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Delivered by E-Mail

July 18, 2008

Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

**Re: Docket No. R-1286 – Proposed Rulemaking on the Open-End Credit Provisions
of Regulation Z**

Dear Ms. Johnson:

This letter is submitted by American Express Travel Related Services Company, Inc., on behalf of itself and its card-issuing affiliates (collectively “American Express”) in response to the Federal Reserve Board’s (“Board”) proposed amendments to the open-end credit provisions of Regulation Z, 12 C.F.R. § 226, as published in the Federal Register on May 19, 2008. American Express appreciates the opportunity to comment on these proposed amendments, just as it appreciates the Board’s continued efforts to improve Regulation Z.

I. Introduction

American Express continues to support the overall direction of the Board’s work on Regulation Z’s open-end credit provisions. In general, we believe it will improve the transparency of Regulation Z’s open-end credit disclosures and make them more useful to consumers.

In our view, the current proposal makes a series of helpful modifications to the Board’s comprehensive June 2007 proposal. We particularly appreciate and strongly support the Board’s continued use of consumer testing to refine that earlier proposal. As we stated in our October 12, 2007 comment letter in this proceeding, we believe that disclosure policy for consumer credit works best when it is informed by empirically tested consumer reactions and

needs. The Board's further simplification of the Schumer box in the current proposal is an example of the benefits of such testing.

American Express is, however, concerned about several aspects of the Board's current proposal. Specifically:

- The proposed 45-day penalty APR notice introduced in June 2007 would interfere with and constrain prudent risk management practices by credit card issuers. This constraint is magnified by the proposed Regulation AA restriction on increasing interest rates on existing balances. The penalty APR notice should be revised to permit the continued use of prudent risk management practices based upon "on-account" behaviors. Specifically, additional notice should not be required for APR increases triggered by actions that are limited to the specific credit card account, that are clearly disclosed initially upon account opening and on each billing statement, and that are within the consumer's knowledge and control.
- The current proposal's payment crediting requirements, which we generally support, need to be sharpened to clarify that credit card issuers who receive and process mail on Sundays and holidays can rely on payment due dates that fall on such days.
- The current proposal's "promotional rate" definition needs to be sharpened to ensure that it is not construed to mean other types of rates as well.
- The Board's June 2007 Regulation Z proposal, as supplemented and modified by the current proposal, poses a significant implementation challenge to credit card issuers. This challenge is now compounded by the task of simultaneously implementing the results of the pending Regulation AA proposal. Accordingly, we urge the Board to provide an effective date for its final Regulation Z rule that coincides with the effective date for Regulation AA and is at least 18 months from the date the rule is promulgated.

We look forward to working with the Board on these and other aspects of both its current and June 2007 Regulation Z proposals to achieve our mutual objectives of improved disclosures without unintended harmful consequences for consumers.

II. Discussion

Set forth below are American Express' comments on specific aspects of the Board's current proposal. The discussion follows the order in which the various issues arise under Regulation Z as it would be revised by the Board's proposal.

§ 226.9(g) Penalty APR Notice

American Express continues to believe that the 45-day penalty APR notice as presently structured does not align well with the Board's stated objectives, and may have the unintended consequences of increasing the cost and curtailing the availability of consumer credit.

One of the Board's objectives for the notice is to prevent "costly surprise" to consumers by increasing consumer awareness of behaviors and other circumstances that can trigger penalty pricing. The notice, however, is generated only *after* the consumer triggers a penalty APR. Therefore, it does little to increase consumer awareness of the triggering factors before a penalty rate is imposed, and puts consumers in no better position than before to avoid penalty APRs.

Another of the Board's objectives is to help consumers mitigate the consequences of their defaults by providing them time to pay down or transfer an account balance. The number of consumers in a position to do this during the 45-day notice period will be very small because of the propensity of defaulting consumers to have stretched financial resources and blemished credit records. That number will be made even smaller by the reductions in credit lines and tightening of underwriting criteria that issuers have already started due to market reaction to the Board's pending Regulation AA proposal, the deepening credit crisis, and other factors.

These questionable benefits to defaulting consumers come at the expense of the overwhelming majority of consumers who manage their credit card accounts responsibly. In response to the constraints and restrictions on risk management practices (imposed by the new requirements of Regulation Z and Regulation AA), credit card issuers will be forced to raise APRs on all accounts and further tighten underwriting criteria. The end result will be a drastic cost increase for the general consumer population, the vast majority of who pay on time, and a reduction in credit availability, even for creditworthy consumers.

These adverse consequences can be avoided by some minor adjustments to the penalty APR notice. Our proposed adjustments will achieve the Board's objective of providing consumers with actionable information to avoid the "costly surprise" of penalty APRs, while

also preserving prudent and legitimate risk management practices of card issuers. As indicated, the preservation of these practices will benefit the overwhelming majority of consumers.

To achieve these ends, we recommend:

- The 45-day penalty APR notice should remain as proposed for all “off-account” events that trigger penalty APRs (factors not directly related to a consumer’s performance on the particular account).
- The 45-day penalty APR notice should not apply to “on-account” default triggers that are limited to behaviors on the specific credit card account, that are clearly disclosed initially upon account opening and on each periodic statement, and that are within the consumer’s knowledge and control. These would include:
 - 1) A late payment of 30 days or more;
 - 2) Two late payments (irrespective of the number of days past due) in any 12 month period; or
 - 3) A dishonored payment.
- A penalty APR triggered as a result of one of the specified “on-account” default triggers may be imposed without further notice at the beginning of the billing period immediately following the triggering event. In other words, the penalty APR may be imposed at the beginning of the billing period immediately following the billing period during which a late payment becomes 30 days past due, a second payment is late within a 12 month period, or a payment is dishonored.

We urge the Board to adopt this recommendation. It is consistent with the recommendation we made in our October 12, 2007 comment letter as well as public testimony we have given on related legislation pending in Congress¹. Under our proposal, each monthly billing statement would provide consumers with important information about the status of their account and precisely what future behaviors would result in a penalty APR. Empirical evidence from the Board’s consumer research indicates that consumers read their monthly

¹ See testimony of Larry Sharnak, Executive Vice President and General Manager, Consumer Cards, American Express Company before the House Financial Institutions and Consumer Credit Subcommittee of the House Financial Services Committee, April 17, 2007.
(http://www.house.gov/apps/list/hearing/financialsvcs_dem/sharnak041708.pdf)

billing statement to gain important information about their account. Including a notice about the specific “on-account” behaviors that could lead to a penalty rate *before* it is imposed will help consumers better manage their accounts on an ongoing basis.

Our proposal would fulfill the Board’s goals in the area of penalty APR pricing without the undesirable side effects. First, it would continue to protect consumers against “off-account” and other costly and surprising penalty APR triggers, while encouraging the use of a limited number of sharply defined “on-account” triggers. Second, it would provide consumers with actionable information to avoid penalty APRs resulting from the specified “on-account” triggers. Third, it would preserve a prudent and legitimate risk management tool for credit card issuers by allowing timely actions following defaults that, in our experience, are the ones that point most strongly to increasing risk in an account.

We also believe our recommendation would mitigate the more aggravated pricing disruption and associated problems that would arise from the 45-day penalty APR notice combined with the proposed Regulation AA restriction on increasing interest rates on existing balances. The Board’s commentary in **§ 226.9(g)-1** shows the remarkable complexity that would be created by the intersection of the two requirements.² Clearly, Regulation Z **§ 226.9(g)** and Regulation AA **§ 227.24(b)(3)** must work together. The best way to accomplish this is to remove the additional notice requirement under Regulation Z **§ 226.9(g)** for those behaviors that are permitted to trigger APR increases on outstanding balances under Regulation AA **§ 227.24(b)(3)**. As proposed, there is considerable tension between these requirements and the Board’s overarching goal of increasing clarity and transparency in disclosures. This tension is demonstrated by proposed **Model Form G-21**³. Our recommendation resolves this problem by preserving the notice requirement where the APR increase may pose a costly surprise to consumers. But where the additional notice is redundant, complex, and non-actionable, it’s eliminated in favor of providing consumers with actionable and timely information they can use to avoid triggering an APR increase.

²One result of this complexity is the apparently unintended inconsistency between **§ 226.9(g)-1(ii)(D)** and the surrounding commentary. **§ 226.9(g)-1(ii)(D)** requires a payment to be 30 days past due before the 45-day penalty APR notice can be issued, while **§§ 226.9(g)-1(ii)(B), (C), and (F)** and **Model Form G-21** permit the notice to be issued as soon as the payment is past due. **§ 226.9(g)-1(ii)(D)** should be corrected to conform to **§§ 226.9(g)-1(ii)(B), (C), and (F)**.

³ Model Form G-21 demonstrates the complexity of the combined operation of Regulation AA **§ 227.24(b)(3)** and Regulation Z **§ 226.9(g)**. It is unlikely that a typical consumer would find the proposed notice readily understandable.

§ 226.10(d) Crediting of payments when creditor does not receive or accept payments on due date

Proposed § 226.10(d) prohibits creditors from enforcing payment due dates that fall on a day the creditor does not “receive or accept payments by mail.” We believe the intent of this provision is to prevent payment due dates from falling on days on which the issuer does not receive *and process* payments. Mere receipt or acceptance, absent actual processing, could create the appearance of prompt crediting of payments where there is none. And an issuer could be in technical compliance with the proposal by simply accepting payments but failing to process or credit them over a long holiday weekend. To correct this, we recommend replacing the phrase “receive or accept” with “receive and process” in § 226.10(d).

Another concern with § 226.10(d) is the inclusion of the phrase “for example, if the U.S. Postal Service does not deliver mail on that date.” At American Express, we receive and process payments, and credit payments to accounts, every day, including Saturdays, Sundays, and holidays - 365 days a year. This holds true whether the payment is sent by mail or electronically. An overly expansive reading of the quoted text could extend the prohibition to Sundays, holidays, or other days that mail is not delivered to the general public, even if the issuer receives or picks up mail by special arrangement on that day. We do not believe that issuers should be precluded from enforcing a payment due date on a day that it receives or picks up mail from the U.S. Postal Service by special arrangement (presuming it also processes payments on that date). Nor do we believe this to be the intent of § 226.10(d). To avoid any ambiguity or confusion on this point, we recommend that the clause in quotes above be deleted from the proposed provision.

§ 226.16(e)(2)(i) Definition of Promotional rate

The definition of “Promotional rate” in § 226.16(e)(2)(i) is problematic as it relates to the definition of the same term in proposed Regulation AA. Unlike the Regulation Z proposal, the definition in Regulation AA is not limited to “advertisements” and has operational implications in areas such as payment allocation. Differences in the definition as it appears in the two regulations could serve as a source of confusion and needless dispute. The ambiguities we describe below need to be removed from the definition in both places.

The ambiguities in the proposed definition stem from its vague comparison of a “low” annual percentage rate to one that will be “in effect” at the end of a specified period or for a particular type of transaction. This language could be subject to an expansive reading that includes “standard” rates to the extent that the rate “in effect” for purposes of comparison is a

penalty rate, discounted rates that may be given to a consumer as part of a work-out arrangement, “grandfathered” rates on existing balances that may be required under Regulation AA, and other rates that are not promotional rates in the common sense meaning of the term.

To remedy this problem, the definition in **§ 226.16(e)(2)(i)** should be modified by the addition of the bold and underscored text shown below:

(i) Promotional rate means:

(A) Any annual percentage rate applicable to one or more balances or transactions on a consumer credit card account for a specified period of time that is lower than a **standard, non-penalty** annual percentage rate that will be in effect **for such balances or transactions** at the end of that period; or

(B) Any annual percentage rate applicable to one or more transactions on a consumer credit card account that is lower than a **standard, non-penalty** annual percentage rate that applies to other transactions of the same type **on that account**.

Additionally, commentary language should be inserted to expressly exclude from the “promotional rate” definition any special rates that apply to an account for other than marketing or promotional purposes. These should include reduced rates given to a consumer as part of a work-out arrangement, any “grandfathered” rates on existing balances that may be required under Regulation AA, and other special rates applied to an account for collections, legal, or operational reasons.

Effective date

American Express urges the Board to adopt an effective date for its final Regulation Z rule that is at least 18 months from the date of promulgation. Whatever its final form, the Regulation Z rule will require costly and time consuming systems development and operational changes by credit card issuers. The challenge of implementing these changes, which is significant in and of itself, will be compounded by the simultaneous challenge of implementing changes that arise from the pending Regulation AA proposal. We believe that credit card issuers will need at least 18 months to plan, design, program, thoroughly test, and implement the required changes in an orderly manner.

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Once again, American Express appreciates the opportunity to comment on this proposal. We would also welcome the opportunity to discuss our comments further with the Board's staff. Toward that end, any staff member should feel free to call me at any time at 212-640-5418.

Sincerely,

/s/

Thomas J. Ryan
Senior Counsel