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December 23, 2009

Ms. Jennifer L. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

*Sent Via Email*

**RE: *Proposed Rulemaking – Regulation Z; Docket No. R-1367 (HELOC)***  
***Proposed Rulemaking – Regulation Z; Docket No. R-1366 (Secured Closed-End)***

Dear Ms. Johnson:

The Pennsylvania Credit Union Association (PCUA) appreciates this opportunity to provide comments to the Board of Governors of the Federal Reserve (Board) on two of its proposed rules to amend the disclosure requirements of Regulation Z for home-equity lines of credit (HELOC) and closed-end credit secured by real property or a consumer's dwelling (Closed-end mortgage loans), respectively.

As a matter of background, the PCUA is a statewide trade association that represents over 80% of the approximately 561 credit unions located within the Commonwealth of Pennsylvania.

The PCUA consulted with its Regulatory Review Committee (the Committee) in order to provide comments to these proposed rules. The Committee consists of twelve (12) credit union CEOs who lead the management teams of Pennsylvania's federal and state-chartered credit unions. Members of the Committee also represent credit unions of all asset sizes. The comments contained in this letter reflect the input of the Committee and PCUA staff.

Recently, we commented on the Board's proposal to implement certain provisions of the CARD Act. As the Board proceeds forward with finalizing its numerous and voluminous amendments to Regulation Z, we respectively request the Board to consider the following observations:

- **Not all lenders are the same.** Specifically, credit unions did not engage in the egregious and predatory practices at which the amendments to Regulation Z are targeted. In addition, credit union loan products, particularly mortgage products, are uncomplicated when compared to the mortgage loan products offered by other lenders. It is our position that National Credit Union Administration (NCUA) should retain the sole and primary responsibility to oversee consumer protection issues related to credit unions, including the promulgation of regulations that address credit union loan products.

- **Beware of unintended consequences:** The broad application of Regulation Z and the amendments thereto can and have already caused unintended negative consequences to credit union members.

**Not all lenders are the same:**

Pennsylvania credit unions generally support the Board's efforts to revise loan disclosures to improve consumer understanding and provide clarity regarding rates, fees, and loan terms.

The members of our Committee appreciate the Board's objective to provide consumers with disclosures in formats that improve the ability of consumers to understand the terms and conditions of the credit being offered and extended to them. We agree that it is particularly important that consumers understand loan terms and conditions when their home is at risk.

It is also our understanding that the vendors, which provide mortgage loan disclosures to credit union members, anticipate that the new disclosures will be available in time for the relevant effective dates included in the proposed regulation.

Notwithstanding the above, we note and caution that each revision or amendment implemented under the name of improving the simplicity and clarification of loan disclosures adds costs. Those costs are typically borne by the credit unions and their members. In consideration of the many articles recently published citing credit unions as low cost, consumer friendly alternatives, it is clearly counterintuitive to increase the costs of credit union mortgage loan products to improve disclosures unnecessarily.

We submit that the "one size fits all approach" to mortgage lending disclosures under Regulation Z is not appropriate.

In order to maintain low cost, consumer friendly mortgage products, it is imperative that the disclosures and notices provided by credit unions to their members are relevant to the interest rate calculations, fee structures, and terms and conditions applicable to the actual products offered by credit unions.

As a general matter, mortgage loan products offered by credit unions do not include high broker fees, yield spread premiums and the other types of miscellaneous fees charged by other mortgage lenders. We urge the Board to recognize that not all mortgage lenders engaged in the predatory and egregious mortgage lending practices that caused our country's current mortgage crisis.

We ask that the regulators recognize that the mortgage lenders who are compensated solely based upon the volume and the amount of the mortgage loans they originate operate differently than credit unions and other community lenders. In the case of nationwide mortgage lenders, the mortgage loan is often the only financial relationship between the mortgage lender and the consumer. Shortly after origination, the mortgage loan is quickly sold into the secondary market and servicing rights are sold to a third party. Those mortgage lenders have little interest in whether the borrower can continue to afford the mortgage once the origination fees are collected.

Conversely, the goal of credit unions is to have multiple financial relationships with their members. In addition to mortgage loans, credit union members hold depository accounts, such as: share, checking and/or savings accounts, and may also have other types of loans, such as auto and credit card loans with their respective credit unions. Credit unions are concerned with the ongoing overall financial well-being of their members/owners.

The structure and mission of credit unions do not provide incentive to the credit unions to impose excessive fees and charges to their members to squeeze as much profit out of a mortgage loan as possible. Further our member credit unions can attest that during the years of exotic mortgage loan products and loose credit standards, they remained true to conventional mortgage loan underwriting standards in order to protect the financial well-being of their members and the credit union.

In consideration of the above comments, we submit that the NCUA should retain the authority to promulgate and enforce regulations that are tailored to address the mortgage loan products offered by credit unions. There is precedence for this recommendation. NCUA adopted its own regulations under the Truth in Savings Act, 12 C.F.R. Part 707, so that credit union members can make informed decisions about *accounts at credit unions*.

Accordingly, with financial regulatory restructuring in progress, we believe the time is ripe for the NCUA to address the disclosures, prohibitions and limitations applicable to credit union mortgage loan products under the Truth in Lending Act and other relevant Federal law. We submit that it is time to break away from the “one size fits all approach” to mortgage lending and regulation and for the NCUA to adopt regulations that are practical and relevant to the mortgage loan products that are offered by credit unions.

**Beware of unintended consequences:**

Certainly the increase costs associated with revamping Regulation Z disclosures and training staff on the new regulations have an impact on credit unions. The costs related to building software to revise old and produce new disclosures are typically borne by the credit unions and other mortgage lenders. As credit unions, consistent with their mission to offer low cost credit, are already operating on narrow margins, the cost of new software is often reflected in higher rates and sometimes new or higher fees. As mentioned above, it seems counterintuitive to increase the costs of credit union credit mortgage loan products to improve disclosures unnecessarily.

However, even more disconcerting is the conflict inherent in the policies announced by the Obama Administration and the amendments to the mortgage lending regulations.

**The “higher-priced mortgages” regulations:**

Recently, the national press has been covering examples of the Obama Administration’s request to all lenders to do their share in extending credit to stimulate the economy and pull our country

out of recession. In concert, the Administration has been designing mortgage lender programs to help consumers stay in their homes through the recession hump.

In fact, just this week on December 22, the Governor of Pennsylvania announced a partnership among the Pennsylvania Housing Finance Agency (PHFA), the U.S. Treasury, Fannie Mae and Freddie Mac.

The new program includes a new \$1.2 billion statewide mortgage program to kick-start the country's housing recovery. "To kick-start the housing recovery we need to repair the damage of the past few years and again make it possible for qualified homebuyers to get loans," Governor Rendell said. One key aspect to the program is to provide \$50 million for new-home construction loans to encourage new home construction, create jobs, and boost the economy. The program has set aside funds for new construction lending because it has a rippling affect in the community to provide jobs and revenue.

In contrast, the "higher-priced mortgages" rules included in Regulation Z, which became effective October 1, 2009, are having an opposite effect in Pennsylvania. In particular, the new requirements to establish escrow accounts for taxes and insurance for mortgage loans meeting the definition of "higher-priced mortgages" is causing havoc on certain credit union mortgage loan products.

We have been advised by our member credit unions that this requirement has a dramatic impact on the closed-end, non-purchase money mortgage loan products they offer. Because the new regulations calculates a "higher-priced mortgage" by referencing APRs that exceed the average of comparable prime mortgage rates instead of the index used for HOEPA loans, some credit union loans are falling into the "higher-priced mortgage" category. They have indicated that in order to continue to provide this product they will need to move from risk-based pricing, and charge higher rates to all of their members.

Most of our member credit unions do not have a mechanism for establishing and administering escrow accounts for closed-end, non-purchase money products. The increased costs and burden associated with this requirement are causing many of our member credit unions to abandon their closed-end, non-purchase mortgage products due to the problems in pricing. Their loans are simply becoming too expensive and, therefore, are not attractive to borrowers who are looking for lower rate mortgage products to finance home improvement projects or subsidize higher education costs.

Accordingly, the new regulations have resulted in less low cost mortgage loan options to consumers.

**The Credit Union *Better Choice* program:**

In the later part of 2006, PCUA announced a joint effort between the Association, the Pennsylvania Treasury Department, and the Pennsylvania Department of Banking, which resulted in the *Credit Union Better Choice* program. The program was developed by PCUA to



position credit unions as a solution to the growing problem of payday lending practices. Under our program, Pennsylvania credit unions offer short-term installment loans with a maximum term of 90 days. Other parameters of the program include: a maximum loan amount of \$500.00; a maximum interest rate of 18% and a maximum application fee of \$25. Of course, credit unions are permitted under the program to offer lower loan amounts and charge interest and fees lower than the established maximums. However, no other fees are permitted under the program.

The merits of the program were featured in *Cascade*, a publication of the Federal Reserve Bank of Philadelphia. A copy of the article can be reviewed at:

[http://www.philadelphiafed.org/community-development/publications/cascade/69/04\\_PA-credit-unions-offer-payday-lending.cfm](http://www.philadelphiafed.org/community-development/publications/cascade/69/04_PA-credit-unions-offer-payday-lending.cfm)

The underwriting criteria under the *Better Choice* program excludes pulling credit reports but does permit participating credit unions to require employment verification before extending a *Better Choice* loan. The program was designed to make *Better Choice* loans available to as many consumers that currently use high cost payday lenders as possible.

The *Better Choice* program also includes a savings component, which requires that 10% of the requested loan amount be deposited into a savings account in the borrower's name, hoping that the program will encourage savings. Interest paid on the required savings amount is rebated when the loan is paid in full and according to the loan terms. In addition, loan applicants are offered financial counseling to assist and encourage their use of other low cost services. Information regarding *The Better Choice Program* is available on PCUA's website at [www.pcucoop.com](http://www.pcucoop.com).

We recognize that the proposed regulations do not specifically apply to our *Better Choice* program. However, we raise this issue because the closed-end mortgage rule proposal amends the APR disclosure to include most fees and settlement costs paid by the borrower. Accordingly, the new proposed definition of APR, if adopted for all types of loans, may cause our credit unions to be out of compliance with the NCUA regulations that cap the interest rate on credit union loans at 18%.

The affect of adopting this new definition for all types of loans could impact the availability of *Better Choice* loans as participation in the program would become more difficult and costly. Since *Better Choice* was designed as a break-even program at an 18% interest rate and a \$25 fee, we anticipate that many of our member credit unions would need to eliminate their participation in the *Better Choice* program if they are required to eliminate the application fee, thereby causing the program to run at a loss to the credit union.

There are currently 82 Pennsylvania credit unions with 214 branches throughout Pennsylvania, Ohio, and Delaware participating in the *Better Choice* program. Pennsylvania credit unions have responded to our state government's request to provide an alternative low cost product to payday loans. The *Better Choice* program has saved consumers over \$6.7 million dollars since its debut in 2006.

Ms. Jennifer J. Johnson  
Secretary of the Board

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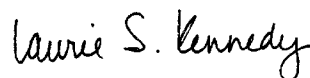
If the proposed amendments are adopted for closed-end mortgage loans and the definition is then applied to other types of loans offered by credit unions, the unintended consequence could require credit unions to change the parameters of their *Better Choice* loans. PCUA is concerned that our member credit unions that are unable to recoup their administrative costs by charging a modest application fee will be required to cease participating in the program. If the definition of APR is amended in this proposal, we will need clear guidance from NCUA that should the definition apply to all loans, Pennsylvania credit unions can continue their participation in the program as it is designed so that the program does not cause losses to the credit unions.

We have provided a copy of this letter to the NCUA Board members.

Thank you again for this opportunity to provide comments. Please feel free to contact me or any of the PCUA staff at 1-800-932-0661 if you have any questions or if you would like to discuss the contents of this letter.

Sincerely,

Pennsylvania Credit Union Association



Laurie S. Kennedy  
Associate Counsel

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cc NCUA Board Members  
Association Board  
Regulatory Review Committee  
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