First Data Resources, Inc.
6902 Pine Street
Omaha, NE 68106

December 12, 2005

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue
N.W., Washington, DC 20551
E-mail: regs.comments@federalreserve.gov put the docket number in the subject line
FAX: 202/452-3819 or 202/452-3102

Re: Docket No. R-1217 ANPR comments

We appreciate the opportunity to comment on the second advance notice of proposed rulemaking regarding the open-end credit rules of the Board's Regulation Z. First Data Resources, Inc. provides credit card processing services to approximately 1,400 credit card issuers, and First Data is the leading third-party processor of credit card accounts in the United States. We would like to provide comments to specific questions in this ANPR that would impact the services we provide to credit card issuers.

Q67: If the Board selects a "typical" minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit cards (such as retail credit cards, HELOCs, and other lines of credit)?

Our experience is that the more typical minimum payment percentage for general purpose credit cards (including many retail co-brand cards) is 2-3%, most often with various fees added on to the percentage amount. The added fees are not limited to finance charges, but may include late and overlimit fees as well. Many issuers are now using more sophisticated formulas to ensure positive amortization. Therefore, it is not possible to select a typical minimum payment formula.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

As we read the statute, it requires issuers to use the Board's formulation for providing estimated repayment information through a toll-free number, and gives issuers the option of providing "actual" repayment information using their own specific terms. We believe the Board should keep this approach. Any attempt by an issuer to provide actual repayment information will open the issuer to potential liability due to the inherent infeasibility of accurate calculation. We believe few issuers will elect to use this approach, and that the Board's typical formula will be viewed as a safe harbor for the estimated disclosure. Requiring some creditors to create a disclosure using actual minimum payment terms, while allowing others to rely on the Board's typical formulation, would create a significant inequity in terms of liability exposure, cost and customer confusion. With respect to cost, implementing functionality for disclosures using a Board-approved calculation will involve significantly less cost and effort for First Data and its clients than implementing disclosures based on the complex account terms of hundreds of clients. It is unlikely the latter could be accomplished within the current compliance timeframe.

Q70: What proportion of credit card accounts accrue finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?

We estimate that more than 70% of the accounts processing with First Data accrue finance charges at more than one periodic rate. Account balances are not distributed in any particular manner and are particular to each client. The proportion of account balances accruing interest at the higher rate is only slightly higher than the proportion accruing interest at lower rates.

Q73: One approach to considering multiple APRs could be to require creditors to disclose on periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number to request an estimated repayment period that incorporates all the APRs that apply. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

Passing along the ending balances for each balance with a unique APR would require major system enhancements for First Data at an estimated cost of several hundred thousand dollars, with an additional cost to each client of $12,000 at a minimum. Such enhancements could not be implemented within the current compliance timeframe. Considering the fact that (i) the ending balance provides no meaningful information to the consumer in relation to the actual terms of the consumer's account and (ii) is useful only for the purpose of providing an inherently inaccurate payoff estimate to the consumer, the burden and cost of this disclosure seems greatly out of proportion to its value.

We suggest allowing the option of using the average daily balance in place of the ending balance for each principal that is subject to a unique APR. For consumers making only the minimum payment, the ending balance and average daily balance will not differ significantly during a given cycle, and the average daily balance is already available as a statement disclosure.

Q75: If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

The proposed assumption reflects a common payment allocation method, and would probably be simpler than attempting to weight the payment application according to the balances at each rate.

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

Consumers might be directed to a website or phone number where all assumptions could be disclosed. Due to the number of necessary assumptions, disclosure on the statement would not be practical. It would be helpful for the Board to provide model clauses for these disclosures, or to provide them on its own website.

- Simple interest
- Floor minimum payments
- Payment allocation
- Impact of rounding in calculations, or rounding of the balance and APR to use tables to calculate a payoff could result in the payoff time remaining the same or increasing from one cycle to the next
- Declining minimum payment amounts are not actually used in the hypothetical example. The "typical 2% minimum payment" does not require 2% of first month's balance for the remainder of the payoff, as demonstrated in the Bankruptcy Act's "17%" hypothetical example. If "typical 2%" minimum payments are used, then 2% of the remaining balance is the minimum required each month. With a "typical" 2% minimum payment, it would take closer to 207 months to pay off the account in the hypothetical example, not 88 months as the example states. If 2% of the high balance is used, the message should say, "Making only a $20 payment", (or whatever amount was used in the calculation,) instead of a calling it a "typical 2% payment").

Also we are assuming that there are no changes in terms at all, even the ones the consumer is already aware of:

- Changes in APRs, i.e. when part of the balance has a 0% APR that will expire
- Fluctuations in variable rates (when applicable)
- Unique minimum payments for promos may result in reduced payments once the promo is paid off. Any example, calculation or estimate would have to use the current terms on the account for the entire payoff period. It would be impossible to have a calculation that takes payoff dates and expiration dates into account.

Q77: What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an "actual" repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

Since the statute allows the option for the creditor to provide "actual" payoff information, we believe the Board should provide a calculation and safe harbor. However, we are not aware of a single calculation that is capable of fully reflecting the actual account terms for all of the creditors with accounts on our system. While the actual balance computation method and all applicable APRs can be incorporated in a formula, we believe it's impossible for a formula to account for the typically complex payment application methods and minimum payment formulas that can vary from one account to the next. As stated previously, the time and cost for a processor like First Data to implement and run complicated formulas for individual clients would be significant.

In addition, displaying the actual payoff disclosures on each statement may be extremely confusing to consumers. Due to all of the factors mentioned in this comment letter, the "actual" payoff will not be consistent from cycle to cycle. For creditors displaying the "actual" payoff, the number of months will seldom decrease by one for each cycle it is displayed, and continue to do so until the account is paid off. In this way, displaying an "actual" payoff might be the most confusing option for consumers, who will be expecting the number to decrease by one each cycle.

Q78: Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

With all of the assumptions that must be made, the "actual" repayment period will never be accurate within a given tolerance. The assumptions used can and will skew the result significantly away from what will actually happen on any account. Even with an excellent formula, the result could easily vary from the disclosure by several years. We believe that a tolerance provides no value to the consumer and creates additional risk for the issuer, and that a safe harbor that allows the disclosure to be "deemed" accurate is the only feasible approach.

Q79: Is information about the "actual number of months" to repay readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of developing new systems to provide the "actual number of months" to repay?

As stated elsewhere, any calculation of the "actual number of months" is just an estimate based on a number of assumptions, many of which are unrealistic. System development necessary for this type of disclosure depends on the level of accuracy the issuer seeks to achieve. Greater accuracy requires the incorporation of more specific factors that may affect an individual account at any given time. Each additional factor adds programming complexity and, perhaps more significantly, data storage needs. At some point, the processor would have to draw the line as to the human, computer and financial resources that can be dedicated to such an effort. Considering that even the best formula will be thrown off by the consumer's subsequent behavior, the value of this effort is questionable. As we have previously communicated to the Board, First Data developed a relatively suitable calculation to meet the requirements of the California minimum payment disclosure law. If issuers choose to use that existing functionality to meet requirements under this statute, the cost per client would be a minimum of $165,000. Any client seeking to have a custom formula and message implemented would incur a minimum cost of $500,000.

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

It would be feasible for First Data to provide for disclosure of the repayment estimate on the statement, if the Board provides the formula and the form of the disclosure to be used and the issuer chooses to use the disclosure.

Q97: Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be charged?"

Some creditors require payment by the cycle date, or sooner, but may allow a day or two grace period on the payment. This day (or more) grace period is usually not disclosed to the cardholder because it is to their advantage and the creditor does not want to encourage waiting until the last minute to make a payment. Therefore, if the actual date is required to be disclosed, creditors who currently allow more time will have to eliminate the grace period or incur the cost of programming changes to provide for this "date of late payment fee assessment" disclosure. In this way, this particular requirement could have a negative impact on the cardholder.

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

Since some issuers have a late fee amount that depends on decisioning due to the number of transactions, past performance, the balance, etc., disclosure of a specific late fee amount on the statement will be difficult. It would be helpful for the Board to allow disclosure of a range of amounts that could be assessed.

Q100: Failure to make a payment on or before the required due date commonly triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

Some clients use decisioning based on many factors to determine whether and what "go-to" rate may apply. Disclosure of such go-to rates would be difficult, since the account would have to go through the actual decisioning as if the payment were late before we could tell the actual go-to rate. In addition, there may be a different go-to-rate for different balances on an account. Requiring the go-to rate for every balance with the late fee payment disclosure could result in several separate disclosures. Again, it would be helpful if the Board allows the disclosure of a range of go-to rates that may apply.

Q101: The late payment disclosure is required for all open-end credit products. Are there any special issues applicable to open-end accounts other than credit cards that the Board should consider?

The issues and costs from a processing standpoint would be the same for HELOC as for credit cards.

In conclusion, the additional disclosures proposed by this ANPR would be costly and would require extensive system enhancements. Our biggest concern is that twelve months would not be enough time to implement all of these changes for our clients. Thank you for your consideration of these comments and concerns.

Very Truly Yours,

Pamela Griffin,
First Data Resources, Inc.
(402) 222-5670