Having credit protection on loans provides the creditor with additional assurances that the loan will be repaid, thus decreasing charge-offs and loan losses.

In the proposal, the Board indicates that it used a test group of only 18 consumers in formulating these disclosures. The size of this test group strikes us as exceedingly small and inappropriate for a set of disclosures with such a significant impact on consumers for years to come.

In reviewing the test groups utilized by the Board in previous disclosure-driven rulemakings, the size of those groups have numbered in the hundreds, if not thousands. Considering that the average error margin in a group of 400 participants is typically +/- 5%, the margin of error in such a small test group calls into question the validity and reliability of the testing performed. We are confident that a more representative sample for testing consumer opinions would provide a more inclusive view on the validity and simplicity of the disclosures.

We believe that, in proposing these disclosures, the Board is going beyond the purpose and language of the Truth-in-Lending Act (TILA).

Furthermore, credit insurance products are already regulated by state insurance departments, which are in a better position to gauge the disclosures that would be helpful to the consumers in their respective states. State regulators have required fair and balanced credit insurance disclosures to consumers for decades. These disclosures make it very clear that the purchase of these ancillary products is not required to obtain the credit.

We also believe that the Board's insertion of its subjective opinion, masked as government-mandated disclosures, inappropriately interferes with legitimate commerce and harms consumers. If the proposed disclosures are adopted, they will undoubtedly lead to consumers declining the product, not because they were aware of all the pros and cons of the product, but because the government told them that it was a bad product. The Board's own consumer testing proves this. In its summary of its consumer research, the Board finds that, when using the proposed disclosures, every one of the 18 consumers tested declined to purchase the product.

Such a result constitutes inappropriate governmental interference with the business of insurance through the proposal of credit insurance disclosures that are unduly negative and are designed to steer consumers away from the product. We respectfully submit that the role of the Board is to provide <u>objective</u> disclosures regarding the cost of credit so consumers can make an informed choice when obtaining loans. It is not to provide substantive advice regarding the purchase of credit insurance.

<u>Right of Rescission</u>

We generally support the policy of permitting a Member to rescind a mortgage or home equity loan, particularly if the Member discovers that the loan may not best serve her needs or create a financial burden. Accordingly, we support and appreciate the changes to the rescission notice that clarify a consumer's right to rescind, including the detachable form.

In direct contrast, the extended right to rescind represents a minefield of technical Regulation Z "violations," that only foster litigation. The Federal Reserve should create a safe harbor for lenders, like credit unions, that offer conventional mortgages and home equity products. Extended protections consistent with the right to rescind may be appropriate in the case of lenders who employ abusive practices or provide products such as negative amortization loans, but lenders who offer conservative and financially responsible products should be exempted from this extended rescission right.

We strongly disagree with the proposed change that the rescission notice be sent out sometime "before" the loan closing or prior to the addition of a security interest for existing loans. We fail to see how trying to estimate exactly when the closing will be, sending out the notice, and then allowing for additional time for it to get to the borrower will do anything but slow down service to consumers. Not to mention, it will cause confusion to financial institutions and consumers and result in duplicate rescission notices being sent out every time there is a change in closing date. Consumers understand they can rescind the loan when they sign the documents - there is no need to send it out beforehand.

The proposal provides that the rescission notice must include the calendar date that the three-day period will expire. A better option would be to allow the signer to write in the closing date on the document as opposed to having it pre-printed on the notice. Alternatively, the rescission notice could contain a pre-printed chart of dates on which the signer can circle or cross out dates.

The rescission notices should be sent back to the lender within the three days after signing loan documents. Only under allowed special circumstances should a rescission notice be sent to the lender *after* the three day notice has expired.

We agree with the proposal that if a lender receives a borrower's notice of rescission outside of a court proceeding and the initial three day period, the lender should be given at 20 days to respond and, if the lender agrees, the borrower should be given 60 days to tender the property or money.

We also believe the "material" amount should be changed to reflect simply the ½ % of the credit limit requiring new disclosures; $100 is too low a limit.

Loan Modifications Requiring New Disclosures

Floor rates should still be allowed with HELOCs as long as the floor rate is disclosed properly and the borrower understands the options. Because this type of loan has a much longer advance period than credit cards and more disclosure requirements, it should not be treated the same related to floor limits. The net effect may be to actually increase the cost of credit to consumers, which is what happened on credit cards when that rule was enacted. Many banks attempted to set their rates to protect against low rate environments that could wipe out the margins necessary to continue their programs. Most credit unions were less impacted, but the end result of the Federal Reserve's previous rulemaking was still negative for most consumers. It does not seem prudent to make the same mistake again.

On closed-end ARMs, we do agree that publicly available indexes are acceptable and a common practice. We do not agree that internal indices are a common practice nor should they be permissible; there is a substantial risk of self-serving by some financial institutions if permitted to utilize internal indices.

We also agree with the requirements for new TILA documents when key terms are being modified or an ARM is converted to a fixed rate loan. However, the only fees that should require a new disclosure are those retained by the lender. Additionally, a payment or loan amount increase of at least 10% should be the "de minimis" amount before the new disclosures are required.

We agree with the Board's view that new disclosures should not be required for borrowers in default unless new monies are advanced or the APR is increased. However, even in the latter scenario, we believe that it would be an undue burden on lenders to be required to go through the entire disclosure process. Instead, a preferable option would be to allow lenders to provide such borrowers with a streamlined disclosure that highlights the changed terms in order to assist borrowers in analyzing whether a short sale or a deed-in-lieu of foreclosure might be a more appropriate course of action in their case.

It appears problematic from an operational perspective to require TILA disclosures to be provided by a person who is modifying a loan given the fact that TILA disclosures require that a unique identifier appear on the disclosures pursuant to the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act. The SAFE Act contains an exception to registration for anyone solely in the business of modifying loans. Therefore, no unique identifier would issue for these individuals. We would request that the Board consider this operational challenge in finalizing its rulemaking.

Interest Rate Coverage Test for HOEPA Rules

We agree with the changes to the rule that include using an internal rate (as opposed to the APR) that would be compared the Average Prime Offer Rate (APOR) when calculating whether or not a rate is a "higher-priced mortgage loan" under Section 35. However, we cannot agree with the Board's suggestion that use of such an internal rate would be optional for lenders. Allowing some lenders to compare the APOR using internal rates while other lenders continue to use the APR would result in incongruous results in HOEPA reporting and prevent peer comparisons from being made. Whichever criterion the Board elects to use (internal rate vs. APOR) it must be uniform for all lenders. Anything less would undermine the intent behind this rule.

Borrower's Right to a Refund of Fees and Other Related Issues

We appreciate the merits of refunding fees if the borrower cancels a loan request in a timely manner. Unfortunately, the proposed timing rules are very unclear and place a lender in a position of refunding fees out of an abundance of caution. The proposed rule appears to ignore legitimate and necessary costs such as appraisals and other processing costs.

We do not believe that the borrower should receive a refund of any fees not charged by the lender (such as an appraisal fee) if the fee has been paid and the borrower decides not to proceed with the loan. This will result in all mortgage loan applications having to wait for three days before being processed, no matter how urgent the consumer's need for a speedy transaction such as for medical bills or school tuition. The notices of the refund rights should be provided with the early disclosures in order to provide a consistent approach.

However, we do agree with the proposed clarification that a lender may obtain a borrower's credit card information but not initiate a charge or a hold on the card prior to the initial TILA disclosures being received by the borrower. This practice increases efficiencies and provides a great deal of convenience to the consumer while resulting in no detriment whatsoever; the borrower is free to walk away from the transaction once she has reviewed the initial disclosures without incurring a charge.

The Board is proposing that servicers must provided the name, address, and telephone number of the owner of a loan within 30 days of the borrower's request. We would request clarification with regard to this requirement as to how this requirement would be handled in the event that the borrower's loan has been packaged into mortgage-backed securities (MBS). In this context, it would not be possible for the "owner" of the loan to be readily identified. It would appear that the name, address, and telephone number of the servicer should suffice where the underlying loan is in an MBS.

Conclusion

In conclusion, we would like to point out a few things that have become all too evident as we wade through all of the lending regulations which the Board (along with the other regulatory agencies) continues to issue. First of all, regulations continue to be issued in a seemingly haphazard fashion without any apparent consideration being given to integrating the regulations with each other.

Several rules which were in a proposed stage prior to the passage of the Dodd-Frank Wall Street Reform and Financial Protection Act are being finalized even though they are not compatible with the rulemakings required by the Act. This will require the Board to revisit the exact same regulation in just a few short months in an attempt to reconcile what has already been implemented with what is actually required by the legislation.

We raise the above point because it is sometimes helpful to take a step back and analyze the ramifications on the consumer of what is being done in Washington. The reality we hear from our Members every day is they are more confused than before by the reams of disclosures they receive each time a threshold is exceeded on their mortgage loan or their loan amount changes by a few hundred dollars. Many Members feel that we are resending disclosures because we made a mistake.. We repeatedly find ourselves in the position of explaining that there was no mistake; that regulations require us to provide them with the voluminous disclosures.

Is this truly to the benefit of the consumer? If the regulating bodies truly want to take action to assist consumers in understanding the terms of their mortgage loans, a respite from the incessant pace of rulemaking is clearly warranted. During this time, a side-by-side comparison of all of TILA, RESPA and HOEPA should be undertaken so that the agencies can integrate these regulations to greatest degree possible. Only once this occurs, will American consumers truly get what they deserve from the agencies which are entrusted to look out for their best interests.

SchoolsFirst Federal Credit Union appreciates being given the opportunity to comment on all of these potential modifications to Regulation Z. Please feel free to contact me if I may be of further assistance.

Sincerely,

John Barton

John Barton
Senior Vice President, Lending
SchoolsFirst Federal Credit Union

cc: Credit Union National Association (CUNA)
California/Nevada Credit Union League (CCUL)