Carl V. Howard
Deputy General Counsel

Citigroup Inc.
425 Park Avenue, 2nd Floor
New York, NY 10022

T 212 559-2938
F 212 793-4403
howardc@citi.com

citi

November 20, 2009

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

Re: Docket No. R-1370 – Proposed Rule Implementing Provisions of the CARD Act of 2009

Dear Ms. Johnson:

Citigroup, one of the largest U.S. financial services holding companies, respectfully submits these comments in response to the Federal Reserve Board's (the "Board's") proposed amendments to the open-end credit rules of Regulation Z, 12 C.F.R. § 226, which implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). The proposed rule was published in the *Federal Register* on October 21, 2009.

Citi appreciates the opportunity to provide the Board with comments on the proposed rule. We generally support it. As discussed further below, we also believe there are certain areas where clarification or revision will benefit creditors and consumers alike, as well as facilitate compliance. We understand that Board staff has requested that comments to the proposal focus on major issues due to the proposal's broad scope and the importance of releasing a final rule expeditiously. Thus, this letter concentrates on the issues we believe to be the most significant. For the Board's convenience, we have first addressed the effective date and then organized our remaining comments by the section order of the proposed rule.

Effective Date

In response to the Board's request for comment, we recommend that the Board retain the mandatory compliance date of July 1, 2010 for portions of the proposed rule that are not directly required by the CARD Act. We, like other issuers, have launched a massive effort to update underwriting policies, operational systems, and disclosures to conform to those provisions of the CARD Act that take effect February 22, 2010. This compliance initiative has come on top of the extensive and ongoing campaign to implement the January 2009 Regulation

Z revisions. Since the release of those revisions, we have devoted a tremendous amount of information technology staff hours, and must devote substantially more hours, to methodically stage system releases to test and implement the necessary changes by July 1, 2010. Given the complexity and enormity of the work in progress, accelerating all of the proposed changes to February 22, 2010 would put an onerous burden on our staff. In addition, such acceleration would preclude adequate testing of the new systems and processes, which could result in unanticipated errors.

The Board recognized that it may be appropriate to retain the mandatory compliance date of July 1, 2010 for "certain tabular or other formatting requirements applicable to account-opening disclosures under § 226.6(b), portions of the periodic statement under § 226.7(b), disclosures provided with checks that access a credit card account under § 226.9(b)(3), change-in-terms notices provided pursuant to § 226.9(c)(2), and notices of a rate increase due to a consumer's default, delinquency, or as a penalty pursuant to § 226.9(g)." 74 FR at 54126 (Oct. 21, 2009) (footnote omitted). We agree. In addition, we strongly urge that the Board not impose the February 22, 2010 compliance date with respect to other revisions that are not required by the CARD Act.

Transitional guidance should clarify that provisions effective in February and July 2010 should have prospective application only. In the Supplementary Information accompanying the January 2009 Regulation Z and Regulation AA revisions, the Board gave substantial transition guidance to clarify the prospective effect of the new requirements. 74 FR at 5244, 5388-5390, 5520, 5534, 5537, 5543 (Jan. 29, 2009). We urge the Board to adopt substantially similar guidance in this rulemaking. We give specific examples in certain sections below.

§ 226.2(a)(15)(ii) Definition

Lines of credit accessed by debit cards that can only be used at ATMs should be excluded from the definition of credit card account. Citi supports the inclusion of a definition of "credit card account under an open-end (not home-secured) consumer credit plan" in § 2(a)(15)(ii), and the exclusions from that definition for credit cards that access home-equity plans subject to the requirements of § 5b and overdraft lines of credit accessed by a debit card. Citi also urges the Board to exclude "lines of credit accessed by debit cards that can be used only at ATMs." The Board has not previously considered these lines of credit to be credit card accounts, and thus has excluded them from the Schumer box requirements. *See* § 5a(a)(3) of current Regulation Z; § 5a(a)(5)(iii) as proposed. Like overdraft lines of credit, they have only a superficial similarity to credit cards. They cannot be used to make purchases at a merchant, but can only be used to obtain cash. Thus, the practices addressed by the CARD Act are generally not at issue with respect to these lines of credit. *See* 74 FR at 54130 (Oct. 21, 2009).

§ 226.5(b)(2) Periodic statements

Citi supports the clarification of the 21-day rule in comment 5(b)(2)(ii)-2. The revised comment clarifies that the prohibition on treating a payment as late for any purpose or collecting any finance or other charge applies only during the 21-day period following the actual mailing or delivery of the statement. This ensures that consumers receive the full statutory grace period, while allowing issuers to maintain strong account management processes, consistent with safety and soundness.

§ 226.7(b)(12) Periodic Statement: Repayment disclosures

In response to the Board's request for comment, we recommend the Board retain the exceptions from the January 2009 revisions for accounts with a fixed repayment balance. Some credit card products allow consumers to select a fixed repayment term. For these products, the repayment term is a key element of the value proposition. The consumer is quite sensitive to the repayment term, and indeed has selected the specific repayment term for each balance. In this context, the proposed repayment disclosures are neither relevant nor helpful, and may be confusing if they tend to suggest that the selected repayment term is no longer available. Thus, Citi requests that the exceptions formerly found in § 7(b)(12)(v)(E) and (F) be retained. *See* 74 FR at 5411 (Jan. 29, 2009).

An issuer should not be required to make the 36-month disclosures if an account has both a revolve balance and a fixed repayment balance of less than 36 months. Some accounts allow consumers the opportunity to have both a revolve balance and a fixed repayment balance. On an account with a revolve balance and a fixed repayment balance with a term of less than 36 months, the required minimum due may initially be higher than what would be required to repay the entire account balance in 36 equal payments. When the required minimum due is higher than the amount required to pay off the entire account balance in 36 months, the 36 month disclosure would be misleading because the amount in that disclosure would be lower than the payment required to avoid a late fee. Accordingly, we do not believe that such a disclosure would be beneficial to the consumer, and should not be required.

§§ 226.9(c)(2)(i) Changes where written advance notice is required

The 45-day advance notice requirement should not apply to account upgrades made at the consumer's request. Citi urges the Board to delete the language added to comment 9(c)(2)(i)-3, which provides that "the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features" is not an "agreement" for purposes of § 9(c)(2)(i). The inclusion of this language causes an unnecessary 45-day delay before changes the consumer wants and has affirmatively agreed to can be effected. It may also unfairly prejudice issuers, as a consumer may obtain a substantially similar product without delay from a competitor. The requirement in § 9(c)(2)(i) that the issuer "give a consumer notice of a change agreed to by the consumer before the change becomes effective" strikes the appropriate balance between protecting the consumer and giving the consumer flexibility. Excluding consumer consent to upgrades from the definition of "agreement" under this rule could cause frustration for consumers and issuers without providing additional benefit to consumers.

§ 226.9(c)(2)(iv) Disclosure requirements

Section 9(c)(2)(iv) should be revised to include guidance for making cure disclosures when applicable. Proposed § 55(b)(4) provides that an issuer may increase an APR, fee, or charge when a consumer is 60 days late, provided the issuer discloses in a § 9(c) or 9(g) notice a statement of the reason for the increase and that the increase will cease to apply if the issuer receives the next six consecutive payments on time. Citi strongly supports the Board's decision to reference both § 9(c) and 9(g) notices in § 55(b)(4). Both options are consistent with the CARD Act and the other provisions of proposed Regulation Z because the delinquency exception operates independently of whether the applicable card agreement has a contractual penalty rate. Currently, the Board has provided guidance in § 9(g)(3)(i)(B) and Model Form G-23 on how to make the required cure disclosures in a § 9(g) notice. We urge the Board to include similar guidance concerning cure disclosures in § 9(c)(2)(iv) and to adopt a Model Form for use when a § 9(c) notice is sent in accordance with § 55(b)(4).

An issuer should not be required to disclose a right to reject a particular change if the consumer has expressly and affirmatively agreed to that change. Section 9(c)(2)(iv)(B) lists a series of circumstances in which a creditor need not disclose the right to reject a significant change. Citi supports these exceptions and urges the Board to include also an exception when a consumer has agreed to a particular change. When a consumer affirmatively agrees to a change, the consumer has already been given the opportunity to reject the change and has affirmatively chosen not to do so. Thus, there is no need for disclosure of the right to reject the change when giving the written notice of the change. In fact, this additional disclosure may create confusion for consumers who have just negotiated the change.

Model Form G-20, to the extent intended to be used for APR increases on credit card accounts, should reflect the requirements in the proposed rule. It appears that Model Form G-20 is intended to be used when an annual percentage rate is increased on a credit card account. However, the form includes the statements: "You have the right to opt out of these changes. For more detailed information, please refer to the booklet enclosed with this statement." This language is inconsistent with the requirement under § 9(c)(2)(iv)(B). Thus, Citi urges the Board to correct this Model Form to prevent confusion and facilitate compliance.

§ 226.9(c)(2)(v) – Notice not required

Comment 9(c)(2)(v)-5 should be expanded to cover all telephone offers. Citi supports the clarification that, for telephone purchases, the disclosures required by § 9(c)(2)(v)(B) may be made as soon as reasonably practicable after the first transaction subject to the promotional rate, if certain conditions are met. This comment will facilitate the continued availability of promotional offers without diminishing consumer protections, as these offers are advantageous to consumers. Citi requests that this guidance be expanded to cover all telephone offers, including offers made as part of a retention strategy. These offers are equally beneficial to consumers.

The Board should exempt the § 9(c)(2)(v)(B) disclosures from the consumer-consent requirements of the E-Sign Act. The same rationale that the Board used when exempting the disclosures required under §§ 5a and 16 from the E-Sign consent procedures applies to the promotional rate disclosures: the exemption will "eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers." 72 FR at 63462, 63464 (Nov. 9, 2007). For promotional rate disclosures, the clear and conspicuous standard, combined with issuers' economic incentives to make promotional rate information readily and widely available, provides adequate protection.

The workout and temporary hardship arrangement exception should permit oral disclosure over the telephone, provided that written disclosures are given promptly thereafter. Oral disclosure of the terms of a workout arrangement would allow creditors to reduce rates and fees as soon as the consumer agrees to the arrangement. When consumers are in trouble, time is often of the essence. Moreover, since workout arrangements unequivocally benefit consumers, there is no consumer protection rationale for delaying the start of such relief until the creditor can deliver written disclosures. Citi therefore urges the Board to permit an issuer to give these disclosures orally when a consumer agrees to the arrangement on the telephone, if written disclosures are subsequently sent promptly thereafter.

§ 226.9(g) Increases in rates due to delinquency or default

The disclosures concerning the 60-day late cure should reflect the cure required by the proposed rule. Citi generally supports the revisions to § 9(g), particularly the revision that eliminates the consumer's right to reject changes under this section. However, Citi believes that the disclosures under § 9(g)(3)(i)(B)(*2*) and Model Form G-23 need to be clarified. If a creditor receives six consecutive required minimum payments beginning with the first payment due following the date of the increase, § 55(b)(4)(ii) requires the creditor to reduce any increased rate, fee, or charge to the former rate "with respect to transactions that occurred prior to or within 14 days after" provision of the notice. All transactions made at least 15 days after provision of the notice will continue to be subject to the increase, even if all the required payments are received. Section 9(g)(3)(i)(B)(*2*), however, requires creditors to disclose that if the required payments are received, "the increase will cease to apply." Similarly, Model Form G-23 states that if the consumer makes the required six payments, "your rate will return to the Standard APR." Consumers reading this language will likely believe that the APR for all their transactions will return to the lower APR and that new transactions will also be at the lower rate. Thus, Citi strongly urges the Board to revise § 9(g)(3)(i)(B)(*2*) and Model Form G-23 so that issuers can use the language in the Model Form as they meet the cure requirements of § 55(b)(4).

Citi further notes that the model language regarding how long a penalty rate will apply in the application and account-opening Model Forms is similarly confusing. *See* Model Forms G-10(B) and (C); G-17(B) and (C). The model language states: "If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due." Consumers reading this language will likely believe that if they make any six consecutive minimum payments when due, the Penalty APR will no longer apply to any balances on their account. This result is far beyond the cure requirements in § 55(b)(4). Thus, we urge the Board to revise these forms as well, to more accurately reflect the cure requirement.

§ 226.10(f) should contain an exception for branch closings or relocations where customers are notified in advance of the changes

Section 226.10(f) provides that the card issuer cannot impose any late fee or finance charge for a late payment that is due to the card issuer's "material change in address for receiving payments", if the change causes a "material delay in the crediting of a payment during the 60-day period following the date of the change".

The proposed comments provide an example of a material change in payment as a situation where a customer regularly makes payments in person at a local branch, and the card issuer permanently closes that branch. We suggest that the Board reconsider this example.
First, financial institutions will be challenged to accurately determine if an individual accountholder "regularly makes payments" at a particular branch. In addition, as required by Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), insured depository institutions must notify customers of a proposed branch closing by mail at least 90 days prior to the proposed closing, providing them with the location of the branch to be closed, the proposed date of closing and either the location where customers may obtain service following the closing date or a telephone number for customers to call to determine such alternative sites. The financial institution is also required to post a conspicuous notice in the branch at least 30 days prior to the proposed closing.

We believe that these advance notice provisions should allow customers to appropriately adjust their banking habits in advance of their payment due date. There should be no reason why a customer could not make timely payment to the card issuer's new address in these situations.

§ 226.51(a) General ability to pay

In response to Board staff request for alternative means to obtain income information, we recommend that issuers be permitted to use empirical models based on personal characteristics and past payment performance. Citi urges the Board to clarify that when considering a consumer's ability to pay, issuers may make a reasonable approximation of income using models that are based on the personal characteristics of the consumer, such as information in a credit report or other publicly available information. Citi also urges the Board to clarify that issuers can rely on past payment performance as evidence of income, as a consumer's prior history with credit is a powerful predictor of the likelihood of repayment. Thus, for example, an issuer whose reasonable policies and procedures take into consideration the payment history of an existing customer would not need additional income information before evaluating a credit line increase.

In response to the Board's request for comment, Citi is unaware of any evidence that warrants an additional requirement to verify information before a credit card account is opened or a credit line is increased. We believe the requirement that a creditor adopt reasonable policies and procedures sets the appropriate balance between consumer protection and excessive burden. Issuers adopt sound underwriting practices to protect themselves from the risk of loss on credit card accounts. These practices incorporate judgments about the adequacy and reliability of information needed to make an underwriting decision. The judgments are carefully calibrated and may vary over time as conditions change. This flexible approach utilizes verification when warranted and is superior to a regulatory requirement, which would impose an unnecessary burden by also requiring verification even when it is not necessary for sound underwriting.

The Board should clarify that an issuer may grant an emergency credit line increase upon a consumer's request, subject to the issuer's reasonable policies and procedures. Consumers periodically call issuers in an emergency situation, such as one involving a medical emergency or automobile accident. An issuer's inability to increase credit lines in these situations could severely harm consumers. Thus, Citi requests that the Board clarify that an issuer may grant an emergency credit line increase upon the consumer's request, provided that the issuer has in place reasonable policies and procedures to consider such emergency credit line requests.

***Transitional Guidance*: When an "account is opened" should be determined by the date the application is received.** Citi urges the Board to define "when an account is opened" for the purposes of § 51 as the date the application is received. For example, if an application is received before February 22, 2010, it would be evaluated using existing underwriting standards. If an application is received on or after February 22, 2010, it would be evaluated using underwriting standards compliant with § 51. Using the date an application is received will provide consistency and certainty because this is the date used to track compliance with Regulation B. Using the date an account is opened could cause confusion and delay because, for example, an issuer may begin the underwriting process, but not complete it, prior to February 22, 2010. Thus the account could not be opened without re-underwriting after February 22, 2010.

§ 226.54 Limitations on the imposition of finance charges

Citi appreciates the Board's comments to § 54. For example, the guidance in comments 54(a)(1)-1, -2 and -3 is helpful and will facilitate compliance. In particular, the clarification that an issuer is not prohibited from placing limitations and conditions on a grace period, to the extent consistent with § 54, strikes the appropriate balance between consumer protection and flexibility.

***Transitional Guidance*: the Board should clarify that this section applies to billing cycles that begin on or after February 22, 2010.**

§ 226.55 Limitations on increasing annual percentage rates, fees, and charges

The Board should clarify that comment 55(b)-1 permits an issuer to use the advance notice exception to terminate a promotional interest rate with regard to new transactions after a late payment and should conform comment 55(b)-3.i.B accordingly. Comment 55(b)-1 clarifies that an issuer may increase a rate under an exception, even if that increase would not be permitted under another exception. Thus, if an issuer discloses that making a late payment will terminate a promotional rate and complies with the advance notice requirements of § 55(b)(3), the issuer should be able to terminate the promotional rate after a late payment even if the rate increase would not be allowed under the temporary rate exception. Citi urges the Board to revise comment 55(b)-3.i.B so that it is consistent with comment 55(b)-1.

The Board should clarify that if a consumer becomes 60 days late, an issuer may terminate a deferred interest promotion and increase the rate on that balance. Citi generally supports comment 55(b)(1)-3, which clarifies the application of § 55(b)(1) to deferred interest programs. However, we request that the Board clarify that the other exceptions in § 55(b) also apply to deferred interest programs. Specifically, comment 55(b)-1 provides that issuers may increase an annual percentage rate, fee, or charge pursuant to an exception set forth in § 55(b) even if that increase would not be permitted under a different exception. Thus, if a consumer becomes 60 days delinquent, an issuer should be permitted to accelerate imposition of accrued interest and/or increase the rate at which interest accrues to the default rate, after appropriate notice under § 55(b)(4), even if the promotional period disclosed under § 55(b)(1) has not ended. The Board should further clarify that the cure required by § 55(b)(4) only applies to increased rates not the acceleration of the accrued interest.

Citi strongly supports the option of using either § 9(c) or 9(g) to provide notice under the delinquency exception. Citi believes that the Board correctly gave issuers the option of using either § 9(c) or 9(g) to provide notice under §55(b)(4). This exception should apply equally whether the issuer has a contractual penalty rate in its card agreement or must amend its agreement to increase an APR because the consumer has paid 60 days late.

The Board should revise the disclosure required under § 55(b)(4)(i)(B) to reflect the cure required under § 55(b)(4)(ii). Section 55(b)(4)(ii) requires the creditor to reduce any increased rate, fee, or charge to the former rate "with respect to transactions that occurred prior to or within 14 days after" provision of the notice. Section 55(b)(4)(i)(B), however, requires creditors to disclose that if the required payments are received, the increased rate fee or charge "will cease to apply." Consumers reading this disclosure will likely believe that the rates, fees and charges applicable to all of their transactions will return to the lower ones and that new transactions will also be at the lower rate. However, issuers are "not required to reduce the rate that applies to any transactions that occurred on or after ... the fifteenth day after provision of the ... notice." Comment 55(b)(4)-3.iv.A. Thus, Citi strongly urges the Board to revise § 55(b)(4)(i)(B), so that it is consistent with the cure requirements of § 55(b)(4)(ii).

In response to the Board's request for comment, Citi recommends the Board clarify that an issuer complies with § 55(d)(2) by adopting reasonable policies and procedures to prevent balance transfers between accounts it issues. The requirement that an issuer retain existing rates and certain fees and charges on a balance if that balance is transferred to another account with the issuer will be difficult for issuers to monitor in some cases, and may therefore result in inadvertent violations. Thus, we urge the Board to clarify that issuers can satisfy the requirements of § 55(d)(2) by adopting reasonable policies and procedures to prevent such balance transfers. For example, these policies and procedures could require an issuer, when sending access checks to its customer, to disclose that those checks cannot be used to transfer balances from another account with the same issuer. Similarly, these policies and procedures could instruct customer service representatives not to accept balance transfer requests relating to two credit cards issued by the same issuer.

This clarification will facilitate compliance and advance consumer protection while enabling issuers to continue to make valuable offers to their own cardholders.

***Transitional Guidance*: The Board should provide transitional guidance so that the proposed rule is not retroactive in nature.** For example, if a temporary rate applies to a balance on February 22, 2010, an issuer can apply an increased rate to that balance at expiration so long as the issuer previously disclosed the increased rate and expiration date. In addition, the limitation on rate increases during the first year should not apply to accounts opened prior to February 22, 2010. Also, an issuer may increase a rate pursuant to § 55(b)(4) when an account becomes 60 days delinquent even if the delinquency began prior to February 22, 2010. *See* 74 FR at 5534 (Jan. 29, 2009).

<u>§ 226.57 Special rules for marketing open-end credit to college students</u>

The Board should clarify that a bank branch is not "near the campus" for the purposes of § 57(c) if it exists to provide services to the general public and its marketing efforts do not target college students. Citi believes additional guidance in comment 57(c)-3 is necessary to prevent unnecessary burdens on branches that happen to be within 1000 feet of a campus, but whose activities are not aimed at college students. Citi urges the Board to clarify that if a branch is brick and mortar, exists to provide services to the general public, and does not target college students, its offers should not be considered made "near the campus of an institution of higher education" for purposes of the prohibition on inducements. This problem is especially acute in dense urban areas. To include these branches in the prohibition would go beyond the scope of activities the CARD Act was intended to prohibit.

The Board should clarify what "campus" means under § 57(c). Neither the proposed rule nor its commentary defines "campus" as that term is used in the prohibition on inducements in § 57(c). Comment 57(c)-3 refers to "1000 feet of the border of a campus," but without a definition of "campus" this clarification does not provide needed guidance. Does campus mean only the main campus or does it encompass satellite and classroom locations that are not part of the main campus? Where would an issuer find this information and how often must it be updated? For example, the current trend is to make college classes more accessible by holding them at various locations throughout the community, for example, in or near shopping centers. Without additional clarity, these various locations could be deemed campuses. It would be difficult for creditors to keep track of all of these locations and their borders in order to remain compliant. In addition, given that many of these locations are near shopping centers, a retailer's ability to offer inducements to its customers would be significantly curtailed. An expansive definition of campus that would consider these locations to be campuses goes well beyond the CARD Act's intention to protect college students. Thus, Citi requests that the Board clarify these issues and exclude locations that should not be covered under § 57(c).

<u>§ 226.58 Internet posting of credit card agreements</u>

Citi urges the Board to permit an issuer to submit agreements to the Board in the same format used to post agreements on the issuer's website (e.g. PDF format). Citi generally supports § 58, particularly § 58(f)(2). The guidance provided in § 58 and Appendix N fulfills the statutory requirements in a way that maximizes the utility of the disclosures by focusing on the information that will be most useful to consumers and avoiding information overload that could otherwise eliminate the value to consumers. Moreover, it fulfills those requirements in a way that reflects an understanding of the technical challenges involved in such a massive disclosure scheme. Citi urges the Board to continue this sensitivity by allowing issuers to submit agreements to the Board using the same standard set forth in Appendix N for posting credit card agreements to the issuers' own websites.

* * * *

On behalf of Citigroup, I thank you again for this opportunity to comment on the Board's interim final rule implementing certain provisions of the CARD Act. If you have questions on any aspects of this letter, please call me at (212) 559-2938, Joyce ElKhateeb at (212) 559-9342 or Karla Bergeson at (718) 248-5712.

Sincerely,

Carl V. Howard
Deputy General Counsel

cc: Joyce ElKhateeb
Karla Bergeson
Viola Spain