



July 18, 2008

Ms. 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

**Via Electronic Delivery**

Dear Ms. Johnson:

This comment letter is submitted by the Consumer Bankers Association (“CBA”) in response to the Proposed Rule (“Proposal”) to amend Regulation Z published by the Board of Governors of the Federal Reserve System (“Board”) in the *Federal Register* on May 19, 2008. CBA is the recognized voice on retail banking issues in the nation’s capital. CBA’s member institutions are the leaders in consumer, auto, home equity and education finance, electronic retail delivery systems, privacy, fair lending, bank sales of investment products, small business services and community development. CBA was founded in 1919 to provide a progressive voice in the retail banking industry. CBA represents over 750 federally insured financial institutions that collectively hold more than 70% of all consumer credit held by federally insured depository institutions in the United States. CBA appreciates the opportunity to share its views on the Proposal with the Board.

**In General**

This Proposal addresses issues relating to the Board’s Regulation AA rulemaking as well as issues stemming from the current Regulation Z revision process. CBA will submit its significant concerns to the Board as they relate to the Regulation AA rulemaking in the near future. Furthermore, the Proposal does not provide great substance with respect to the Regulation Z revisions that would be necessary if the Regulation AA proposal is adopted. Rather, the Board has provided several placeholders that will require conforming changes. Our comment letter, with one exception, is therefore limited to those portions of the Proposal that are not directly related to the Regulation AA rulemaking. With this in mind, we generally support many of the Proposal’s revisions, and we commend the Board for its continued diligence in revising and updating Regulation Z.

## **Electronic Disclosures**

The Proposal provides several clarifications that certain disclosures that are not required to be in writing may be provided electronically without regard for the notice and consent provisions of the E-SIGN Act if the consumer requests the product electronically, such as at a credit card issuer's web site. For example, the disclosures required under proposed § 226.6(b)(1) that can be provided at any time before the consumer agrees to pay or becomes obligated to pay for the charge may be provided electronically without notice or consent under the E-SIGN Act if the consumer requests the service electronically.

CBA strongly supports the Board's proposed clarification as the correct interpretation of the application of the E-SIGN Act to these disclosures. Because the disclosures are not required to be provided in writing, the E-SIGN Act's notice and consent provisions are inapplicable by the plain language of the E-SIGN Act itself. We believe the Board's proposed clarification is appropriate in the context of products requested electronically, and we urge the Board to adopt this clarification in its final rule.

## **Use of the Term "Grace Period"**

The Proposal would delete the requirement to use the specific term "grace period" in the Schumer box and any other tabular disclosure, such as the account-opening disclosure (as proposed in a prior Regulation Z rulemaking ["Prior Proposal"]). Instead of using the term "grace period" in the Schumer box to reference the grace period on a credit card account, the Board proposes to require the following language: "Your due date is [at least] \_\_ days after the close of each billing cycle. We will not charge you interest on purchases if you pay your entire balance (excluding promotional balances) by the due date each month."<sup>1</sup> For those accounts which do not have a grace period, the Board proposes the following language: "We will begin charging interest on purchases on the transaction date." For other disclosures, the Board would require language focused on the terms "how to avoid paying interest on purchases" or, if there is no grace period, "paying interest".

We ask the Board to reconsider this proposed requirement. As a general matter, we believe that consumers have generally understood the grace period disclosures required by Regulation Z. Although this assertion may not necessarily be proven through consumer testing, it is absolutely demonstrated through consumer behavior. Cardholders certainly understand that if they pay their balance in full by the end of the grace period, they will receive an interest free loan. They also understand the duration of the grace period as demonstrated by their payment behavior.

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<sup>1</sup> This proposed language assumes the Board's proposed requirements in Regulation AA relating to promotional balances is adopted. As noted above, CBA reserves its comments on issues relating to Regulation AA for separate comment.

Regardless of whether the term “grace period” should be revised on disclosures required by Regulation Z, CBA notes that the Schumer box disclosure provided in the Proposal will likely need further revision and that such revision may make the disclosure less preferable than the current reference to a grace period. Specifically, under the Regulation AA proposal, the Board contemplates that there could be at least two different due dates—one for purposes of the grace period expiration and the other for late payment fees and all other purposes. The proposed language does not appear to contemplate this, as it does not specify which “due date” is important to the consumer for purposes of retaining the grace period on the account. We believe that revisions to this disclosure to make it more appropriate would also make it less useful in the Schumer box than the current simple reference to a grace period. We also note that there may be circumstances, either now or in the future, in which the grace period could be conditioned on more than payment of a balance in full. The Board should therefore permit the necessary flexibility to card issuers to allow for a more accurate description of the grace period as may be appropriate or necessary.

### **Minimum Finance Charges**

The Proposal would allow a card issuer to omit the “minimum finance charge” disclosure from the Schumer box and account-opening table if such charge is \$1.00 or less (adjusted for inflation). A card issuer may voluntarily choose to provide the minimum finance charge disclosure when the charge is \$1.00 or less, and the Board states that it expects card issuers to provide the minimum payment disclosure in the account-opening table, even if not specifically required, because the charge must be disclosed before the consumer becomes obligated for it.

CBA commends the Board for proposing to allow issuers to delete this disclosure from the Schumer box if the minimum finance charge is \$1.00 or less.<sup>2</sup> We do not believe that this disclosure is particularly helpful to consumers when choosing a credit card product, and its placement in the Schumer box only detracts from other important information in the Schumer box. CBA therefore asks the Board to amend Regulation Z as it relates to the minimum finance charge disclosure as proposed.

### **Foreign Transaction Fees**

In the Prior Proposal, the Board would have prohibited the disclosure of foreign transaction fees in the Schumer box, but require them in the account-opening table. The Proposal, however, would require a card issuer to disclose foreign transaction fees in the Schumer box as well as in the account-opening table. The Board states that the revision to the Prior Proposal stems from the Board’s desire for uniformity among disclosures. Specifically, the Board appears to be concerned that an issuer that provides its account-opening table instead of

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<sup>2</sup> CBA also appreciates the proposed flexibility for issuers who do not want to disclose the minimum finance charge of \$1.00 or less in the account-opening table. For the reasons cited by the Board, however, CBA agrees that many if not most issuers will likely retain the disclosure in the account-opening table.

the Schumer box as part of an application or solicitation would disclose the foreign transaction fee, whereas an issuer that simply provides the Schumer box would not provide such a disclosure. The Board believes that consumers comparing the two disclosures may believe that the second issuer, in this example, does not charge a foreign transaction fee and apply for the second issuer's card based on such belief.

CBA does not believe that an issuer should be required to provide the foreign transaction fee in the Schumer box. Although the Board believes that some consumers may be confused if some disclosures have a foreign transaction fee while others do not, we do not believe that consumers choose a credit card based on the foreign transaction fee.<sup>3</sup> The foreign transaction fee disclosure is one more piece of information that adds to "information overload" in the Schumer box. Therefore, the disclosure should not be required in the Schumer box.

### **Cut-Off Times for Payments by Mail**

The Proposal would provide that a card issuer's cut-off hour for receiving payments by mail can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. In the Supplementary Information, the Board describes the importance of providing consumers a reasonable opportunity to make conforming payments. The Board then states that the current practices used by card issuers in establishing cut-off times are—in fact—unreasonable. We strongly disagree. This statement is simply not accurate given how industry has responded to litigation and regulatory guidance on this topic. Therefore, CBA strongly asks the Board to delete this portion of the Proposal from the final rule, especially any suggestion that current cut-off times are *per se* unreasonable.

Because the current practices involving cut-off times are reasonable, CBA does not believe it is necessary to mandate a 5 p.m. cut-off time for mailed payments. Indeed, we understand that card issuers receive the vast majority of mail before noon, which means that a late afternoon cut-off time will provide few benefits to cardholders. Furthermore, many card issuers provide a "silent grace period" on late payments, meaning that they will not treat a payment as late so long as it is received within a certain time period after the stated due date, *e.g.*, 24 hours. Therefore, it would appear that few cardholders would benefit from this portion of the Proposal. On the other hand, it is critical for the Board to understand the complications and costs the Board would create by requiring a 5 p.m. cut-off time as it relates to mail. Many card issuers cannot open, process, and credit a payment on the day it is received unless it is received by a time certain. For many card issuers, this time certain appears to be in the early or mid-afternoon. The Proposal would require these issuers to modify *significantly* their current payment processing mechanisms in order to credit a payment received at 4:59 p.m. as being received on that day.

The Board does not provide any justification in terms of net benefits as to why 5 p.m. is a preferable cut-off time compared to an earlier cut-off time. CBA notes, however, that in other consumer protection regulations, the Board has avoided dictating cut-off hours for purposes of

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<sup>3</sup> To our knowledge, the Board does not have consumer testing results suggesting otherwise.

bank operations. For example, under Regulation CC, the crediting of certain deposits depends on the “banking day” established by the bank—the Board does not dictate the deposit cut-off times, however.

CBA is also concerned about the unintended consequences of the Board’s Proposal. For example, to recover the costs associated with the extension of the cut-off time, card issuers may decide to eliminate “silent grace periods” which could result in more consumers paying late fees or suffering other adverse consequences—not less. Issuers could also pass the increased costs onto cardholders in other forms, meaning that most cardholders would pay increased amounts to offset the benefit provided to a very small minority of cardholders whose payments are late based on the existing reasonable cut-off times.

### **Disclosure Requirements for Rate Increases**

The Proposal would provide specific requirements regarding the disclosure requirements for rate increases in § 226.9(g)(3). We ask the Board to revisit the interplay between the 45-day notice for rate increases generally and the proposed 30-day delinquency requirement in Regulation AA before a rate increase can be applied to an existing balance. We believe that once the consumer has received the 45-day notice regarding penalty pricing, and the notice states that if the consumer becomes 30 days delinquent on the account, that the card issuer should be permitted to increase the APR on the existing account anytime thereafter once the consumer becomes 30 days delinquent. The Board’s primary objective regarding the 45-day notice is that the consumer should have the opportunity to shop for a different credit card if he is displeased with the new APR. If the change we propose is adopted, the consumer will still have this time to shop, but the card issuer will be afforded greater flexibility to increase the APR on an existing balance to manage credit risk instead of having to restart the entire notification “clock” all over again. At the very least, a card issuer should not need to start the notification clock again if the issuer has provided the 45-day notice within the past year.

### **Card Substitution**

The Proposal includes a proposed revision to the Official Staff Commentary to Regulation Z stating that an issuer that proposes to change the merchant base that will honor an accepted credit card may not properly substitute the new card for the accepted card without a specific request or application if the account has been inactive for a 24-month period preceding the issuance of a substitute card. According to the Board, a change to the merchant base to enable the cardholder to use the card at an affiliate of the merchant is not affected by the Proposal.

Although the card substitution provides benefits for cardholders, the Board notes that consumers are concerned about identity theft and that consumers can be surprised by the substitution of an accepted card that accesses an otherwise inactive account. CBA understands that consumers who receive a card substitution after a certain period of inactivity may not expect

the proposed substitution. However, CBA believes that this issue can be addressed through certain disclosures without eliminating an issuer's ability to substitute an accepted card in certain circumstances. Indeed, a card substitution expanding the merchant base for an accepted card can be beneficial for cardholders by expanding the utility of the card. The substituted may also have *additional* protections against account fraud than the accepted card, such as if an accepted private label card is substituted for a general purpose card.

To the extent any revision of Regulation Z or its Official Staff Commentary is necessary, we believe the Board could suggest that a card issuer provide certain disclosures when making a card substitution in the circumstances described in the Proposal. For example, the substituted card could be provided with disclosures informing the cardholder of the card being substituted, the fact that the liability for unauthorized use on the account has not changed (or has been improved), and a toll-free number the cardholder may call if the cardholder has any questions about the substitution. We believe these disclosures would address the concerns expressed by the Board without unnecessarily limiting the ability of a card issuer to provide its cardholders with improved or updated credit cards.

#### **“Consumer Credit Card Account”**

The Board uses the term “consumer credit card account” in § 226.16(e) and (h). Although the Board would define these terms in Regulation AA, they are not defined in Regulation Z. We ask the Board to provide the same definition of “consumer credit card account” in Regulation Z as it proposes in Regulation AA.

#### **Promotional and Introductory Rate Disclosures**

The Board proposes to extend the introductory rate disclosure requirements to other types of promotional rates. CBA believes this may be appropriate, but we ask the Board to clarify a few points. First, an introductory rate should be one that is available exclusively to new customers. For example, there may be cases where a rate that is offered could apply to new customers and existing customers. In this circumstance, it may not be appropriate to call the rate an “introductory” rate because it would imply that it is not available to existing customers. Yet, a reference to a “promotional” rate would still have meaning to potential new customers. Second, it does not appear that a “promotional” rate includes a “life of balance” rate and we ask for confirmation of our interpretation. Finally, we also ask the Board to clarify that deferred interest programs are excluded from the definition of a promotional rate.

## **Deferred Interest Programs**

The Proposal includes significant new disclosure requirements in connection with advertisements of deferred interest programs. These requirements relate to the deferred interest expiration period and the fact that interest may accrue on an interest deferred balance. Specifically, the Proposal would require a card issuer to disclose the deferred interest period, or the date by which the consumer must pay the balance in full to avoid finance charges on such balance, clearly and conspicuously in immediate proximity to each statement of “no interest” or similar term. The card issuer must also provide a statement in a prominent location closely proximate to the first statement of “no interest” (or similar term) that: (a) if the balance is not paid within the deferred interest period, interest will be charged from the date the consumer became obligated for the balance; (b) interest will be charged from the date the consumer becomes obligated for the balance if the account is otherwise in default;<sup>4</sup> and (c) if the minimum monthly payments do not fully amortize the balance during the deferred interest period, making only the minimum monthly payments will not pay off the balance in time to avoid interest charges. These requirements would apply to all written and electronic advertisements, including accompanying promotional materials for direct mail applications or solicitations and accompanying promotional materials for publicly available applications or solicitations. The second, lengthier disclosure is not required on envelopes or other enclosures.

CBA does not believe the Board should amend Regulation Z to require such cumbersome disclosures for deferred interest offers. For example, it would appear that a card issuer that simply makes a brief reference to a deferred interest program in a store display must also make a much lengthier disclosure about the deferred interest period. We do not believe that a disclosure, the length of which can swallow the advertisement itself, is necessary when the advertisement in question can simply include an asterisk indicating where the consumer can obtain additional information about the interest deferred program (such as from a store clerk or from a disclosure elsewhere in the solicitation).

## **Providing Intro/Promo/Deferred Interest Disclosures**

The Board asks for comment as to whether it should require the § 226.16(e) and (h) disclosures in connection with radio, television, and telephone advertisements. CBA does not believe that such disclosures are appropriate in these types of advertisements. Any such disclosure would be relatively lengthy (compared to the content of the advertisement itself) and could result in information overload. To the extent the Board believes a disclosure of some type is necessary for these advertisements, CBA suggests a reference to a web site or other location would be appropriate.

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<sup>4</sup> The second portion of the disclosure appears to be required even if it is not true. We ask the Board to clarify that the reference to account default is necessary only if it will trigger the elimination of the deferred interest offer.

## **Effective Date**

The number of new regulatory burdens and compliance obligations that will be imposed on banks over the next several months will be staggering. We anticipate a significant restructuring of credit card programs, new requirements on overdraft policies, the finalization of an Internet gambling rule, and other new requirements in addition to the complete overhaul of Regulation Z (of which this Proposal is only a small part). Banks only have so many compliance and programming resources. CBA strongly urges the Board to consider the cumulative regulatory burdens that will be imposed on banks when determining effective dates for the final revisions to Regulation Z (and other rules). We believe it would be appropriate to provide banks with a mandatory compliance date of two years after the revisions to Regulation Z are published in the *Federal Register*.

## **Conclusion**

As we note above, CBA will provide detailed comments under separate cover expressing significant concerns relating to the substance of the Regulation AA proposal—much of which, if implemented, will require amendments to Regulation Z. Having said that, CBA applauds the Board's efforts to revise Regulation Z through a thorough and diligent regulatory process, of which this Proposal is a relatively small part. We support many of the provisions included in the Proposal, including several of the more technical proposed revisions. We appreciate the opportunity to offer our comments on those and other provisions, and we look forward to continuing to work with the Board in its efforts.

If you have any questions or would like additional information please contact Marcia Sullivan (703) 276-3873 / [msullivan@cbnet.org](mailto:msullivan@cbnet.org); or Steve Zeisel (703) 276-3871 / [szeisel@cbnet.org](mailto:szeisel@cbnet.org).

Sincerely,



Steven I. Zeisel  
Vice President & Senior Counsel