WORLD FINANCIAL NETWORK NATIONAL BANK

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November 20, 2009

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Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1370

Re: Proposed Rule on CARD Act Requirements Effective February 22, 2010

Dear Ms. Johnson:

World Financial Network National Bank ("WFNNB") has over 85 private label and co-brand credit card programs; representing almost 105 million cardholders and $3.8 billion of managed receivables. Our clients are predominately specialty retailers who place between 20% - 45% of their sales on our credit cards.

We are pleased to submit the following comments in response to the proposed rule ("Proposed Rule" or "Rule") issued by the Federal Reserve Board ("FRB") to implement provisions of the "Credit Card Accountability Responsibility and Disclosure Act of 2009" ("CARD Act" or "Act").

Due to the short period of time between the close of the comment period and the effective date of a final rule, we understand that the Board will have limited time to read and analyze lengthy comment letters. Thus, we have made an effort to provide concise and pointed comments.

The Proposed Rule would make significant changes in the requirements for credit card accounts. While some of these changes build on provisions previously adopted by the Board in its amendments to Regulation AA and Regulation Z, many of the changes raise entirely new issues, many of which have yet to be fully vetted from an operational and technical standpoint. Because the Proposed Rule will dramatically affect the delivery, pricing and availability of credit card features, promotions and services, some issuers have curtailed or ceased the offering of promotions and workout programs, or have delayed program changes, due to the inability to comply with the Rule as proposed or because of the lack of clarity in the Proposed Rule.

We understand that the Board will adopt a final rule in late December 2009 or early January 2010. At that point, issuers will have less than two months to implement the final rule. Given such a short implementation period, it is essential that the Board resolve certain key issues and provide important clarifications, including implementation guidance, in the final rule. Below is a discussion of some of the principal issues.

Effective Date

The supplementary information accompanying the Proposed Rule states that "In order to implement the [CARD Act] in a manner consistent with the January 2009 Regulation Z Rule, the Board intends to make the effective date for the final rule pursuant to this proposal February 22, 2010." The Board also indicates that it is considering accelerating the effective date for at least some provisions of the January 2009 Regulation Z Rule.

We strongly urge the Board to refrain from accelerating requirements in Regulation Z that are not part of the CARD Act that currently are scheduled to go into effect in July 2010. Card issuers, as well as the processors on which the majority of card issuers rely, have indicated that it would be impossible for them to comply with a February 22, 2010 compliance date for all of the Regulation Z requirements.

Notwithstanding the effective date of the final rule, it is essential that issuers be provided relief in complying with the formatting requirements, especially in the context of periodic statement disclosures. Until the final rule is published, issuers and their processors are unable to finalize the design and formatting of required disclosures. It typically takes issuers six to eight months to develop and implement new statement designs. Since issuers will have little time before the effective date to fully understand the legal and compliance obligations and convert these new obligations into new form designs, and because many issuers, particularly those with retailer relationship programs, have multiple form sets, issuers should be permitted for a period of time to provide required disclosures in a manner that is not technically compliant with the formatting requirements, such as through the use of statement messages and/or statement inserts for periodic statement disclosures, and similar accommodations for other disclosure forms, particularly the new account-opening disclosures.

Additionally, we ask the Board to clarify that the Rule restrictions related to interest or fee increases for the first year of an account, restrictions on promotional rates under six months, and the Ability to Repay requirements should not apply to accounts that were opened prior to February 22, 2010.

Consideration of Ability to Pay (Section 226.51)

As proposed, Section 226.51(a) will substantially undermine the credit underwriting process associated with opening a credit card account, particularly at the point-of-sale (in which a majority of our cards and those of other retail associated issuers are initiated), and will greatly complicate increasing credit limits on existing accounts. Proposed Section 226.51(a) purports to implement the CARD Act prohibition against the opening of a credit card account for a consumer, or the increasing of the credit limit for a consumer's existing account, unless the issuer has considered the ability of the consumer to make the required payments under the terms of the account. The Proposed Rule, however, goes well beyond the statute by specifically requiring an issuer to consider the consumer's income or assets and the consumer's current obligations, before opening an account or increasing the credit limit on an existing account. In underscoring this requirement, the supplementary information states that "[A] card issuer has not complied with this provision if . . . a card issuer does not review any information about a consumer's income, assets, or current obligations, or issues a credit card to a consumer who does not have any income or assets."

The requirement that issuers consider income or assets is problematic, especially in the context of prescreened offers and account acquisition at the point-of-sale, where it is not possible to obtain income or difficult to request income in the presence of other store customers. It is also problematic for credit line increases where the issuer may not have previously obtained income information or where the income information available is dated, and yet the consumer's performance on the account, together with current information from consumer reporting agencies clearly demonstrates that the consumer is qualified for a credit line increase. Accordingly, we strongly recommend that the Board amend the Proposed Rule and related commentary provisions to eliminate requirements not found in the Act itself (we believe it is important to note that we have yet to see a correlation between a consumer's income level and the predictability for that consumer to make required and timely payments) or, at a minimum, to allow issuers to meet the requirement of considering income by using income estimates based on the issuer's evaluation, or a third party's evaluation, of the consumer-specific information from the issuer's own files and from the consumer's credit report or file maintained by a consumer reporting agency, in order to create a consumer-specific estimate. The Proposed Rule already permits an issuer to rely on information on obligations from a consumer reporting agency, and the final rule should make it clear that an issuer can also rely on income information, including income estimates, received from a consumer reporting agency.

In this regard, it is our understanding that all three consumer reporting agencies have developed reliable individual income estimator products. We understand that these models were created using actual consumer information from completed mortgage loan files and/or tax returns, for example, from hundreds of thousands of consumers in the case of one company, to more than a million consumers in the case of another company, to validate the models. As a result, these companies report that their models are empirically derived, demonstrably and statistically sound, consistent with the qualification standard for a validated credit scoring system under Regulation B. Under such circumstances, an issuer, at a minimum, should be able to rely on income information received from a consumer reporting agency using such an empirically derived, demonstrably and statistically sound model, because it is a consumer-specific estimate that in most cases would be far more reliable than unverified income information received directly from a consumer.

We would encourage the Board to adopt a "De Minimis" exception to the Ability to Repay requirement for accounts with a credit line of $1,000.00 and below, particularly in the private label context. For these accounts, the required minimum payment (assuming full line usage) would be approximately $50.00. We believe this amount would not burden the average consumer and that issuers should not have to consider income/assets and obligations for these lower lines of credit.

In addition, the Board should grandfather existing accounts from the requirement to consider income when increasing credit lines. More specifically, the Board should exempt accounts opened before February 22, 2010 even though there is no income information in the consumer's file, provided that the performance information in the consumer's file, together with other information available to the issuer, including information from a consumer reporting agency, demonstrates the ability of the consumer to handle the increase. Even for accounts opened after February 22, 2010, an issuer should not be required to seek current or updated income information when the issuer already has income information or when the consumer's performance on the account and information received from a consumer reporting agency is sufficient to support the credit line increase. This interpretation is supported by proposed Commentary Section 226.51(a)-2 which allows a card issuer to rely on information "known to the card issuer . . . when the card issuer considers increasing the credit line on an existing account." However, proposed Commentary Section 226.51(a)-4 references current or reasonably expected income. Thus, the Board should clarify that an issuer is not required to update income.

The Board also should clarify that alternatively an issuer can meet the income requirement by putting consumers on notice of a minimum income requirement for a credit account and the consumer's representation that he or she meets this income requirement by applying for the account. For example, the Board should revise the commentary to permit an issuer to use a minimum income notice at the point-of-sale, especially if the notice is coupled with the consumer's written, oral or electronic acknowledgment of the minimum income requirement when requesting the account.

Promotional Periods of Six Months or Longer (Section 226.55(b)(1))

Proposed Section 226.55(b)(1) requires that promotional rates apply for a period of six months or longer before an issuer may increase an annual percentage rate. This provision on its face seems to prohibit any promotional program less than six months, including deferred interest programs. We ask the Board to consider the effect this provision will have on retailer based "same as cash" programs, who frequently offer deferred interest programs of less than six months in duration. We believe there is a benefit to consumers that take advantage of these "same as cash" programs under six months, particularly in light of the additional consumer protections related to the advertising and statement requirements for these programs detailed elsewhere in the Rule. We also believe there will be a dramatic detrimental impact on retailers who would no longer be able to offer these types of programs for less than six months, which are used to drive sales during certain periods of the year.

Accordingly we ask the Board to exempt deferred interest programs of less than six months from the general rule, particularly for retail based programs.

Deferred Interest Programs Advertising, Default and Increasing Interest Rate (Section 226.16 (h)(4), Section 226.55)

Proposed Section 226.16 (h)(4)(ii) provides that when advertising deferred interest programs, issuers may provide a statement, if applicable, "that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period." Further, Sample G-24 in Appendix G provides the following sample language, "interest will be charged to your account from the purchase date if the purchase balance is not paid in full within/by [deferred interest period/date] **or if you make a late payment.**] (Emphasis Added).

We would ask the Board to clarify several items related to the advertising, default and interest application for deferred interest programs:

1. That, consistent with the language of Sample G-24, an issuer may treat a deferred interest program as in default (assuming proper disclosures consistent with 226.16(h)), if a consumer is late on any payment within the deferred period.
2. That upon such default, the issuer will be allowed to immediately charge interest from the date of purchase without having to provide the consumer advanced notice as required under Proposed Section 226.55(3).
3. However, if the Board does require advanced notice prior to the assessment of deferred interest, we ask that the consumer not be afforded the right to opt out of this interest application. We believe this scenario is analogous to the Delinquency Exception for increasing interest in which the consumer cannot opt out, and that the same opt out prohibition should apply here as well.

Limitation on Fees Related to Method of Payment (Section 226.10(e))

We believe the Commentary Section 226.10(e)-2 should be revised to provide that "expedited" applies to representative-assisted payments that are scheduled to occur on a specific date or dates in the future, provided the payments will be immediately credited on the scheduled date or dates specified by the consumer (commonly known as "Post-Dated Payments"). For example, a consumer leaving on a 45-day trip could ask the representative to make two payments on two specific future dates. This clarification is consistent with the exception. A payment is processed using an actual customer service representative and is credited on the specific day or days requested by the consumer. Otherwise, the consumer would have to make the payments in advance or make arrangements for the payments to be made on or before the scheduled payment due dates.

Partial Grace Requirement (Section 226.54)

Proposed Section 226.54(a)(1) implements the CARD Act requirement that an issuer offering a grace period not impose finance charges for partial payments under certain circumstances. Specifically, the Proposed Rule mirrors the statutory language in stating that "a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account . . . if those finance charges are based on . . . [a]ny portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period."

We commend the Board for proposing several commentary provisions and examples clarifying the scope and application of this prohibition. For instance, underscoring the significance of the account agreement language, proposed Commentary Section 226.54(a)(1)-1 states that the partial grace period requirement does not require an issuer to provide a grace period, nor does it prohibit a card issuer from placing limitations or conditions on a grace period to the extent consistent with the statutory prohibition.

In this regard, we recommend that the Board further clarify that a cardholder must be eligible for a grace period under the terms of the account before the partial grace period requirement becomes applicable. Accordingly, Proposed Commentary Section 226.54(a)(1)-5, which could be read to suggest that the partial grace period requirement applies to all partial payments, should be modified to read (modified language is underscored):

> *Prohibition on imposing finance charges on amounts paid within grace period.* When a balance on a credit card account is <u>eligible for a grace period, under the terms of the account</u>, 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. Card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii). However, <u>when the partial grace period prohibition applies</u>, a card issuer complies<u>, for example,</u> with § 226.54(a)(1)(ii) if it applies the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

The conditions on the application of the partial grace requirement are significant. If the requirement is applied too broadly, lenders could be forced to eliminate grace periods from accounts altogether. The elimination of grace periods neither serves the interests of the consumer nor the purpose of the statute. In order to avoid forcing creditors toward less consumer-friendly practices in order to limit the applicability of the partial grace period, we recommend that the Board further clarify the interrelationship between the partial grace period requirement and the terms of the account which establishes when the consumer is eligible for a grace period, by stating specifically that the partial grace period provision has no application unless, under the terms of the account, the consumer is eligible for the full grace period in that billing cycle but instead makes only a partial payment. In this regard, proposed Commentary Section 226.54(a)(1)-6.iii already explains that if, under the terms of the account, a consumer is required to have repaid the entire account balance during the prior billing cycle in order to be eligible for the grace period in the current billing cycle and the consumer did not pay the entire balance in the prior cycle, the partial grace period provision has no application in the current cycle because the consumer is not eligible for a grace period.

It is important, however, for the Board to clarify that this is simply one example of how the terms of the account can limit the eligibility of consumers for a grace period and, thus, limit the application of a partial grace period. Specifically, the Board should add another example to Commentary Section 226.54(a)(1)-6 to read:

> iv. The terms of the account can otherwise limit a consumer's eligibility for a grace period. For example, assume that under the terms of the account, in order to be eligible for a grace period, the consumer must not have any unpaid purchase balance remaining from the prior billing cycle. Assume also that in February a consumer repays $200 of his $600 purchase balance, that the remaining $400 appears on the March statement along with $300 in March purchases and the consumer pays $250 of the total balance due of $700. Under these circumstances, § 226.54 does not apply because the carry over purchases balance from February made the consumer ineligible for a grace period.

In addition, to further clarify the application of the Rule, we recommend that the Board adopt supplemental information explaining that if, under the terms of the account, the grace period only applies to consumers who regularly pay their account in full, then Section 226.54 would only apply to a consumer who regularly pays in full, but makes less than a full payment in a particular month.

Lastly, we recommend that the Board clarify that issuers are not required to describe application of the partial grace requirement when disclosing the balance calculation descriptions required by Sections 226.5a, 226.6 and 226.7. Requiring issuers to disclose the application of the partial grace requirement would add significant complexity and little meaning to already complex disclosures.

Dual Notice for 60-Day Delinquency (Sections 226.9(c) and 9(g))

The ability of an issuer to provide consumers with a dual notice is essential to implement the Act as written. That is, an issuer that has already provided a 45-day notice of an increased rate due to delinquency should not be required to give a second 45-day notice in connection with applying an increased rate to the outstanding balance if a consumer becomes 60 days delinquent after the first notice is provided, but before the effective date of the change. This approach is consistent with the Board's clarification to the January 2009 Regulation Z rule.

Without clarification that such a dual notice is permissible, the Board could essentially eliminate the true 60-day delinquency exception contemplated by the CARD Act; it will essentially become a 105-120-day delinquency exception, well beyond what was provided for in the Act. There is no language in the Truth in Lending Act that requires an additional notice to be provided after the consumer has become 60 days delinquent. In fact, providing the consumer notice of the consequences of becoming 60 days delinquent as part of the initial delinquency notice would be more meaningful to consumers.

Thank you for allowing WFNNB the opportunity to comment on the Proposed Rule.

Sincerely,

/s/

Daniel Groomes, President
World Financial Network National Bank