GE Money Bank
170 Election Road
Suite 125
Draper, UT 84020

September 21, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
Twentieth Street and
Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1364, Truth in Lending, Regulation Z
Interim Final Rule Published on July 22, 2009, 74 Fed. Reg. 36077

Dear Ms. Johnson:

GE Money Bank ("GEMB") appreciates this opportunity to comment on the interim final rule (the "Rule") published by the Board of Governors of the Federal Reserve System (the "Board") to implement certain provisions of the Credit CARD Act of 2009, Pub. L. 111-24, 123 Stat. 1734 (2009) (the "Act"), in Regulation Z, 12 C.F.R. pt. 226. *See* 74 Fed. Reg. 36077 (July 22, 2009).

GEMB offers many private label and co-branded credit cards through relationships with retailers. GEMB's programs include very large, national retailers, as well as many mid-size and smaller retailers and other merchants. A key part of many of these programs is promotional financing for retail purchases. The promotions feature reduced interest rates (often no interest) for certain purchases, either until the purchase is paid in full or for a defined period of time. We also offer deferred interest plans, in which a consumer can avoid interest by paying the purchase in full by the end of a designated period. If the purchase is not paid in full, then interest is assessed at a disclosed rate – generally the APR that applies to non-promotional purchases on the account – from the date of purchase.

We have divided this letter into our comments relating to promotional and deferred interest disclosures, which we believe is the area where the Rule can be most significantly improved, followed by a few comments on other issues.

Comments Relating to Promotional Disclosures

Promotional and deferred financing provides important benefits to consumers. It enables consumers to make purchases – often on larger ticket items – and make payments over time while incurring few, if any, finance charges. For example, the consumer may be able to purchase a major appliance such as a refrigerator and have 6 or 12 months to pay without incurring any finance charges. For deferred interest plans, typically 80% or more of the participating cardholders pay off the balance by the end of the promotional period, thus avoiding finance charges.

The plans are also extremely important to retailers. Promotional rates and deferred interest offers are a key driver of sales, particularly sales of larger ticket items. Many retailers have found that financing promotions are often more attractive to customers than direct price discounts. Of particular import to the Rule, retailers have also stocked inventory and set advertising for at least the remainder of 2009 (including the important holiday season) based on the availability of promotional and deferred interest financing. Thus, restricting these plans through onerous disclosure rules would be especially problematic in the short term.

We believe that the Rule, although recognizing the desirability of continuing to allow promotions and deferred interest programs, will in practice substantially reduce the feasibility of offering promotions and deferred interest programs. In some cases, the Rule is so burdensome that it may effectively preclude issuers from offering promotions and workout programs that are to consumers' benefit. We urge the Board to consider the impact that the Rule has on these transactions – which will be detrimental to issuers, to retailers, and ultimately to consumers. This result should be avoided, as meaningful disclosure can be provided in less burdensome ways. Nor do we believe that there is a Congressional mandate requiring these onerous requirements under the Act.

In that regard, both Congress and the Board have previously recognized the importance of promotions and deferred interest programs, and demonstrated in the text of the Act and the Rule the desire to preserve promotions and deferred interest programs. The Act refers specifically to promotions, and recognizes the need for appropriate exceptions to allow promotions to be offered. Further, the legislative history supports the conclusion that Congress intended for deferred interest promotions to be allowed. *See* 155 Cong. Rec. S5570 (daily ed. May 19, 2009) (colloquy of Sens. Dodd and Shelby). The Board, moreover, specifically noted its belief that Congress did not intend for the Act to serve as a "disincentive to offering deferred interest programs," as Congress created a special payment allocation rule for deferred interest programs. 74 Fed. Reg. at 36085. In addition, the Board's prior action to limit deferred interest promotions, in the January 2009 revisions to Regulation Z, was subsequently modified by the May 2009 proposal to allow such promotions subject to enhanced disclosures.

We note that, in many cases, our comments relate not only to the Rule but also to the Board's revisions to Regulations Z and AA published in January 2009, the proposed clarifications to those revisions published in May 2009, and the provisions of the Act that become effect in February 2010 or later, which are subject to further rulemaking by the Board. In particular, several of the comments below address the disclosures required to take advantage of the exception for promotional rates from the general prohibition on rate increases for existing

balances, in § 101(b) of the Act, which adds § 171(b)(1) of TILA (the "Promotional Disclosures"). Although § 171 is not effective until February 2010, the Board implemented aspects of the section early in order to implement the change-in-terms disclosure requirement in § 101(a) of the Act, TILA § 127(i). Our comments below concerning the Promotional Disclosures are directed both to the requirements adopted by the Board in the Rule in § 226.9(c)(2)(v)(B), as well as to the implementation of that requirement for purposes of the prohibition on rate increases under § 171 of TILA, to be effective in February. Indeed, these comments are all the more important given the substantive prohibitions in § 171.

1. **For Promotional Disclosures that are provided at point of sale, issuers should not be required to repeat the rate that already applies to consumers' accounts or, at a minimum, should have flexibility to disclose the type of rate, or the maximum rate, that will apply following a promotion.**

The requirement in the Promotional Disclosures that the issuer disclose the rate, expressed numerically, that will apply after the promotional period is highly burdensome at point of sale. In almost every case, at least for GEMB's programs, the rate that applies after the promotional period[1] is the APR generally applicable to non-promotional purchases on the account. This APR, however, varies for different cardholders as a result of risk-based pricing, historical differences in account pricing that have not been standardized, or the fact that some cardholders may be subject to a higher rate because of past defaults. Therefore, providing a numerical rate requires a way to look up and then print the specific accountholder's rate during a transaction (or in the case of Internet purchases, in the middle of the checkout flow). That functionality is not supported by the technology currently available at point of sale, and trying to build it would be undesirable in a number of respects. First, communicating a customer's APR to or through a retailer is necessary when the customer is deciding whether to open an account. But communicating a rate the customer already knows when the customer is merely making a purchase would appear to be an unnecessary intrusion on the customer's privacy without any corresponding benefit. Second, the communication connectivity supported today for transaction authorization and clearing is based on industry standard ISO interfaces. The information that flows between the participants in a credit card transaction (card networks, acquirers, issuers and merchants) have standard formats that all participants are set up to send and receive. Adding a new required field of information would require all of these participants to change their systems to identify, send and receive it. This would be onerous, expensive and very time consuming. Adding a new required field also would potentially slow down in-store authorizations. At checkout counters where every millisecond counts, this could have dramatic implications that go well beyond the participants in the credit card industry.

The Board must consider whether the disclosure of a numerical rate is meaningful, given the burden of providing the disclosure. In the case of most of GEMB's programs – and for those of many other creditors providing promotional programs – the rate that would be disclosed is the APR applicable to that consumer's non-promotional purchases. That APR has already been disclosed to the cardholder, in account opening disclosures and on every subsequent periodic statement. Requiring re-disclosure of this rate is not a particularly meaningful disclosure.

[1] And, for deferred interest programs, the rate at which interest accrues during the promotional period, as set forth in Comment 9(c)(2)(v)-6.

Indeed, the limited value of such a disclosure is shown by comparing two consumers who make the same purchase using their existing cards, one of whom has no promotional offer and the other of whom receives a promotional plan. The first consumer receives no disclosure of the applicable APR – he or she is presumed to know the APR at which he or she will pay interest. The second consumer receives the terms of the promotional offer (e.g., that interest will accrue at a reduced rate for one year). It makes little sense, however, to require a creditor to provide a numerical disclosure of the APR to this second cardholder simply because that rate will apply one year later, instead of immediately (as with the first consumer).

We submit, therefore, that the burden of the Promotional Disclosure requirement in the Rule greatly outweighs any marginal benefit of those Promotional Disclosures to consumers. That marginal disclosure benefit to consumers is also greatly outweighed by the benefits to consumers (as well as retailers) of promotional programs, when those programs may be limited or even eliminated because of the burden of providing the disclosures. We thus urge the Board to modify the Rule to balance the burden and benefit.

There are a number of ways in which the Board can modify the Rule, still faithfully implement the Act, and yet provide the ability for issuers to offer promotional financing offers. In this regard, the key requirement under § 127(i) as added by the Act is that, in order to be exempt from the obligation to provide a 45-day advance notice of an increase in the APR and a right to opt out at the expiration of a promotion (and to be exempt from the substantive prohibition on raising a rate in § 171(a)), the creditor must have disclosed "the length of the [promotional] period and the annual percentage rate that would apply after expiration of the period...." Act, § 101(b), adding TILA § 171(b)(1)(A).

a) *Apply the rule to disclose a rate only where a rate other than the APR applicable to non-promotional purchases applies.* The most straightforward solution to the problem of the Promotional Disclosures is to require a disclosure of the rate that will apply after the promotional period (or the rate at which interest accrues during the deferred interest period) only where the rate is a rate other than the APR generally applicable to non-promotional purchases on the account. This approach would recognize that the consumer using his or her card to enter into a promotion is presumed to understand the rate that would apply to use of the card generally. The Promotional Disclosures would spell out the exceptions – *e.g.*, the period during which a reduced rate applies – but would not need to spell out the terms that would apply to a non-promotional purchase as well. From a statutory perspective, this is faithful to the language in TILA § 171(b)(1)(A) because the APR applicable to non-promotional purchases would have been disclosed to the cardholder previously in the account opening disclosures and periodic statements, in a clear and conspicuous manner, as required by the statute.[2]

[2] For cardholders who open a new account and receive a promotion at the same time, the APR applicable to non-promotional purchases will be disclosed as part of the § 226.6 account opening disclosures. The issuer should not be required to repeat that rate as part of the promotional disclosures, as that would add little to the effectiveness of the disclosure. Moreover, it would impose an additional burden on issuers if they had to provide different promotional disclosures for new accounts as opposed to existing accounts.

For promotions where a rate other than the APR applicable to non-promotional purchases applied after the promotional period (or was used to accrue interest during a deferral period), the creditor could continue to be required to include that rate, expressed numerically, in the Promotional Disclosures. This would apply, for example, if the promotion was a stepped promotion, where the cardholder received a 1.9% APR for the first year, and a 5.9% APR thereafter, even if the APR for non-promotional purchases was 9.9%.

b) *Permit the creditor to reference the type of rate.* If the Board does not adopt the position set forth in the preceding paragraph (a), under which use of the APR generally applicable to non-promotional purchases as the "go to" rate would be exempt from the Promotional Disclosures, then the creditor should be permitted to reference that same APR in a narrative form in order to satisfy the requirement to disclose "the annual percentage rate that would apply after expiration." This information, after all, has been disclosed in advance to the consumer on periodic statements and account opening (or change-in-terms) disclosures. Re-disclosing this rate in numerical form is thus unnecessary. Moreover, although there may be some benefit to reminding the consumer of the numerical rate, that marginal benefit must be weighed against the significant logistical impediments to such individualized disclosure at point of sale. It would not serve consumers' interests to require such a marginal benefit if the result is that issuers cannot offer promotions.

c) *Permit the creditor to disclose an "up to" rate that applies after the promotion.* To the extent that the Board continues to believe that a numerical rate is necessary to satisfy the requirements of TILA § 171(b)(1)(A), the Board should permit creditors to use an "up to" disclosure, provided that the actual rate is equal to or less than the disclosed amount. This is consistent with the rule in § 171(b)(1)(B), which provides that the rate applied by the creditor after the promotion may not "exceed," but need not necessary equal, the rate disclosed in connection with the promotion. Moreover, it is consistent with the general rule that a creditor need not disclose a rate reduction. An "up to" rate disclosure is significantly easier for creditors to implement, because the disclosure need not be customized on a person-by-person basis.

As part of this disclosure, creditors should be able to use the words "up to," or other clarifying language to indicate to consumers that a lower rate may apply. For example, the creditor might disclose that the rate would be "up to 25.99%, or the APR that applies to non-promotional purchases on your account, if lower." This provides the benefit of a numerical disclosure of the highest possible cost, but is a more accurate disclosure because it also informs the consumer that the lower APR will apply if applicable.

Even if the Board does not agree that the "up to" disclosure is appropriate long term, it should confirm that creditors may rely on "up to" rate disclosures for the period through at least February 2010. As discussed above, this approach is fully consistent with the language of the Act. The consumer may be charged less, but

no more than, the rate disclosed. We also believe that this solution should take the form of a clarification of the Rule as published in July 2009, effective from August 20.

2. **For new accounts that have retail point of sale promotions, the Board should not require the inclusion of the promotional rates in Schumer box and account opening table disclosures. Requiring such a format would limit the ability of creditors to offer promotional rates.**

We urge the Board, as it reviews Regulation Z, the revisions published in January 2009, and the proposed clarifications published in May 2009, to provide flexibility with respect to the formatting of the disclosure of promotional rates at point of sale in connection with opening new accounts. As the Board has already noted, disclosure of APRs at point of sale requires flexibility because of the practical limitations at point of sale, and the fact that issuers may not be able to offer beneficial terms absent such flexibility. *See* Truth in Lending, Proposed Rule, 74 Fed. Reg. 20784, 20785 (May 5, 2009). As a result, the Board has provided flexibility for disclosing APRs (and other fees) at point of sale, where they vary by state or based on creditworthiness.

With respect to promotional rates, the availability and specific terms of promotions change frequently. Moreover, applicability of promotions may depend on a number of factors, including the specific items that a consumer purchases. Thus, for example, a retailer may offer a promotion during a particular week where a consumer can purchase a particular appliance (for example, a particular model refrigerator) and receive 1.9% financing on that purchase for the first year. Disclosing such rates in "Schumer box" tables and account opening disclosure tables under § 226.5a and § 226.6 would be impossible, or else so impractical as to be meaningless to consumers. For example, there may be so many different promotions available at a given time, but each particular to different items, that a Schumer box might run to a full page or more just to list the relevant promotions that would be available. And even if the number were not so large, updating the Schumer box each time that purchase promotions changed would be inordinately burdensome. Unlike direct mail applications/solicitations, where the Schumer box can be customized for that particular offer, applications at point of sale must be pre-printed with the Schumer boxes and distributed to the retail locations. Replacing all of the disclosures for each change in the promotions would be operationally impossible.

Today it takes approximately 4-6 weeks to produce and distribute new applications for retailer points of sale. This timeline takes into account a wing-to-wing process involving creative services, paper suppliers, data processors, printers, legal review, distribution and setup. Store managers and associates are responsible for destruction of old applications, receiving and distributing applications to thousands of register locations and training associates on any material differences. While strong processes have been developed to ensure that new applications are manufactured and distributed on a timely basis, requiring more frequent reprints and shortening the window to have applications replaced (as the regulations would in fact do) will stress the system significantly and would make compliance extremely difficult. Requiring applications to be switched out for changes in credit promotions as well as changes in variable interest rates would further compound this issue.

The same is true of the account opening disclosures. Although theoretically the account opening table can be more concise because it need only contain the rates actually applicable to the particular consumer's account (and not every potentially available promotional plan), this does not work in practice. First, at the time the account opening table is provided, the issuer will not know which promotions the new accountholder may chose to take advantage of – a number of promotions may be available to the new accountholder for immediate use on the new account. Second, issuers cannot, in most cases, arrange to print a customized table at point of sale. An account opening table cannot be printed at point of sale of most retailers because of the limited equipment available. This is the reason that creditors requested flexibility for disclosing APRs that vary based on creditworthiness (*i.e.*, through risk-based pricing), so that the customer's specific rate could be provided outside of the table. In most cases, the table itself must be preprinted, and thus cannot be customized to reflect only those promotional offers applicable to the consumers' account.

Requiring that promotional rates be included in these tables would elevate the form of disclosures over the substance of the credit terms. By enacting such strict requirements for form, the Board may effectively preclude beneficial promotional plans. Instead, the Board should consider ways to provide meaningful disclosure but, at the same time, permit issuers to offer financing promotions.

We urge the Board to exclude promotional rates (and deferred interest offers) from the scope of the Schumer box and the account opening table, at least with respect to point of sale transactions. Instead, the Board should require that these promotional rates be disclosed separately, in conjunction with the disclosures required to satisfy the exception for Promotional Disclosures. Such disclosure would be fully effective, and is, in fact, more logical. The promotional rate provided in connection with the point of sale purchase is really more a term of the specific purchase than a term of the account generally. This would also provide uniform treatment with respect to new accountholders and existing accountholders who obtain the same promotion.

At a minimum, if the Board determines that promotional rates must be reflected in the tables, we request that the Board allow issuers to disclose promotions using a range of rates in the tables, with more specific disclosures provided in a separate document. This would be consistent with the approach for risk-based pricing and rates that vary by state. Unfortunately, it is not as practical a solution for promotions, because promotions vary and change for a greater variety of reasons, and thus it is more difficult to provide a range and describe the conditions that might affect or determine the specific rate offered to a particular consumer. Nevertheless, it is a better solution than requiring that all promotional rates be specifically included in the tables.

3. Deferred interest programs do not involve rate increases, and therefore notice of a rate increase at the expiration of such a program (or the alternative notice under § 226.9(c)(2)(v)(B)) should not be required.

Deferred interest programs are quite different from promotional rate plans because deferred interest programs do not involve any change in the applicable APR. Rather, the cardholder has the ability to avoid interest altogether by paying the balance by a particular date, even though interest actually accrues at the rate applicable to non-promotional purchases during

the entire term. We note that the Act does not require treating deferred interest in the same manner as a reduced rate promotion where the APR is lowered for a limited period of time. Indeed, a deferred interest offer is not within the Board's definition of a promotional rate under the January 2009 revisions to Regulation Z. And, the terms of a deferred interest offer do not fit well into the provisions regulating promotions.

We ask the Board to revise the regulation to provide that deferred interest programs do not involve a rate increase. To the extent that there are consumer confusion issues regarding deferred interest, the Board has already fully addressed them in the context of the May 2009 proposal, in the required periodic statement and advertising disclosures.

4. Online Promotion Disclosures, and disclosures regarding workout programs, should not be required to comply with the ESIGN Act.

The Board has previously recognized that, when a consumer initiates online activity, disclosures related to that activity should be able to be provided electronically without taking the formal and sometimes cumbersome steps to comply with the ESIGN Act. Thus, in its January 2009 revision of Regulation Z, the Board allowed advertising disclosures and "Schumer box" disclosures to be provided electronically without regard to ESIGN consent in connection with electronic transactions. §§ 226.5(a)(1)(iii), 226.5a(a)(2)(v). These disclosures are intended to accompany specific online activity, such as an application initiated online. The Board has required an ESIGN consent where disclosures are intended to apply more generally to an ongoing account relationship – such as account opening disclosures and periodic statements.

The same standard should apply here, when disclosures are provided in relation to a specific promotional transaction initiated by the consumer online. If a consumer enters into a promotional transaction online, or enters into a workout program or temporary hardship program online, then the creditor should be permitted to provide the Promotional Disclosures in electronic form without regard to the ESIGN Act. This is particularly true for promotional financing provided in connection with an online purchase, where complying with the ESIGN Act's technical requirements could interrupt the flow of the transaction and, at a minimum, would require substantial technological development and implementation time.

In this regard, we note that providing these Promotional Disclosures or workout disclosures online is a very different situation than where a customer opens an account online. When the customer opens an account online, the process of delivering the account agreement and related disclosures is structured by the issuer, and can incorporate the consent required by the ESIGN Act. But when an existing customer uses his or her card for an online transaction, the transaction is part of the retailer's online checkout process, and promotional disclosures must be integrated into that process. It is more difficult for a creditor to include its disclosures in the retailer's process, as the creditor has less control over that system and the additional step of an ESIGN consent may be viewed as interfering with the flow of the checkout process. Moreover, given the limited nature of these disclosures – which apply to a specific purchase transaction initiated electronically by the consumer – it seems to add little value to require an ESIGN consent.

5. **For telephone transactions, issuers should be permitted to provide Promotional Disclosures orally, followed by confirmation on the next billing statement. In addition, issuers should be permitted to comply in these circumstances by orally confirming a prior written disclosure.**

The requirement to provide the disclosures under § 226.9(c)(2)(v)(B) "in writing" – a requirement not found in the Act – creates a significant problem for transactions that occur by telephone. This includes, for example, a consumer who calls a merchant to order goods and is offered a promotional financing offer. The Rule as currently drafted would seem to require the creditor to delay the transaction in order to provide a written disclosure – an odd result that benefits neither the consumer, the creditor, nor the retailer.

Instead of impeding the offering of promotions by telephone, we urge the Board to allow creditors to provide the Promotional Disclosures orally by telephone, if followed up in writing on the next billing statement – *i.e.*, the billing statement that reflects the transaction. Oral disclosure in this circumstance is appropriate. Unlike other TILA and Reg. Z disclosures that must be provided in writing – the account opening table or periodic statement disclosures, for example – the elements of the Promotional Disclosures are limited, and can be provided quickly and effectively over the telephone. Moreover, the requirement to include them on the next statement would provide a record in writing and offer the consumer an opportunity to dispute the transaction and promotional terms in the case of an error or misunderstanding.

The Board's regulations have provided flexibility over the years to accommodate consumer transactions by phone. One example are the procedures outlined in § 226.5(b)(1)(iii) to allow delivery of the Promotional Disclosures without delaying the fulfillment of the consumer's underlying purchase transaction. Another example is the Gramm-Leach-Bliley provision allowing the issuer's privacy notice to be delivered after the transaction (*e.g.*, in the case of phone transactions) where providing it when the relationship is established "would substantially delay the customer's transaction." 12 C.F.R. § 216.4(e)(2)(ii)(A). Similar accommodations should be made in this case.

As an additional option, issuers should also be permitted to satisfy the disclosure requirement in connection with telephone sales by providing the written (or online) disclosure in advance of the telephone call (such as in a catalog or other mailing, or online) and then confirming the disclosures orally on the telephone. For example, a catalog or website advertisement might disclose the terms of three promotional financing plans. When the customer calls to place the order, the customer service representative could confirm orally which plan would apply. Then, the promotional transaction would also appear on the next statement.

6. **Issuers should be permitted to provide confirmatory disclosures for promotions entered into prior to the issuance of a final rule.**

The Supplementary Information issued with the Rule requires issuers to provide disclosures in connection with promotions issued prior to the effective date of the Rule (August 20), in order to take advantage of the exception in § 226.9(c)(2)(v)(B). However, issuers had flexibility to provide these disclosures after the promotion started as long as the disclosures were provided prior to August 20.

Similar flexibility should be provided with respect to promotions entered into on or after August 20, up through date of issuance of a final rule and effectiveness of the additional requirements of the Act on February 22, 2010. This is appropriate for two reasons. First, the time between issuance of the Rule and August 20 was extremely short, giving issuers very little time to come into compliance. Allowing issuers to provide the disclosures in a confirmatory letter or other written or oral disclosure concerning the promotion would grant some flexibility given the short time frame. Furthermore, there was a great deal of uncertainty surrounding the Rule and the meaning of some of its provisions and requirements. Because of the short time period, and the fact that there was no opportunity to comment in advance of the effective date, issuers had little ability to get clarification of the Rule. Second, the nature of the Rule as an interim final rule leaves uncertainty as to the requirements of a final rule. Flexibility is appropriate with respect to compliance with the interim final rule, so that issuers are not required to spend substantial resources first to comply with an interim rule, and yet again to comply with a final rule. This is particularly true in light of the many other regulatory changes, both under the Act and the other amendments to Regulation Z.

7. When a cardholder calls to request that a prior transaction be included in a promotional financing offer, issuers should be permitted to accommodate such requests by providing oral Promotional Disclosures that are confirmed in writing.

Occasionally, we receive inquiries from cardholders stating that they did not receive a promotional plan for which they were eligible, or that their transaction was mistakenly enrolled in the wrong promotional plan, or requesting that a transaction be included in a promotional plan for some other reason. Our policy is to switch the transaction to the correct promotional plan, if it appears that a mistake was made and/or that the customer is eligible for the plan. Such flexibility is important to provide good customer service, and it would serve little purpose to prohibit such accommodations in the name of consumer protection under the Act.

In order to allow issuers to accommodate these customer requests, the Rule should be clarified to provide that issuers may honor requests by consumers for promotions after the transaction, and provide correct disclosures orally and confirmed in writing (such as on the next periodic statement). This is fully consistent with the Act, which does not require written disclosures.

8. Issuers should be permitted to provide the elements of the required Promotional Disclosures at different times and in different documents.

The Rule requires issuers to provide a written disclosure of the length of the promotional term and the APR that will apply after the promotion expires (or, in the case of deferred interest programs, the APR at which interest accrues during the deferral period). The Board should clarify that these items of disclosure may be provided separately, provided that the disclosure is clear and conspicuous and in writing. Thus, the disclosure of the promotional period might be provided on a written disclosure given at point of sale. The disclosure of the APR might be provided by mail, in advance, or might be printed on a shopping pass given to the consumer at point of sale in the case of a new account.

This is particularly true for existing cardholders, who receive billing statements pursuant to the requirements of Reg. Z, § 226.7, or who receive other mailings with clear and conspicuous information about the rate applicable to an account. If an issuer discloses on the statement (or other mailing) the APR that will apply after the promotion (or at which interest accrues during the deferral period), then the issuer should be permitted to satisfy the disclosure obligation by providing, prior to the beginning of the promotional period, the length of the period. As discussed in Comment 1, above, there seems to be very little benefit – but an immense burden – to provide contemporaneous disclosure of the APR with the promotional period.

9. The Board should consider a reasonable procedures standard for delivering the Promotional Disclosures.

In implementing the 21-day requirements of TILA § 163, in § 226.5(b)(2)(ii), the Board adopted a "reasonable procedures" requirement, rather than require issuers to strictly ensure compliance with respect to each and every periodic statement. That standard appropriately recognizes that, in the high-volume business of consumer credit card issuance, issuers must rely on their procedures to ensure compliance and cannot conceivably monitor each and every statement or other disclosure document. Importantly, the Board extended the concept of reasonable procedures to the grace period requirement in TILA § 163(b), even though it does not appear there in the Act.

The Board should similarly adopt a "reasonable procedures" standard, under its TILA rulemaking authority, with respect to the Promotional Disclosures. Given the context in which these disclosures are provided – at point of sale, especially – tracking compliance on an account-by-account basis is impractical. Issuers' compliance will be implemented by adopting appropriate policies and procedures. Therefore, it is logical to impose a requirement based on policies and procedures. Moreover, in all cases, the Promotional Disclosures are providing the cardholder a lower rate than would otherwise apply to the account.

10. A provision regarding variable rates should be added to the exception for Promotional Disclosures.

In the Rule, the exception for workout programs (§ 226.9(c)(2)(v)(D)) has a specific reference to the effect of changes in variable rates during the period of the workout. Similar language should be added to the exception for Promotional Disclosures in § 226.9(c)(2)(v)(B), as the "go to" rate may also be a variable rate subject to change during the promotional period.

11. Issuers should be permitted to terminate promotions upon customer request, or in connection with granting a workout program.

Occasionally, we receive requests from our customers to terminate a promotion or deferred interest plan early, for some reason particular to that consumer. Issuers should be permitted to honor such requests, as failure to honor the request can lead to customer service difficulties and dissatisfied consumers.

Another situation where this concern arises involves the initiation of workout plans. Sometimes, a cardholder will have an open promotional balance or deferred interest balance when he or she becomes eligible for – and in need of – a workout program. We cannot support

continuation of the promotional or deferred interest balance while allowing the customer to enter into a workout program – this is true for operational reasons, but it is also a sensible business position. We are willing to work with customers in hardship situations, but we cannot compound the benefits of the promotion with the additional benefits and accommodations provided as part of the workout. Therefore, we inform the cardholder that he or she needs to decide whether to (1) keep the promotional/deferred interest terms, or (2) accept the workout and request that we terminate the promotional/deferral terms. Early termination of the promotional/deferral terms should be allowed in these circumstances, to permit continued offering of important workout programs.

Other Comments

12. Section 226.9(c)(2) should not require additional notice of a change in terms and opt out in connection with a temporary reduction in a non-APR term that has been disclosed in advance.

Section 226.9(c)(2) does not clearly provide guidance on how an issuer can disclose a temporary reduction in a non-APR term, followed by a return to the amount previously in effect. This might happen in a number of contexts, such as a workout program that offers a reduced minimum payment or reduced late fee, or a special offer to skip a payment in one month. Because there is no specific guidance, such changes could be viewed as subject to the requirement to provide 45-days advance notice and, other than changes in the minimum payment, a right to opt out.

The Board should not make these types of temporary reductions in non-APR terms, which are followed only by a re-instatement of the term originally in effect, subject to the notice and opt out rule. Such an approach is completely consistent with the terms of the Act, which treats notices of changes in APRs differently from notices of changes in other terms: any increase in an APR (subject to limited exceptions) triggers a notice, whereas only a "significant change ... in the terms ... of the cardholder agreement" triggers a notice for non-APR terms. Act, § 101(a), TILA § 127(i)(1), (2). Temporary reductions in non-APR terms, followed by a return to the original amount, are not significant changes in the terms of a cardholder agreement, but rather more like temporary waivers or discounts.

Rather than subject these types of temporary, non-APR reductions to notice and opt out, or to the specific terms of the exceptions for Promotional Disclosures (or workout programs), the Board should instead treat these types of changes under either the general exclusion for changes "set forth initially" in Comment 9(c)(2)-1, or the "Skip Payment" provision in Comment 9(c)(2)(v)-2. Although these temporary reductions are not set forth in the account opening disclosures statement (as seems to be required by the new Skip Payment comment, Comment 9(c)(2)(v)-2), they are precisely the type of short-term reduction that, as long as it is disclosed to the consumer in advance, should be outside the specific rules for change-in-terms notices and opt out rights.[3]

[3] Based on the new language of Comment 9(c)(2)(v)-2, it is not clear how an issuer would offer a traditional "skip payment" feature on an account if that feature were not included in the account opening disclosures. It does not seem that a formal change-in-terms notice under § 226.9(c)(2) is needed for such a feature, especially as the 45-day

13. Changes to a cardholder's benefit should not require notice and opt out under § 226.9(c)(2).

The Rule requires notice under § 226.9(c)(2) for any "significant change" to one of the specified account terms. § 226.9(c)(2)(i). Later, the rule expressly exempts any reduction of any component of a finance charge or other charge. § 226.9(c)(2)(v)(A). However, the Board should clarify that this exemption also covers other changes in the consumer's favor. For example, an increase in the length of a grace period should be covered by this exemption. It makes little sense to provide advance notice and a right to opt out of such a change, which redounds only to the benefit of the consumer. (And, indeed, to the extent that the grace period must be extended in order to comply with law, providing an opt-out right makes little sense.) We note that a similar concept is used as an exception to the rule precluding changes to home equity plans, under § 226.5b(f)(3)(iv), which could be adopted here.

14. Issuers should be permitted to supply the required disclosures for workout programs orally or electronically, if confirmed in writing thereafter.

Under the Rule, in order to take advantage of the exception for workout or temporary hardship programs, the issuer is required to provide a written disclosure of the terms "prior to the commencement of such arrangement...." § 226.9(c)(2)(v)(D)(*2*), 226.9(g)(4)(B). While the timing requirement is taken from the Act, TILA § 171(b)(3)(B), the writing requirement is not found in the Act.

The addition of the writing requirement makes this disclosure highly impractical. In most cases, the terms of workout or temporary hardship programs are discussed with the cardholder by telephone (and, in some cases, online). Often, one of the terms of such a program is an immediate payment (authorized by telephone), in order to start the benefits of the workout plan. In these situations, it makes little sense to delay the program for the sole purpose of providing a written disclosure. These consumers are generally in need of immediate relief.

As a result, we urge the Board to permit issuers to provide the workout/hardship program disclosures orally or electronically, with written confirmation after the fact. In addition, to the extent that the Board does not exclude temporary reductions in non-APR terms from the scope of the general requirement to provide a § 226.9(c)(2) notice (*see* Comment 12, above), then such temporary reductions should, at a minimum, be included within the scope of workout exception.

15. An exception regarding the Servicemembers' Civil Relief Act should be added to § 226.9(c)(2)(v).

Issuers may be required to reduce the APR on some accounts of servicemembers (and/or family members) under the Servicemembers' Civil Relief Act ("SCRA"). Issuers should have the flexibility to increase the APR to the rate in effect prior to the decrease (including a variable rate as in effect at the end of the period), once the person is no longer eligible for the relief under the SCRA. Although the Act does not expressly refer to the SCRA as an exception to the notice

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advance notice requirement would interfere with the timing of such offers. We urge the Board to provide greater flexibility for such programs, which provide an important benefit, when we are not aware of any consumer confusion with such programs that would require greater disclosure.

rule in TILA § 127(i) or the rate increase limitation in § 171, the Board has ample authority under TILA to either create such an exception (TILA § 105(a)), or to consider the SCRA benefits to be the equivalent of a temporary hardship arrangement. We note that the Board previously provided similar guidance in the context of the May 2009 clarifications to the Regulation AA proposal. *See* 74 Fed. Reg. 20804, 20814 (May 5, 2009), 12 C.F.R. § 227.24(b)(6).

16. The Board should confirm that, for workout programs entered into prior to August 20, 2009, a transition rule applies that is similar to the one for promotions.

In connection with the Rule, the Board provided specific guidance on the transition rule for promotions entered into prior to August 20, giving issuers substantial flexibility to provide disclosures that would avoid the need to provide notice and opt out under § 226.9(c)(2) when the promotion expires after August 20. We ask the Board to clarify that a similar transition rule applies for workout programs entered into prior to August 20, 2009, but which extend after August 20. To the extent that issuers provided, orally or in writing, disclosure of the key terms of the workout, including a description of the APR and other terms that would apply after the workout program expired or was terminated, then issuers should not be required to provide notice and opt out after August 20. For this purpose, a narrative description of the APR (such as "the rate that currently applies to your balance") should be sufficient to comply, just as a narrative description is adequate under the transition rule for Promotional Disclosures.

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We appreciate the opportunity to provide these comments, and we would welcome an opportunity to discuss them with you further if that would be helpful to your further consideration of these matters.

Sincerely,

Kurt Grossheim
President