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

RE: Docket No. R-1314 – Interim Final Rule Implementing Provisions of the CARD Act of 2009

Dear Ms. Johnson:

Citigroup, one of the largest U.S. financial services holding companies, respectfully submits these comments in response to the interim final rule published by the Federal Reserve Board (the "Board") to amend Regulation Z, 12 C.F.R. § 226, to implement the provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act") that became effective on August 20, 2009. The interim final rule was published in the *Federal Register* on July 22, 2009.

Citi appreciates the opportunity to provide the Board with comments on the interim final rule. We support the interim final rule. In addition, as discussed further below, we also believe that there are certain areas where clarification or revision will benefit creditors and consumers alike, as well as facilitate compliance. For the Board's convenience, we have organized our comments by the section order of the interim final rule. At the end of this letter, we address the apparent scope of the CARD Act.

§ 226.5(b) Time to make payments

We strongly support the "reasonable policies and procedures" approach that the Board adopted in § 226.5(b)(2)(ii) of the interim final rule for purposes of complying with both the late payment and grace period requirements. As the Board noted in the Supplementary Information, this approach will facilitate compliance by creditors while providing protection for consumers. 74 Fed. Reg. 36077, 36080 (July 22, 2009). In addition, we agree that a creditor's response to acts of God, war, natural disaster or strike should be evaluated under the reasonable policies and procedures standard. However, we ask that the Board address this issue in the commentary to the rule to provide additional clarity and to eliminate any uncertainty regarding the significance of the Board's deleting the previous exception addressing acts of God and similar circumstances. Finally, although it can be inferred from the language of the rule, to reduce the risk of needless litigation, we urge the Board to clarify that if a statement is mailed late in violation of a creditor's reasonable policies and procedures, the creditor can treat a payment as late 21 days after the statement was actually mailed.

§§ 226.9(c)(2)(iv) and 9(g)(3) Disclosure requirements

No opt out right when changes agreed to by the consumer

The 45 day timing requirement does not apply under § 9(c)(2)(i) when the consumer has agreed to a particular change. Thus, Citi requests that the Board clarify that the notice required to be given before the agreed upon change becomes effective need not include a disclosure of the right to opt out, which would otherwise be a required disclosure under § 9(c)(2)(iv)(D). The Board has interpreted new Truth in Lending Act ("TILA") § 127(i)(3) as "generally establishing a substantive right for consumers who receive a notice of a rate increase or change in terms ... to avoid the imposition of that increase or change by rejecting it before the effective date." 74 Fed. Reg. at 36087. This right gives the consumer an opportunity to reject a change that will be imposed if the consumer does not act. If a consumer has affirmatively agreed to a change, however, the consumer has already been given the opportunity to reject the change and has affirmatively chosen not to do so. Thus, there is no need to give the consumer an additional opportunity to opt out when giving the notice of the change. In fact, because the § 9(c)(2)(i) exception is limited to relatively unusual circumstances, *see* comment 9(c)(2)(i)-3, this additional opportunity may create confusion for consumers who have just negotiated the change.

14 day rule exception to right to opt out should be disclosed

Under § 9(h)(3)(ii), a consumer cannot opt out of a significant change to an account term or other increase in an annual percentage rate with respect to transactions that occur more than 14 days after provision of a notice under §§ 9(c) or 9(g). However, the disclosure requirements for these notices under §§ 9(c)(2)(iv) and 9(g)(3) do not require that this fact be disclosed. We believe that this is important information for consumers to have when making decisions about their accounts. Thus, the Board should clarify how creditors should disclose the fact that a rate increase will apply to transactions made more than 14 days after provision of a notice, even if the consumer opts out of the change described in that notice.

Notices need only include information to the extent applicable

Citi requests that the Board clarify that inapplicable disclosures under §§ 9(c)(2)(iv) and 9(g)(3) do not need to be included in a notice. This clarification is consistent with the disclosure requirements in other sections of both the current and January 2009 Regulation Z. For example, § 5a(b) requires that the Schumer Box include "all applicable items" from a list set forth in that paragraph; § 6 requires that the account opening disclosures include the items listed in that section, "to the extent applicable;" and § 7 similarly requires that the periodic statement include the items listed in that section "to the extent applicable."

§ 226.9(c)(2)(v) – Notice not required

Promotion exception

We appreciate that the Board provided an exception, in § 9(c)(2)(v)(B), from the 45-day advance notice requirements in connection with an annual percentage rate increase at the expiration of a promotion. However, we would like to draw the Board's attention to the operational and logistical difficulties that creditors and their retail partners will face in complying with this exception, especially at point of sale. For example, if a consumer qualifies for a promotion at a store, the retailer typically does not have information to determine the numerical annual percentage rate that will apply to that consumer's account at the end of the promotion. The retailer will know the terms of the promotion: for example, that the rate at the end of the promotion will be the standard purchase rate on the account or that the rate will be "up to" a certain amount. However, the retailer will not have access to the bank's systems to determine the specific rate that will apply to an individual consumer's account after the promotion. (We note that the comment letter submitted by MasterCard Worldwide describes in detail this and other logistical and compliance challenges that creditors and their retail partners face in their attempts to administer promotions in compliance with the interim final rule.)

Citi therefore requests that the Board clarify certain aspects of the exception to facilitate compliance and enable creditors and their retail partners to continue to provide promotional offers that benefit consumers. First, Citi urges the Board to clarify that, at the point of sale, disclosing the rate that will apply in a narrative form that the consumer can readily understand, such as "the standard annual percentage rate applicable to purchases" or disclosing an "up to" rate is sufficient to meet the requirements of § 9(c)(2)(v)(B)(*1*), as long as the rate applicable to the category of transactions does not exceed the rate that applied to that category prior to commencement of the promotion.

If the Board chooses not to make this clarification, Citi urges the Board to adopt transition guidance. As the Board is aware, creditors and their retail partners are diligently working to make the systemic changes required to disclose, at point of sale, the actual numerical rate that will apply after expiration of a promotion in accordance with 9(c)(2)(v)(B)(*1*). However, these changes will take time to implement. Thus, consistent with its previous oral guidance, the Board should clarify that during a transitional period, at point of sale, creditors and their retail partners may disclose the rate that will apply at the end of a promotion as a rate up to the highest amount that will be paid by any consumer eligible for the promotion or allow a narrative disclosure that the standard purchase rate will apply.

Second, Citi requests that the Board clarify that the promotion exception in § 9(c)(2)(v)(B) applies to all significant changes, not just to an increase in an annual percentage rate. Promotions may include reduced or waived fees. The Board should clarify in the commentary to § 9(c)(2)(v) that a resumption of the regular account terms, including fees, when a promotion ends is permissible under the exception. Thus, as with annual percentage rates that increase to pre-promotion rates, no notice or right to opt out should be required to resume other terms of the account.

Third, Citi requests that the Board revise the promotion exception in the context of transactions that are consummated over the telephone so that § 9(c)(2)(v)(B)(*1*) permits a creditor to disclose the terms of a promotion orally, provided written notice is given within a few days of the conversation. This would permit a creditor to make an oral offer, for example as part of a retention strategy, that will take effect immediately. Absent such a change, consumers are likely to be frustrated by a delay in the start of a promotion that they have agreed to over the phone, because the delay will prevent them from receiving the agreed upon benefit immediately.

Finally, Citi requests that the Board exempt the § 9(c)(2)(v)(B) disclosures from the consumer-consent and other requirements of the E-Sign Act in connection with Internet transactions. The Board has exempted other important disclosures from these requirements, such as those required under §§ 5a and 16. (*See* Regulation Z § 5(a)(1)). The same rationale that the Board used when exempting these disclosures from the E-Sign Act applies in the context of the promotion exception disclosures: the exemption will "eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers." 72 Fed. Reg. 63462, 63464 (Nov. 9, 2007). Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access a promotion is potentially burdensome and could discourage creditors from offering and consumers from investigating promotions available online. Moreover, because these consumers are engaging in the transaction online, we can be confident that they will be able to view clear and conspicuous online disclosures as well.

Workout and temporary hardship exceptions

Citi appreciates the Board's adoption of an exception from the 45-day notice requirements for the completion or termination of a workout or temporary hardship arrangement. Citi requests, however, that the Board make clarifications and modifications to this exception, similar to the revisions suggested for the promotion exception. Such revisions will allow broader relief to troubled consumers and will allow creditors to act expeditiously when consumers are in trouble.

First, Citi urges the Board to clarify that the exceptions in §§ 9(c)(2)(v)(D) and 9(g)(4)(i) apply to all significant changes, not just to an increase in an annual percentage rate. Workout and temporary hardship arrangements often include reduced or waived fees, such as late fees and over-limit fees. These fees are typically reinstated once the consumer has completed or violated the arrangement. The Board should clarify in the commentary to § 9(c)(2)(v) that a resumption of the regular account terms, including all fees, when an arrangement is completed or terminated, is permissible under the exception. Thus, as with annual percentage rates that increase to pre-arrangement rates in these circumstances, no notice or right to opt out should be required before resuming other terms of the account. A conforming change should also be made to the commentary to 9(g)(4)(i).

Second, Citi requests that the Board revise the workout and temporary hardship arrangement exceptions so that §§ 9(c)(2)(v)(D)(*1*) and 9(g)(4)(i) allow the required disclosure of the terms of the arrangement to be given orally when the consumer agrees to the arrangement over the phone, provided that written disclosures are given within a few days of the conversation. This would allow creditors to start the terms of an arrangement as soon as the consumer agrees and would not require that a creditor wait to apply a reduced rate until after it provides written notice. Consumers are likely to be confused by a delay in the start of an arrangement that they have agreed to over the phone, especially when the delay prevents them from getting needed assistance immediately. This revision would be consistent with the language in the CARD Act itself. The workout and temporary hardship exception in § 171(b)(3) of TILA, as revised by the CARD Act, requires only that the disclosures made prior to commencement of the promotional period be "clear and conspicuous." It does not require that they be made in writing. In addition, with the added protection that the rates and fees at the termination or violation of the arrangement cannot exceed the rates and fees that applied prior to the commencement of the arrangement, the consumer is not disadvantaged by accepting the arrangement.

Finally, because the Board did not provide any explicit transition guidance with respect to workout or temporary hardship arrangements entered into prior to August 20, 2009, we assume that the Board intended to treat these arrangements similarly to promotions in place before that date. We request that, as in the case of promotions, the Board clarify that if a creditor generally provided disclosures consistent with the workout or temporary hardship exception prior to August 20, 2009, it is not required to provide consumers with 45 days' advance notice and the right to reject changes before a change as a result of expiration or violation of the arrangement. As recognized by the Board in its discussion in the Supplementary Information in the context of promotions, to require otherwise "would have the impact of imposing the requirements of the interim final rule retroactively." 74 Fed. Reg. 36077 at 36092.

Servicemembers Civil Relief Act Exception

Citi urges the Board to provide an exception from the § 9(c)(2) notice and opt out requirements for accommodations under the Servicemembers Civil Relief Act ("SCRA"). As with the exception in § 24(b)(6) of the proposed UDAP clarifications, 74 Fed. Reg. 20784 (2009), the addition of a SCRA exception is consistent with the SCRA, which allows a creditor to return an account to its original rates and fees after a discount during a period of military service. Without clarification, the workout and temporary hardship exception is not workable in the SCRA context. For example, a creditor would not be able to provide a notice to a consumer prior to the commencement of the arrangement because the commencement is not determined by the creditor. Instead, the consumer notifies the creditor when the period begins. In addition, because the period of the rate decrease cannot be determined by the creditor, it would be difficult to disclose the annual percentage rate that would apply to each category of transactions at the end of the consumer's military service. For example, if a promotional rate on a category of transactions expires to the purchase rate during the period of military service, when the military services ends, the standard purchase rate will typically apply to that category of transactions. However, if the military service ends during the promotional period, the promotional rate will apply. Thus, the Board should provide a SCRA exemption that does not require notice prior to the commencement of the period or a numerical disclosure of the rate that will apply after the period of military service.

<u>§ 226.9(g) Increases in rates due to delinquency or default</u>

Combined Notice

We favor the Board's adoption of § 226.9(h)(3)(i), which provides that a consumer does not have the right to reject a rate increase or other significant change when the consumer becomes 60 days late. We agree with the Board that consumers who become 60 days late should not be allowed to use the right to reject a change to override the exception in § 171(b)(4) of TILA, as revised by the CARD Act, which was specifically created to address the consequences of severe delinquency. Consistent with the reasoning behind this exception from the opt-out right, we urge the Board to clarify under § 9(g)(2) that the day after a consumer becomes late, a creditor may send a combined notice giving both the 45-day advance notice of a rate increase or change in terms and a notice that if the consumer becomes 60 days late on that payment, the change will become effective regardless of whether the consumer opts out and closes the account. The creditor should not be required to send a second 45-day notice after the consumer becomes 60 days late. Such a requirement would effectively require creditors to wait until a consumer is at least 105 days delinquent before the creditor may impose a rate increase or other change without permitting the consumer to opt-out. This result would override the language in the exception in § 171(b)(4) of TILA by, in effect, changing the 60 days to at least 105 days.

In addition to being consistent with the CARD Act, allowing a combined notice is consistent with the language of the interim final rule and the 2009 Regulation Z and Regulation AA rulemakings. Section 9(g)(3)(iv) requires that the notice of an increase in rate due to delinquency or default include a statement that the consumer has the right to reject the increase "unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment." The plain language of this requirement is that the right to reject does not apply if the consumer becomes 60 days late. It would be inconsistent with this disclosure to require creditors to give the consumer an additional 45 days in which the opt-out applies. Finally, in the 2009 Regulation Z and Regulation AA rulemakings, the Board permitted creditors to provide a notice when the consumer was one day late regarding the rate increase on new transactions and to provide in the same notice that if the consumer became 30 days late, the increase would apply to the existing balance. Permitting a combined notice regarding the right to reject changes would be consistent with this position.

Default rate can apply to closed accounts.

The Board should clarify that if a consumer pays late on a closed account, the creditor may still send a § 9(g) notice. The ability to increase rates due to delinquency or default on closed accounts with outstanding balances is an important risk management tool that should be available to creditors as they seek to keep these accounts current and to collect the outstanding balances. Creditors should not have to forfeit the ability to use this risk management tool simply because an account is closed. As with open accounts, the notice would have to include the right to reject the changes, but it should not have to include inapplicable information (such as a reference to closing the account).

Scope of the CARD Act

The Board should move the exceptions in § 5a(a)(3) of Regulation Z, as currently in effect, to the definition of credit card in § 2(a)(15). This would facilitate compliance by eliminating from the scope of the rules products that are not in fact credit cards, as that term is generally understood. For example, overdraft lines of credit accessed by check guarantee cards or lines of credit accessed by debit cards that can only be used at ATMs have only an incidental connection to credit cards and do not have the same features. These products cannot be used to make purchases at a merchant, but can only be used to obtain cash.

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On behalf of Citigroup, I thank you again for this opportunity to comment on the Board's interim final rule implementing certain provisions of the CARD Act. If you have questions on any aspects of this letter, please call me at (212) 559-2938, Joyce ElKhateeb at (212) 559-9342 or Karla Bergeson at (718) 248-5712.

Sincerely,

Carl V. Howard

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cc: Joyce ElKhateeb
Karla Bergeson
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