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May 10, 2004

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-1187

Dear Ms. Johnson:

This comment letter is submitted on behalf of MBNA America Bank, N.A. (“MBNA”) in response to the proposed rulemaking notice (“Proposed Rule”) of the Board of Governors of the Federal Reserve System (“Board”) concerning the addition of a model form (“Model Notice”) to Regulation V that financial institutions may use to comply with the notice requirement relating to furnishing negative information contained in section 217 of the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”). MBNA appreciates the opportunity to comment on this important matter.

Overview

As a general matter, MBNA supports the Board’s proposal for a Model Notice as a means by which financial institutions may satisfy the notice requirements of section 217 of FACTA (“Section 217”). However, we believe that changes to the Model should be made to enhance its overall clarity and readability. In addition, we believe the banking agencies should address a number of issues concerning delivery of the Model Notice.

The Language of the Model Notice Should Be Modified to Improve Consumer Understanding

The proposed Model Notice states: “[w]e [may provide]/[have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report.” While the proposed Model Notice meets the technical requirements of

Section 217, we believe that it could be shortened and simplified to make it easier for consumers to read and understand.

1. Although the proposed model utilizes each of the four elements of negative information specified in Section 217 (delinquency; late payment; insolvency; default), we are of the view that the term “delinquency” effectively repeats the term “late payment” and could be omitted. Thus, we believe that the specific examples of negative information to be included within the Model Notice should be the terms “late payment” , “insolvency” and “default” - terms that consumers can easily identify and understand as negative information.
2. In addition, we recommend deletion of the last clause of the proposed Model Notice: “. . . to include in your credit report.” Although MBNA provides information to the credit reporting agencies, we are not responsible for deciding whether such information is, in fact, included in the relevant credit reports, and those agencies may suppress, block or otherwise exclude information under certain circumstances.
3. We are also concerned that, when provided in advance, the Model Notice may give the consumer the impression that the creditor expects the consumer to make a late payment or to default on their account. Although a creditor could avoid creating this impression by sending the notice only after providing negative information to a credit bureau, such an “event - driven” approach to notices is costly and prone to errors. Indeed, Section 217 provides for an advance notice for precisely this reason. To avoid this negative impression, and to underscore the constructive policy of educating consumers about their repayment practices and the effects of those practices on their credit history, we believe the Model Notice should be structured as two alternate notices - one that could be given in advance of providing negative information to a credit bureau, and one that could be used after providing negative information. The first notice could read: “If there is a late payment, insolvency or default on your account, we may tell a credit bureau about it.” The other notice could read: “We have told a credit bureau that there was a late payment, insolvency or default on your account.” These alternative notices would significantly improve consumer understanding, and lessen possible consumer apprehension, compared to the Model Notice included in the Proposed Rule. Moreover, we believe the language we propose for use in advance of providing information to a credit bureau is likely to be viewed as less adversarial or threatening.
4. Finally, consistent with Section 217, the Board should clarify that the critical references to late payment, insolvency, default, and reporting to a credit bureau, can be rearranged or combined with other language and still fall within the safe harbor of the Model Notice, provided that its meaning is retained.

The Board Should Clarify Certain Issues Related to Delivery of the Notices

While Section 217 requires financial institutions to provide consumer notice regarding negative information reporting “prior to, or no later than 30 days after [] furnishing negative information to a credit bureau,” we believe that further clarification of delivery requirements would facilitate compliance. First, clarification of the extent of the notice requirement for existing customers would be desirable. In addition, it would be helpful to clarify delivery requirements for new

accounts, and for existing accounts that may involve more than one reporting financial institution.

1. Existing Accounts – Prior Similar Notices

As of December 1, 2004 (the effective date), Section 217 will require financial institutions to provide a notice to consumers with existing accounts if the financial institution subsequently provides negative information to a credit bureau about credit extended to those customers. Providing these notices to existing accounts will require either a costly mass mailing or a costly tracking system to determine when negative information is provided to credit bureaus and to provide the requisite notice on those accounts. To mitigate these costs, it should be made clear that (a) no notice is required if a financial institution has previously provided a substantially equivalent notice to the customer, and (b) a single notice can be provided with respect to all of the customer's accounts.

2. Only One Notice Should be Required for Each Extension of Credit

As discussed above, Section 217 states that after providing the negative information reporting notice, financial institutions “may submit additional negative information to a consumer reporting agency . . . with respect to the same transaction, extension of credit, account, or customer without providing additional notice.” We believe strongly that this provision supports our position that notice should only be required once per loan transaction or extension of credit. However, neither Section 217 nor the Proposed Rule elaborates on the extent to which a notice given by one creditor can be relied on by other creditors who may, from time to time, have an interest in the same loan, as owner, servicer or participant, and who may as a consequence report negative information to a credit bureau. We believe that one notice provided by the originator of a loan, or another party, should satisfy the requirement of Section 217 for all financial institutions that may report negative information about a consumer with respect to a single extension of credit.

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Thank you for your consideration in this matter. Please call the undersigned if you have any questions.

MBNA America Bank, N.A.

By/s/Joseph R. Crouse
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