



## National Credit Union Administration

August 10, 2012

Catherine Klimek, Senior Counsel  
Securian Financial Group/Minnesota Life Insurance Company  
400 Robert Street North  
Mailstop 21-3285  
St. Paul, MN 55101

Re: Multi-Featured Lending Plan.

Dear Ms. Klimek:

You have asked if a federal credit union (FCU) may offer a multi-featured lending (MFL) plan that utilizes one umbrella loan agreement for multiple subaccounts with open-end and closed-end credit features. Yes, a lending plan that combines both open-end and closed-end credit is not inconsistent with the requirements of Regulation Z provided the FCU gives appropriate disclosures specific to each transaction under the plan and complies with applicable state law. 12 C.F.R. part 1026.<sup>1</sup> An FCU is permitted to perform underwriting for each closed-end transaction under an MFL plan if it provides proper closed-end disclosures in each instance. We note, however, that even if the terms of an MFL plan comply with Regulation Z on their face, the MFL plan may not comply with state law in a particular state. In that instance, the MFL plan would not be a practical or legal option for an FCU in that state. We discuss this issue more fully below.

We understand that Securian Financial Group offers an MFL plan developed to adapt to changes to Regulation Z's open-end credit rules that became effective in

---

<sup>1</sup> In 2011, the Consumer Financial Protection Bureau (CFPB) republished the Federal Reserve Board's (FRB) Regulation Z as part of CFPB's regulations, which are codified in Chapter X of Title 12 of the Code of Federal Regulations. 76 Fed. Reg. 79768 (Dec. 22, 2011). The CFPB has indicated the republished regulations incorporate only technical changes and do not impose new substantive obligations. The technical changes reflect the transfer of authority to the CFPB and certain other amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under section 1025 of the Dodd-Frank Act, the CFPB has authority to examine for compliance with federal consumer financial laws, including the Truth in Lending Act, and to enforce those laws for federal and state-chartered credit unions with total assets of more than \$10 billion. NCUA has enforcement authority for federal credit unions with total assets of \$10 billion or less, while the Federal Trade Commission (FTC) has enforcement authority for state-chartered credit unions with total assets of \$10 billion or less. FTC and CFPB share enforcement authority for state-chartered credit unions with total assets of more than \$10 billion.

2010. 75 Fed. Reg. 7658 (Feb. 22, 2010).<sup>2</sup> Those changes affected an FCU's use of another kind of lending plan known as a multi-featured open-end lending (MFOEL) plan. MFOEL plans have been a common tool used by FCUs for many years. Generally, MFOEL plans utilize an umbrella loan agreement for a single account that can be accessed repeatedly via a number of subaccounts established for different credit features.<sup>3</sup> The plan as a whole, including all its subaccounts, is designed to be treated as open-end credit even though the plan has closed-end features. 12 C.F.R. §1026.2, Comment 2(a)(20)-5. Many credit unions continue to offer MFOEL plans, which are often marketed as a flexible, efficient, and convenient lending option for members.

The 2010 changes to Regulation Z still permit MFOEL plans. However, the amendments made clear that underwriting of individual advances is not allowed for an advance treated as open-end credit under a MFOEL plan. In other words, FCUs using a MFOEL plan may not underwrite particular advance requests, which have open-end and closed-end features, even where it may be appropriate to do so for safety and soundness reasons because repeat underwriting is inconsistent with open-end lending.

We understand your MFL plan was designed to provide FCUs with an alternative to MFOEL plans while still affording members a flexible and convenient lending option, but in a way that allows FCUs to underwrite individual, closed-end advance requests when appropriate. Your lending plan provides features that are somewhat similar to a MFOEL plan, but your plan is not an exclusively open-end plan. Because it includes both open-end and closed-end features, it is more accurately described as a blended or MFL plan.<sup>4</sup>

You have indicated that, under your MFL plan, the member-borrower has the convenience of signing an umbrella loan agreement only once, when the MFL plan is first established. In signing the umbrella agreement, the member is agreeing to the general provisions of the credit agreement and security agreement, as well as the loan terms agreed upon at the time of any future

---

<sup>2</sup> The changes to the open-end lending rules were first adopted by the FRB in a January 2009 rule. 74 Fed. Reg. 5244 (Jan. 29, 2009). The 2009 rule was withdrawn on the same day that the FRB published a February 2010 rule which primarily focused on implementing the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009. 75 Fed. Reg. 7925 (Feb. 22, 2010). The changes relevant to MFL were republished in the February 2010 rule without restating the supplementary information relevant to MFL from the January 2009 rule.

<sup>3</sup> Examples of common MFOEL products include share overdrafts, unsecured lines of credit, share-secured lines of credit, vehicle loans, and home equity lines of credit.

<sup>4</sup> We note that the blended or MFL lending plan addressed in this opinion is distinguishable from impermissible "hybrid" plans. During its rulemaking, the FRB expressly rejected requests by commenters to consider a hybrid disclosure approach. This approach would have permitted MFOEL plans that included individually underwritten, closed-end credit features provided the FCU made a new subsequent disclosure in addition to its open-end credit disclosures. 74 Fed. Reg. 5244, 5259 (Jan. 29, 2009).

advance under the plan. The MFL plan consists of multiple subaccounts for various loan products. Some subaccounts are open-end or revolving credit that are replenishing, such as personal lines of credit and overdraft lines of credit. Other subaccounts are closed-end loans that have a single disbursement and do not replenish, such as vehicle loans. Once the MFL plan is established, members may request open-end or closed-end advances depending on their particular lending needs.

We understand that to obtain revolving, replenishing, open-end subaccounts, a member applies to establish an initial line of credit (LOC) under the MFL plan. If approved, the member receives open-end disclosures in tabular format in accordance with Regulation Z's open-end credit rules. See 12 C.F.R. §§1026.5 and 1026.6. Once the LOC is established, the FCU does not underwrite any particular advances, but it may occasionally or routinely verify that the member's credit standing has not deteriorated.<sup>5</sup> If the member's creditworthiness has deteriorated, the FCU can suspend the line, decrease the credit limit, increase the APR, or refuse any future advances. If, however, the FCU has verified the member's credit standing has not deteriorated, the member is entitled to take the advance without being required to qualify for it anew. The advance is not independently underwritten.

We understand that to obtain a single-disbursement, nonreplenishing, closed-end subaccount, such as a vehicle loan, a member is required under the MFL plan to apply and be approved for the advance. Specific advance requests are fully underwritten and the member receives the closed-end disclosures in accordance with Regulation Z's closed-end credit rules. See 12 C.F.R. §§1026.17 and 1026.18. The disclosure, typically referred to as the Fed Box, is given before the time the member becomes contractually obligated on the loan.<sup>6</sup> The disclosure

---

<sup>5</sup> Under Regulation Z, a creditor may "occasionally or routinely" verify credit information but such verification may not be done "as a condition" of granting a consumer's request for a particular advance under a MFOEL plan. 12 C.F.R. §1026.2, Comment 2(a)(20)-5. For example, credit unions may verify a member's continued creditworthiness "occasionally" on a limited, ad hoc basis, or "routinely" on a regular, periodic timetable but such verification cannot be done in connection with, or triggered by, a particular advance request or a certain type of advance request if that advance will be treated as open-end credit. NCUA Letter to Federal Credit Unions 12-FCU-02, "Multi-Featured Open-End Lending," provides additional guidance regarding occasional or routine verification. 12-FCU-02 (July 2012).

<sup>6</sup> Generally, Regulation Z requires the Fed Box disclosure to be given before consummation of a closed-end credit transaction. 12 C.F.R. §1026.17(b). Consummation is defined as the time that a consumer becomes contractually obligated on a credit transaction. 12 C.F.R. §1026.2(a)(13). When that obligation is created is determined under applicable state law; Regulation Z does not guide or govern this determination. 12 C.F.R. §1026.2, Comment 2(a)(13)-1. Accordingly, if state law defines the point in time when consummation occurs in a way that makes the use of an MFL plan functionally impractical or illegal, then an FCU may not use an MFL plan in that state. This is despite the fact that NCUA has determined that MFL in concept does not violate Regulation Z. An MFL plan that violates a particular state law by virtue of the manner in which it must be implemented and consequently does not allow for compliance with Regulation Z is not

is made by providing the member with an "Advance Receipt" that documents the transaction and contains the Fed Box.

Based on the information you have provided, we believe your MFL approach is permissible under Regulation Z subject to proper implementation under and in compliance with state law. In its rulemaking amending Regulation Z, the FRB<sup>7</sup> stated that "the statutory framework clearly provides for two distinct types of credit, open-end and closed-end, for which different types of disclosures are deemed to be appropriate." 74 Fed. Reg. 5244, 5259 (Jan. 29, 2009). Creditors must provide open-end disclosures for open-end credit and closed-end disclosures for closed-end credit. An MFL plan that combines both open-end and closed-end credit is not inconsistent with Regulation Z, provided the FCU complies with the requirements under 12 C.F.R. part 1026, subpart B for open-end credit and 12 C.F.R. part 1026, subpart C, for each closed-end loan transaction under the MFL plan and complies with applicable state law. By providing closed-end disclosures for each closed-end advance made under an MFL plan, the FCU is permitted to perform underwriting in connection with those individual advances.

Please contact Staff Attorney Pamela Yu or me with any questions.

Sincerely,



Frank Kressman  
Associate General Counsel

GC/PWY:bhs  
11-0620

---

permissible for FCUs in that particular state. For purposes of this opinion, we assume the Fed Box is provided to a member before consummation of the loan, consistent with state law.

<sup>7</sup> Rulemaking authority for Regulation Z transferred from FRB to CFPB on July 21, 2011. The CFPB issued an interim final rule republishing the FRB's Regulation Z (and the accompanying official commentary) as CFPB's new Regulation Z. The republished regulation incorporates only technical, formatting, and stylistic changes and does not impose any new substantive obligations on regulated entities. The technical changes reflect the transfer of authority to the CFPB and certain other technical amendments required by the Dodd-Frank Act. 76 Fed. Reg. 79768 (Dec. 22, 2011). Thus, for additional guidance, federal credit unions can refer to the discussion of open-end credit in the preamble to the FRB's January 2009 Regulation Z rulemaking. 74 Fed. Reg. 5244 (Jan. 29, 2009).