Consumer Lending Compliance
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Via Electronic Delivery

December 16, 2005

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

Re: Docket No. R-1217
Proposal to revise Regulations Z to accommodate requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Dear Ms. Johnson,

KeyCorp (hereinafter "Key"), one of the nation's largest bank-based financial services companies with assets of approximately $92 billion, is pleased to comment on the Board of Governors of the Federal Reserve ("the Board") proposal to amend the rules under Regulation Z as a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("The Bankruptcy Act"). Key companies provide consumer finance, investment management, retail and commercial banking, retirement, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. Key has a presence from Maine to Alaska, and we deliver products and services through a network of KeyCenters (branches), ATMs, affiliate offices, telephone banking centers and a website, Key.com®.

Key is committed to helping consumers better understand the financial process and we applaud the Board's efforts in interpreting the requirements of the Bankruptcy Act. In general, Key finds the Proposed Rules to be true to the intent of the Bankruptcy Act. While Key applauds the Board for following this intent, we find some issues where the Proposed Rules may exceed what was intended by the authors of the Bankruptcy Act and which could be potentially burdensome, problematic, and/or prohibitively costly in terms of practical implementation. In addition, Key commends the Board in their efforts to issue rules that are flexible and adaptable to all types of financial institutions, rather than a one-size-fits-all approach, and further encourages the Board to advance this standard when issuing final regulations.

Due to the length and complexity of the proposed rule changes and consistent with the subject matter topics found in the Bankruptcy Act, our comments are divided into six sections: (1) Minimum Payment Disclosures; (2) Introductory Rate Disclosures; (3) Internet Based Credit Card Solicitations; (4) Disclosures Related to Payment Deadlines and Late Payment Penalties; (5) Disclosures For Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value;

and (6) Prohibition on Terminating Accounts for Failure to Incur Finance Charges. Responses to specific questions posed by the Board are referenced by number, as appropriate.

Minimum Payment Disclosures

Should certain types of accounts or transactions be exempt from the disclosures?

Q59: There are certain classes or types of accounts that should be exempt from the minimum payment disclosure requirements. An account that has a defined maturity date, such as a home-equity line of credit (HELOC), with stated draw and repayment periods should be completely exempt from the minimum payment disclosure requirements. Typically, the outstanding principal balance of the HELOC at the close of the draw period is fully amortized over the course of the repayment period. The maximum length of time to repay the balance is dependant on the terms of the account rather than the actions of the borrower. Since the account disclosures and loan closing documents clearly define the draw and repayment periods, to repeat this information on the periodic statement is unnecessary and relatively meaningless when compared to the standard revolving credit card account.

Q60: The minimum payment disclosures should not be required for any type of account when the accountholder pays the entire balance due prior to the due date.

Q61: Accounts that have one or more clearly defined repayment periods should be completely exempt from the minimum payment disclosure requirements.

Hypothetical examples for periodic payments

Q62: Key does not see a compelling reason why the statutory example should be changed, since the repayment examples are only hypothetical in nature. We defer to the Board to determine the criteria for future adjustments, but respectfully note that excessively frequent adjustments would have significant associated costs.

Q63: While some personal lines of credit and overdraft protection lines of credit may have repayment requirements that are based on criteria other than a percentage of the outstanding balance, the hypothetical examples found in the Bankruptcy Act are broad enough to be relevant. We reiterate that home equity lines of credit with a defined repayment period should be exempted from the minimum payment disclosure requirement altogether. See Q59.

Q64: The Board may want to consider some brief notation to reinforce for customers the concept that the examples are only hypothetical in nature.

What assumptions should be used in calculating the estimated repayment period?

Q65: The assumptions used by the Board in considering the balance calculation method, grace period, and residual interest are sound.

How should the minimum payment requirement and APR information be used in estimating the repayment period?

Q66: It would be reasonable for the Board to select typical minimum payment formulas for various types of accounts.

Q67: As noted in the proposal, accounts may have repayment requirements that are based on criteria other than a percentage of the outstanding balance. For example, many non-card unsecured lines of credit calculate the minimum payment as a percentage of the outstanding balance plus any finance charges with a floor, such as "Whichever is greater, $20 or 1/240th of the outstanding principal balance plus interest, fees, and past due amounts." We reiterate that home equity lines of credit with a defined repayment period should be exempted from the minimum payment disclosure requirement altogether. See Q59.

Q68: Creditors should have maximum flexibility in determining whether to utilize the actual payment formula or a typical minimum payment formula provided by the Board. The Board is urged to avoid a one-size-fits-all approach that would dictate one approach or the other.

Q69: Some lines of credit may contract for minimum payment amounts of accrued interest and fees only. While this type of account would not result in true negative amortization, the situation is analogous in that it would not be possible to calculate the number of months to pay off the balance if only the minimum payment is made. The Board is requested to provide guidance on how creditors should disclose the repayment period in instances where the scheduled minimum payment includes accrued interest and fees only.

Q70 through Q75: Key respectfully defers to the judgment of the Board in addressing issues regarding credit card accounts that involve multiple periodic rates, multiple balances, and weighted balances.

What disclosures do customers need about the assumptions made in estimating their repayment period?

Q76: The Board should establish standards for disclosing key assumptions behind the estimated repayment period disclosures. These disclosures should include the assumption that there will be no new draw transactions, all payments are made by the due date, only minimum payments are made and there is no increase or decrease in the Annual Percentage Rate. These disclosures should be made to the customer at the time that the repayment estimate is provided.

Option to provide the actual number of months to repay the outstanding balance.

Q77: For creditors who choose to provide the actual number of months to repay the outstanding debt, the Board should consider the calculated number of months to be accurate if the calculation incorporates assumptions based on the actual terms of the consumer's account for items such as minimum payment formula, balance calculation method, and annual percentage rate.

Q78: The Board should adopt reasonable measures to determine tolerance for error in disclosing the actual repayment periods. These tolerances should be consistent in approach and magnitude with existing tolerances for other related Truth in Lending disclosures such as tolerances for disclosing an annual percentage rate.

Q79: Information about the actual number of months to repay is not currently available on our current loan accounting systems. Generally, the data needed to perform this type of calculation is available, but the calculation itself is not being performed today.

Are there alternative approaches the Board should consider?

Q80: The general approaches presented by the Board appear to be sound. We are not aware of any significantly different framework that would offer a viable alternative.

Q81: Creditors should have the additional option of offering the required repayment estimates via an Internet web site. Web-based tools are commonly available that could perform these calculations. We currently provide a similar tool for use by consumers. The input fields include the current balance, future monthly charges, the current interest rate, annual fee (if any), the desired number of months to pay off the balance, and the predicted rate change (if any). The calculator then provides 1) the monthly payment amount that would be required to pay off the balance within the desired number of months, and 2) the number of months it would take to pay off the balance if only the minimum monthly payment is made.

Q82: Key supports the Board in giving creditors maximum flexibility in meeting the minimum payment disclosure requirements of the Bankruptcy Act. Creditors should have the

option of providing the actual number of months to repay the customer's balance on a consumer's statement but creditors should not be required to do so.

Clear and Conspicuous Standards

Q83: The Board should establish "clear and conspicuous" standards that are consistent with existing similar standards for open end credit, namely that disclosures should be "in a reasonably understandable form and readily noticeable to the consumer." The Board should allow creditors maximum flexibility to operate within these guidelines.

Q84: The Board should consider developing model clauses for the standardized minimum payment warning, the hypothetical example of the length of time to pay off a specified balance, and the availability of a toll-free number. (See General Comments below for comments regarding the minimum payment warning)

General Comments

GC1: Toll-Free Telephone Numbers. The Board notes in the proposal that, "Creditors may not use the toll-free number to provide customers with information other than the repayment information set forth in the 'table' issued by the Board." The Board should consider clarifying this limitation in the final regulations. It seems that the intent on the part of the lawmakers in the Bankruptcy Act is to restrict creditors from providing extraneous or otherwise misleading or unwanted information when a consumer requests the length of time required to retire their debt with only minimum payments. It does not seem that the lawmakers intended to require creditors to establish a dedicated toll-free telephone number for this purpose only when they wrote:

> *"A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i)"*

To require a dedicated line would be costly and inefficient for creditors. It would also be a disservice to consumers who may want or need additional information about their account(s), for they would then be required to hang up and place a separate call. We are confident that the requirements established in the Bankruptcy Act can be effectively met using existing customer service toll-free telephone numbers.

GC2: The Board may want to consider enhancing the language of the standard minimum payment warning. As presented in the Bankruptcy Act, the warning reads, "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance." For many open end credit lines, making the minimum payment will actually pay off the account balance as scheduled. Conceptually the standard warning is true only when compared to the alternative, which would be making additional unscheduled principal payments. As a result, the Board might consider revising the standard warning to "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance compared to making additional unscheduled principal payments." or something conceptually similar.

Introductory Rate Disclosures

Q85: The Board should establish "clear and conspicuous" standards that are consistent with existing similar standards for open end credit, namely that disclosures should be "in a

reasonably understandable form and readily noticeable to the consumer." The Board should allow creditors maximum flexibility to operate within these guidelines.

Q86: It is sufficient for the term "introductory" to immediately proceed or follow the APR. Doing so does not detract from the message that the rate is applicable on a temporary basis for a limited period of time.

Q87: The Board should refrain from requiring an actual date when then introductory period ends. It should be permissible for credit card issuers to document a time period instead, i.e., "0% APR introductory rate for the first 3 months."

Q88: The Board should adopt an approach that is consistent with existing standards for multiple page advertisement in Regulation Z when defining requirements for establishing a "first mention" of the temporary APR.

Q89: The Board should adopt an approach that is consistent with existing standards for multiple page advertisement in Regulation Z when defining requirements for establishing standards for a "prominent location" that is "closely proximate" to the temporary APR.

Q90: Credit card issuers who engage in risk-based pricing should be able to show a range of "go-to" APRs if they also indicate that the actual rate will be determined based on the consumer's creditworthiness.

Q91: Additional guidance in what constitutes a "general description" of the circumstances is not required.

Q92: The guidance for credit card applications and solicitations provided by direct mail or other similar methods should be consistent with the guidance for those provided electronically.

Internet Based Credit Card Solicitations

Q93: The guidance for Internet credit card applications should be consistent with guidance for Internet credit card solicitations.

Q94: The Board should establish "clear and conspicuous" standards that are consistent with existing similar standards for open end credit, namely that disclosures should be "in a reasonably understandable form and readily noticeable to the consumer." The Board should allow creditors maximum flexibility to operate within these guidelines.

Q95: The Board should allow creditors maximum flexibility in their ability to display required disclosure in an electronic format.

Q96: A 30-day maximum timeframe would be sufficient for providing updated disclosures in an electronic format.

Disclosures Related to Payment Deadlines and Late Payment Penalties

Q97: In many cases there could be a gap between the scheduled contract payment due date and the earliest date when a late fee would be charged. For example, home equity lines of credit generally have a "grace period" following the "date on which the payment is due." Many personal lines of credit share this feature as well. Credit card products are less likely to offer any gap between the "date on which the payment is due" and the "earliest date on which a late payment fee would be charged."

Q98: Additional guidance on how these disclosures should be made is generally not needed. However, the Board should allow for the possibility that a late payment fee will not be an absolute value, but could be a function of the amount due. For example, a late payment

amount could be "$20 or 5% of the amount past due, whichever is greater" or other similar determination. In such a situation, the actual late payment amount can vary based on the actions of the consumer after the statement is provided. As a result, creditors should be given the flexibility to provide this disclosure in a descriptive narrative format such as "$20 or 5% of the amount past due, whichever is greater" rather than providing one absolute value.

Q99: Key supports the Board in allowing creditors the freedom to establish reasonable cut-off times.

Q100: The practice of increasing an APR in the event of a late payment is common for credit card products, but generally not for other types of credit lines. See Q101 regarding lines of credit other than credit cards.

Q101: There are special issues applicable to open-end accounts other than credit cards that the board should consider. Specifically, the Board should limit this disclosure requirement to credit cards only and other types of open-end account such as home equity lines of credit (HELOCs) and personal lines of credit should be exempted from this requirement. In the case of HELOCs, a creditor may not change any significant term of the account unless the consumer agrees to the change in writing or if the change unequivocally benefits the consumer. [Reference 12CFR 226.5b(f)(3)] See also our response to Q59 for related comments. As a result, consumers should be aware of any late fee that may apply through the account disclosures provided at the time of closing. In the case of other accounts such as personal lines of credit, it is not commonplace in the industry to have frequent changes in the terms of the account. The practice of frequently changing account terms in general and late fees in particular is much more common in the credit card industry, and this practice as it applies to credit cards seems to the motivating factor on the part of the lawmakers in drafting this portion of the Bankruptcy Act.

Disclosures For Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value

Q102: The condition when an "extension of credit may exceed the fair market value of the dwelling" should be interpreted to mean when any new credit combined with any existing mortgages may exceed the dwelling's fair market value. In other words, the condition would be met for any one mortgage loan with a loan-to-value (LTV) ratio that exceeds 100%, or when any two or more mortgage loans secured by the same property have a combined loan-to-value (CLTV) ratio that exceeds 100%. These criteria seem consistent with both the intent of the Bankruptcy Act and the requirements of existing Internal Revenue Service standards, and represent the type of scenario that could potentially be detrimental to consumers in this situation.

Q103: In determining whether the debt "may exceed" a dwelling's fair market value, negative amortization should be taken into account. Given the recent increase in popularity of 'non-traditional' mortgages including interest-only mortgages, graduated payment mortgages, optional payment mortgages and other creative programs all of which can create significant negative amortization, increasing numbers of consumers may be at risk in this area. As a result, the disclosures should be required for transactions where the scheduled minimum payment is not sufficient to cover the accrued interest on the outstanding balance thereby causing a loan to exceed the dwelling's fair market value.

Q104: The Board should establish "clear and conspicuous" standards that are consistent with existing similar standards for open end credit, namely that disclosures should be "in a reasonably understandable form and readily noticeable to the consumer." The Board should allow creditors maximum flexibility to operate within these guidelines.

Q105: The Board should establish disclosure timing standards that are consistent with existing similar standards for closed end dwelling secured credit, namely that disclosures are provided within three days of application. The existing disclosure timing requirements can seemingly accommodate the new disclosure requirements without significant modification.

Prohibition on Terminating Accounts for Failure to Incur Finance Charges

Q106, Q107: Key respectfully defers to the judgment of the Board in addressing issues regarding termination of accounts for failure to incur finance charges.

Q108: The Board should provide guidance regarding when an account may be terminated for other reasons, such as account inactivity.

We thank the Board for the opportunity to provide our thoughts and comments on the proposed rules. If you have any questions regarding our comments, please do not hesitate to contact me at 216-689-8206.

Sincerely,

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