SchoolsFirst™
FEDERAL CREDIT UNION

May 2, 2011

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

Re: Proposed Rule – Regulation Z, Section 226
Docket No. R-1406

Dear Ms. Johnson

SchoolsFirst Federal Credit Union serves school employees and their families in Southern California. We have more than 475,000 Members and over $8.5 billion in assets. SchoolsFirst FCU is pleased to have the opportunity to comment on the Federal Reserve's proposed rule to amend Section 226 of Regulation Z.

While we realize that the implementation of this proposal is required by Sections 1461 and 1462 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), we believe that there are several aspects of the proposal which, if finalized as proposed, would have the unintended consequence of creating inconsistencies and confusion within the mortgage loan process. Our concerns are addressed below.

Cancellation of Escrow Accounts

- **Permissible Threshold**

The proposed rule requires that a "higher-priced" mortgage loan have a mandatory escrow account for a minimum of five (5) years and, after this period, allows for the cancellation of the escrow account based on the borrower's request only if the loan-to-value on the subject property does not exceed 80% at that time.

Some state laws allow borrower-initiated escrow account removal once the loan-to-value reaches 90%. While we do not object to the proposal's threshold in principle, we would request that the final rule contain specific preemption language with regard to any state laws which trigger a borrower's right to cancel an escrow account within a broader loan-to-value threshold. This will eliminate future interpretational issues and provide for additional clarity in the rulemaking.

Furthermore, the proposed rule attempts to correlate the trigger for the permissive cancellation of an escrow account with the prerequisites for borrower-initiated cancellation of private mortgage insurance found in the Homeowner's Equity Protection Act (HOEPA). We believe that such a correlation is incongruous and may be problematic.

HOEPA requires loans with PMI to have an escrow account for the entire time the loan is insured. Automatic lender-initiated PMI cancellation does not occur until a 78% loan-to-value threshold is met. However, the proposed rule states that an escrow account on a "higher-priced" loan must remain in effect, even if the five years have lapsed, unless and until "the borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance". Elsewhere in the proposal, however, it states that the escrow account must be cancelled based on borrower request if, among other requirements, the loan-to-value dips below 80%.

Therefore, we are left with the conundrum of allowing a borrower to request cancellation at 80%, but the lender not being permitted to cancel the account until the 78% threshold is reached. We would request clarification as to which of these loan-to value ratios the Federal Reserve intends to serve as the benchmark for escrow account cancellation.

Disclosure Requirements

- **Timing of Disclosures**

The proposed rule requires a lender to provide the borrower a disclosure regarding the establishment or non-establishment of an escrow account at least three (3) business days prior to consummation of a mortgage loan. We believe that a better alternative would be to require the form to be provided at consummation.

Lenders are already overburdened with multiple timing requirements under the Mortgage Disclosure Improvement Act (MDIA), RESPA, etc. To add the burden of yet another timed disclosure without a corresponding consumer benefit would appear to create an unreasonable operational burden for lenders.

Unlike closing costs and the like, the existence or non-existence of an escrow account is something that a borrower and lender can modify after consummation and loan funding. If a borrower who does not have an escrow account wishes to establish one after consummation, he/she can generally request the lender to establish such an account subsequent to funding. The borrower would obviously need to provide the lender with the necessary monies to fund the account, but this is no different than if the borrower were to fund such an account prior to funding.

Likewise, if a lender does not offer escrow accounts, it is very unlikely that this fact alone would cause a borrower to seek a loan from a different lender. It is equally unlikely that a borrower's decision to continue with a loan would be any different whether this notification is provided three days prior to consummation or at consummation.

There is no discernible benefit to a borrower by receiving this disclosure three days prior to consummation. If the existence or non-existence of an escrow account is a deal-breaker for a particular borrower, the borrower has the same opportunity to walk away from the transaction whether the disclosure is provided at the closing table or three days prior to being bound to the loan.

- **Content of Disclosures**

We request clarification as to whether, in loans involving multiple borrowers, the signature of only the primary borrower on both escrow account disclosures would be sufficient to satisfy the requirements of the regulation.

We believe that the operational burden of requiring a lender to obtain signatures on what could potentially be three or four borrowers on a loan outweighs the minimal benefit that would be received by all borrowers acknowledging such a disclosure. In our experience, borrowers on a mortgage loan generally communicate with each other regarding the significant terms of a loan. It is reasonable to assume that the primary borrower on a loan will notify the other borrowers of the receipt of the escrow account disclosure.

Therefore, the final rule should clarify that the signature of only one borrower the escrow account disclosures is sufficient. Alternatively, we would propose that the final rule require that all borrowers be provided a copy of the disclosures, but that the signature of only one borrower be required.

The Model Forms appended to the proposal contain a section entitled "What could happen if I don't pay my home-related costs?". The response on the Model Forms addresses only that a lender could force-place insurance and/or establish an escrow account which would increase the borrower's monthly payment.

We believe that the response on the Model Forms should be more descriptive to reflect that a failure to pay property taxes, special assessments, or to maintain homeowners' insurance on the subject property constitutes a default on the underlying mortgage obligation which triggers the lender's right to foreclose on the property.

Fully advising consumers of the repercussions of their actions (or, in this case, inaction) is one of the stated objectives of the Dodd-Frank Act. In fulfilling this objective, we believe that a borrower should be provided this information along with the existing disclosure. This will further impress upon the borrower the importance of maintaining these obligations current where no escrow account is in force.

Finally, we request clarification regarding the amounts to be provided to borrowers on the required disclosure where an escrow account will be established pursuant to Section 226.19(f)(2)(i) of Regulation Z. Due to system error or last minute changes in loan structure, the amount of the monthly escrow account payment and the amount needed to fund the initial escrow account could easily be overstated or understated in the disclosure statement.

We believe that the final rule should clarify that these amounts may vary up to a maximum of ten percent (10%) from the actual amounts at closing without the lender being required to redisclose and potentially begin the "three-day prior to consummation" period anew.

A variance tolerance of 10% is permitted by RESPA on the Good Faith Estimate (GFE) for items such as title insurance and recording fees. Furthermore, an unlimited variance tolerance is provided daily interest charges and homeowner's insurance. We believe that escrow account costs are comparable in impact to title fees and homeowner's insurance fees. They represent a cost to a borrower, but they are not costs controlled by the lender.

Furthermore, we do not believe that a borrower would be adversely impacted or misled by a variance tolerance of 10% on the escrow account charges. In fact, in many cases it would be detrimental to the borrower to delay closing for an additional three days (assuming the Federal Reserve ultimately elects to require that the second disclosure be provided three days prior to consummation).

In closing, we would like to commend the Federal Reserve on using its best efforts to implement this complex provision of the Dodd-Frank Act. With the clarifications and revisions which we have proposed above, we believe that this rulemaking can be effectively implemented while eliminating inconsistencies and removing unintended consequences to both borrowers and mortgage lenders.

SchoolsFirst FCU appreciates being given the opportunity to comment regarding this proposed rule, which is of great importance to the mortgage lending industry, to credit unions, and to our valued Members.

Sincerely,

Fred Ferrell

Fred Ferrell
Vice President, Real Estate Lending
SchoolsFirst Federal Credit Union

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