Virginia Credit Union

P.O. Box 90010 Richmond, VA 23225-9010
(804) 323-6000 • (800) 285-5051 • vacu.org

December 22, 2010

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 30551

Re: Regulation Z–Docket No. R-1390

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Federal Reserve Board's (FRB) proposed changes to Regulation Z as part of their comprehensive review of the Truth in Lending Act's rules for home-secured credit. I am responding on behalf of a state-chartered credit union located in Virginia with over 2 billion in assets and over 200,000 members.

We offer the following comments for your consideration.

Prepayment
When a borrower prepays a FHA loan in full, the borrower must pay interest through the end of the month in which this payment is made, even if the prepayment is made before the end of that month. The proposal would indicate that the amount of interest paid between the prepayment date and the end of that month would now be considered a prepayment penalty under TILA. We disagree with this approach. A prepayment penalty is designed to recapture those costs associated with the origination of a loan. The "penalty" referred to is not a lender's penalty but one created by Ginnie Mae. The penalty is completely avoidable by strategically closing at or near the end of the month whereas the traditional prepayment penalty is only avoidable by not paying the loan off until the prescribed period is over. It is noted however, that borrowers of VA and conventional mortgages do not share the same disadvantage. Additionally, calling the unearned interest a prepayment penalty could have unintended consequences for determining how to proceed in the case a FHA loan exceeds the HPML (Section 35) thresholds. This would be problematic since the "prepayment penalty" would extend the entire life of the loan, rather than the first several years.

We believe the best approach would be if Ginnie Mae amended their policy rather than adding new regulations. Changing the rule could be confusing for applicants in that one disclosure document (Truth-in-Lending disclosure) would state that there *is* a prepayment penalty where under Reg X, the Good Faith Estimate would not consider the collection of unearned interest as a prepayment penalty. If it is unacceptable to have Ginnie Mae to modify a policy, then we suggest that both regulations (X and Z) would need to be updated to provide consistency.

One consideration currently not required for closed-end adjustable rate mortgage (ARM) loans is that lenders be required to use an index that is outside of their control and publicly available. Each index has its own set of risks and volatility that in certain economic times can be more advantageous than in others. It is not uncommon for credit unions to use rates on financial products such as share certificate rates as their index rather than external indexes since not all

Credit Unions sell their mortgage loans into the secondary market. However, we believe that it is a best practice that ARMs should have an index that is readily understood and identified by borrowers. This allows the borrower to calculate the future value of their rate. In addition, from an asset/liability management perspective following an index published by a third party such as Wall Street Journal LIBOR or the Constant Maturity Treasury yield allows financial institutions to better manage interest rate risk and project future net interest margin changes. Using published indexes would also improve execution in the secondary markets and reduce servicing costs. Finally, in the event of winding down an institution, ARM loans with market accepted indexes will be easier to maintain by future owners.

TILA Disclosures on Modifications
The proposal would require new TILA disclosures for closed-end mortgage loans when parties to an existing closed-end mortgage loan agree to modify key terms, which includes a change to the interest rate; monthly payment (unless it is a decrease); loan term; an advancement of new funds that are added to the loan amount; adding new property as collateral; or adding/changing an adjustable rate feature or adding other risk factors, such as a prepayment penalty, interest-only payments, negative amortization, a balloon payment, a demand feature, no or low documentation, and shared equity or appreciation. As a Credit Union, we are not in the practice of modifying key terms such as those listed above unless they are in the borrower(s) favor; and normally they are done in conjunction with a modification to assist a distressed borrower. We would not be in favor of any additional documentation that would adversely affect this process. If a modification of terms occurs for a reason other than assistance to a distressed borrower, the proposed disclosures could be appropriate.

Under the proposal, any modification in which a fee is imposed would be considered a new transaction, requiring new TILA disclosures. This will result in more transactions that would require new disclosures. We believe not all fees are meant to be income producers – some are charged only to cover out of pocket costs such as title searches, recording costs or appraisal costs. If new disclosures were to be required, we would suggest a merging of the two – allowing a de minimus amount of fees that can be retained by the lender but allow fees to cover out of pocket expenses that are based on a percentage of the loan amount.

We do not consider modifications of delinquent loans to be a new transaction; we consider them an opportunity to assist a borrower in need of temporary assistance. We are concerned that should new disclosures be required, what the benefits would be and would more lenders consider a refinance – with more costs to the borrowers rather than less – rather than doing the modification? We also have concern that taking this approach would have a larger impact to distressed borrowers especially as how it relates to the 2008 HOEPA rules. We find that with the current limits, prime borrowers are being adversely affected and we can only assume that the HOEPA rules would certainly cause delays in assisting these borrowers.

We also believe that if the proposal is passed, that a de minimus limit of increase in the loan amount be allowed before new disclosures are required. This could perhaps be limited to delinquent or distressed mortgages or emergency increases necessary due to natural disasters and borrowers are unable to pay deductibles or other related losses (for example, losses where there was no insurance – for example, earthquake). Lenders may allow modifications for non-emergency property related fees such as water/sewer connection. The limit should allow for all

arrearages to be included allowing borrowers the ability to not have outstanding fees and costs due.

Under the proposal, modifications for borrowers in default or delinquency would not require new TILA disclosures unless the loan amount or interest rate is increased or if a fee is imposed. We suspect that any modification would include new money in the current unpaid principal balance since any arrearages would likely be included in the agreement. Additionally, most lenders are charging a small fee – often to cover costs of the modification rather than as a source of income. This would make most, if not all, modifications subject to new disclosure requirements, even those modifications made for delinquent or distressed mortgages. If new disclosures were to be required, we would prefer a streamlined disclosure limited to no more than one or two pages. Additionally, if there was an exception for "imminent danger of default or delinquency," there should be a clear and concise definition of what that is.

Under the Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act, those who modify existing loans do not have to register under the Act but under this proposal, new TILA disclosures may need to be given. We do not believe these different requirements would pose operational or compliance difficulties because the purpose of a modification is to temporarily change the terms of a loan in order to assist borrower(s) with keeping their home. It is not an income producing function with the same associated risks that would be involved with a purchase or a refinance or where employee compensation is an issue.

When an ARM is converted to a fixed rate, we believe a notice of interest rate adjustment – including the new interest rate and payment amount – should be sufficient since in most cases, no other terms of the loan are changing. We do not believe that new disclosures would necessarily be informative as a comparison tool since a conversion and a refinance are two separate types of transactions. The ARM conversion is for the most part limited to determining a new rate of interest, a corresponding payment and payment of a small fee (to cover the costs of conversion); whereas refinancing is a new transaction including payment of all related closing costs –including points and related closing costs. For the most part, rates on converted ARMs are greater than current market refinance rates. Based on what is involved in an ARM conversion, we believe that consumers are more focused on the new interest rate (which for many borrowers should be lower than the interest rate that is currently in effect) and the new payment. Since payment of settlement costs does not factor in, the TILA disclosures are not necessarily informative since there is not necessarily anything to compare it to.

Rescission
Under the proposal, a guarantor would have the right to rescind certain mortgage loans if the guarantor's home is offered as security. How often is there a mortgage loan in which there is a guarantor that offers his or her home as security? We currently do not recognize a guarantor in a mortgage transaction. All individuals who sign the note are considered borrowers whether or not they hold title to the property. Therefore, under the current definition, a guarantor, provided he is an occupant of the mortgaged premises, is already provided the right to rescind.

For the rescission provisions, the proposal would have consistent provisions for closed-end mortgages and HELOCs with regard to whom the borrower would notify if he or she wants to rescind the loan, whether during the initial three day period or during the extended rescission

period. We agree that consistent provisions in this area would benefit all parties. The proposal indicates that the rescission period would start "the later of the loan closing, delivery of the rescission notice, or delivery of the material disclosures." Should the rescission notice be required to be delivered three days prior to closing, we suspect that the notice would become very confusing both to consumers and to lenders in that it would be difficult to determine the exact expiration date. The proposal also states that the lender must include the calendar date that the three day period expires. We can only assume based on this that the rescission period could extend for significantly longer than the current three days if the rescission notice is delivered three days prior to loan closing (rescission begins on the later of, not when the notice is delivered). Based on other waiting periods that were put in place by other sections of Reg Z, we wonder what benefit is provided to consumers in having this extended rescission period?

For purposes of providing the "material" disclosures with the rescission notices, the one-time costs, total settlement charges, and payment summary would be considered accurate if each amount is understated by no more than $100 or is greater than what is required to be disclosed. Does this assume an "all-in" approach to what is and what is not considered a prepaid finance charge? If so, then a higher limit than $100 should be allowed – a single threshold limit that is indexed to changes in the CPI index. A separate foreclosure limit is unnecessary in that in the case of two limits – one related to foreclosure and the other not, the lower limit is relied on and the higher ignored. With a $150,000 loan amount at 5%, one day's interest alone is $21 – making even $35 an extremely low threshold with little room for unintended errors.

For purposes of providing the "material" disclosures with the rescission notices, the loan amount and credit limit for HELOCs would be considered accurate for purposes of providing "material" disclosures if it is: 1) overstated by no more than ½ percent of the credit limit or loan amount that is required to be disclosed, or $100, whichever is greater; or 2) less than the credit limit or loan amount that is required to be disclosed. For processing and documenting purposes, there is no substantial difference between a closed and open end equity loan. Any tolerance should be indexed to changes in the CPI index.

Under the proposal, the rescission notice must include the calendar date that the three-day period will expire, based on the lender's reasonable belief if this date cannot be determined precisely at the time the notice is given. The lender would be in compliance if it provides a longer period than would be required. If the lender originally provides a shorter date than what is required, then it could comply by sending a subsequent notice with a date that is three business days after the second notice is sent. We do not agree with changing how and when the rescission notice is presented. We see no benefit to consumers in that most refinances are made to either lower the current interest rate (any delays in loan disbursement will result in increased costs to the borrowers) or to obtain cash out to accomplish debt consolidation, tuition payments, pay for life events, etc. – any delays could potentially result in higher costs or additional fees paid by the borrower.

If the three day period cannot be determined at the time the notice is provided, it would be difficult for lenders to determine if the rescission period is properly closed and thus disburse the loan proceeds without risk of a future claim of rescission. This uncertainty will result in more costs to the borrower as well as lenders. We believe it will be impossible to comply with a moving disclosure date.

The proposal provides sample language for informing borrowers that their rescission rights may be extended beyond the three-day period and how and who to contact if exercising these extended rights. We see no issues in sending such claims to the loan servicer. While it may not always be possible to forward notices to the owner of the loan on the same day, they certainly could do so within a reasonable time frame.

The proposal would require the lender to provide the rescission notice before the transaction that gives rise to this right. Providing the notice prior to the transaction has huge compliance and operational issues and we're not sure that we know of any benefit that these rules would provide either lenders or borrowers. This assumes that loan files are completely documented several days prior to closing. This is often not the case. Lenders are beholden to borrowers and 3rd party service providers delivering supporting documents prior to closing. It is common for loans to clear underwriting hours before closing. Lenders would need to be certain that the borrowers indeed received the form (rather than relying on an assumption of delivery for regular first class mail after three days or expensive overnight options requiring a signature which both increases the cost of closing and inconveniences borrowers to be at a certain place and time). Without knowing exactly when the right will arise, determining when the appropriate time period has expired becomes extremely difficult. Additionally, under the current system of "at closing," there is no question as to when the three day provision begins and ends rather than relying on a nebulous "*...we may have to extend your right because we guessed incorrectly as to when you would receive your form or we didn't account for your closing being delayed.*" There are multiple adverse affects on both borrowers and lenders – to the borrower it could result in additional fees and costs due to rate lock extensions, additional interest in delayed loan payoffs etc., and to the lender, difficulty in ensuring that the borrowers rights in rescission are properly met.

Further the right of rescission arises frequently from the addition of a security interest on an existing obligation so we do not believe a separate model rescission form is necessary for these situations. The use of separate forms provides layers of complexity that do not necessarily provide any benefit to consumers. The ultimate right is the same.

If a lender receives a borrower's notice of rescission outside of a court proceeding, the proposal would require the lender to send written acknowledgement of the borrower's request within 20 days after receipt of the notice and must indicate whether the lender will agree to cancel the loan. The lender's statement must also give a reasonable date for the borrower to tender the funds or property, and 60 days would be considered reasonable. We believe that 20 days is not very long when dealing with a large company and assuring that mail is delivered to the correct individuals. At minimum, 30 business days would be considered fair. Finally, we believe a reasonable response time to tender a response after closing is 60 business days.

Fees
Under current rules, fees may not be charged until the borrower receives the early disclosures. Under the proposal, this would prohibit charging fees, even if they are refundable at a later time. This would include the lender taking a post-dated check, the lender agreeing not to cash a check until a later time, or if the lender initiates or places a hold on a debit or credit card account, although it would be permissible to take the card account information, as long as the

lender does not initiate a charge. These proposals serve to delay the processing and closing process in that most lenders will likely not move forward with a mortgage application until the applicants have provided fees. We also believe that the "shopping" part of the process is fairly complete once the application has been placed and that prohibitions of facilitating payment of those fees in advance would not provide any additional benefit to consumers. Additionally, the lender is prohibited from charging virtually all fees, whether or not they have permission from applicants until the disclosures (Good Faith Estimate and Early Disclosure) have been delivered.

For mortgage loans, the proposal would require the lender to refund fees paid by the borrower, other than the credit report fee, if the borrower decides not to proceed with the loan and requests the refund within three business days after receiving the early disclosures. This is similar to current requirements for HELOCs. This proposal would serve only to delay the processing of a mortgage loan rather than providing any real benefits to applicants. Lenders are already prohibited from collecting fees (other than the credit report) until the applicants have received their early disclosures. Applicants already have the option of not paying the fee until they are ready to move forward with the transaction. The result of this proposal is that lenders would not proceed with processing any mortgage request until three days after receipt of the disclosure – a delay that could last nearly two weeks. Additionally, it could put applicants at risk of an increasing interest rate since many lenders also tie this fee to the lock in of the interest rate. Should this proposal be implemented, we ask that the language be changed to "after delivery" rather than "after receiving" the early disclosures. It is an operational challenge to determine when the three day period begins and ends. We also believe that the regulators should define a business day and reconcile the differences between Reg Z and Reg X.

Further, the notice of this refund right would be provided in the "Key Questions to Ask About Your Mortgage" that the Fed created and which would be provided when the application is provided to the borrower. We believe the disclosure itself is not informative – it provides the most basic of answers and none that are loan specific. We believe that because it is general in nature, it should not be a loan disclosure at all but perhaps something that should be posted on websites along with other mortgage related information, provided by realtors or included in the settlement costs booklet required by Reg X. As to the fee, we do not concur that fees paid should be refundable – the payment of fees is an indication of intent to proceed with the transaction and have the underlying assumption that the consumer has read his disclosures. These fees are used to cover the hard dollar costs associated with the processing of the request. Any requirement to refund fees would delay the ability of lenders to begin processing a consumers' request.

The proposal would provide guidance with regard to the provisions allowing the borrower to waive the waiting period between the time the lender provides the early and/or corrected disclosures and the time of the loan closing for "bona fide" personal financial emergencies. We request that the regulators define a "bona fide financial emergency." Right now that term is too nebulous. Unless the reasons allowed by the rules are specific, most lenders will not agree

to waive any wait periods since any such waiver could potentially affect or delay a future foreclosure.

General
Current provisions require servicers, to the best of their knowledge, to provide borrowers with the name, address, and telephone number of the owner of the loan, upon the written request of the borrower. Under the proposal, this must be provided within a reasonable time after the borrower's request and ten business days would be considered "reasonable." When considering larger institutions, ten days indeed may be insufficient for the mail to be delivered by the appropriate staff. This may be more complicated with a loan in a securitization trust as the trust, a non-entity, will own the loan and investors own the cash flows. We believe that thirty days sounds more reasonable.

The proposal would prohibit a number of advertising acts and practices for HELOCs, which mirrors the ones imposed on closed-end mortgage advertising. We believe it is inappropriate to mirror advertising for an open-end HELOC to that of a closed-end mortgage. HELOCs have credit limits with defined draw periods. Mortgages are based on a set loan amount and term. Closed-end trigger terms such as the amount of any down payment or period of repayment would not be applicable to a standard HELOC.

Credit Insurance and Debt Cancellation and Suspension Products
We are concerned with the FRB's proposal that will mandate specific disclosures for payment protection products, including credit life, credit disability, debt cancellation and debt suspension coverage. These types of products help members make their loans and other payments in times of need. Not all consumers can qualify for other types of insurance, so these products provide members with peace of mind and protect their credit rating to ensure they have access to credit at reasonable rates. Our credit union supports fair and accurate disclosures for members who purchase such products; however these proposed disclosures will have a significant negative impact on our members. Members who would benefit from these products may elect not to purchase them because they are told these are bad and inferior products. Further, the decision to not purchase these products will potentially expose them to unnecessary risks if they are unable to make future payments. We urge the FRB to change these disclosures so that they instead reflect accurate, fair and objective information about these payment products. The government does not promote certain types of products and services in other industries and should not do so for insurance or other similar products.

We again appreciate the opportunity to respond to your proposed changes to Regulation Z. Should you have any questions about our comments, please feel free to contact me at the telephone number listed on Page 1, at extension 5665.

Sincerely,

Beverley F. Rutherford
VP/Compliance