December 18, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1366 & R-1367

Dear Ms. Johnson:

The Conference of State Bank Supervisors (CSBS), the American Association of Residential Mortgage Regulators (AARMR), and the National Association of Consumer Credit Administrators (NACCA), collectively "the state regulators," commend the effort by the Board of Governors of the Federal Reserve System (Board) with respect to its proposed amendments to Regulation Z as it applies to closed-end credit transactions and home-equity lines of credit (HELOCs). We appreciate the opportunity to comment on the proposed amendments.

In general, the state regulators believe that the proposed amendments to the disclosures involved in closed-end and HELOC transactions represent substantial improvements to the existing disclosures in Regulation Z. Additionally, the state regulators commend the Board on its effort to address some of the more substantive issues in residential mortgage transactions, such as loan originator compensation and steering. The Board's extensive consumer testing has certainly provided a rational framework for the proposed amendments. Furthermore, the state regulators support the Board's proposal to extend the scope of Regulation Z to all transactions secured by real property or a dwelling, not simply to principal dwellings as currently reflected in Regulation Z. Although the state regulators believe that the majority of the changes the Board has proposed with regard to closed-end and HELOC transactions will benefit both consumers and creditors, we feel it is important to acknowledge that disclosures are not a panacea for the predatory lending that has plagued residential real estate markets throughout the financial crisis. We therefore encourage policymakers to continue to explore methods for addressing and rooting out unfair and deceptive practices in the marketplace.

As mentioned, the state regulators support the proposal to prohibit payments to mortgage brokers or a creditor's loan officer based on the loan's interest rate or other payment features. Deceptive loan originator compensation practices have worked to create an unfair environment for consumers. Providing financial incentives to originators to provide nontraditional mortgage loan products has led to consumers taking on excessive risks in unsuitable mortgage loans.

The state regulators support the Board’s proposal to adopt an anti-steering measure as well. We acknowledge, however, that detection of steering is a difficult task, and we encourage the development of a more structured detection process. In addition, we suggest that the Board illustrate more clearly the ramifications for engaging in steering or any other unfair practices regarding loan originator compensation. The state regulators also support increasing beyond two years the current requirement that obliges a creditor to retain records of compliance with Regulation Z.

With regard to the finance charge, the state regulators support the majority of the adjustments the Board is proposing, including the Board’s proposal to rename the finance charge “interest and settlement charges” and to adopt a more inclusive approach to determine which fees and charges to include in the finance charge. The Board’s proposal will more accurately reflect and help consumers better understand the actual cost of credit. It will also help simplify compliance and eliminate the complexities that have characterized the current Regulation Z. On a more specific level, and to address a board inquiry, the state regulators suggest that taxes, which by definition are paid in full to third party government agencies, not be included in the finance charge. Additionally, while the proposed adjustments to the finance charge should simplify calculations, help consumer awareness, and add transparency for all, we believe that there should be established estimations for how many loans might be thrust into the “higher priced” category as a result of the proposed finance charge adjustments. While it is critical that the finance charge be an accurate representation of the cost of credit, it is also important to be mindful of the possible ramifications of reclassifying loans as “higher priced.” It is noted that given the long term nature of most mortgage transactions that additions to the finance charge may affect the corresponding APR only in a nominal amount.

The state regulators would also like to promote a notion of consistency on various levels. Above all, we encourage consistency between the closed-end and HELOC proposals. The state regulators acknowledge that the Board has gone to great lengths in structuring the two proposals in a consistent manner. However, we believe that the HELOC proposal would benefit from a greater degree of consistency with the closed-end proposal through more fact driven, transaction specific information in the disclosures, an issue we address in more detail under the section dealing specifically with the HELOC proposal. On a different level, the state regulators would like to encourage the federal regulators to continue their work in making consistent the processes and requirements outlined in the various Acts governing residential mortgage transaction disclosures, such as TILA and RESPA. Continuing the fragmented compliance process that results from such inconsistencies will only serve to confuse consumers and burden creditors. Finally, the state regulators promote the continued exploration of methods for strengthening the informed use of credit across all credit transactions.

The state regulators support the proposed amendment that would require a creditor to determine whether a consumer meets age and or employment eligibility criteria for credit insurance or debt cancellation type programs at the time of enrollment and provide a disclosure that such a determination has been made. The state regulators also support the effort to apply this requirement to all consumer credit transactions.

The state regulators want to express their strong support for the Board’s proposal to include a creditor’s unique identifier number as governed by the Nationwide Mortgage Licensing System (NMLS) on various disclosure forms. The states, through CSBS and AARMR, developed and launched NMLS to enhance supervision of the residential mortgage market. The unique identifier granted to residential mortgage loan originators through NMLS allows supervisors to track mortgage providers across state lines to ensure a provider will not escape regulatory action in one state, simply by crossing into another state. Coupled with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, NMLS enables state and federal regulators to better coordinate our efforts to create a seamless system of mortgage supervision.

In an effort to address specific aspects of the two proposals in an organized manner, the state regulators have addressed the closed end and HELOC proposals in two separate sections.

Proposed amendments to Regulation Z as it applies to closed-end mortgage transactions:

The state regulators support the Board’s effort to provide simplified, transaction specific disclosures for closed-end credit transactions secured by real property or a dwelling. We also believe that the formatting adjustments, which primarily involve employing a tabular or Q&A format in various instances, will make disclosures more readable for consumers. We strongly support the Board’s efforts in eliminating hypothetical examples and revising outdated numbers throughout the closed-end proposals. In reference to the exempt transaction that deals with personal property that is a dwelling but not the borrower’s principal dwelling and secures a $25,000 loan—a figure that was established in the 1969 TILA—we believe that the $25,000 figure is obsolete and should be increased or removed.

Disclosures at Application: The Board’s proposed revisions to the disclosures to be provided at application provide a much more manageable and meaningful set of disclosures than those that are currently included under Regulation Z. The “Key Questions to Ask about your Mortgage” document provides valuable transaction specific information and a set of questions that will properly alert consumers to risky aspects of closed-end mortgages. The “Fixed vs. Adjustable” rate document, to replace the currently issued CHARM booklet, is also a well-organized, succinct disclosure that properly addresses the information overload issue associated with the CHARM booklet. The Adjustable Rate Loan Program disclosures to be issued at application are an improvement on current ARM disclosures. However, with regard to the proposed ARM disclosures, the state regulators suggest that balloon payments and interest only features should be appropriately highlighted in every possible instance where they might occur.

Disclosures Three Days after Application: In examining the proposed changes to disclosures that are to be issued three days after application, the state regulators believe the Board has made meaningful adjustments. The proposed APR chart will be a helpful tool in depicting a consumer's comparative standing, and the Loan Summary and "Key Questions about Risk" sections are well-organized and informative. However, we would like to make three suggestions regarding these disclosures. Above all, we believe that the interest and settlement charges (formerly finance charge) should not be subject to different formatting requirements than the APR. Currently, Regulation Z provides that the APR and the finance charge are formatted in the same fashion, highlighted above all other figures as the two most important consumer disclosures. The proposals provide that the APR would be subject to conspicuous formatting requirements while the interest and settlement charges would not, thereby emphasizing the APR as the most important figure for consumer consideration. We believe that the interest and settlement charges calculation is as important as the APR. In fact, in many cases the APR is subject to more manipulation than the interest and settlement charges due to the long term nature of mortgages and the minimal effect on the APR. And considering the beneficial changes that the Board has proposed regarding the finance charge, the new interest and settlement charges figure should be an even more valuable tool for consumers.

Secondly, the state regulators believe that the "no obligation statement" should be placed directly above the signature line since it is directly related to consumer consequences for signing the form.

Thirdly, in many cases, under the Interest Rate and Payment Summary, the disclosures highlight additional borrowings a consumer will have by a certain date, provided that he or she only makes minimum payments on the loan. The state regulators believe that while it is helpful to have this piece of information, it is more important to know how much money a consumer will owe in the end.

Final TILA Disclosures: The state regulators support requiring "Final TILA Disclosures" to be provided to a consumer three days before consummation, and we urge the Board to adopt the proposed alternative to apply APR tolerances to the Final Disclosures. In many cases, consumers do not benefit from an extension of the period before consummation. Certainly minor changes to the APR should not trigger an additional three day waiting period for creditors to rework the final disclosures. It is therefore appropriate to implement tolerances on a case-by-case basis, in which additional three day waiting periods will not be triggered unless such tolerances are eclipsed.

The state regulators also endorse the option to require creditors to make available to consumers the final HUD 1/1a twenty-four hours prior to closing. Often times, consumers do not know about the HUD 1/1a, and while we support that it be made available twenty-four hours prior to closing, we also support that its availability be made clear at the time of application along with the other required disclosures.

Disclosures after Consummation: Finally, the state regulators support the Board's proposals related to disclosures to be issued after consummation. Specifically, we support the measure that would require lenders to notify consumers 60 days in advance of a change in their monthly payments for adjustable-rate mortgages, in place of the current 25-day requirement. In addition, we support the proposed negative amortization monthly disclosure model form. The state regulators also endorse the proposal to require creditors to provide notice to a consumer in the case of creditor-placed property insurance.

Proposed amendments to Regulation Z as it applies to HELOC transactions:

The state regulators acknowledge that HELOCs by nature are more complicated products than closed-end mortgages, and in the former case, it is more difficult to disclose valuable, fact driven information. While we do support the broad effort to simplify current HELOC disclosures—and we understand the challenge of providing precise, transaction specific information in such disclosures—we believe that the proposed HELOC disclosures could use some additional clarity and simplification, particularly with regard to the "Early HELOC Disclosures" that are to be supplied three days after application. As is true in the closed-end proposal, the state regulators support the formatting adjustments that the Board proposes for the disclosures.

Disclosures at Application: The "Key Questions to Ask about HELOCs," to be provided at application, is a comprehensive but concise document that will certainly help consumers make sense of the product. The state regulators support this document as proposed.

Early HELOC Disclosures: As mentioned, we believe that the "Early HELOC Disclosures," to be provided three days after application or at account opening, whichever is earlier, would generally benefit from increased clarity and simplification. In our examination of the sections dealing with Payment Plans and Plan Comparisons, we have concluded that these sections, as currently proposed, may still serve as a source of confusion for consumers. Additionally, in response to the board's comment solicitation regarding the proposed disclosure to show the range of the APR that would have applied to the HELOC plan over the last 15 years, the state regulators believe that consumers would benefit from the inclusion of the range of the index plus the margin that is currently offered to the consumer instead of simply showing the index range, as is currently proposed. As we have similarly suggested in the closed-end section, the state regulators also support moving the no obligation statement directly above the consumer's signature (as well as in the account-opening disclosures).

Account Opening Disclosures: The proposed account-opening disclosures are well constructed, but the state regulators would like to suggest two more specific changes. In the description of early termination fees, we believe it would enhance consumer understanding to include the actual dollar amount that corresponds with the percentage of the credit limit that the consumer would have to pay in the case of early termination fees. Secondly, we believe that consumers commonly understand the accrual of interest in terms of a grace period. Thus, the disclosure regarding "Paying Interest" would be clearer to consumers if it was captioned "Grace Period" and stated: "There is no grace period. We will begin charging interest on each transaction on the date the transaction is posted to your account."

<u>Periodic Statements:</u> The state regulators support the Board's proposed periodic statements. Additionally, we support the change in terms notices and the proposal to require notice of change 45 days in advance of the change. With regard to the new guidance on terminations, the state regulators believe that the proposed 30-day period of account inactivity, after which a creditor may terminate an account, should be increased. Finally, we support the proposal to require creditors to provide a notice of reinstatement of credit privileges to consumers where appropriate. However, we believe that the creditor should be allowed more than 30 days to complete an investigation and mail notice of reinstatement.

Improving consumer disclosures is a valuable mission. Therefore, the state regulators commend the Board's efforts in amending Regulation Z to better serve consumers and creditors alike. We look forward to working with the Board to address lending practices and mortgage products that may be detrimental to consumers.

Thank you for the opportunity to submit a formal response on behalf of the state regulators.

Best Personal Regards,

Neil Milner
President and CEO, CSBS

Joe Crider
President, NACCA

Mark Pearce
President, AARMR