



USAA FEDERAL SAVINGS BANK

November 20, 2009

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-1370

Dear Ms. Johnson:

USAA Federal Savings Bank ("USAA") is submitting this comment letter in response to the proposed rule amending Regulation Z and the Official Staff Commentary ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board") to implement the Credit CARD Act. While USAA has many concerns with the Proposed Rule, we are mindful of the short period in which the Board must review comments and promulgate a final rule. Therefore we limited our comments to the most troubling issues in the Proposed Rule.

1. Increases in APRs upon the Expiration of a Specified Period.

a. Written Disclosure Requirement.

Under the CARD Act, a creditor may raise an APR at the expiration of a specified period provided that prior to the commencement of that period the creditor disclosed to the consumer the length of the period and the annual percentage rate that would apply after expiration of the period. However, unlike the CARD Act, the Proposed Rule would require creditor's to make the disclosures in writing. USAA opposes the writing requirement when a promotional APR is offered by telephone for the following reasons:

- i. Consumers offered a promotional rate by phone will be forced to wait until written disclosures can be disclosed in writing. This delay could cause many consumers to pay increased interest.
- ii. Mail and other factors could cause unforeseen delays resulting in the promotional period beginning before the creditor discloses the required terms. Because creditors will not know when consumers receive written disclosures, there is no way to know when a promotional period begins.

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- iii. The penalty for a creditor that begins a promotional period before disclosing the terms is significant. Not only would all such creditors be required to send a 45-day change in terms notice before they could increase a promo APR to the regular APR, *credit card issuers could never apply the increase to the existing promotional rate balance*. Such a result is not justified and could result in creditors curtailing the promotional rate offers made in response to consumers' telephone requests.

USAA supports the concept of providing promotional rate terms to consumers. However, when the offer to provide a temporarily reduced rate is discussed in a phone conversation, creditors should be permitted to provide the required disclosures verbally and follow up with written disclosures within a reasonable time thereafter. This is important especially when a creditor temporarily is lowering an APR on an existing balance.

b. Delayed Implementation of Increase.

When a card issuer is permitted to apply an increased APR due to the expiration of a promotional period that is not the first day of a billing cycle, proposed Comment 55(b)-2 would allow a card issuer to delay application of the increased APR until the first day of the following billing cycle without relinquishing the ability to apply that rate. USAA is concerned, however, that this Comment could be interpreted to mean that a creditor relinquishes the ability to increase the APR to the go-to rate if it delays increasing the APR beyond the first day of the following billing cycle. We believe such a rule is unnecessary and will harm consumers by forcing card issuers to increase rates earlier.

USAA routinely offers cardholders the benefit of extended promotional periods that can sometimes be two or three months beyond the disclosed expiration date. For example, we may offer a 0% promotional rate for one year on balance transfers made within the next 90 days. Although we state the promotional period will expire in one year after the period commences, we generally do not increase the APR until 12 months after the last balance transfer is processed. Under the Proposed Rule, we could be deemed to be relinquishing our right to increase the APR if we continue our current process. While we could move up the promotional end date, this would harm our members. In addition, the change would result in expensive and time consuming changes to our operations. We therefore, urge the Board to allow creditors to increase an APR anytime within a reasonable period after the promotional period expires based on the facts and circumstances.

2. Increases in APRs at the end of a Workout or Temporary Hardship Arrangement

Under the Credit Card Act, card issuers may also raise an APR at the completion of, or consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that prior to the commencement of that period the creditor disclosed to the consumer the terms of the arrangement. The Proposed Rule would require creditors to make the disclosures in writing and to deliver these disclosures before the arrangement begins.

USAA strongly opposes the writing requirement when the arrangement is offered by a creditor during a telephone conversation because workout and temporary hardship arrangements involve immediate assistance to delinquent consumers. They generally cannot make any new transactions. There simply is no reason a creditor could not disclose the reduced APR and basic workout terms on the phone prior to commencement of the arrangement and follow up the verbal disclosures in writing after commencement.

3. Loss of Grace Period

When a balance on a credit card account is subject to a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, §226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. [See proposed Comment 226.54(a)(1)-5.]

Many credit card issuers, in addition to the traditional grace period offered to cardholders who pay their balances in full every month, also allow cardholders who revolve balances from month to month the ability to pay off the account balance by the next payment due date without incurring any additional finance charges on their purchase balance. Because these card issuers allow cardholders a period of time within which they may repay the account balance without incurring any additional periodic finance charge on the outstanding purchase balance, any payment on a purchase balance could be interpreted to be subject to the rule prohibiting the imposition of finance charges. The cost to these card issuers would be substantial and would likely require them to eliminate this consumer benefit.

USAA does not believe this is the intent of the CARD Act. We ask the Board to clarify that the rule in §226.54(a)(1)(ii) does not apply to any period in which an account balance may be paid off without incurring additional finance charges when the cardholder has not paid the previous statement balance in full.

4. Ability to Repay

USAA generally supports the ability-to-repay provisions in the Proposed Rule, but believes the Board should adopt a *de minimis* exception for small credit lines. Specifically, we ask the Board to consider an exception for a credit card that has a minimum payment no greater than \$30. We believe regular underwriting considerations support such *de minimis* credit lines with low minimum payments.

5. Timely Settlement of Estates

USAA believes representatives of a deceased cardholder should be able to contact a creditor and be given the necessary account information required to promptly resolve the account. However, we are concerned with the Proposed Rule 226.11(c) that would require card issuers to provide an account balance to anyone who calls a creditor and claims to be an executor or administrator. Creditors should be allowed to obtain documentation that the person calling has been appointed as the legal representative of the estate of the decedent. Card issuers should not be required to disclose non-public personally identifiable information to any third party who claims the cardholder has died and requests the account balance.

6. Allocation of Payments and Disputes

Comment 53-3 would require payments to be allocated in a manner that avoids or minimizes any reduction in the amount of a cardholder's claim or defense asserted under 226.12(c). The Proposed Rule could be interpreted as permitting a claim or defense to survive as long as a consumer has an unpaid balance because allocating all payments to any other balance would always avoid or minimize the reduction. Therefore, a card issuer could be subject to a claim or defense indefinitely on a transaction that was paid off months or years earlier using either the payment allocation method in 226.53 or the method to determine the amount of credit outstanding for a claim or defense in 226.12(c). Such a result would require card issuers to go back and recalculate the cardholder's balances, interest charges, and fees on the statements between the transaction date and the initial assertion of the claim or defense.

USAA believes the Board should not require a different payment allocation on a credit card account when a claim or defense is asserted. Instead, we urge the Board to maintain the current provision in existing footnote 25 (moved to proposed Comment 12(c)-5) which requires a first-in, first-out method to determine the amount of credit outstanding for purposes of a claim or defense. The proposed Comment 53-3 should be changed to state

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that nothing in the payment allocation provisions of Section 226.53 affects how to determine the amount of credit outstanding for purposes of 226.12(c).

7. Effective Date

The January 2009 Regulation Z Rule was to become effective on July 1, 2010. However, the Credit Card Act effectively requires the Board to move up the effective date of certain provisions of the January 2009 Regulation Z Rule to February 22, 2010. The Board is considering whether the provisions of the January 2009 Regulation Z Rule that are not directly affected by the Credit Card Act should also become effective on February 22nd rather than July 1, 2010. USAA strongly opposes moving up the effective date of the non-affected provisions.

Implementing the provisions of the Credit Card Act and the October Proposed Regulation Z Rule that become effective on February 22, 2010 will be challenging. Card issuers' and their system providers' resources are already being strapped by the heavy workloads required to comply with these provisions. The current difficulty will likely be increased by the fact that the Board will understandably not issue a final rule until sometime in late December 2009 or January 2010. Adding a requirement at that time requiring issuers to also implement the remaining portions of the January 2009 Regulation Z Rule is unworkable. USAA urges the Board to maintain the July 1st 2010 effective date for the remaining portions.

USAA also asks the Board to allow creditors some reasonable grace period in which to comply with the final rule that imposes any significant new burdens. Creditors will likely have only thirty to sixty days to review the final rule and implement any changes the Board promulgates.

USAA appreciates the opportunity to provide comments on the Proposed Rule. If you have any questions regarding our comments, please do not hesitate to call me at (210) 498-1098.

Sincerely

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Banking Counsel