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November 20, 2009

Jennifer J. Johnson
Secretary
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

Dear Ms. Johnson:

Barclays Bank Delaware ("Barclays") is pleased to be able to submit these comments in response to the Board of Governors of the Federal Reserve System's ("Board") proposal to amend Regulation Z and accompanying staff commentary to implement those Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act") provisions that are effective February 22, 2010. The Board's proposed amendments go a long way in helping clarify various provisions of the Act. There are certain provisions in the proposal however which Barclays submits would benefit from further clarification.

Barclays is a partnership focused issuer of credit cards with approximately $11 billion in credit card receivables and 6 million credit card accounts. Some of its credit partnerships include the LL Bean card, the US Airways card, the Barnes & Noble card and the Carnival Cruise Lines card. As a bank wholly focused on the issuance of credit cards, Barclays appreciates the opportunity to make its views known on this important proposal.

We understand that the Board has limited time to consider our comments. Therefore, we have endeavored to make our comments as concise as possible and have only focused on those clarifications which we believe could have the most significant impact.

ARGUMENT

Effective Date

We understand that the Board is considering accelerating the effective date of certain Regulation Z requirements that are not part of the CARD Act to February 22, 2010. We strongly urge the Board not to do so. Accelerating those provisions would mean that compliance with these provisions would be accelerated by four months with two months notice, assuming the final Regulation Z amendments are issued in December. We at

Barclays are working as hard as we can to meet the compliance deadlines of the CARD Act. We have hundreds of individuals stacked up (we only have 1600 total FTE) against CARD Act compliance projects. To require that card issuers comply with additional requirements that were not previously scheduled for February compliance would be next to impossible and set us up for potential failure.

In addition Barclays requests that certain provisions or requirements scheduled to be implemented as of February 22, 2010 not apply to accounts opened prior to February 22, 2010. Specifically we request that the fee limitation requirements under proposed Section 226.52(1)(i) only apply to accounts opened after February 22, 2010. Barclays issues several airline co-branded cards with annual fee. It will be virtually impossible to ensure compliance on 100% of the cards that were issued before section 226.52(7)(i) systems requirements were implemented.

Ability to Pay

The Board proposes a new section 51(a) implementing Truth in Lending Act ("TILA") Section 150 requiring credit card issuers to consider the consumer's ability to make required payments before opening a credit card account or increasing the credit limit applicable to a credit card account. However, Section 51(a) appears to go further than requirements of the Act in that it requires card issuers to consider specifically the consumer's income or assets before opening an account or increasing a credit limit. That stated, Barclays appreciates the Board's comment 51(a)-5 that in considering a consumers current obligations or income, a card issuer may rely on information provided by the consumer or in a consumer's credit report. As the Board states, TILA section 150 does not require verification. Verification can be burdensome for both issuers and consumers. Moreover, Barclays has found that consumers generally do not inflate their income in the credit card application – that the income they report on their credit application closely reflects their actual income.

However, in some instances, it may be not be practical or even possible, to request income information from the consumer. For instance, in many retail locations, when opening up a credit card account, it might not be possible to request income information from the consumer. At the very least it might offend the consumer and his/her sense of privacy for a clerk to ask a consumer standing in line with several strangers standing behind him/her what his/her income is. We urge the Board to allow the issuer the flexibility to use income information based on the issuer's evaluation of that specific consumer's credit bureau file. The bureaus have "income estimators" that issuers can purchase which estimate the specific consumer's income and which Barclays uses and believes to be reliable. The income estimators were developed by using a large sampling of mortgage application data and/or tax returns. The consumer reporting agencies report that their income estimator models are empirically derived, demonstrably and statistically sound. We are informed that those consumer reporting agencies validated their income estimation models by comparing their estimates with the consumer's self reported income to the census bureau. Self reported income to the

census bureaus would seem to be just as, if not more, reliable than self reported income on credit card applications since there is no incentive for the consumer exaggerate or mislead the census bureau – and the comparisons with consumer reporting agencies' estimates seem to bear that out. Using income estimators would provide issuers the ability to make credit card credit available at point of sale without outright embarrassing the consumer. The Proposed Rule already permits a card issuer to rely on obligation information from a consumer reporting agency; the final rule should make it clear that a card issuer may likewise rely on income information received from a consumer reporting agency.

Barclays also encourages the Board to grandfather existing accounts (i.e., accounts opened before February 22, 2010) from the requirement to consider income when increasing credit lines. For accounts opened prior to February 22, 2010, when there is no income on the card issuer's file from that consumer, issuers should be allowed to consider other information on file that demonstrates that the consumer has the ability to handle the proposed credit line increase. Prior to the effective date, issuers were not required to source income information, nor retain it on file. Therefore, there will be many instances where the consumer's income is not readily present and yet the consumer has demonstrated the ability to handle a credit line increase. Such evidence might include consistently paying more than the minimum amount due each month, or consistent on time payment behavior on all the consumer's accounts. In such instances, for accounts acquired prior to February 22, 2010 the consumer and the issuer would be best served by not requiring the issuer to request the consumer's income in order to grant a credit line increase when the issuer has more relevant and predictive information on hand.

Limitation on the Imposition of Finance Charges (Section 226.54) Partial Grace

Proposed Section 226.54 implements the Act's prohibition on assessing finance charges when the consumer does not pay the balance in full (i.e. makes a partial payment) on that portion of the balance subject to a grace period that was repaid prior to the expiration of the grace period – in other words on the portion of the balance paid down as a result of the partial payment. Barclays appreciates the Board's efforts to clarify this provision. Barclays requests that the Board submit additional examples of the partial grace requirement to further clarify when the partial grace requirements do and do not apply. Without such clarification, issuers might have to limit or eliminate grace periods in certain situations. For instance, Barclays respectfully submits that the Board should make clear it that Section 226.54 does not apply to revolvers who make partial payments, except in the limited circumstances when the cardholder paid the previous balance in full prior to making a partial payment in the next billing cycle (i.e. is not truly a revolver). We also request that the Board make it clear that the cardmember must be eligible for a grace period under the terms of the account agreement before the partial grace period requirement applies. For instance, when the initial disclosure statement specifically requires that all balances must be paid in full in the prior billing cycle for a grace period to apply to a purchase balance, the partial grace period

requirement should not apply unless all balances were repaid in full in the previous billing cycle. This would mean that if partial a payment is applied to the purchase balance because the purchase APR is the highest APR, and as a result the purchase balance was paid in the prior billing cycle in full but other balancers were not, the purchase balance in the next billing cycle is not automatically subject to a grace period because all balances were not paid in full in the previous billing cycle. Finally, we request that issuers not be required to describe the applicability of the partial grace requirement when disclosing the balance computation method – it is too complex to be described meaningfully and simply for consumers.

General Disclosure Requirements 226.5 Substitutions/Upgrades

The Board's proposed comment 5(b)(I)(i)6 purports to provide creditors flexibility to treat a cardmember's request for new features or benefits as either the opening of a new account subject to section 226.6(b)) or a change in terms subject to 45 days advance notice. Barclays requests further clarification that would allow for immediate upgrades to higher annual fee programs where the consumer explicitly requests the upgrade due to the fact that the higher annual fee program provides for increased rewards.

With many of our co-branded credit cards, Barclays provides consumers the option of selecting an annual fee and with enhanced rewards products (ex. $100 annual fee airline co-branded card which earns 2 miles for every $1 spent on the airline, 1 mile for every other $1 charged, 25,000 bonus miles with first purchase and an annual companion ticket for $99) or a no annual fee co-branded card with lesser rewards (ex. 1 mile for every $2 spent; 5,000 bonus miles with first use and no annual companion ticket). Often times, the consumer selects the no annual fee card and then realizes that no annual fee card benefits are limited and thus requests an upgrade to the annual fee card. Barclays submits the issuer should be allowed to grant such express requests. As the regulation are currently written, there is a question whether the creditor could even honor the request during the first year in the first year of the account relationship. Even if the creditor could, or if the consumer is in the second year of the account relationship, the creditor in effectuating a change in terms would have to provide at least 45 days advance notice – not a good experience (the creditor certainly would not want to award the extra miles and companion ticket until the consumer was obligated to pay the annual fee). Alternatively, according to the Board, the creditor could treat the upgrade as a new account – send a new card with a new initial disclosure statement, allow the customer to continue charging on the old card with reduced benefits until the customer receives and activates the new card – not necessarily a good experience. There is an additional questions whether the customer would qualify for a second account in that both accounts would have to be open for a period of time and there is a question as to how much credit the creditor will make available to that customer. Again not a good customer experience. Barclays urges the Board to allow a third option – to allow for immediate upgrades to higher annual fees and in return for increased rewards program where the customer explicitly requests it. This would benefit both consumers and issuers

Ability to Increase for Workout Programs

The requirements that issuers must provide 45 days advanced notice before raising APRs and that APRs can not be increased during promotional periods could be problematic in certain workout scenarios. Barclays submits that creditors should have the ability to increase a customer's APR on a particular balance to put the customer in a work out program provided the customer's overall APR on all balances combined is lower. To provide an example, take the situation where the customer has a $1,000 balance at a promotional 0% APR, a $1500 purchase balance at a 15% APR and a $3,000 cash advance balance at 25% APR. The creditor has a workout program option that provides for a 5% APR on all balances for one year with timely payments. The customer calls the creditor or a non-profit consumer counseling service who in turn calls the creditor for assistance, and asks if the creditor can provide temporary assistance. If the creditor does not have the functionality to keep the $1,000 promotional balance at 0% APR, the creditor would be prevented from helping the customer even though on a blended basis, the 5% APR on all balances is substantially less costly to the customer. We encourage the Board to provide flexibility to creditors in work out situations where the workout program's combined APR or fees is less than the APR or fees that the consumer must currently pay on his/her account.

Dual notice for 60-Day Delinquency (Sections 226.9(c) and 9(g))

The ability of an issuer to provide cardholders with a dual notice is essential to implement the Act as written. Barclays submits that an issuer that has provided a 45-day notice of an increased rate due to delinquency and discloses in that same notice the consequences of going 60+ days late should not be required to give a second 45-day notice after the cardholder becomes 60+ days delinquent. This approach is consistent with the Board's clarification to the January 2009 Regulation Z rule.

Without clarification that such a dual notice is permissible, the Board would essentially eliminate the true 60-day delinquency exception contemplated by the CARD Act; it will essentially become a 105-120-day delinquency exception, well beyond what was provided for in the Card Act. Moreover, providing a description in the first 45-day notice of what would happen should the cardholder become 60+ days delinquent puts the cardholder on notice of the consequences of not making timely payments in the future and provides the cardholder an opportunity to prevent that event from happening (i.e. by making a payment). There is no language in the Act that requires an additional notice to be provided after the cardholder has become 60+ days delinquent. Providing the consumer notice of the consequences of becoming 60 days delinquent as part of the initial delinquency notice would be meaningful to cardholder and serve the purpose of the Act.

Renewal Disclosures (Section 226.9(e))

Proposed Section 226.9(e) states that "[A] card issuer that imposes any annual or other periodic fee to renew a credit or charge card account...**or** any card issuer that has changed or amended any term of a cardholder's account required to be disclose under § 226.6(b)(1) and (b)(2)...shall mail or deliver written notice of the renewal..." (Emphasis added). [Federal Register page 54218]. Barclays requests that the Board clarify that renewal notices are not required unless there is an annual or similar fee assessed at account renewal.

Specifically, if there is no annual fee or similar fee at renewal, the Rule should make it clear that no renewal notice is required even if there has been a change in the account as described under proposed Section 226.9(e). This can be accomplished by changing "**or any** card issuer that has changed" to "**and the** card issuer has changed."

If you have any questions about any of these comments, please do not hesitate to contact me at 302-255-8700.

Sincerely,

Clinton W. Walker

CWW/cm