



March 15, 2005

By Hand Delivery

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-1217, Regulation Z—Advance Notice of Proposed
Rulemaking

Dear Ms. Johnson:

This letter is submitted on behalf of Visa U.S.A. Inc., in response to the Federal Reserve Board's ("FRB") advance notice of proposed rulemaking ("ANPR") on the open-end credit rules of Regulation Z, which implements the Truth in Lending Act ("TILA"). Visa appreciates the opportunity to comment on this important ANPR. In addition to the thoughts contained in this letter, Visa will submit more specific comments responding to many of the questions raised in the ANPR.

The Visa Payment System, of which Visa U.S.A.¹ is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

The FRB's Review of Regulation Z is Timely Given the Market and Technological Changes Since Enactment of TILA

Visa strongly supports the FRB's decision to take a fresh look at TILA. TILA was enacted in 1968. At that time, the primary purpose of TILA was to provide consumers

¹ Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

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with the “true cost of credit” expressed as an “annual percentage rate” (“APR”) and to allow consumers to compare available credit terms more readily. Ten years after the enactment of TILA, both consumers and creditors agreed with the FRB that TILA could be substantially improved. As a result, TILA was significantly revised in 1980 to simplify disclosures given to consumers, make compliance easier for creditors, limit civil liability and strengthen administrative enforcement. There have been numerous additional amendments to TILA and Regulation Z since 1980 to address an amalgam of issues and concerns. Nevertheless, we believe that a comprehensive review of the open-end credit provisions of Regulation Z is timely and appropriate.

In conducting this comprehensive review, Visa believes that the FRB should fully reevaluate existing TILA requirements in light of the dramatic changes in consumer credit markets and communications technology since TILA was broadly revised in 1980. For example, there has been a significant expansion in the number and variety of open-end consumer credit products, and the market for open-end consumer credit is far more competitive today. In addition, the number of consumers who are eligible to receive credit cards has increased dramatically. In the early 1980s, it was difficult for consumers to obtain credit cards and most consumers carried only one, or at most, two credit cards. Since then, the demand for open-end credit, and particularly for credit cards, has risen significantly due to the benefits that consumers derive from credit cards. In addition, due to technological developments, most notably the Internet, consumers have ready access to information about open-end credit products and terms, and both creditors and policy makers have efficient new tools for delivering information to consumers.

Therefore, as the FRB reviews the open-end credit provisions of Regulation Z, we strongly encourage the FRB to consider these market developments and the alternative approaches that new technologies will support, and encourage the FRB to avoid viewing Regulation Z and TILA as the sole means of addressing issues related to open-end credit plans. While Visa believes that there are a number of provisions of Regulation Z that should be modified to better facilitate informed shopping and to improve consumer understanding of open-end credit plans, we believe that it is equally important for the FRB to consider the role of Regulation Z in a broader context, as well as to consider those educational issues that can be addressed more effectively outside of Regulation Z. In this regard, there has been a tendency for some to view Regulation Z as a cure all for what are often isolated or transitory practices. While some regulatory changes clearly are appropriate, we believe that Regulation Z is not the appropriate vehicle for addressing many of these issues.

FRB Should Not Review Regulation Z in Isolation

While the ANPR includes 58 separate questions, we believe it would be a mistake for the FRB to attempt to address all of the issues raised by these questions through revisions to Regulation Z. Such an approach would only lead to longer and more complex disclosures that serve the needs of neither consumers nor creditors. We believe that the FRB’s overall goal should be to enhance consumer understanding of open-end credit

transactions and to facilitate the ability of consumers to make better informed credit decisions. And, while some aspects of this goal, such as comparison shopping, can be effectively addressed through Regulation Z, other aspects can be addressed most effectively through other means. Therefore, we recommend that the FRB's review of Regulation Z include a three-pronged approach: (1) fixing Regulation Z; (2) educating consumers; and (3) exploring non-regulatory or non-TILA approaches, such as the issuance of agency guidance or best practices, to address many open-end credit issues.

Specifically, Visa believes that the FRB should examine each issue identified in the ANPR and determine whether the issue would be addressed most effectively under the first prong (fixing Regulation Z), the second prong (educating consumers) or the third prong (a non-regulatory approach).

“Fixing Regulation Z”—Current Issues Related to Open-End Credit Plans

The current Regulation Z scheme of account opening disclosures and periodic statements has been criticized by consumer groups, creditors and government officials. Some believe that consumers are given too much information through Regulation Z disclosures and that the information required to be provided is illogical and does not facilitate either comparison shopping or understanding account activity. This is in part due to the extensive disclosures required by Regulation Z and the liability provisions of TILA, which encourage creditors to “over disclose” in order to protect themselves from potential liability.

Visa believes that the dynamic nature of open-end consumer credit, and the wide variety of open-end consumer credit products, presents significant regulatory challenges. Open-end credit is fundamentally different than closed-end credit. Closed-end credit typically involves a single loan transaction and a series of repayments. Open-end credit plans, on the other hand, often involve hundreds or thousands of transactions involving an array of services spanning years or decades during which the services provided, the costs of providing those services, including the costs of funds, and market practices are all subject to significant change. To shop for and use open-end consumer credit intelligently requires a basic understanding of the nature of open-end credit. However, unlike the terms of individual accounts and the details of individual transactions that cause disclosures to differ from account to account and from periodic statement to periodic statement, the basic nature of open-end credit does not change. Therefore, there is no need to reeducate consumers of these basic facts in every disclosure or account statement. For example, the general fact that the payment must be received by the payment due date does not have to be repeated on each account or account statement.

As a result, Visa believes that the FRB should look to Regulation Z to facilitate comparison shopping for consumers opening new open-end credit plans, and to provide error resolution rights, while other purposes and goals should be addressed through educational efforts or other regulatory tools. This limited Regulation Z focus would help

to simplify account opening disclosures and periodic statements for open-end credit plans under Regulation Z and, thereby, promote comparison shopping for consumer credit.

In this regard, Visa believes that there has been significant progress in recent years in the use of “readable” language and that this progress could benefit both the regulatory language of Regulation Z and the model disclosures. Given the nature of open-end credit, the relative importance of various terms can change over time and different terms can have more or less significance to different consumers using the same open-end credit plan because of the many ways that consumers use these plans. As a result, it is not feasible to highlight all of the terms that may be important to all consumers for purposes of comparison shopping for open-end credit plans. For example, balance computation methods are complex and have a relatively small impact on most consumers. Similarly, some fees may be incurred only in unusual situations. While information on such open-end credit terms may need to be included in the comprehensive plan agreement, they are not important for comparison shopping. Accordingly, Visa believes that the “Schumer box” and initial disclosures under open-end credit plans should emphasize only those few key terms important to most consumers. Initial disclosures and the “Schumer box” then could include a statement that other terms may affect the consumer’s use of the plan and that the consumer should review all of the terms in the plan agreement.

In determining the key terms that should be highlighted, Visa believes that the FRB should: (1) only highlight terms where consumer comparison shopping is essential; and (2) only include disclosures where uniformity can be achieved and uniformity is beneficial. This would lead to shorter and simpler disclosures that would enhance consumer understanding by making it more likely that consumers will actually read and understand the disclosures. Increasing consumer understanding, in turn, will assist consumers in making informed decisions.

In addition, the FRB should recognize that the APR operates differently in open-end credit than in closed-end credit. Any use of the APR should recognize this fact and provide for an APR that makes mathematical sense. The APR should only include charges that are based on the amount and duration of credit and, therefore, should not include fixed fees. This approach to APR disclosure would both simplify compliance and foster consumer understanding by making disclosures more intuitive. In particular, the FRB should reevaluate the calculation of the historical APR provided on periodic statements. Fees that are included in the historical APR, but are not based on the duration and amount of credit, such as cash advance fees, distort or “skew” the APR in a way that is confusing to consumers. Although an artificially high APR in a periodic statement may shock consumers, it does little in terms of educating consumers about the significance of their account activity. In addition, the current approach for calculating the historical APR includes some finance charges and excludes others and fails to provide a figure that is useful to consumers for comparing accounts or for understanding the costs associated with credit.

Consumer Education Outside of Regulation Z

The FRB also has asked whether there are non-regulatory approaches that could further the FRB's goal of improving the effectiveness of disclosures. In this regard, Visa believes that it is important for consumers to have a fundamental understanding of how open-end credit operates before they even begin to shop for credit.

Attempting to educate consumers about open-end plans through one-on-one disclosures is inefficient for a number of reasons. First, it leads to longer and more complex disclosures, thereby diluting efforts to highlight the most important common terms. In addition, information provided by creditors at the time of the credit transaction is often too late. Further, information provided with individual transactions can lead to repetitive delivery of the same information and ongoing costs, while serving no useful purpose, because the consumer does not read such information.

Visa believes that such information should be provided through educational efforts, rather than through creditor disclosures. More specifically, Visa believes that the federal government, and most appropriately the FRB, should take a far more active role in educating consumers about the characteristics and uses of open-end consumer credit. Rather than relying on TILA as the primary vehicle to educate consumers about open-end credit issues, we believe educational initiatives sponsored by the FRB would more efficiently inform consumers about many aspects of open-end credit. Issues such as the use of open-end credit that are common to most, if not all, credit plans should be addressed through targeted educational efforts, rather than through Regulation Z. For example, information about minimum payments, over-limit fees, payment allocation methods and payment due dates should be disseminated through educational efforts, rather than through Regulation Z disclosures.

In fact, the FRB's educational efforts should look far beyond the traditional pamphlets, like those distributed in connection with home equity lines of credit. For example, Visa believes that the FRB should seriously consider a significant and substantial long-term commitment to educate consumers about open-end credit. Such a program could include mass media messages targeted at specific topics, an interactive educational Web site and mass media promotion of the FRB's Web site. If the FRB believes that the public needs a better understanding of particular issues, such as the increased costs of making only small monthly payments on an open-end credit plan, an issue that is the subject of three questions in the ANPR, such issues could be addressed most effectively through mass media education by the FRB. Although the cost of this education might be borne initially by the FRB, rather than issuers of open-end credit, the total educational cost actually would be lower. In this regard, most issuers pass this cost on to consumers broadly.

Moreover, such an educational Web site could provide consumers with extensive information about credit terms and credit practices and about the prudent use of credit. Such a Web site could be accessed by consumers at any time—before or after opening an open-end credit plan. Information from such a Web site also could be downloaded and printed for distribution to consumers with limited Internet access.

Non-Regulatory or Non-TILA-Related Approaches

Visa also believes that TILA should not be viewed as the vehicle for addressing individual abusive practices; instead, these practices should be addressed through the agencies' unfair and deceptive acts and practices authority. Open-end consumer credit is an efficient and flexible vehicle for delivering credit to consumers. This flexibility has resulted in a wide variety of open-end credit products and an even wider variety of terms and conditions for these products. While it is possible to highlight common terms of open-end credit, a consumer can only understand open-end credit products by understanding how all of the terms of the credit product will apply to the consumer's particular pattern of account use.

A few unscrupulous creditors desiring to take unfair advantage of consumers can always do so by means that elude simple, clear disclosure of common terms. When this occurs, Visa believes that the FRB and other federal agencies should look to an approach other than TILA disclosures. For example, the banking agencies and the Federal Trade Commission have the power to address unfair and deceptive acts and practices. The disclosure of key terms should not be expanded in an effort to cover, or deter, such practices. To do so would only complicate disclosures and detract from the key information needed to compare accounts.

As long as expectations for unfair and deceptive practices are based on a full understanding of current practices and are made clearly and consistently by all federal agencies, such as through best practices developed after notice and comment, this power can be exercised by individual agency actions that provide the flexibility to deal with evolving market practices or rules written by the FRB in the case of persistent longer term abuses. This approach also would give the agencies the flexibility to address changing practices without cluttering key disclosures with information that often is of little relevance to a particular plan, and should reduce litigation by limiting and simplifying Regulation Z requirements.

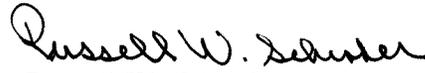
Statutory Changes

Visa recognizes that some of these actions could require legislative changes, but the FRB certainly can propose statutory changes to TILA where it believes such changes are necessary to implement the program described above.

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Visa appreciates the opportunity to comment on this very important topic. If you should have any questions about the above, or if I can otherwise be of assistance, please call me, at (415) 932-2178.

Sincerely



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Senior Vice President and
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