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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
(via regs.comments@federalreserve.gov)

RE: Docket No. R-1217; Regulation Z

BB&T Corporation ("BB&T") appreciates the opportunity to comment on the Federal Reserve System's second advance notice of proposed rulemaking regarding the open-end credit rules of the Board's Regulation Z, which implements the Truth in Lending Act (TILA) and amendments in the Bankruptcy Act. BB&T is a regional financial holding company with three-state chartered banks and multiple non-bank subsidiaries.

Our comments in response to the Federal Reserve Board's request are as follows:

A. Minimum Payment Disclosures

Q59: Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate?

Yes, there are overdraft credit lines that typically carry low balances, low credit limits, and temporary balances. There are also lines of credit that are not credit cards or secured by real estate that typically carry temporary balances and are harder to qualify for than the credit card or home-equity plans. There are home-equity plans that have draw periods and repayment periods set by an agreement and individual state laws that limit the term on the deed of trust or mortgage securing the line. There are home-equity plans that allow for a specific fixed credit line amount that have fixed payments and a fixed term. Although the nature of the home-equity plan is to continue a long term relationship with our customers and are open-end, they have defined "review" periods that make the term in practice fixed. The Board should exempt the above types of open-end accounts from the hypothetical example and the toll-free telephone number on periodic statements but still require the warning notice.

When answering the questions below we will refer to home-equity plans and re-emphasize our position that the Board should exempt this type of account based on the existing requirements under Regulation Z section 226.b which already address hypothetical examples as part of the application disclosure. The hypothetical example and the toll-free telephone number on periodic statements are only appropriate for credit card accounts.

Hypothetical examples for periodic statements.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly.

Regulation Z section 226.5b already requires that home-equity plans receive the appropriate hypothetical example. The disclosure has an example of how long it would take to pay off a specified balance if only minimum payments were made. Therefore, this disclosure regarding minimum payment examples should suffice for the hypothetical examples for periodic statements for home-equity plans. The Board could use the existing section of Regulation Z as reference in writing a regulation to handle credit card hypothetical examples. The Board must give the flexibility to the creditor in determining what APR should be used.

Q63: The hypothetical examples in the Bankruptcy Act may be more appropriate for credit card accounts than other types of open-end credit accounts.

Yes (See above response to Question 59)

Q64: The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being "typical."

We feel the word "typical" implies it is a percentage used or used in the past by the creditor. This may or may not be true and should not be set by regulation. The option of what to set the minimum payment percentage should be given to the creditor. The Board can set the balance amount and also allow the creditor to use a recent interest rate. To avoid any confusion to the customer as to how these examples relate to their own credit plan, we suggest that a general statement be added to the minimum payment example that the example does not reflect the consumer's actual payment and is an assumption to determine how long it takes to pay off an outstanding balance if the consumer made only the minimum payment.

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

Q65: In developing the formulas used to estimate repayment periods, should the Board use the three assumptions stated above concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why?

Yes, the Board should use the three assumptions and any other assumption that will allow the Board and the creditor to calculate estimated repayment period with the least amount of information needed to be provided by a customer. Even something as basic as asking the customer for their APR could be confusing based on the number of APRs that could be disclosed on their periodic statement. Even if the objective is for the creditor to add more customer-specific variables in determining the estimated repayment period, the Board must give flexibility to the creditor. Creditors are concerned that the estimated repayment period could confuse the customer. If the regulation simply requires in general terms what must be disclosed and creditors are given the flexibility to disclose more customer specific variables as appropriate to their products, the disclosures to the consumer will be more meaningful. .

The primary purpose of the estimated repayment period is to allow the consumer to estimate how long it will take to pay off the credit card account if only minimum monthly payments are made. The tables that are to be created by the Board that estimate repayment periods for different outstanding balances, payment amounts, and interest rates must, again, be kept simple. The assumptions listed seem to match up with the methodology previously prescribed by regulation in calculating the minimum payment examples for home-equity plans.

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

Q66: Comment is specifically solicited on whether the Board should select "typical" minimum payment formulas for various types of accounts. If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

There is wide disparity throughout the financial services industry in the methodology for calculating actual minimum payment requirements. Therefore, there will be no one single formula that the Board can use to accurately represent the minimum repayment requirement for every open-end creditor. However, use of a "typical" minimum payment formula would seem to be the easiest and most logical way to approach this aspect of the repayment tables that are to be created.

Q67: If the Board selects a "typical" minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges?

No, we do not have a "typical" minimum payment formula for all our open-end credit plans.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board?

Yes, the creditors should have the flexibility to program their systems to calculate the estimated repayment period using their actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board. Creditors should not, however, be required to do so.

Q69: Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle.

On some open-end credit plans we adjust the payment to avoid negative amortization, and we have several balancing accruing methods. In most cases the toll-free telephone number call center will not have access to client specific information in order to estimate repayment period, so the call center's response would exclusively on assumptions based on recent APRs used by the creditor. We would like guidance from the Board on how to make these assumptions so that we can be consistent.

<u>What disclosures do consumers need about the assumptions made in estimating their repayment period</u>?

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period?

Assume only a single advance was made on the account to get to the customer's current balance, only the minimum payment will be made each month, and the interest rate will remain constant over the entire repayment period. The Board needs to be clear that this is an assumption.

Q77: What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors?

Our current systems that produce periodic statements are not able to compute an actual number of months to repay the outstanding balance if a set minimum payment is made. To do so would not only require a major restructure of our statement and systems at significant cost but we run the risk of making changes that could negatively impact the accuracy of our periodic statement. We seriously doubt that any creditor has a system that provides "what if" situations such as to the repayment period of an outstanding balance when estimated equal minimum payments are made. All of our efforts have been directed towards systems that provide accurate periodic statements based on the actual activity of the consumer. We have internal policies that prevent staff from making any or minor changes to our statement and APR systems because of the risk that such a minor change could have a negative impact on the overall accuracy. Any regulatory requirement issued by the Board to introduce estimates such as fixed payments until repayment will increase the risk that creditors periodic statements will not be accurate. We have many concerns about an "actual" example, whether given by phone or on the periodic statement.

Are there alternative approaches the Board should consider?

Q80: Are there alternative frameworks to the three approaches discussed above that the Board should consider in developing the repayment calculation formula?

The Board used a rate table in the Home Mortgage Disclosure Act regulation to design a rate spread calculator to be used by creditors and consumers. Creditors use this calculator as a guide to not only validate any internal system they may use but to ensure they are following the regulation consistently with the way the Board intended. It not only contains basic entry elements but the help assigned to the calculators gives good insight as to how the Board used the tables and the entry elements to come to the rate spread. We suggest that the Board make a similar web-based calculation tool available to consumers to determine the repayment calculation.

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers?

The required toll free number will be troublesome for creditors, particularly if the Board elects to require that creditors provide the estimated time to repay account balances based on that creditor's account methodology. Many creditors have lines of credit portfolios that were not originated by the creditor because of mergers or purchases, and even though most key account variables are on a periodic statement system, there are account variables unique to that individual line or group of lines that are not automated. There would be no "one size fits all" methodology to apply to calls coming into the creditor's call center; therefore, this process could not be automated to achieve the purpose for the warning. If not automated, training would have to be quite extensive, and the chance for error would be significant.

<u>What guidance should the Board provide on making the minimum payment disclosures "clear and conspicuous?"</u>

Q83: What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

In some cases the Bankruptcy Act requires that the minimum payment disclosure appear on the front of the periodic statement in a "prominent location." Guidance as to what constitutes a "prominent location" would be desirable. Periodic statements already contain quite a bit of required information, all of which is currently defined by regulation as to what is considered "clear and conspicuous." If everything must be "clear and conspicuous", nearly the entire statement will look the same, and then nothing will be "prominent" or "conspicuous."

Q84: What model forms or clauses should the Board consider?

Creditors are familiar with the current model forms explaining the home-equity plan hypothetical example so any model form that would follow the same standard to explain how we may add the disclosures to the credit card periodic statement.

B. Introductory Rate Disclosures

Q85: The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures.

The creditor should have the flexibility to use the term "introductory" in immediate proximity to each mention of introductory APR. The expiration date and go-to APR should be in close proximity to the first mentioned APR in the text of the letter that is sent with solicitations and does not need to be repeated in any other documents sent with the letter. If an APR is based upon risk based pricing, a range of rates is sufficient with the additional verbiage that states that the rate will be determined upon creditworthiness. No additional rule is required to disclose to the consumer the events that may trigger penalty pricing. We feel that the current Regulation Z requirements address the concerns under the Bankruptcy Act.

C. Internet Based Credit Card Solicitations

Q93: Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

We currently follow the guidance in the 2001 interim rules because there is little guidance otherwise. We suggest that the Board define electronic delivery in an amendment to the 2001 guidance in order to avoid adding electronic delivery rules to each individual regulation. In addressing electronic delivery based on the Bankruptcy Act, we ask that the Board keep in mind that the 2001 interim rule sets the correct balance needed for technology development. For example, a card issuer could provide on the application a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application. The emphasis needs to be on "cannot bypass the disclosure" and keep flexibility on how the creditor accomplishes this. The Board should not be more specific because the technology may yet exist to support the specificity.

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

Q97: Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be charged?"

On some of our lines we offer grace periods of between 7 and 30 days before a late charge is assessed; therefore, a late payment fee would not be imposed prior to the date a payment is due. Our periodic statements clearly disclose at the top of the statement the due date of the payment, the current minimum payment, and any past due amount. Late fees are disclosed at the time each account is opened on the line agreement and are specific to the state of origination as well as originating lender. We do not, however, disclose the amount of the late charge on the periodic statement. Rather, late payments that have been assessed are disclosed in the transaction history on the following month's statement. In order to disclose the potential late fee on each monthly statement, our statements would require a time-consuming and expensive re-design.

Guidance from the Federal Reserve about the placement of the date on which the payment is due would be welcomed provided necessary flexibility is given to creditors.

Also, on some lines we credit all payments received after 2:00 p.m. on the next business day. Our statements already disclose that payments made before 2:00 p.m. will be credited on the date of receipt. We oppose any requirement to credit payments on the actual date received. The Board does not need to change their current rule as to the receipt of payments and reasonable cut off hours.

E. Disclosures for Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value.

Q102: What guidance should the Board provide in interpreting when an "extension of credit may exceed the fair-market value of the dwelling?

The disclosure should be given regardless of whether the new loan exceeds the dwelling's fair-market value or whether all mortgages (new and existing) will exceed the dwelling's fair-market value. As proposed, the new disclosure is required at the time of application if the loan request may exceed the fair-market value of the property. This puts the creditor at a disadvantage because we won't have a verified value on the property until further into the loan underwriting process. If the fair-market value is left to be determined by the creditor, which is in direct conflict with FIRREA appraisal requirements (which state that the lender must be independent from the valuation process), this leaves the creditor in the position of always having to make this disclosure. As the information provided doesn't indicate that this disclosure must be in a form the consumer can keep, the Board should provide that creditors may to place the disclosure on any existing document.

Q103: In determining whether the debt "may exceed" a dwelling's fair-market value, should only the initial amount of the loan or credit line and the current property value be considered?

The disclosure should be based only on the initial amount of the loan or credit line and the current property value rather than the "unknowns" that could occur over the life of the loan, such as negative amortization or property devaluation.

Q104: What guidance should the Board provide on how to make these disclosures clear and conspicuous? Should the Board provide model clauses or forms with respect to these disclosures?

The Board should provide a model clause that can be made a part of already existing disclosure notices.

Q105: With the exception of certain variable-rate disclosures (12 CFR §§ 226.17(b) and 226.19(a)), disclosures for closed-end mortgage transactions generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. 15 USC 1638(b).

As long as any new disclosures can be incorporated into already required disclosure notices, there would be no need for further compliance guidance regarding the timing of the disclosure.

F. Prohibition on Terminating Accounts for Failure to Incur Finance Charges

Q106: What issues should the Board consider in providing guidance on when an account "expires?" For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

If a prohibition on terminating accounts for failure to incur finance charges is required by regulation, that prohibition should address only those creditors who have a practice of terminating lines of credit solely because the accounts have incurred no finance charges. The regulation should acknowledge that creditors terminate lines for a myriad of reasons, and that the prohibition applies only to terminating consumer accounts based exclusively on failure to incur finance charges.

Thank you for the opportunity to provide these comments. We understand the difficulty of promulgating a regulation that is mandated by law yet appropriate to protect legitimate business needs with respect to open-end credit rules. We commend you for trying to write a regulation that considers the needs of all.

Sincerely,

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