HSBC Card Services Inc.
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By electronic delivery

September 21, 2009

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1364

Dear Ms. Johnson:

This comment letter is submitted by HSBC Bank Nevada, National Association ("HSBC") in response to the interim final rule ("Interim Rule") issued by the Board of Governors of the Federal Reserve System ("Board"). The Interim Rule establishes regulations through which creditors may comply with the Credit CARD Act of 2009 (the "CARD Act") provisions which took effect 90 days following enactment. HSBC appreciates the opportunity to provide its comments on the Proposed Rule.

HSBC is part of HSBC North America Holdings Inc., one of the ten largest financial services companies in the United States. HSBC – North America comprises all of HSBC's U.S. and Canadian businesses with assets totaling $547 billion at June 30, 2009. The company's businesses serve customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

HSBC appreciates the Board's efforts to publish the Interim Rule on an accelerated schedule, given the effective date of August 20, 2009 (the "Effective Date"). As we are sure you understand, the implementation of the Interim Rule within three months of the enactment of the CARD Act presented HSBC with immense operational challenges, particularly related to enhanced disclosure requirements. As further described below, some of these disclosure challenges resulted in less advantageous programs being offered to HSBC customers than were previously offered. We respectfully request that the Board consider issuing clarifications to the Interim Rule to remediate these issues.

HSBC offers the following comments in response to the Interim Rule:

I. 21-Day Advance Billing

HSBC supports the Board's proposal to incorporate reasonable procedures within the amended Truth in Lending Act ("TILA") § 163(b) prohibition against imposing finance charges when a cardholder has not been provided 21-day advance billing. HSBC believes any strict prohibition is impracticable given the possibility of inadvertent errors which may otherwise be resolved to give effect to the legislative intent of this prohibition. Also, a strict standard fails to recognize situations where a cardholder is actually allowed 21-days to remit payment through a creditor's error resolution, but remits no payment at all during a billing period. HSBC intends to establish reasonable procedures designed to provide 21-day advance billing as required, but would expect flexibility to rectify isolated mailing error incidences by allowing additional grace days to give effect to the intent of the CARD Act requirement.

II. Changes in Terms

A. Hardship Programs

1. Delayed commencement of hardship programs to allow for receipt of written disclosures only harms consumers.

Section 226.9(c)(2)(v)(D)(2) of the Interim Rule would require that "[t]he creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to such completion)." HSBC urges the Board to consider the potential negative impact to the consumer resulting from the time delay while disclosures are being provided.

The vast majority of hardship programs are agreed upon during telephone interactions with the consumer. Currently, the hardship arrangement is given immediate effect, and written confirmation of program terms are sent shortly thereafter. A cardholder receives immediate benefit from APR reductions, account fee waivers, reduced minimum periodic payment requirements and suspended collection efforts.

In requiring a written notice to be provided before commencement of the program, a creditor would presumably need to wait some number of days for mailed materials to reach a customer. However, during any such delay, finance charges would continue to accrue at a higher interest rate, late and over-limit fees would continue being assessed, standard minimum payments would be required and a consumer's delinquency would increase.

As the CARD Act only requires that the disclosure be made in a clear and conspicuous manner, there does not appear to be a reason for the Board to

require a written disclosure in this circumstance. These programs accommodate consumers in financial distress, and it is well understood that these are temporary arrangements. Moreover, clear disclosures can be provided by telephone. If the Board determines it necessary for some type of communication to be sent in writing, we believe any such written notice could be sent shortly after commencement of the arrangement. HSBC requests that the Board modify its proposal to permit commencement of the arrangement after telephonic disclosure, which would allow HSBC to continue providing immediate relief to its customers. If the Board believes some disclosure should be provided in writing, HSBC suggests that any such written disclosure be sent as a confirmation sometime shortly following the commencement date of the hardship arrangement.

2. Creditors who temporarily waive account fees and reduce minimum payment requirements as part of a hardship program should be allowed to reinstate those fees and minimum payments at program conclusion, without providing advance notice and opt out right.

It is a standard industry practice to reduce or suspend the imposition of account fees and reduce minimum periodic payment requirements as part of a hardship program. Waiver of late and over-limit fee assessments and reduction of monthly payments provide significant relief to those in financial turmoil. However, the Interim Rule only provides exception to change in terms requirements for the increase in the annual percentage rate at the conclusion of a hardship program. HSBC believes the CARD Act intended to allow fee reinstatement upon termination of a hardship program, and requests that the Board add this as an exception from advance notice and opt out requirements. HSBC also requests that the reinstatement of prior minimum payment requirements be similarly excluded from any change in terms requirements.

The CARD Act clearly intended to create exception to allow for the reinstatement of account fees at conclusion of a hardship program. It provided that under a properly disclosed hardship program, a creditor may reinstate account terms so long as "the annual percentage rate, *fee*, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, *fee*, or finance charge that applied to that category of transactions prior to commencement of the arrangement." [Emphasis added]

Despite the clear authority to create exception for the reinstatement of account fees, the Interim Rule provides exception only for "an increase in an annual percentage rate due to the completion of a workout or temporary hardship arrangement by the consumer." HSBC requests that the Board modify its proposal to provide exception for reinstatement of account fees within § 226.9(c)(2)(v)(D), so long as the terms of reinstatement are properly disclosed before plan commencement. Without this modification, creditors may be discouraged from continuing to suspend account related fees while consumers work through financial hardships.

Finally, understanding that the Interim Rule does not provide for opt out rights when a minimum periodic payment is increased, HSBC does not believe the reinstatement of prior minimum periodic payment at the conclusion of a hardship arrangement should be treated as a 'change in terms' requiring advance notification. We therefore ask the Board to clarify that the reinstatement of prior minimum payment requirements at conclusion of a hardship arrangement is not considered a change in terms, and should be exempted from any advance notice requirements.

3. The Interim Rule should apply only to hardship programs commencing after the Effective Date.

The Interim Rule did not indicate applicability to hardship programs commencing prior to the Effective Date, nor did it suggest any need to remediate prior program disclosures in order to reinstate standard account terms upon program completion. In addition, while the Interim Rule went to great length describing methods by which creditors could comply with new regulations as to promotional offers existing as of the Effective Date, no guidance was provided with respect to hardship arrangements existing as of the Effective Date.

HSBC believes that the conditions of its existing hardship arrangements, including the timing of and reasons for reinstatement of prior account terms, have been reasonably communicated. As noted previously, it would be impractical to expect that hardship arrangements predating the Effective Date, typically arranged by telephone, would have adhered to any requirement to provide written disclosure before commencement of the arrangement, or contained all disclosures which will be required under an anticipated final rule. HSBC therefore requests supplemental Board commentary indicating that any requirements contemplated under the Interim Rule have effect only as to hardship arrangements entered into after final published rules take effect.

B. Servicemembers Civil Relief Act

1. When benefits under Servicemembers Civil Relief Act end, a creditor should be allowed to reinstate prior account terms without providing advance notice and opt out right.

Largely, Congress adopted the exceptions to advance notice and opt out rights in the CARD Act from those provided in rules being promulgated under Regulation AA by the Board, the National Credit Union Administration and Office of Thrift Supervision (collectively, the "Agencies"). Perhaps a consequence of reliance on unfinished proposals, the CARD Act failed to include a Servicemembers Civil Relief Act ("SCRA") exception which was added by the Agencies in their May 5, 2009 proposed rulemaking (the "Proposed Clarification").

The SCRA provides that "[a]n obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent." Because account fees are considered a component of the interest rate under SCRA, creditors suspend account fees as necessary to comply with the 6 percent per year limitation. Finally, a creditor is obligated to reduce the periodic minimum payment so as to not cause accelerated repayment of the principal balance during the benefit period. Credit card issuers are required to honor these restrictions during the period of military service or a reservist's call to active duty.

The Proposed Clarification added an exception for the reinstatement of standard terms following cessation of accommodations required under the SCRA. The Agencies explained:

> "The Agencies understand that clarification is required regarding the relationship between §_.24 and certain provisions of the [SCRA]. Under the current version of §_.24, an institution that complies with the SCRA by lowering the rate that applies to an existing balance on a consumer credit card account when the consumer enters military service would not be permitted to increase the rate for that balance once the period of military service ends and the protections of the SCRA no longer apply. The Agencies did not intend this result, which appears to be inconsistent with the plain language of the SCRA."

HSBC strongly supported this proposal, and agreed with its reasoning. It seems unlikely that there would be intent under the CARD Act to obligate creditors to honor SCRA benefits perpetually, or to otherwise classify the reinstatement of prior account terms as a practice requiring enhanced consumer protection, when a plain reading of the SCRA contemplates temporary benefits to servicemembers.

HSBC encourages the Board to use its discretion to include exception to advance notice and opt out rights when a creditor reinstates account APRs, fees and minimum payment requirements at the conclusion of an SCRA benefit period. If the Board did not add this exception within the Interim Rule because it felt constrained from adding an exception not specified within the CARD Act, HSBC believes the Board should provide commentary that SCRA benefits are considered a hardship arrangement under of §226.9(c)(2)(v)(D). HSBC recognizes that the Proposed Clarification sought to create separate exceptions for hardship arrangements and SCRA benefits, perhaps because SCRA benefits are not considered akin to a hardship arrangement. Notwithstanding perceived differences in hardship arrangements and SCRA benefits, creditors simply must

be allowed to reinstate prior account pricing terms under some form of exception if required to provide the SCRA benefits under separate federal law.

As an additional comment, HSBC notes that the duration of deployment is often uncertain at commencement of the SCRA benefit period, or susceptible to change sometime thereafter if deployment is shortened or extended. Therefore, it is not feasible to specify a date at which prior account terms will be reinstated within disclosures provided prior to commencement of the benefits. Should the Board decide to incorporate exception for SCRA benefits under the hardship exception, HSBC would appreciate the ability to provide narrative disclosure that prior account terms will be reinstated once deployment ends, in lieu of any strict requirement to determine a strict date at which this reinstatement will occur.

Finally, understanding that the Interim Rule does not provide for opt out rights when a minimum periodic payment is increased, HSBC does not believe the reinstatement of prior minimum periodic payment at the conclusion of the SCRA benefit period should be treated as a 'change in terms' requiring advance notification. We therefore ask the Board to clarify that the reinstatement of prior minimum payment requirements at the conclusion of a SCRA benefit period is not considered a change in terms, and is exempted from any advance notice requirements.

C. Retail Point-of-Sale Disclosures

HSBC recognizes and appreciates that the Board provided an exception to the change in terms notification requirements in connection with the increase of an APR at the expiration of a promotional period. This exception requires that card issuers provide consumers with prior, written notification of the precise APR that will apply after the promotional APR expires, and the term of the promotional period. If a card issuer provides these disclosures and the APR that applies after the expiration of the promotional period does not exceed the APR disclosed, the card issuer is not required to provide a change in terms notification relating to the increase in APR at the expiration of the promotional period.

In practice, HSBC has found that requirement to provide the "go to" APR in writing prior to the commencement of the promotional period presents operational difficulties with respect to in person point of sale transactions, telephone transactions and internet transactions. HSBC respectfully requests the Board to consider these difficulties, and to revise the Interim Rule to provide for more flexibility in connection with promotional programs.

1. Flexibility is needed for Point of Sale Retail Programs, as disclosure requirements in the Interim Rule present significant technological challenges which may impede the availability of current promotions.

Like other retail credit card issuers, HSBC offers certain retail credit cards that may be used to purchase goods under promotional rate programs. At any

given time, HSBC may offer a number of promotional rate programs for a retailer. These promotional rate programs differ in duration of term, APR, and interest deferment. For example, a retailer may offer everyday financing for 90 days and 6 months with payments, a 48 month reduced rate product and special financing offers of 18 months with payments for purchases over $499 and 36 months with payments for purchases over $999 in a certain department. These promotional programs provide the retailers with many financing options for their consumers, and are used to support an estimated $100B worth of retail sales per year. Also, many consumers have more than one promotional rate program open at any given time.

In most promotional transactions, retailers communicate orally through the store associate, as well as through signage and/or printed advertising to provide consumers with the promotional term, the promotional APR and the standard/"go to" APR. In addition, new consumers are disclosed their "go to" APR in the account application and, for existing cardholders, in their monthly statement. After receiving these disclosures, should the consumer make a purchase and elect to use a promotional plan, the retailer's point of sale computer system either prints out a simple sales receipt form for the consumer to sign or the consumer signs the electronic signature pad. Upon either type of signature, the retailer's computer system prints out the specific terms of the promotional transaction, including the term of the promotional period and the promotional APR. In some merchants without sophisticated point of sale systems, a sales slip is used to convey similar information.

HSBC found that changing the current process to meet the Interim Rule requirements involved overcoming two major challenges: first, the challenge of providing the specific "go to" APR for each consumer; and second, the challenge of providing all of the required disclosures *in writing* to the consumer *prior to* their agreeing to the purchase.

1. Challenges with providing the specific "go to" APR. Many retail credit card programs utilize risk-based pricing, which means that each customer can have a different "go to" APR. Additionally, many retail credit card programs have variable "go to" rates, in which the interest rate will change based upon changes in an index, such as the prime rate. Disclosing a customer's precise "go to" rate in the store prior to them making a purchase would require a complex technical solution that would take significant time to implement. Such a solution would involve the customer identifying themselves (probably while standing at the cash register) and the store associate looking up and printing their "go to" interest rate through their point of sale system all prior to completing the transaction. A simpler solution would be to allow for the disclosures to provide an "up to" rate using the highest APR offered on the particular credit card or allowing the "go to" APR to be the standard APR. Another simplification, for variable rate indexed plans, would be to allow the APR to be disclosed as a spread above the index instead of the precise APR.

These simplifications would allow for a more standardized disclosure to be provided and would allow for a much simpler and less costly process.

2. Challenges with "in writing" and "prior to" plan commencement. The challenge of providing the disclosure in writing prior to the purchase being finalized comes from the fact that most purchases are made using electronic signature pads and the sales receipt prints out after the consumer has agreed to the purchase by signing the electronic signature pad. Section 101(c) of the Electronic Signatures in Global and National Commerce Act 15 U.S.C. 7001 *et.seq.* ("E-sign") provides that if a statute or regulation requires that consumer disclosures be provided in writing, certain notice and consent procedures must be followed in order to provide the disclosures in electronic form. Providing written disclosure prior to purchase would require retailers to either abandon electronic signature pads and revert to having customers sign paper receipts containing the required disclosures or to change their process to print a set of disclosures prior to the purchase being finalized, give them to the customer to read, and then have the consumer sign the signature pad. We would propose allowing for disclosures to be made orally and through signage prior to purchase with a subsequent written disclosure, either via the mail (within 60 days) or via the sales receipt. If this is not acceptable, it may be possible for some retailers to modify their signature pads to display the required E-sign consent and disclosure prior to a customer signing the transaction. However, this solution would take years to be implemented industry wide, and most retailers need a solution that does not involve the customer providing the necessary E-sign consents, since gaining those consents is not possible using most currently available signature pads. Moreover, the CARD Act only requires that the disclosure be made in a clear and conspicuous manner, and there does not appear to be a reason for the Board to require a written disclosure that prompts E-sign compliance in a point of sale transaction.

2. Disclosure flexibility is needed for promotional offers which are consummated by telephone.

Many retailers offer consumers the option to purchase goods under promotional rate programs over the telephone. If a promotional rate program is available to the consumer, a customer service agent can offer the program to the consumer, and can easily read a disclosure that provides the promotional APR, term, and "go to" APR. There is, however, no way to provide a written disclosure over the telephone. Similar to the situation facing credit card issuers that offer hardship programs, the consumer cannot benefit from the lower rate until after a written disclosure is mailed to the consumer. Pursuant to the Interim Rule, this written disclosure must be provided prior to the commencement of the promotional period.

Since there is no definition of "commencement of that period," we have interpreted this requirement to mean that the written disclosure must be provided

prior to when the consumer becomes liable for the credit card transaction. In order to comply with this requirement, goods purchased under promotional APR programs are not being shipped until after the consumer has received a written disclosure of the promotional APR, the term of the promotional period, and the "go to" APR. This delay in shipping does not benefit the consumer or the retailer, and leads to consumer and retailer frustration with the process.

Again, HSBC notes that the CARD Act did not require that disclosures be provided in writing, but merely requires that "the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period." As the Board has previously determined justification to alleviate written disclosure requirements when a creditor interacts with its consumer by telephone, HSBC requests that the Board likewise provide that any needed disclosures may be communicated orally in these instances. If the Board determines a need, telephonic disclosures could be accompanied by a prescribed written notice sometime shortly after the commencement of the promotional period.

3. Disclosure flexibility is needed for promotional offers which are consummated by Internet Sales

Compliance with the Interim Rule in connection with promotional transactions made on the internet presents unique operational difficulties. In order to provide a prior written disclosure, E-sign would require that the credit card issuer first obtain the consumers consent to E-sign transactions and then provide the promotional disclosures electronically before the consumer completes the promotional rate transaction. Because most retailers do not have E-sign consent built into their internet purchase process, many have discontinued offering promotional rate internet sales programs. At this time many retailers are struggling to update their internet technology in order to meet the in writing requirements of E-sign.

An additional concern is the flow of an internet transaction. In the pre-Effective Date environment, the consumer would first decide on their purchase items, and then go to "checkout". At checkout, the consumers information is collected, and the consumer inputs their account number and may be presented with several APR programs, including their standard/"go to" APR program or one of several possible promotional rate offers. When the consumer clicks on their APR selection, the system processes the transaction. Since E-sign consent must be provided before the consumer selects an APR offer, every consumer will go through the E-sign consents before proceeding with the transaction, even where the consumer picks the standard/"go to" APR.

4. Suggestions

HSBC and our retail partners were able to achieve compliance with the interim rule. However, the solutions we implemented are expensive, operationally

complex, and labor intensive, often requiring store associates to provide additional paper-based disclosures to consumers. These solutions are not practical for the long-term. Consequently, HSBC respectfully requests the Board to consider the following types of revisions or clarifications to the Interim Rule.

- In order to facilitate both in store and telephone promotional rate purchases, permit the disclosures to be made orally prior to commencement of the program, provided that the credit card issuer sends a follow up letter within 60 days of the transaction, or a billing statement confirming the promotional APR, term of the promotional APR, and "go to" APR.

- Clarify that for variable rate indexed plans, a disclosure of the APR as a spread above the index is permitted for in store sales instead of the exact APR at the time of the sale.

- Clarify that the "go to" APR may be disclosed as an "up to" rate on the receipt, using the highest APR offered on the particular credit card program or that the "go to" APR is the "standard" APR.

- Clarify that internet and point of sale electronic signature pad disclosures may be provided in text form whether or not the consumer has consented to E-sign.

- Clarify that the promotional APR, term of the promotion, and "go to" APR may be provided in separate documents as long as they are provided within 60 days of the transaction.

- Provide a "safe harbor" for promotional transactions that occurred before August 20,2009 by allowing credit card issuers to comply with the disclosure requirements by providing the promotional APR, term of the promotional program and "go to" APR in writing after the commencement of the promotional program but before the end of 2009.

D. Increase due to delinquency or default

Section 226.9(g) of the Interim Rule requires that 45-day advance notice of delinquency pricing must be provided "after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase." Consequently, a consumer would conceivably become 105 or more days delinquent before the bank can react to risky cardholder behavior. HSBC strongly urges the Board to revisit the delinquency pricing notification process, and to allow creditors to provide advance notice when a cardholder initially becomes delinquent, allowing a delinquency APR to be imposed immediately if the consumer exceeds 60-day delinquency. In addition to alleviating a creditor's inability to promptly react to significant risk, HSBC believes an anticipatory disclosure will impress upon cardholders the

consequences of becoming 60-days delinquent, at a time when that information may be used to avoid the consequence.

E. Correction of Errors

HSBC believes the Interim Rule, and strict itemization of scenarios where APRs and Fees may be changed, may cause confusion in situations where a creditor would correct bona fide errors pursuant to TILA §§ 130(b)-(c). For example, in instances where a creditor discovers that a programming error caused an account to be set up inconsistently with the terms disclosed to a consumer under Section §226.5 and/or §226.6 of Regulation Z, there may be confusion regarding the creditor's ability to correct that error without treating the correction as an actual increase in APR and/or fees. In these instances, the actual account terms would have been properly disclosed to the cardmember, and the correction would be merely instituting the agreed upon terms. HSBC would appreciate Board commentary which provides direction to creditors as to the interplay between change in terms limitations and correction of bona fide errors.

F. Management of Rejection Notifications

Under Section 226.9(h) of the Interim Rule, a creditor is required to allow customer rejections related to certain changes to significant terms. Specifically, this section provides that "the consumer may reject that change or increase by notifying the creditor of the rejection before the effective date of the change or increase." As written, a consumer would presumably have until 11:59 PM on the day prior to the effective date of terms change to communicate rejection, which may require after-hours staffing and ability to give immediate effect to the rejection. HSBC comments that the Board should consider a creditor's staffing capabilities and limited ability to give effect to rejection notices received after normal business hours. HSBC proposes that the Board use the approach taken with respect to remittance of payments, and require that a rejection notification be made before 5:00 PM the day prior to the effective date of the change in terms, when a creditor is properly staffed to accept the rejection and may more easily cause its systems to give effect to the rejection before new terms are implemented.

III. Conclusion

Again, HSBC appreciates the Board's efforts in publishing the Interim Rule on an expedited basis. While the Interim Rule provided much needed initial guidance in advance of the Effective Date, many significant questions remain. Additional guidance is needed in order for creditors to continue offering timely relief as currently provided to consumers facing financial hardship. Creditors must be allowed to reinstate prior terms once a SCRA benefit period has concluded, without advance notice and opt out requirements. Finally, added flexibility with regard to retail point of sale, telephone and internet promotions is

needed to ensure that the types of favorable credit promotions currently offered to consumers remain viable. HSBC appreciates the opportunity to provide its comments on the Interim Rule. Please do not hesitate to contact James Hanley at (952) 564-7600 or Donna Radzik at (224) 544-2952 in connection with this comment.

Sincerely,

James Hanley	Donna Radzik
Senior Counsel	Associate General Counsel