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October 15, 2007

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-1286

Dear Ms. Johnson:

On behalf of Barclays Bank Delaware (“BBD”) I am pleased to submit this letter in response to the request of the Board of Governors of the Federal Reserve System (the “Board”) for comments regarding the Board’s proposal to amend Regulation Z (“Reg Z”) (in so far as it applies to credit cards) and the staff commentary to Reg Z (the “Proposal”).

BBD is a partnership focused issuer of credit cards, with approximately \$5.5 billion in credit card receivables and approximately 2.5 million credit card accounts. Founded in 2001, it is one of the fastest growing credit card issuers in the United States. BBD is a wholly owned subsidiary of Barclays Group U.S. Inc., a United States Financial Holding Company which is itself a wholly owned subsidiary of Barclays Bank PLC, a U.K. bank with approximately \$2.35 trillion of on book assets. As a company wholly focused on the issuance of credit cards, BBD appreciates the opportunity to make its views known to the Board on this important topic.

Summary:

BBD wholeheartedly agrees with the Board’s stated goal “to improve the effectiveness of Regulation Z disclosures that must be provided to consumers for open-end accounts” and “to improve consumers’ ability to make informed credit decisions”. To a significant degree, BBD believes that Board has taken great strides towards that goal. The efforts that have been made to improve the so called “Schumer Box”, solicitation disclosures and account opening disclosures, are to be commended. The Board’s focus on disclosures rather than on mandating price controls is also salutary, especially given the inevitable unintended consequences of price controls. BBD also greatly appreciates the Board’s efforts “to balance potential benefits for consumers with the compliance burdens enforced on creditors” and to conduct a cost-beneficial analysis. BBD recognizes that the Board took great pains to create a considered and balanced document – one that seeks to highlight those disclosures that the Board feels consumers are most likely to be interested in and to need – and eliminate certain other disclosures that the Board feels are superfluous or likely to create information overload. BBD also appreciates that the Board made efforts to structure the proposed disclosures so that they are easy to read and so that the most important provisions are emphasized. Finally, BBD appreciates the fact that consumer input was sought; and that the disclosure requirements were drafted from the view point of consumers’ expressed preferences.

That stated, BBD believes that the Board did not go far enough in simplifying disclosures and making them readable for consumers. There is still too much information emphasized, which BBD believes will lead to customer confusion and not assist consumers in making informed decisions. In addition, improvements can be made to all disclosures, especially to change in terms disclosures which BBD respectfully submits almost amount to price controls. BBD believes that the sum total of the proposed periodic statement disclosures constitutes too much information which would not significantly improve consumers' understanding of their credit card accounts. Current periodic statement disclosures generally work and BBD does not believe that a forced reformatting of periodic statement disclosures is necessary or appropriate.

BBD has the following specific comments:

Change-In-Terms

The Board proposes amending the change in terms ("CIT") notification requirements under Reg Z to extend CIT disclosures to APR changes resulting from a cardmember's default of his/her obligations on the credit card account (such as the failure to pay on time) and to changes in late payment fees and overlimit fees and to increase the notice period for CITs from 15 days to 45 days. BBD understands the goal of giving consumers advance notice of change-in-terms so that if the consumer does not want to accept the change in terms, the consumer may obtain alternative financing or change his or her account usage. That is a appropriate and effective consumer protection. However, requiring such notice be provided prior to a contractually established increase in a rate due to a consumer's delinquency or default on that account goes far beyond consumer protection and in effect represents an abrogation of contractually agreed upon terms. Requiring such notice be provided 45 days prior to implementing the price increase only magnifies that issue and is more than necessary for any price increase, whether contractually agreed to or not. Accordingly, BBD urges the Board to reconsider its proposal of 45 day CIT notice period and its proposal to apply CIT disclosures to actions taken pursuant to contractually provided terms already disclosed to consumers in application disclosures and incorporated in initial disclosure statements (i.e., increases in APR due to default or delinquency).

Terms Included in Prior Disclosures

In virtually all instances where creditors increase APRs due to their customers' default or delinquency, that increase is a contractually pre-determined. BBD submits that if the solicitation disclosures and the initial disclosures clearly, conspicuously and specifically set forth the circumstances of default and/or delinquency that would cause the APR to increase, such an increase is not a CIT and an additional advance notice of the APR increase should not be required. The customer has already been provided with notice in the solicitation materials and in the account opening disclosures as to what would happen in the event of the customer's default or delinquency. Additional advance notice is not needed (contemporaneous disclosure should be sufficient). The Board is even proposing (correctly in our estimation) changes that would make such disclosures more prominent in solicitations and in account opening disclosures. Requiring an additional 45

days advance notice is simply abrogating the contract between the consumer and the creditor. Moreover, given the fact that pursuant to the proposed disclosure scheme most consumers will know up front what will happen if they are late with their payments and paid late anyway – the additional 45 day notice is redundant and not helpful in protecting the consumers from making a late payment.

Importantly, the Board's proposal in effect discourages penalty pricing and as such constitutes a price control mechanism that may result in an artificial distortion of the pricing of credit cards. If a card issuer is effectively prevented from promptly adjusting rates based on the cardholder's risk as evidenced by the cardholder's behavior on that account, the card issuer may be forced to resort to other pricing mechanisms to compensate for risk. This could include higher fees, account closures or higher APRs for all cardholders. The law of unintended consequences could apply; as it usually does to efforts to control prices.

45 Day Notice

BBD also submits that the proposed 45 days advance notice of a CIT is too long. Whereas advance notice should be given, the current system, which in effect constitutes a one month or one billing cycle advance change in terms¹ notice provides consumers sufficient time to shop for other credit cards. In the event of an over limit transaction, assuming the card issuer includes the CIT notice in the periodic statement, it could be as much as 3 billing cycles between the time of the over limit transaction and the APR increase and 2 billing cycles for late payments. This would adversely impact cardholders as well as issuers. Today card issuers have the flexibility to respond quickly to changing marketing conditions. This flexibility allows card issuers to price credit more cheaply because card issuers know they can address increased future risk relatively quickly. Requiring a 45 (60/90) day advanced notice would create additional risk for card issuers and card issuers would be forced to price their accounts to compensate for the increased risk (again the law of unintended consequences). In addition, in order to shorten the effective timing of the advance notice of CIT, card issuers might cease sending CITs in periodic statements (which cardmembers are most likely to read) and do stand alone mailings which cardmembers are less likely to read. BBD urges the Board to retain the current 15-day requirement; it works and is effective.

Solicitation Disclosures

BBD believes that the Board's proposal regarding solicitation disclosures represents an effective first step. We agree that the fees mentioned and information about penalty fees should be included in the tabular disclosures. One significant concern however, is that the required disclosures are still too voluminous in the so called Schumer Box -- in other words they take up too much real estate in the solicitation. The obvious potential impact is information overload. The more information disclosed, the less effective the overall disclosures are. BBD also cautions against requiring

¹ The current 15 day advance notice would in effect constitute as much as 2 months advance notice of a penalty increase in APR as almost 2 billing cycles could pass between the penalty event and the implementation of the change in APR.

disclosures outside the tabular disclosure box, that doing so initially will result in more and more disclosures being included outside the box. If the information is important enough that the consumer should consider it in making their decision with regard to acquiring a credit card, the disclosure should be included in the Schumer Box; otherwise it simply takes up valuable marketing real estate and does not serve a salutary purpose.

Schumer Box

BBD recommends omitting from solicitation disclosures 1) the minimum interest charge provided such interest charge is \$1 or less; 2) the website for additional information²; and 3) the balance calculation method beneath the Schumer Box. No one will or will not choose which card to apply for as a result of any of those disclosures; whereas such disclosures might be appropriate in the initial disclosures (cardmember agreement), they take up valuable real estate in the solicitation and could cause information overload.

For the same reason BBD proposes eliminating redundant disclosures including a) statements to the effect “your introductory APR applies only to balance transfers, not to purchases” – that should be obvious from the clear distinction in the Schumer Box between the APR for Purchases and the APR for Balance Transfers and b) the statement that “You will be charged interest on all purchases until the entire balance has been paid off completely, including transferred balances (in effect this statement is disclosed in “Grace Period Disclosure”). We submit that such information is superfluous and not necessary as an aid to the consumer in understanding how the credit card account works and for the reasons stated above (information overload and wasted space) should be eliminated.

BBD also submits that if disclosures are made in the Schumer box, they should not also be required to be made elsewhere in the solicitation. Consumers have been trained to look at the Schumer box. The Schumer Box should be considered full and prominent disclosure for all purposes for information disclosed therein.

BBD also agrees with the Board that including the minimum payment formula should not be a required disclosure since no one chooses a credit card on the basis of the minimum payment calculation. Describing the minimum payment calculation is complicated and any attempt to describe it could potentially be misleading. BBD does support describing the minimum payment calculation in the account opening disclosure statement (in the body of the document and not in the account opening table).

Credit Limit

² BBD’s reluctance to include the reference to the Board’s website in the table does not mean that BBD does not support promoting the website. We do. We just believe that the reference to the website in solicitation materials is an expensive burden to place on issuers and will not help distinguish once issuer’s offering from another. Rather, BBD believes that there should be other ways to promote the Board’s website to consumers.

BBD agrees with the Board that the credit limit need not be disclosed in the solicitation – that the credit limit does depend on the consumer’s credit worthiness and consumers understand that fact. Requiring credit limit disclosures in card solicitations would promote unsafe and unsound banking. Consumers are notified of their credit limits at time of account opening and throughout their relationship with the bank in the periodic statement disclosures and can always close their account if they find their credit limit to be insufficient.

Paper Size

BBD understands that the Board envisions but does not anticipate requiring the tabular disclosure (“Schumer Box”) be on 8” X 14” paper (legal size paper). BBD concurs with the sentiment as most of its solicitations are on that size paper. However, flexibility is a good thing. It is possible that BBD and other issuers in the future will want to test a solicitation format on other than 8” X 14” paper. In other words, as long as disclosures are all contained in tabular box, and the font size is appropriate, the size of the paper should not matter. Accordingly, BBD requests that the Board affirmatively state that a card issuer may use paper other than 8” x 14” so that examiners do not view the 8” x 14” sheet as a default requirement.

Rates that depend on Credit Worthiness

BBD agrees with Board that the best way to disclose APRs in credit card solicitations, when the issuer can not know what the actual rate will be because the actual rate will depend on the consumers credit worthiness, is either to disclose all possible APRs or a range of APRs. That way, the consumer can gauge what the highest APR might be that the consumer might qualify for and make an informed decision accordingly. In addition, this would allow issuers to risk based price their products and therefore make their products available to a broader range of individuals in a safe and sound manner. BBD also urges that such disclosure would also accommodate individuals seeking to perform balance transfers. Consumers should be able to determine what the highest APR might be that would apply to the balance transfer and plan accordingly; requiring a separate notice of the actual APR if it is not the lowest APR in the range before processing the balance transfer would be superfluous, operationally difficult and not very helpful. BBD also agrees with the Board that disclosure of “typical rates” would be inappropriate. “Typical rates” could be misleading and confusing since what is “typical” for one consumer might not necessarily be “typical” for another consumer.

Payment Allocation

BBD agrees that the payment allocation method should be included in the Schumer Box. Payment allocation represents important information that consumers should be aware of in making their decision as to which credit card to apply for. We suggest, however, that the disclosure could be made more concise than the disclosure envisioned by the Board by having it read “We may apply payments first to the balance with the lowest interest rate and interest may continue to accrue on unpaid balances.” We submit that such a statement is easy to understand and more than sufficient for disclosure purposes.

Account Opening Disclosures

BBD agrees with the Board that tabular disclosures are appropriate for the account opening disclosure statement. BBD submits that similar tabular disclosures should be used for account opening disclosures as for solicitation disclosures. The important thing from an operational point of view is to ensure that the table together with any other “cost” type disclosures that the Board mandates that could vary from card to card, fit on a page (panel) of the account opening disclosure statement. That way the other non-variable disclosures can be printed in a stock format, and the “cost” disclosures can be lasered on one page.

In addition, our comments about omitting certain less important information from the Schumer Box for solicitation disclosures applies doubly for account opening disclosure tables where information such as the Fed website, can be located elsewhere in the account opening disclosure document and space is at a premium on the page where the table is lasered.

We also submit that for accounts opened at point of sale, it should be permissible to provide the account opening disclosures in the table with a reference in the table to a register receipt or other document that sets forth the APR. It is possible that an individual walking into a retail establishment could be offered one of several potential APRs. The card issuer will not know which APR to offer the consumer until the individual’s credit bureau is pulled. Having the ability to have the correct APR printed on some sort of register receipt will greatly assist the card issuer in its ability to disclose accurately the APR. That way, creditors would not have to rely on sales clerks to provide the correct account opening table. Finally, we also believe the Board should explicitly sanction the use of paper other than 8” x 14”. As the Board is aware, many issuers use different size paper, often folded into 6 or 8 panels.

Periodic Statements

The Board has proposed a number of significant revisions to periodic statement disclosures both in format and substance that essentially standardize periodic statements. This concerns BBD. We at BBD do not understand the need for wholesale revisions to the periodic statement disclosures. It is our understanding that consumers generally understand the information included in their periodic statements. BBD receives very few complaints about such disclosures. What is the rationale behind such wholesale changes, especially the rationale behind formatting changes? BBD respectfully submits that many of the proposed changes would only serve to confuse consumers; and certainly they would result in information overload. Moreover, mandating extensive formatting changes will be expensive to implement and could stifle both the efforts to improve the periodic statement and the ability of issuers to adjust the periodic statements disclosures to accommodate new product features.

Formatting Requirements

We at BBD are concerned with a number of the format requirements – that, 1) a summary of key rate and term changes must precede the transaction disclosures when a notice of change in terms or rate accompanies a periodic statement, 2) link by proximity the payment due date and time with late payment fee and penalty rate, 3) link by proximity the minimum payment amount with the new Bankruptcy Act wording. These all seem proscriptive, burdensome, and not necessarily beneficial to consumers. For instance, listing the so called “penalty rate” APR next to the payment due date might make it more difficult to include all APRs (intro/go to/penalty) in one easy to read area where the consumer could refer to and understand all the potential APRs (and indeed understand better the ramification for paying late by seeing the delta between the purchase APR and the penalty APR).

Indeed, the proposed formatting system seems designed to obfuscate certain information. To make it work, it requires that certain information such as new balance, minimum payment due and payment due date (and time) be reported on multiple occasions. Not only would this create redundancy; with all the information that needs to be disclosed up front on the first page, it is possible that the transaction disclosures will seldom be included on the front page. In effect this will educate consumers to skip the disclosures on the first page and go immediately to the second page where the transaction disclosures would be printed. In addition, the proposed new format delinks cash advances and balance transfers from cash advance fees and balance transfer fees. This would not assist in understanding the cost of those transactions. The proposal also delinks late payment fees from late payments making it harder to understand why a late payment fee was imposed. It will not improve consumer understanding of the management of their account.

We understand the Board’s desire to locate certain information proximate to other information. The fact is, however, that not all payment-related information can be grouped together without significant unintended consequences. For example, an issuer could provide information on or with the periodic statement relating to electronic payments, recurring payments, payments by phone, the impact a late payment may have on the cardholder’s credit history, or other types of payment information. Yet none of this information should necessarily be required on the front of the first page of the billing statement. We further question whether the late payment disclosures in the Proposal are so clearly more important than other payment-related disclosures – or any of the other required disclosures that need not appear on the first page – such as to mandate their placement near the top of the first page.

As previously mentioned the required placement of the change-in-terms and penalty pricing disclosures before the disclosure of transactions creates operational concerns. Such an approach would require two or three forms of periodic statements – one to be used when a change-in-terms is assessed; one when a penalty pricing action is proposed and one where neither is planned. This would increase costs and create the potential for operational mishaps.

We are also concerned about requiring the grouping of transactions by type and by fees. Consumers understand the listing all transactions in chronological order and issuers ought to be allowed the option to list all transactions in chronological order. As the Board indicated, participants in consumer testing tended to review their transactions and noticed fees when they

were placed in the list of transactions. BBD believes that issuers should be allowed the option to disclose the fees in such a manner. In any event, and most importantly, it ought to be sufficient to list fees and other transactions once – there is no need to list them multiple times. Any requirements that any transaction fees be listed more than once would be redundant and take up too much space, constitute information overload, and potentially create customer confusion.

BBD believes that the late payment disclosures suggested by the Board are appropriate, and that they should be provided in a clear and conspicuous manner. However, we question whether it is necessary to provide the augmented late payment disclosures on the front of the first page of the periodic statement, when they could be disclosed effectively, clearly, and conspicuously elsewhere. The Board implicitly recognizes that it is possible to provide equally (if not more) important disclosures than the late payment disclosures effectively even if such disclosures are not included on the front of the first page of the statement, such as those pertaining to the transaction activity during the billing cycle. We also note that the periodic statement is not the only (nor even the first) place the consumer will learn about late payment fees and penalty APR that could result from late payments. These items must be disclosed as part of the Schumer box and the account-opening disclosure table, further mitigating the need to call special attention to these disclosures as opposed to other terms and conditions disclosed as part of the periodic statement.

Periodic Rates

BBD supports the Board's proposal to eliminate the requirement to disclose periodic rates on periodic statements. Consumers do not refer to periodic rates in making decisions about the use of their accounts. They simply look to the annual percentage rate. Disclosing periodic rates only serves to confuse consumers and distract from more important information. This is especially true given the proposed increased disclosure requirements for periodic statements.

Balance Computation Method

Similarly, and for the same reasons, BBD appreciates the fact that the Board is not seeking to require an explanation of the balance computation method on the periodic statement; however, we respectfully submit that the balance computation method need not be identified as well. Consumers do not refer to the balance computation method when they review their periodic statements. If they are really interested, which would be incredibly rare, they could always call the customer service number which should be included on the periodic statement or they could refer to the account opening disclosure statement.

Total Interest Charge/Total Fees

BBD supports the disclosure in dollars of "total interest charge" and for "total fees" for the billing statement period. That provides meaningful information that will help consumers understand the total dollar cost of credit. However, requiring the "total interest charge" and "total fees" for the calendar year to be disclosed each billing cycle seems like overkill and would be incredibly burdensome. If required, it makes sense to disclose the "total interest charge" and the "total fees"

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for the calendar year at the end of the calendar year and not 12 times a year. That way consumers would get the total annual amount of the cost of credit – yet reduce the burden on issuers. Also, credit card issuers should be allowed the option of differentiating fee totals by type of fee.

Effective APR

The Board requests comments as to whether the historical or effective APR should be disclosed in the periodic statement. The Board has proposed two alternative approaches: 1) eliminate the historical or effective APR, 2) disclose a “fee inclusive APR” and has asked commentators to opine on which they prefer. The answer to this is simple – eliminate.

The effective APR is useless. It does not accurately predict the cost of credit. Consumers do not understand it. It can not be used for comparison shopping. The effective APR for any given month can not be reliably compared to another month’s effective APR nor even compared accurately to another creditor’s effective APR for the same month. It tends to exaggerate the cost of credit. Proponents argue that this is salutary in that the “shock” value from the artificially inflated APR discourages the use of credit. This argument represents social engineering and in effect acknowledges that the effective APR does not promote an understanding of the actual or true cost of credit. The danger also exists that consumers, by trying to compare one issuer’s effective APR to another issuer’s effective APR, could switch accounts or balances to another account that reports a lower historical APR in a given month even though that account is actually more expensive. The effective APR confuses consumers and increases the number of calls into customer service. The effective APR can not be used to predict the future cost of transactions on the same account. Finally, it increases creditors’ compliance costs. It is useless and meaningless information and should be scrapped.

Minimum Payments

BBD submits that disclosures about minimum payment repayment periods would only benefit those consumers who regularly or semi regularly make minimum payments. Using the Board’s own litmus test in determining whether the proposed TILA disclosures provide a meaningful benefit to consumers in the form of useful information or protection – it is clear that disclosure of the minimum payment repayment periods would not be meaningful to consumers 1) who pay their bills in full every month or most every month, or 2) who pay significantly more than the minimum amount due each month or most months. Accordingly, BBD submits that since disclosures of the minimum payment repayment period or warnings about making minimum payments would be meaningless to such individuals that the proposed minimum payment disclosure only be required to be provided to those individuals who pay the minimum amount due or less three months or more in a row.

In any event, when card issuers are required to make minimum payment disclosures we urge that such disclosures be required to be clear and conspicuous – not more. We do not believe it is

necessary for minimum payment disclosures to be located in the proximity of other payment information. Given the limited utility of such information, it is surprising that the Board proposes to require that such disclosure be more prominent than other disclosures more broadly applicable to the “average” consumer such as transaction activity.

Timeframe for Mailing Periodic Statements

The Board also requests comments as to whether it should make a recommendation to Congress regarding the timeframe for sending out periodic statements. Under section 163(a) of the Truth in Lending Act (“TILA”), if a card issuer provides a grace period, the issuer must send the periodic statement the consumer not less than 14 days before the expiration of the grace period. The Board requests comment on whether it should recommend to Congress that the 14-day period be increased and, if so, what time period the Board should recommend.

BBD does not believe it is necessary or appropriate to increase the 14-day period set forth in section 163(a) of TILA. BBD is unaware of any changes in technology or mail delivery since 1974—the year Section 163(a) was enacted—that would necessitate a longer period of time than the 14 day period specified in Section 163(a). If anything, the opposite is true. Consumers today have payment and billing options that provide for the more rapid delivery of periodic statements (*e.g.*, through e-mail or through the issuer’s web site) and payments (*e.g.*, through electronic bill payment or payment through the issuer’s web site) than existed in 1974. Consumers can also request that issuers change their billing cycles so that the periodic statements at the time that works best for the consumer. Requiring a longer period than 14 days could create operational and other issues.

Miscellaneous

Billing Error Revisions

BBD urges the Board to reconsider its proposed clarification that Reg Z’s billing error provisions apply when the consumer uses a third party intermediary, such as PayPal, to purchase goods or services that are not accepted by or delivered to the consumer. In such instances, where the consumer is not using a credit card to make a purchase, the credit card account is simply an intermediary in processing the transaction. There is no privity between the card issuer and the merchant and since consumer is not using a credit card to make the purchase, we do not believe that consumer expects to receive TILA protections.

Implementation Period

The changes proposed by the Board are overarching. They are going to involve a total redesign of solicitations, account opening disclosures and periodic statements. A lot of the proposed changes are format driven – such as tabular disclosures, the location of disclosures on the various documents and even the size of the paper used. Creditors will need not only to revise their disclosures but redesign them as well. This will require technological changes in how certain

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documents are printed. In addition, the amount of changes to be incorporated into all disclosure documents will be voluminous. Substantial time will be necessary just to review, assess, understand and plan the implementation of the new regulations. Issuers will have to implement and test the implementation plans to make sure they work right. This will be a substantial undertaking. It will take issuers at least two years to assess redesign implement and test these disclosures; therefore BBD urges that it and all other creditors be accorded at least two years to implement the new disclosure requisites from the date they are officially publicized in the Federal Register.

Safe Harbor

BBD urges that a safe harbor be accorded creditors who comply with the new Reg Z. The new regulations are going to require an overarching redesign of all credit card disclosures by issuers. Creditors over the years have adopted disclosure schemes in part to avoid liability. The new disclosure scheme will differ in material ways from previous disclosure schemes. One obvious resulting concern is litigation. Will creditors be subject to potential litigation simply because they adopted the Board's new requirements? It is inevitable that certain individuals will try to convince courts that by complying with the new Regulation Z, that creditors have failed to disclose other material terms or that by complying with Reg Z or have failed to disclose certain material terms in a clear and conspicuous manner. It is imperative therefore that the Board provide that if creditors comply with the Board's new Reg Z, they will be afforded a safe harbor from litigation.

Again, BBD appreciates the opportunity to provide its comments on the Proposal. If you have any questions, please do not hesitate to contact me at 302-255-8700 or at cwalker@barclaycardus.com. Thank you.

Sincerely,

Clinton W. Walker
CWW/cm