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Ms. Jennifer J. Johnston
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1286

Dear Ms. Johnston:

Compass Bank appreciates the opportunity to comment on the proposed changes to Regulation Z that impact credit cards. We welcome the Board's revision of Regulation Z to the extent it makes disclosure of credit terms clearer to the consumer. The burden to issuers in complying with Regulation Z, however, must be taken into account. In this letter we comment or request clarification on certain changes that present particular problems for issuers and may directly or indirectly drive up the cost of credit.

Delayed imposition of default rates

One of our greatest concerns is the proposed changes to §226.9(c)(2) of Regulation Z that would delay imposition of a default rate for as long as two or three statement cycles. We strongly object to delaying imposition of default rates or other increased rates when actions or inactions by the cardholder that affect the credit card account trigger higher rates and ask that the Board reconsider this change. Any action a borrower takes or fails to take on the credit card account itself (such as not making a payment, paying late, or charging amounts that cause the balance on the account to exceed the credit limit) should trigger the new rate in the current or the next cycle. The borrower has agreed to the terms of the account and meeting those terms is basic to the creditor-debtor relationship. Default rates provide additional discipline to the credit process, rewarding responsible behavior and penalizing failure to honor the credit terms. It should be no surprise to the cardholder that failure to make a payment on an account, for example, has consequences. The rates also provide the creditor with compensation to offset expenses of late payments, loan loss reserves, collection calls, and other costs arising from a borrower's failure to meet the credit terms.

The imposition of this delay also may deter two programs beneficial to borrowers. Rehabilitation programs that card issuers may provide for delinquent borrowers, in which a temporary rate reduction is applied to the account contingent on timely monthly payments, would be affected. Often, after a limited number of timely payments monitored closely by the issuer, the rate on the account returns to a lower rate. To delay for two or three statement cycles elimination of the temporary, reduced rate due to failure of the borrower to meet the terms of the rehabilitation program would deter many institutions from continuing such programs. The borrower is being given a second chance. There is no point in extending a short-term rehabilitation program after it has failed to induce the desired behavior. In addition to rehabilitation programs, promotional rate reductions that are lost if, for example, a payment is late would be covered by the notice requirement. Issuers may, therefore, not offer such programs or offer them at rates that are not as attractive. Both types of programs should be excluded from coverage by this change in the regulation.

Finally, if the Board implements a delay in rate changes made according to the terms disclosed to the consumer, it should clarify how the rate increase applies after the notice is given. For many variable-rate accounts, the rate is determined on a set day during the cycle and applied to the entire cycle. In these cases, will the 45-day notice period have to end in the prior cycle in order to apply the rate increase to the current cycle? Also, can the issuer give the 45-day notice upon an event that will result in a higher rate with the passage of time, or will the issuer have to give the notice after that passage of time? For example, can the issuer give a notice when a payment is missed that a payment late for 30 days or more will result in a higher rate, or must the issuer wait until the 30 days have elapsed before giving the notice?

Treating open-end sub-accounts as closed-end accounts

The Board's proposal to treat sub-accounts on an open-end master account as separate closed-end accounts has enormous repercussions for existing accounts, particularly those secured by residential mortgages, such as home equity lines of credit. While the current proposed changes to Regulation Z do not cover home equity lines of credit, the Board has asked for comment on how this change would affect HELOC accounts. The Board proposes to treat a sub-account as a closed-end account if payments on the sub-account do not result in an increase in the available credit on the sub-account (as opposed to increasing the credit line on the master account). The Board expresses concern that sub-accounts can be subject to separate approval by the creditor and are not really part of the open-end account, yet the Board does not make such prior approval the criteria for imposing closed-end disclosure obligations. Instead the Board proposes that the criteria for which accounts will be treated as open-end accounts occurs after the sub-account has been opened, i.e. whether or not a sub-account credit line is replenished as the sub-account is paid off. This provision would apply to master accounts that are already in place.

The Board should be aware that changing from open-end to closed-end disclosures mid-stream during the life of an account presents tremendous systems problems for issuers and may be more confusing to consumers than helpful. The issuer would have to make disclosures when a sub-account is activated, and disclosures during the term of the sub-account would have to be changed. Separate disclosures at the time of creation of a sub-account would be feasible only if obtaining a sub-account requires the creditor's prior approval. For master accounts already in place, under the Board's proposal, a creditor may be contractually obligated to extend a sub-account to a customer. Yet the creditor now may be obligated to give closed-end disclosures at the time the sub-account is established by a unilateral action of the customer, such as the use of a special check in the customer's possession or giving a simple notice to the creditor.

In addition, sub-accounts on master open-end accounts are usually processed on the same system as the master account, that is on an open-end account system. This permits payoff of the sub-account to automatically replenish the credit line of the master account. On an open-end account system certain subsequent closed-end disclosures may be impossible to give. In particular, the variable-rate rate-change notices required under 12 C.F.R. §226.20(c) for closed-end home equity accounts must give information that may not be available on the open-end system.

Whether a sub-account is actually part of an open-end master account should be determined by whether repayment of the sub-account replenishes any credit line on the account, including the master account and any other sub-account. If it does it usually has to be tied systematically to the open-end account and should receive only open-end disclosures.

Treating electronic payments made on the issuer's web site as conforming payments under §226.10(b)

The Board proposes amending the comments to §226.10(b) to provide that electronic payments made on an issuer's web site be treated as conforming payments. This means that these electronic payments must generally be credited on the day they are made on the web site if made before any cut-off hour. This presents several systematic issues.

Most banks use third-party processors to process credit card transactions, so the issuer may not be in control of the processing system and the transaction must be transmitted to a third-party system. This means that the creditor may not be able to credit the transaction to the credit card system on the same day it is processed on the web site.
In addition, the Board's discussion of payments made "via [the issuer's] web site" ignores the fact that the creditor may provide more than one way to make a payment through its web site. In addition to a portal solely for making credit card payments, which may go directly to the credit card processor's web site, the creditor's web site is the home of its online banking system. This system may permit transfers between accounts on the creditor's systems, as well as bill payments through a third-party bill payment processor. Credit card payments may be sent either way by the consumer. Bill payment through a third-party would have to go through the third-party bill payment system, as well as

through the credit card system, after being processed by the creditor in its online banking system, and this can cause a delay.

For these reasons, we would urge the Board to remove this addition to the comments to §226.10(b). Alternatively, the Board could require that a disclosure about a delay in posting through a web site be made. In that case, the Board should require that web site payments be treated as conforming payments only for those sites that solely access the credit card processing system and do not contain a disclosure to the customer at the point of payment that there will be a delay in posting. The users of online banking systems are repeat users and would be aware of the timing of payments using the online banking system, so online banking system sites should be excluded from coverage by the comment.

Additional disclosure for certain secured card accounts

The Board proposes new disclosures for secured card accounts when the security deposit required is more than 25% of the credit line. Secured card accounts in which the borrower secures the account with a deposit reduce risk for issuers and enable borrowers with low credit scores to obtain cards and rehabilitate their credit records by performance on the account. Secured accounts come in different forms. One form involves the borrower's providing a cash deposit in the amount of the credit line. The Board needs to make it clear in Regulation Z itself, rather than in the comments, that accounts secured by funds obtained from a source other than an advance on the cardholder's account should not require the disclosure under §226.5a(b)(16).

Formatting of the new application and account-opening disclosures

The proposed new tabular disclosures required at application and account opening under §§226.5a and 226.6 will make important information about the account more readily available to consumers. Compass has one comment on the formatting, however. The proposed 8 1/2 by 14 inch, 10 point type disclosure is too large. The consumer is more likely to read an 8/12 by 11 inch disclosure, in slightly smaller font, that he or she can hold and see in one glance. The smaller size of the disclosure makes the information more manageable, and the consumer is more likely to read and retain it than to throw it away. In addition, the world has expressed a preference for 8 1/2 by 11 inches. Many courts will now only accept (without penalty) 8 ½ by 11 inch filings, printers default to that size, software defaults to that size, and so forth. The costs and difficulty of accommodating 8 1/2 by 14 inch disclosures, particularly those sent with the card, must be taken into consideration and we would urge the Board to reduce the size of this disclosure.

Effective APR disclosure

The effective APR has always been misleading to consumers, and Compass supports eliminating it. A balance transfer, for example, with a balance transfer fee may show a very high APR because the fee is taken into account all at once, even though the actual interest rate, calculated to include the one-time fee over the life of the balance would be lower than the standard rate on the account. This confuses consumers and does not provide accurate information for comparison of credit costs.

Minimum payment examples

The minimum payment example may help educate consumers about the cost of carrying a balance on a credit card. Since this disclosure is mandatory, the Board should provide a safe harbor for issuers who follow the Board's requirements in giving this disclosure. The actual repayment period may be longer or shorter than disclosed due to application of payment differences, timing of payments, and other factors. When the issuer is following Regulation Z in making the disclosures, however, the issuer should be protected from lawsuits.

New definition of "fixed" rates

The Board's limit on the use of the term "fixed" to describe a rate that can never be changed obscures real differences between a fixed rate that could possibly be changed and a variable rate that is expected to change. A consumer should have an indication of which of the two types of interest rates apply to the account offered. We especially urge the Board to permit the use of the term "fixed rate" for promotional rates offered for a period of time that are not variable rates but may be raised upon the action or inaction of a consumer (such as paying late, non-payment, charging over the account limit) as opposed to unilateral action by the issuer. A variable rate that changes as often as once a month with changes in a variable-rate index is very different from a fixed rate that can only change based on an action of the cardholder, such as paying late. Use of the Board's suggested term "non-indexed" will be confusing and meaningless to the consumer.

Tabular disclosures with convenience checks

Issuers often make most of the disclosures the Board proposes for convenience checks in the letters accompanying convenience checks. We would like several clarifications on the new tabular format required by §226.9(b). First, if the convenience checks are printed directly one above another with a common, perforated border (i.e. without horizontal spaces above or below the checks), can the tabular disclosures be printed vertically rather than horizontally in the space to the left or right of the checks? Secondly, if the checks are physically printed on the same sheet as the solicitation letter, separated by perforations, can the tabular disclosure be contained on the attached solicitation letter?

In conclusion, we'd like to remind the Board that the use of credit cards fuels growth of the American economy, particularly growth due to the sale of consumer goods. Credit cards provide advantages to cardholders, and the majority of our cardholders manage their credit card accounts responsibly. Using credit cards gives consumers more choice by permitting them to shop online and permits consumers to take advantage of sales prices at the time they are offered. Clearer disclosure of credit card terms, such as making some in tabular format, can promote responsible behavior by cardholders and reduce the cost of credit for everyone. In an extensive rewriting of a regulation, such as it has done in the current revision of Regulation Z, however, the Board must take into consideration the effect of these changes on creditors and the negative effect that can have on credit. Thank you for giving us this opportunity to submit comments.

Sincerely,

Hollis G. Swift

Hollis G. Swift
Senior Corporate Counsel

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