



November 20, 2009

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

RE: Docket No. R-1370, Proposed rule to amend Truth-in-Lending (Regulation Z)

Dear Ms. Johnson:

Thank you for providing PREMIER Bankcard®, LLC with the opportunity to provide its comments to the proposed revisions to Truth-in-Lending implementing the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act).

PREMIER Bankcard is a credit card servicing company for the 10<sup>th</sup> largest issuer of Visa® and MasterCard® credit cards with a portfolio consisting of \$880 million in receivables and 3.4 million cardholders. PREMIER Bankcard, LLP has serviced credit cards for the underserved low credit line market for over twenty years. With this background and experience we provide this letter for the Board's serious consideration.

**Effective Date (Federal Register 54126)**

The Board is considering whether the Regulation Z Rule, currently targeted for a July 1, 2010 effective date should be accelerated to coincide with the CARD Act effective date of February 22, 2010. We would strongly encourage the Board NOT accelerate the July 2010 date. The Board knew that the sweeping changes in the Regulation Z changes would involve tremendous operational challenges when it established the July 2010 effective date. Retaining the original date will ensure that our card processors will be fully compliant with the Board's Regulation Z rules particularly for disclosures and periodic statements.

**226.10(a)(b) Payments (Federal Register 54155)**

The proposed rule for accepting payments can be clarified to provide more guidance for issuers to apply the intent of the rule, particularly section 226.10(b)(4) Federal Register page 24219. Suggestions would include:

- Make clear that issuers that disclose payments may be made at a branch office may consider a payment as nonconforming if made through a night depository or otherwise after hours;
- More clearly provide for issuers that do not disclose acceptance of payments at branch offices that they should not have to accept the payments as conforming;
- Provide more clarity that payments made by means such as a website which are received after 5 p.m. do not have to treat such payments as conforming.

**226.10(e) Payments – Limitation on Fees Related to Method of Payment (Federal Register 54157)**

The rule states that a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. We believe that the interpretative language contemplates representative-assisted payments scheduled for a future date, but immediately posted, are not subject to the limitation on fees. Refer to language on FR 54157 “In addition, a standard for determining whether a service is expedited based on proximity to the due date would not address those circumstances in which consumers may want to make an expedited payment to the account in advance of the due date, such as in order to increase the amount of available credit.” The final rule should make this exception more clear.

The final rule should make clear that an expedited service by a live customer service representative of the creditor includes the creditor’s agent or service bureau. In addition, some payment systems require an initial consumer contact through an automated system, but the payment is ultimately handled by a live customer service representative. An example similar to this should be added to confirm that a fee for handling such a payment transaction is included in the exception.

**226.51 Consideration of Ability to Pay (Federal Register 54160)**

The CARD Act specifies that opening an account or increasing the credit limit of an existing account is prohibited unless the issuer has considered the ability of the consumer to make the required payment under the terms of the account. This provision of the Act was largely intended to stop the practice of issuing credit cards without regard to the consumer’s income. The proposed rule complicates what seems like straightforward risk-based provision in the Act by making it operationally difficult and burdensome for issuers to implement. For example, not all credit cards should have the same standard for applying the provision on determining the ability to pay. Issuers of high credit line card accounts will have considerably higher risk than issuers of low credit line account with small minimum payments.

A risk-based approach based upon the relative obligation of the credit card issues would satisfy the requirements of the Act and provide flexibility for issuers. For example, for low limit card issuers, a minimum income threshold may be sufficient to determine the ability to pay a small minimum monthly payment of say \$25.

Additionally, the proposed rule for determining the ability to pay for credit limit increases should give issuers the latitude to use past performance information of the consumer with the issuer without having to reconfirm the consumer’s income or obtaining a new credit report. Past performance is the best predictor for future repayment.

**226.51(b) Rules Affecting Young Consumers (Federal Register 54161)**

The Federal Register page 54161 notes that;

“..no credit card may be issued to, or open-end consumer credit plan established by, or on behalf of a consumer who has not attained the age of 21 unless the consumer has submitted a written application to the card issuer that meets certain requirements.”

An unintended consequence of the proposed rule to require only written applications from young consumers is the inconsistency with Regulation B and fair lending laws. For example, under the proposed rule, phone applications may be accepted from consumers over the age of 21, but may not be accepted from consumers under the age of 21. This restriction could be construed to be a barrier or discouragement of young consumers to apply for a credit card which may be considered a violation of Regulation B and discrimination by regulatory agencies or the legal community based upon age.

#### **226.52 – Limitation on Fees (Federal Register 54163)**

The Board’s general rule 52(a)(1) states TILA Section 127(n)(1) applies when “the terms of a credit card account require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened.” The rule goes on to provide guidance in 226.52(a)(2) on Fees Not Subject to Limitations and gives examples. We are very pleased that the Board used its authority to grant additional exclusions to the fee limitations, specifically stating “...for fees that a consumer is not required to pay with respect to the account.” The distinction between fees that are subject to the limitations and those that are not are helped with the use of examples and lists of fees in the commentary. However, there will certainly be much debate over the coverage of fees subject to the 25% limit in the first year the account is opened and we would recommend that the Board provide as much interpretive guidance and examples as possible. For instance, one might conclude that a fee for reissuing a lost or stolen card is a fee required with respect to an account and be subject to the 25% fee limitation, but this fee is specifically listed as a one that is not subject to the limit. While the Board cannot list every possible fee, we recommend additional interpretation and guidance be provided. As an example, the Board could provide additional guidance such as establishing that if the fee is not related to the account balance or a condition of extending credit AND is a fee elected by the consumer, the is not subject to the limitations.

#### **226.54 Limitations on the Imposition of Finance Charge – Partial Grace Period (Federal Register 54167)**

The proposed rule to partial grace period requirements could have the unintended consequence of forcing issuers to eliminate grace periods if the rules are not clearly defined. The rule should make clear that partial payments in the current billing cycle are eligible for a grace from finance charges IF the consumer satisfies the grace period requirements under the contract terms for the previous billing cycle.

Additionally, the Board should clarify that issuers are not required to modify or otherwise describe the partial grace period requirements in disclosures. Consumers will not benefit from trying to describe this complex provision in cardholder agreements.

**226.58(b) Internet Posting of Credit Card Agreements – Pricing Information**

Pricing information for purposes for purposes of providing effective shopping disclosures for consumers would be better served as the application and solicitation tabular disclosures rather than the account-opening disclosures. This information would provide more consistency among issuers and would be a format that consumers have become very familiar with.

**Effective Date for Pricing Information**

The Board has noted that the definition of “pricing information” is based upon disclosures that go into effect July 1, 2010. As noted in the opening comment regarding the Effective Date of the Regulation Z Rulemaking, we strongly urge the Board to retain the July 1 date for these disclosures,

PREMIER Bankcard prides itself on providing competent and professional service to the millions of underserved consumer’s while fully complying with all laws and regulations. We support the regulations to improve consumer understanding of open end credit products and hope the Board gives serious consideration to the comments and recommendations that we have presented.

Sincerely,

PREMIER Bankcard, LLC



Miles K. Beacom  
President and CEO  
3820 N Louise Avenue  
Sioux Falls, SD 57107