The PNC Financial Services Group, Inc.
249 Fifth Avenue
One PNC Plaza, 21st Floor
Pittsburgh, PA 15222-2707

412 768-4251 Tel
412-705-2679 Fax
james.keller@pnc.com

James S. Keller
Chief Regulator y Counsel

December 24, 2009

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

Re: Proposed Rule; Request for Comment regarding Proposed Amendments to Regulation Z; Docket No. R-1367; 74 Fed. Reg. 43428 (August 26, 2009)

Dear Ms. Johnson:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, and its subsidiary bank, PNC Bank, National Association ("PNC Bank"), Wilmington, Delaware, appreciate the opportunity to comment on amendments proposed by the Board of Governors of the Federal Reserve System ("Board") to its Regulation Z (12 C.F.R. § 226)("Proposal").

PNC is one of the largest diversified financial services companies in the United States, with $271.4 billion in assets as of September 30, 2009. PNC has businesses engaged in retail banking and consumer lending, corporate and institutional banking, asset management, residential mortgage banking and global investment servicing. PNC provides many of its products and services nationally and others in PNC's primary geographic markets located in Pennsylvania, Ohio, New Jersey, Michigan, Maryland, Illinois, Indiana, Kentucky, Florida, Missouri, Virginia, Delaware, Washington, D.C., and Wisconsin. PNC also provides certain investment servicing internationally.

I. General Comment

PNC supports the Board's intention to improve and simplify the content and format of disclosures consumers receive at all stages in the home equity line of credit ("HELOC") borrowing process. We note that any changes to Regulation Z are certain to have a significant impact on all financial institutions engaged in consumer lending, and we appreciate the opportunity to provide specific comments below.

II. Specific Comments

A. Disclosure Changes.

The Board proposes content, format and timing changes to the four main types of HELOC disclosures governed by Regulation Z: (1) disclosures at application, (2) disclosures at account opening, (3) periodic statements and (4) change-in-terms notices. We provide below comments on all four of the categories of proposed disclosure changes.

(1) Disclosures at Application (12 C.F.R. § 226.5b(1))

The Proposal replaces the requirement to provide a multiple-page generic disclosure with a requirement to provide a transaction-specific disclosure in tabular format that must be given within three days after application. Creditors would be required to disclose in the table a total of one-time fees to open the account, which must include fees in a dollar amount imposed by the creditor and any third party, as well as an itemization of such fees.

The Proposal does not require disclosure of the amount of any property insurance premiums, even if the creditor requires property insurance. The Board believes it is not needed, as consumers are likely to already have property insurance on the home. The Board solicits comment on this topic.

Comment: We fully support the belief of the Board that information on the amount of property insurance premiums need not be provided to the consumer at any time during the HELOC application or account opening process. Typically, HELOC lenders do not require hazard insurance as a condition to extend credit, since such coverage is provided in connection with the first mortgage loan. Invariably, borrowers already have property insurance and any disclosure on the cost of premiums is likely to be, at best, an educated guess on the part of the HELOC creditor. There may be infrequent circumstances where a HELOC is being extended in a first lien context. In that case, we would expect the insurance condition, and the cost related thereto, to be imposed and addressed in the account opening process.

(2) Disclosures at Account Opening (12 C.F.R. § 226.6)

Some items required for current early disclosures would not be included in the proposed account opening disclosure, based on the Board's desire not to overload the consumer with information. Those items include: (i) information about fixed rate options; (ii) fees that could be incurred over the life of the line; (iii) other payment options; and (iv) conditions under which a creditor may take certain actions under the plan. Proposed comment 5b(c)(2) explains that a creditor must provide additional information about fees to a consumer upon the consumer's request ***either*** prior to account opening ***or*** along with the early disclosures; the comment then refers to a series of four additional provisions that further define what information needs to go into separate disclosures. If the creditor chooses not to provide the additional disclosures at the time it supplies the account opening disclosure, the creditor must use a tabular format to disclose it "as soon as reasonably possible" after the request.

Comment. It appears the requirement for separate disclosure would mandate creditors to maintain up to four ancillary separate tabular disclosures, in addition to the account-opening table. The comments also do not address definite format and/or timing requirements. In our view, this requirement will not accomplish the Board's goal of avoiding "information overload." We request the Board revisit this requirement and consider including additional direction in the Commentary regarding format requirements. For example, we suggest the Board permit creditors flexibility, and clarify that these ancillary disclosures may be combined into one supplemental disclosure or, at the creditor's option, that the additional information may be included in the account opening disclosures as long as it is located outside the table.

(3) Periodic Statements (12 C.F.R. § 226.7)

To make disclosures on periodic statements more understandable, the Proposal would revise the format and content requirements, largely conforming to the periodic statement provisions finalized in the Final Rule published at Docket No. R-5244; 74 Fed. Reg. 5244 (January 29, 2009) ("Final Rule"). The Final Rule has a mandatory effective date of July 1, 2010, for personal unsecured LOC without card access ("PLOC") periodic statements, and is optional for HELOC periodic statements on the same date.

The formatting requirements for HELOC statements and unsecured PLOCs differ in a few ways, most notably with respect to the provisions related to the itemization of interest charges. Pursuant to the Proposal, creditors offering HELOCs would be required to itemize the interest charges applicable to the general variable rate feature separately from the interest charges applicable to other features that are subject to different periodic rates (*i.e.,* fixed rate balances). Creditors offering unsecured lines of credit must itemize interest charges by transaction type, regardless of whether the same rate applies to the types of transactions.

The Board requests comment on whether creditors that currently use a single processing system to generate periodic statements for all open end products would be able to continue to do so under the Proposal.

Comment. PNC uses the same statement processing system to generate periodic statements for the bulk of both PLOCs and HELOCs. At this time, we are engaged in the process of reviewing and revising PLOC statements to comply with the July 1, 2010 effective date. We have determined that, from an operational perspective, it is substantially less complex and burdensome to make the same changes for both types of statements without variation. The option of making HELOC periodic statement changes to coincide with the PLOC timing requirements is very helpful and can save a substantial amount of programming time and cost. It appeared from the Final Rule that the required periodic statement changes for PLOC and optional changes for HELOC are identical, and we factored that into our planning to a large extent. However, any difference in the statement format and content, no matter how insignificant it may seem in relation to the overall number of required changes, can make a huge difference in operational complexity and cost. For this reason, we request that the Board adopt final HELOC periodic statement changes that are identical to those established for PLOC statement changes, or to make clear that a HELOC creditor may choose to continue to comply with the PLOC statement requirements at its option.

(4) Change-In-Terms Notices (12 C.F.R. § 226.9)

(i) Advance Notice. Regulation Z currently requires creditors to send notice, in most cases, 15 days before the effective date of certain changes in account terms. The Proposal would revise the format and content of the notice, largely conforming to the change-in-terms provisions of the Final Rule.

The Board is soliciting comment on whether 45 days is an appropriate period for the advance notice requirement, and whether the time proposed is appropriate as the severity of the impact of a change in terms for HELOCs is likely to be less severe than for credit cards.

Comment. The opportunity for creditors to change terms is restricted under Regulation Z to very limited circumstances which, unless either insignificant or beneficial to the borrower, must be disclosed in advance and agreed upon by the borrower in the HELOC agreement. We recommend that, in situations where a HELOC contains a contractual provision for a change in terms upon the happening of specified event, which was disclosed adequately at account opening, the creditor should **not** be required to provide 45-day advance notice. For example, if the HELOC contains a provision for the APR to increase if an employee terminates employment with the creditor, or a borrower discontinues an automatic deduction payment method, the creditor should be able to increase the rate without 45-day notice as long as that feature was properly disclosed at account opening.

(ii) Example of Insignificant Changes. The Board proposes to add to comment 5b(f)(3)(v)-2 the following example of a change considered to be insignificant: a creditor may eliminate a method of accessing a HELOC, such as by credit card, as long as at least one original means of account access remains.

The Board requests comment on the appropriateness of this additional example of an insignificant change.

Comment. We agree that the addition of this example to comment 5b (f) (3) (v)-2 is necessary and appropriate. This is a topic with which many creditors struggle during account conversions, and the addition of a comment addressing this particular topic will definitively settle the issue.

B. Suspensions and Credit Limit Reductions

(1) Material Change in Financial Circumstances (12 C.F.R. § 226.5b(f)(3)(vi)(B))

(i) Regulation Z currently permits a creditor to suspend advances or reduce the credit limit when the creditor "reasonably believes that the consumer will be unable to fulfill the repayment obligations because of a material change in the consumer's financial circumstances." The revised commentary would clarify that evidence of a material change in financial circumstances may include credit report information showing late payments or nonpayments, such as delinquencies, defaults, or derogatory collections or public records related to the consumer's failure to pay other obligations.

The Board recognizes that credit score declines may be an appropriate screening tool for determining which consumers to examine more closely for potential action based on this provision, but is concerned about whether credit score declines alone can meet the required statutory showing.

Comment. We believe that, as currently drafted, the Regulation creates a two-pronged test that is difficult for creditors to manage. In particular, the example of loss of income is both difficult for a lender to determine, and is drafted in a way to appear limited just to loss of income. On the other hand, credit scores, specifically FICO or other available behavioral scores, are objective tools that are statistically validated on an ongoing basis. FICO scores historically have proven to be the best indicator of default risk, which is really the key aspect of managing a line of credit. This alone should be enough to permit creditor action to protect against loss. The FICO or

behavioral score, because it is an aggregation of many variables, is a more complete picture of a consumer's current financial circumstances than income or other factors, and significant declines in score are a reliable indication of a material change in a consumer's financial condition. For example, it is accepted in the industry that a 20-point drop in a FICO score doubles the likelihood that a borrower will default. FICO or other behavioral scores are also easily obtained in an automated environment, in contrast with other financial information, such as employment status or proof of income. Because of the proven and predictive track record of FICO or other behavioral scores, we request the Board to revise the Commentary to expressly permit a creditor to suspend or reduce a HELOC based on its use of score declines. We also ask the Board **not** to include a precise standard regarding what would be considered a material decline in a consumer's FICO score. Rather, we believe the best approach is for the Board to require creditors to establish standards through statistical analysis and historical data applicable to their own portfolios.

(ii) The revised commentary would clarify that evidence of a material change in financial circumstances may include credit report information showing late payments or nonpayments, but that late payments of 30 days or fewer is not adequate evidence of failure to pay a debt.

The Board is requesting comment on whether late payments of 30 days or fewer would be adequate evidence of a failure to pay a debt for purposes of this provision.

Comment. We request that the Board allow creditors to maintain flexibility in their assessment of late payments on credit reports and decline to add the 30-day requirement because it is not a definitive standard in all cases. For instance, delinquency on a first mortgage is a very strong predictor of delinquency on HELOCs, and a less than 30-day late payment on a first mortgage may be more indicative of a consumer's failure to pay than a similar payment delay on another obligation.

(iii) The Board is specifically proposing that account action under §226.5b(f)(2)(iii) be prohibited unless the consumer has failed to make a required minimum periodic payment within 30 days of the due date.

The Board requests comment on whether this 30-day timeframe is appropriate or whether some other time period is more appropriate.

Comment. We ask that the Board decline to create a set minimum timeframe of 30 days related to the borrower's potential default under the account agreement. Creditors should have flexibility in this regard, as there may be a number of other factors that, when combined with a less than 30-day delinquency, make it prudent to terminate the line. This would also be at odds with the definition of default and delinquency in most account agreements.

(2) Reinstatement of Accounts. (12 C.F.R. § 226.5b(f) & (g))

Regulation Z requires creditors to reinstate credit privileges once circumstances permitting a freeze or credit limit reduction no longer exist. The Proposal contains additional requirements regarding reinstating accounts that have been temporarily suspended or reduced.

(i) Creditors' obligation to investigate the request. The Proposal would require creditors to complete an investigation of a request for reinstatement within 30 days of receiving a request for reinstatement and to give a notice of the investigation results to consumers whose lines will not be reinstated.

The Board requests comment on requiring ongoing monitoring in all cases, including specific information about potential benefits and burdens of the approach.

Comment. We believe that the Regulation should continue to permit lenders to request that borrowers take the initiative to reverse line of credit suspensions. Requiring lenders to undertake this task would require an immense amount of work and cost to establish and maintain procedures to monitor all such accounts on an ongoing basis. Failure to manage adequately this process could potentially create liability. Such resource or cost requirements might also provide a disincentive to lenders taking prudent line management actions, thereby increasing credit losses.

The Board requests comment on whether the 30-day timeframe is appropriate and whether the Board should consider additional guidance for creditors when consumers do not provide needed information to complete the investigation in a timely manner.

Comment. We believe the 30-day timeframe should be replaced by a commercially reasonableness standard. Although 30 days may be appropriate in some instances, there may be other situations where 30 days is not nearly enough time to complete an investigation and respond to a consumer, especially in cases where consumers are slow to provide the information necessary to conclude an investigation within that timeframe. There may also be delays in obtaining necessary pieces of information that are outside of the control of either the borrower or the lender. If a 30-day standard is adopted, exceptions should be provided for circumstances warranting additional time.

(ii) Reinstatement Investigation Costs. The Proposal would require creditors to cover the costs associated with investigating the first reinstatement request by the consumer.

The Board requests comment on whether consumers should have to pay reinstatement investigation costs for any reinstatement request. The Board also requests comment on whether, if the first reinstatement request is free but fees may be charged for subsequent requests, a consumer should be required to pay investigation costs for a subsequent reinstatement request made a significant time period after the first request and, if so, what is the appropriate time period.

Comment. We do not object to the idea of a "free" reinstatement process, but the Board should make clear that such a process does not mandate that the creditor incur costs for the investigation, such as requiring an appraisal for each instance of investigation. The Board should also make clear that consumers are not entitled to numerous subsequent requests at no cost. Any obligation on the creditor's part to commission a full appraisal in each investigation would effectively destroy the well-established and cost-effective ability to use Automated Valuation Models (AVMs), which are a statistically sound alternative to appraisals. If reinstatement investigations require lenders to bear substantial costs, this could inhibit a creditor's line management process

and lead to credit loss and safety and soundness issues. Additionally, we believe the creditor should not bear the costs of subsequent requests unless the investigation results in reinstatement of a borrowers credit privileges. If the Board declines to adopt this approach, the Board should establish a reasonable minimum period of time that must pass before a consumer could make a subsequent request at no cost. If there are no limitations on the right to "free" requests, creditors could be overwhelmed with repeat requests, incur excessive, unnecessary expense, and effectively lose the ability to manage prudently credit risk on their HELOC portfolios.

C. Miscellaneous

While not within the express scope of the Board's solicitation for comments, we request the Board consider correcting an ambiguity existing in the Official Staff Commentary at Section 226.5b (5), which reads as follows (emphasis added):

5. Payment terms -- applicability of closed-end provisions and substantive rules. All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. **Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C**, depending on the circumstances. The following examples apply these general rules to different situations:

- If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§ 226.5b and 226.6, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under § 226.7 and comply with other provisions of subpart B (such as the substantive requirements of § 226.5b(f)) throughout the plan, including the repayment phase.

- **If the consumer and the creditor enter into an agreement during the draw period** to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of § 226.5b(f) throughout the plan.

- **If the consumer and creditor enter into an agreement during the draw period** to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

Comment. We believe the language of this Commentary can be interpreted in several different ways, resulting in uneven application for borrowers whose HELOCS are being modified under current federal proposals and lender specific loss mitigation tools. One interpretation of the Commentary is that, if the HELOC is in default and the draw period is terminated ***prior*** to entering into the modification, the HELOC remains an open-end plan, no new closed-end TIL disclosure is required, and the creditor must continue to comply with the open-end rules for HELOCs. If, however, the HELOC is either in default or current, but the draw period is

terminated ***concurrently*** with the modification, the obligation has converted to a closed-end loan and a TIL disclosure must be given to the customer.

We do not believe HELOC modification programs and the current market conditions were contemplated by the Board when these provisions were drafted. Further, generating closed-end TIL disclosures for HELOC modifications creates significant complexity and operational hurdles for creditors attempting to aid distressed borrowers. This becomes a substantial problem because the closed-end TIL disclosures are generated by front-end origination systems and typically are not available on back-end servicing platforms involved in producing modification documentation. We also do not believe that the Board intends that similarly situated borrowers be treated differently simply because of the timing of the replenishment right on their HELOCs. Finally, we are concerned that providing closed-end TIL disclosures to borrowers going through this process could be confusing to the borrowers. We therefore request the Board clarify this point and exempt HELOC modifications from the requirement to furnish closed-end credit disclosures regardless of whether the draw period has been terminated prior to the modification.

D. Effective Date

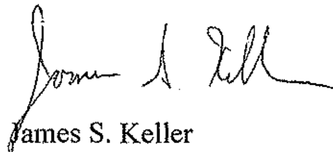
The Board requests comment on what would be an appropriate implementation period for the proposed rules, and, specifically requests comment on the length of time creditors may need to implement the Proposal.

We urge the Board to provide creditors with sufficient time to implement the changes that are adopted. We suggest a two-year period for mandatory compliance, due to the magnitude of the proposed changes and the fact that there have been numerous recent regulatory changes requiring creditors to make a large number of substantial changes in quick succession.

III. Conclusion

Thank you for your consideration of these comments. If you would like to discuss any aspect of this letter, please do not hesitate to call me.

Sincerely,



James S. Keller

cc: Michael D. Coldwell
Federal Reserve Bank of Cleveland