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United States Senate

WASHINGTON, DC 20510

COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
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BUDGET

February 1, 2011

The Honorable Ben Bernanke
Chairman, Federal Reserve Board of Governors
20th and Constitution Street, NW
Washington, DC 20551

RE: Regulation Z; Docket No. R-1399

Dear Chairman Bernanke:

I write today to urge the strong and meaningful implementation of an important consumer protection in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act): section 1100E, for which I was the principal author. I am concerned that the proposed rules keep in place a dangerous loophole that could swallow many of the critical gains made by section 1100E.

Enacted in 1968, the Truth-In-Lending Act (TILA) is one of the foundations of consumer financial protection. The law provides basic protections, such as disclosures of interest rates and other key terms in lending, and consumers have come to rely on the consistency and clarity provided by TILA disclosures. More recently, the Credit CARD Act of 2009 (the "Credit CARD Act") effects its critical consumer protections through TILA. Millions of Americans expect the Credit CARD Act to end the "tricks and traps" that have come to dominate the credit card industry. It is therefore exceedingly important that the protections of TILA extend to the widest set of transactions possible.

While TILA applies to all real estate transactions and all educational loans, it only covers consumer loans up to a monetary threshold. Set by the Congress that enacted TILA in 1968, that monetary threshold was originally $25,000, which in today's dollars, would be $150,000. Section 1100E revises the monetary threshold from $25,000 to $50,000 and provides for annual future adjustments based on any changes to the Consumer Price Index.

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I write today because I am concerned that the rules proposed by the Board of Governors of the Federal Reserve System (the "Board") leave in place a loophole that undermines the protections of TILA. Specifically, to determine whether TILA applies for open-ended credit (i.e., credit cards), the Board looks to the "firm commitment" of credit (i.e., the credit line) rather than the actual amount financed. Thus, if a credit card company provides a consumer a credit card with a $52,000 credit line – even if most transactions are far less than that amount and may, in fact, never cross the $50,000 threshold of actual credit – the consumer's credit card is beyond the protections of TILA, including the Credit CARD Act.

This is a deeply troubling interpretation that cuts against the lessons of consumer protection and financial capability over the last few years. For example, to keep their credit scores higher, consumers are frequently told to use at most 30 percent of their full credit line on a credit card. For a $52,000 credit line, that would be about $15,000. Many small business owners use cards with a credit line above $50,000 that they qualify for in their personal capacity and take advantage of those cards knowing they only intend to charge $10,000 to $15,000 at any given time. If the Board's proposed rules are adopted, these consumers would be exempt from TILA coverage and without the protections of the Credit CARD Act.

Moreover, this rule creates tremendous possibilities for abuse, especially now that the Credit CARD Act is in effect. For example, a consumer seeking to purchase a $20,000 car might be encouraged to open a new credit card with a $52,000 credit limit for the purchase. Although "trick and trap" teaser rates are banned under the Credit CARD Act, nothing would prevent their use on this new $52,000 card. Moreover, if the credit line is then narrowed, making the card subject to TILA, the Board's compliance alternative under the proposed rule (Comment 3(b)-2.iv.B) means the consumer would be stuck with the old, unfair and abusive loan terms. This opens the door to tremendous mischief. Hopefully the new Consumer Financial Protection Bureau would quickly close that door, but why do we have to wait when we could get the rule right today?

Instead, I strongly urge the Board to look to the language of TILA itself. Section 1603(3) of TILA provides that the monetary threshold is for consumer credit transactions "in which the *total amount financed* exceeds $50,000" (emphasis added). The Board should interpret that phrase according to its natural meaning – that the credit actually, and not theoretically, financed exceeds $50,000. This would mean that when a consumer used over $50,000 in credit, the card would be removed from coverage from TILA. Then, when credit extended is no longer larger than $50,000, the card should then be subject to TILA again. To further protect consumers, the Board should require prominent disclosure both at the initial acceptance of a credit limit over $50,000 and the actual use of financing over $50,000.

Credit card companies may argue that looking at the amount of the credit line provides the simplest means to implement the provision with certainty. I recognize the need of business to establish easy-to-use systems and procedures, but more than enough certainty can be provided by a rule that looks to the actual total amount financed. In fact, it provides nearly the same level of certainty as the Board's current rule, which makes cards subject to TILA once the credit line is lowered to below $50,000. It simply does so from the opposite perspective: by shifting the presumption to more, rather than less, consumer protection.

Concerns similar to those discussed above exist for consumer leasing provisions under Regulation M, and I urge you to make adjustments accordingly.

I strongly urge the Board to implement section 1100E in a strong and meaningful way and shift the presumption of TILA coverage in favor of the consumer. This comes at little cost to business certainty and provides great benefit to consumers. If you have any questions, please do not hesitate to contact me or my staff.

Sincerely,

Jeff Merkley
U.S. Senator

cc: Ms. Elizabeth Warren, Consumer Financial Protection Bureau Implementation Director
Hon. Sarah Bloom Raskin, Governor, Federal Reserve System