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HSBC

By electronic delivery

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:

This comment letter is submitted by HSBC Bank Nevada, National Association ("HSBC") in response to the proposed amendments to Regulation Z ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board"). The Proposed Rule suggests amendments to Regulation Z that are primarily related to provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act") that are effective on February 22, 2010. HSBC appreciates the opportunity to provide comments on the Proposed Rule.

HSBC is part of HSBC North America Holdings Inc., one of the ten largest financial services companies in the United States. HSBC – North America comprises all of HSBC's U.S. and Canadian businesses with assets totaling $547 billion at June 30, 2009. The company's businesses serve consumers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

HSBC appreciates the Board's efforts to publish the Proposed Rule on an accelerated schedule, given the effective date of February 22, 2010 (the "Effective Date"). As should be expected with rulemaking covering so many complex topics, there remain outstanding areas which require the Board's clarification. Further, there are significant ancillary topics which necessitate the modification or supplementation of certain proposals. We respectfully request that the Board consider HSBC's comments in making necessary revisions and clarifications within the Board's final rulemaking.

HSBC offers the following comments in response to the Proposed Rule:

Effective Dates

1. **The Board must specify the effect of a February 22, 2010 effective date as to documents mailed and accounts opened prior to the Effective Date, as the Board did in interim rules effective August 20, 2009.**

Several provisions contained in the Proposed Rule impact areas of ongoing operation. For example, a periodic statement may be mailed prior to the Effective Date, but display a due date which falls after the Effective Date. Further, there may be a change in terms mailing which was sent as many as 44 days prior to the Effective Date, yet that notice provided a changed terms date which falls after the Effective Date.

In connection with rulemaking pertaining to the provisions of the CARD Act which became effective 90-days after enactment (the "Interim Rule"), the Board acknowledged ambiguity with respect to the August 20th effective date, and provided for an earlier effective date as to statements mailed prior to August 20th. The Board noted:

> "The Board believes that this is the appropriate reading of the 90-day implementation period in the Credit Card Act. Although the Credit Card Act could be construed to require creditors to have reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days before any payment due date or grace period expiration date that falls on or after August 20, this reading would create uncertainty regarding compliance with the amendments to TILA Section 163 by requiring creditors to mail or deliver periodic statements in accordance with revised TILA section 163 and § 226.5(b)(2)(ii) prior to the effective date for those provisions. Accordingly, for clarity and consistency, the Board believes the better reading of the Credit Card Act is that creditors must begin to comply with amended TILA Section 163 (as implemented in amended § 226.5(b)(2)(ii)) with respect to periodic statements mailed or delivered on or after August 20, 2009."

The Board further clarified that "[t]he relevant date for determining whether a change-in-terms notice must comply with the new advance notice requirements of revised § 226.9(c)(2) is generally the date on which the notice is provided, not the effective date of the change. The Board believes that this is the appropriate transition rule in order to provide clarity and certainty to issuers. Therefore, if a notice of a change in terms is provided pursuant to existing § 226.9(c) prior to August 20, 2009, the notice only need be given 15 days in advance of the effective date of the change, even if the change itself becomes effective after August 20."[1]

[1] 74 FR page 36091

HSBC agrees with the approach taken by the Board with respect to the Interim Rule and believes the Board should provide consistent guidance and clarification concerning all topics addressed in a final rule. Creditors are expending significant resources developing and testing their operations to ensure compliance as of the Effective Date. As a final rule may provide unanticipated deviations from the Proposed Rule, or accelerate other provisions in prior Regulation Z rulemaking, such occurrences will only compound the challenge of meeting requirements as to forms and notices mailed prior to the Effective Date.

Specifically, statements will be mailed prior to the Effective Date, containing due dates which fall after the Effective Date. Given the expected brief duration between final rulemaking and the Effective Date, HSBC believes it would be unfeasible for creditors, and their service providers, to accelerate compliance as to statements mailed prior to the Effective Date. Further, there may be account change in terms notices mailed several weeks prior to the Effective Date in conformance with the Board's Interim Rule, which could not possibly have complied with rules expected to be released shortly before the Effective Date.

Finally, the fee harvester provision should not be effective for accounts opened prior to the Effective Date. For example, accounts opened 11 months prior to the Effective Date should not be subject to the "first year" fee limitations because creditors did not know about these limitations when the accounts were opened.

These are just a few of the countless impacts of new rulemaking, and creditors will need detailed clarification as to actions taken prior to an Effective Date. HSBC requests that the Board take a consistent approach in clarifying that provisions of the Proposed Rule which impact periodic statements and other notices be given effect only as to such documents mailed on or after the Effective Date.

2. The Board should not accelerate provisions of prior Regulation Z rulemaking unless required by the CARD Act.

In the Proposed Rule, the Board indicated that it is considering whether the original mandatory compliance date of July 1, 2010 should be accelerated to the Effective Date for certain provisions not contemplated in the CARD Act. Specifically, the Board has suggested possible acceleration of certain tabular or other formatting requirements applicable to account-opening disclosures under § 226.6(b), portions of the periodic statement under § 226.7(b)3, 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). HSBC is generally opposed to any such acceleration.

Within its January 2009 final rulemaking to amend Regulation Z (the "January 2009 Regulation Z Rule"), the Board explained its decision to provide an 18-month effective date as follows:

> In adopting this mandatory compliance date, the Board is cognizant that due to the breadth of changes required a significant period of time is needed to implement both this final rule and the other final rules adopted by the Board and other federal banking agencies.

We appreciate that the Board understands the planning and technology upgrades that are necessary to provide these disclosures in the appropriate tabular format by the July 1, 2010 effective date. The passage of the CARD Act has created an even greater need for delayed effectiveness of other provisions in the January 2009 Regulation Z Rule, as creditors have been forced to redeploy resources to comply with the timetable required by the CARD Act.

While we understand that there may be benefits to accelerating other provisions in the January 2009 Regulation Z Rule, creditor resources are already stressed by efforts to comply with the yet to be determined final rulemaking under the Proposed Rule. This includes significant contingency planning for provisions within the Proposed Rule, which require further guidance and clarification from the Board. Once the Board publishes a final rule, creditors will have to quickly identify unanticipated requirements, and plan for compliance with those requirements. Any resulting acceleration of operational development has a potential to compound operational risk for the creditor due to potential insufficient development and testing in advance of the Effective Date.

Ability to Pay

1. The requirement to specifically consider income, assets or current obligations is unnecessary and is not supported by legislative history.

The CARD Act requires creditors to consider the consumer's ability to make the required payments on an account before a creditor opens a credit card account or increases the credit limit applicable to an account. In implementing this requirement, the proposed rule requires an issuer to consider a consumer's income, assets or current obligations in determining the ability to repay the loan. However, the CARD Act contains no such express requirement. In fact, the legislative history suggests that Congress did not intend to require creditors to consider any specific information in making a determination about the consumer's ability to repay the loan. The author of the ability to pay requirement filed an amendment (# 1078) to require the creditor to consider income and current obligations, but ultimately this language was not included in the CARD Act.

Creditors have developed valid and predictable credit scoring models that are used to determine ability to pay, and these scoring models are accurate indicators of consumer risk. Credit scoring models use information from consumer reports to determine ability to repay the loan, and are tested, validated and statistically sound. HSBC urges the Board to permit creditors to rely on credit scoring models for compliance with the ability to pay requirements, and to avoid dictating the specifics of how creditors underwrite credit risk. Based on lending experience, we do not believe that a creditor needs to review income in order to determine a consumer's ability to repay a credit card loan.

With point of sale transactions, there are significant operational concerns presented by the requirement to consider income and assets. Many credit card applications do not currently contain an income or credit obligation field for the consumer to complete because creditors have sophisticated, reliable credit scoring systems that predict the ability to repay a loan. In point of sale situations, HSBC will have to rely on third party technology to incorporate an income question on the application. In these scenarios, additional time is needed to build the solution. If the Board is not inclined to offer this flexibility, we urge the Board (i) to retain the express acknowledgment that a creditor need not attempt to verify the income, assets or current obligation information and (ii) to allow a brief transaction period after February 22, 2010 to allow for required system changes.

The requirement to consider income before granting credit line increases to pre-existing customers is very problematic. Because credit scoring models are used to determine ability to repay the loan at the time of application, many creditors do not currently have information about income on their existing customers. If one of these customers called to request a credit line increase, a creditor would be required to obtain the income information, store it, and consider it. In addition, many creditors regularly increase the credit lines of individual customers based on their credit experience with that person. This service is offered to creditworthy customers, and has become an industry standard that customers appreciate.

In point of sale transactions, many creditors issue instant credit line increases to paying, loyal customers that make a purchase on their account that would put them a little bit over their credit limit. For customers that have a good credit history with the creditor, this process is invisible and beneficial. We are also concerned that customers may not be comfortable in providing their income to a sales associate at an in-store location. Providing income in front of a sales associate and other people in line raises privacy concerns. Requiring income to be considered in connection with pre-existing customer relationships would make it virtually impossible to offer these services. Consequently, HSBC requests an exemption to the requirement to consider income in connection with pre-existing customer relationships because it believes that the knowledge of a person's past behavior is predictive of their ability to repay the loan. Specifically, creditors should be permitted to rely on a customer's payment history in order to determine whether to increase their credit line.

2. **The Board should clarify whether income estimators satisfy that an issuer consider income when setting or increasing a credit line.**

If the Board in its final rule decides to continue to require the consideration of income when setting or increasing credit limits, HSBC respectfully requests that the Board allow creditors to satisfy this requirement through the use of income estimators. We are currently researching products that could provide a reasonable approximation of the consumer's income, and these products may be more reliable than consumer stated income. To the extent that research demonstrates that these products are, in fact, more reliable indicators of performance, the Board should authorized their use in lieu of receiving the consumer's stated income.

HSBC understands that the staff has informally indicated that the use of income estimators would not satisfy the proposed requirement for the consideration of income. To the extent that the Board is not inclined to allow income estimators, HSBC urges the Board to clearly express that sentiment to allow for a level playing field among credit providers.

3. **The Board should provide commentary that Ability to Pay requirements under no circumstances supersede requirements under the Board's Regulation B.**

HSBC is concerned that certain of the Board's ability to pay requirements, most notably consideration of the consumer's income, could be interpreted as prohibiting the creditor from considering the income of an applicant's spouse. Section 202.5(c)(2)(iii) of Regulation B implies that an applicant may indicate marital income "if the applicant is relying on the spouse's income as a basis for repayment of the credit requested." Further, 202.6(b)(5) provides that a creditor shall not discount or exclude from consideration the income of an applicant *or the spouse of an applicant* because of a prohibited basis… ."

Prior Board policy has sought to avoid perpetuating the cycle whereby a homemaker spouse fails to build creditworthiness when the income earning spouse is the only individual named on marital debt. If the final rule were to require consideration of the applicant's income alone, presumably all marital credit would be requested in the name of the income-earning spouse. Certainly, this would conflict with Board policy, and could cause unintended disparate impact. HSBC believes it remains permissible for an applicant to provide income of a spouse when he/she is considering it as a source of repayment, and requests that the Board clarify that the creditor is not in any way restricted from considering spousal income under Section 226.51.

Payments

A. Cut-off Time

1. **In-Person Payments should be limited to payments made at a creditor's location, and not extended to branches or other locations of a creditor's affiliates.**

Section 226.10(b)(3) requires that in-person payments made at any branch or office of a creditor are acceptable so long as made by the close of business. HSBC asks that the Board clarify that in-person payments made at a branch or location of an affiliate of the creditor are not conforming payments, even if the affiliate shares the same logo or trademark.

2. **Payments received after a location has closed should not be considered conforming payments.**

HSBC also wishes to comment on Section 226.10(b)(3) as it relates to the cut-off time and the early closing of location. This section states that a creditor may not impose a cut off time for payments earlier than the close of business and/or during business hours. Since Section 226.10(b)(2)(ii) sets a cut off time not earlier than 5 p.m., HSBC wishes to ensure that if a location closes at 3 p.m., the creditor need not do anything further to ensure that payments could be received in-person during the next two hours, nor that the creditor need to credit any payment received the next day as being received during the prior day's business hours.

3. **Processing payments differently based on the time zone of each consumer's billing address would impose significant operational burdens on creditors.**

Proposed § 226.10(b)(2)(ii) refers to the time zone of the location specified by the creditor for the receipt of payments. The Board has stated that this clarification is necessary to provide creditors with certainty regarding how to comply with the proposed rule, given that consumers may reside in different time zones from the creditor, but has solicited comment. HSBC echoes the Boards concerns, and agrees that a rule requiring a creditor to process payments differently based upon the time zone of each consumer's billing address would impose significant operational burdens upon creditors.

Additionally, the Board has inquired as to whether this clarification continues to be appropriate for payments made by methods other than mail or in person. HSBC agrees that further clarification is needed for such payments and proposes that the Board establish a cut-off time for such payments that is no later than 8 p.m. Eastern time.

4. **Rewording the text of the proposed rule with respect to payment due dates, and methods of payments, could better clarify the intent and lead to greater understanding.**

Section 226.10(d) provides that if a creditor accepts payment by a method other than mail on the due date, the creditor need not treat payments made by any method on the next business day as timely, even if the creditor does not receive or accept mailed payments on the due date. However, the proposed language continues with an exception that, while helpful, appears possibly better suited to be the rule rather than the exception: If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephonic, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date. HSBC proposes that the Board consider rewording this section, possibly leading with the text that is now considered the exception, as this language appears to better demonstrates the intent of the proposed rule.

5. **Creditors should not be required to consider whether the closing of a branch actually caused a consumer's payment to be late.**

Section 226.10(f) and comment 226.10(f)(4) discuss that a creditor cannot impose a late fee or finance charge for a payments that is late due to a material change in the payment procedures, including the closing of a creditor's branch where a consumer might otherwise have made a payment. This requirement is almost impossible for any creditor to fulfill, as it requires factual knowledge as to whether the consumer's payment was late due to such practices. For example: Cardholder A often makes a payment by mail, yet sometimes makes a payment by entering the local bank branch that is also the creditor. If the bank closes that local branch, it cannot be certain that a late payment was due to the closing, as Cardholder A may have intended to mail the payment, but since he/she was out of town, failed to timely do so. In this example, the closing of the branch was not the cause-in-fact of any late payment; instead, it was due to the consumer's own fault. In this instance, however, the creditor could be precluded from rightfully assessing late fees and finance charges.

Additionally, it would present operational challenges for a creditor to review all late payments received to determine if a consumer who banked at the local branch that closed may have been late with his/her payment due to the closing itself. In order to comply, each time a branch is closed, the creditor would need to review a list of all consumers who banked at that branch and who made payments at the branch or could have made payments at that branch. The creditor would then need to ascertain whether a payment was late, and if so, credit late fees/interest. This is difficult for any creditor to do, and is also not fully inclusive of all consumers who could've been impacted. For example, Cardholder B meant to mail her payment before she left town on a vacation. After arriving at her vacation destination, she is advised by the Concierge at her hotel that her creditor has a nearby branch location. Cardholder B determines that she can still make her card payment by her due date the following day, although neither she nor the Concierge are aware that the creditor closed that branch location the week before. As a result, Cardholder B is late with her payment, even though she could have used alternative payment means. In this instance, the creditor would be wholly unaware that the closing of its branch negatively impacted Cardholder B, and thus, late fees/interest would be assessed.

HSBC suggests that the concept of branch closings not be considered as a factor in whether a payment is late, and thus, be stricken from the proposed rule.

B. Payment Allocation

1. HSBC requests confirmation that when a creditor selects a balance date as provided under staff comment 53.2, it need not make adjustments based on subsequent events.

HSBC seeks confirmation that, once eligible balances have been determined in conformance with staff comment 53.2, a subsequent event should not require a creditor to make a new payment allocation determination. For efficiency reasons, a creditor may decide always to determine outstanding balance as of the date the preceding billing cycle ends. There will be situations where a consumer subsequently asserts a claim under Section 226.12(c)(1) or 226.13 before the date on which monthly payment is remitted. In such an instance, the creditor should be allowed to allocate as it had previously determined. Requiring a creditor to make a new determination of the outstanding balance, or make any adjustments to the allocation determination, would be highly manual and burdensome to support. HSBC requests the Board provide further additional clarification on this point.

2. Requiring different treatment for claims/defense and billing error disputes causes unnecessary operational complexity, and may deprive a consumer of the right to withhold payments.

Staff comment 53.3 provides that, when a consumer has asserted a claim or defense against the creditor pursuant to § 226.12(c), the creditor must apply the consumer's payment in a manner that "avoids or minimizes any reduction in the amount of that claim or defense." While HSBC agrees that an allocation exception is needed as to claims/defense balances, the better rationale is to give effect to the consumer's right to withhold payment pending resolution. On the same basis, the Board should provide the same allocation exception for balances subject to billing error disputes, which too are subject to a consumer right to withhold payments. Having a uniform exception for disputes of all types would allow operational efficiency for creditors, giving continued effect to a consumer's right to withhold payment under other provisions of Regulation Z.

As an initial matter, HSBC does not believe there is a rationale to differentiate claims/defense claims from other dispute types. Footnote 25 to Section 226.12(c)(1) entitles a consumer to assert a claim for "the amount of the credit outstanding on a disputed transaction *at the time the cardholder first notifies the card issuer of the existence of the claim or defense.*"[Emphasis added] Therefore, while it is true that the consumer's claim may have been diminished by allocation predating notification of a claim, the subsequent allocation of payments should not reduce the amount of that claim.

However, HSBC does believe a payment allocation exception is needed for balances subject to claims or defenses. The more appropriate basis for an exception is to give effect to consumer's general right to withhold payment on such disputed balances, pending resolution. Without an exception, a creditor would be forced to allocate payments to disputed balances which revolve at a higher APR than undisputed balances. For efficiency reasons, HSBC currently excludes all disputes when determining the minimum payment and average daily balance upon which APRs are calculated. Therefore, we request that the Board maintain this exception so that HSBC may support the consumer's right to withhold payment, albeit under a different rationale.

The Board should provide identical exception to avoid or minimize payment allocation to billing error disputes. Section 226.13(d)(1) entitles a consumer to withhold payments on balances subject to a billing error dispute, and this right may be ineffective without an allocation exception for billing error disputes. Second, HSBC believes it is overly complicated to require different allocation treatment for disputes of different types. Current systems do not distinguish between types of disputes, as they are subject to similar requirements. HSBC requests the Board revise its commentary to provide uniform exception to avoid or minimize allocation of payments to any dispute under Section 226.12(c)(1) or 226.13.

3. **HSBC seeks more specific guidance as to Board direction a creditor avoid or minimize allocation to balances subject to claims and defenses.**

HSBC seeks additional clarification regarding the intent of the "avoid or minimize" wording contained in the Proposed Rule. HSBC finds this wording ambiguous, in that a creditor may minimize payments to claim or defense balances even when it may be able to avoid such allocation altogether. HSBC interprets Staff comment 53.3 to require that a creditor must generally avoid allocating to claim or defense balances, but may allocate to claim or defense balances if there remains a payment to allocate after all other balances have been fully paid. HSBC would appreciate confirmation of this understanding.

4. **The Board should provide allocation exemption for loans involving titled goods.**

Some creditors extend credit under a credit card account for the purchase of items which have a title that must be released under unique circumstances. These scenarios may involve an insurance claim on a power sports vehicle (e.g., a Jet Ski or ATV) or a sale of a vehicle that was financed on a credit card. When processing such a transaction, payment is remitted to the creditor with the expectation that the balance will be paid in full, and title to the power sports vehicle released. In such instances, if a creditor is obligated to apply such payments using a strict high APR to low APR allocation, this could result in the specified balance not being paid in full, and a subsequent inability to release a title as requested.

However, without an exception for titled purchases, the Proposed Rule would require a creditor to apply excess payments received from a consumer from high APR to low APR, and a creditor would be prevented from allowing titled products to be prioritized to meet consumer needs. HSBC seeks a Board exception when payment is received which is directed to pay in full a specified balance which is secured by the title of the product. HSBC believes this is an unusual scenario which falls outside the CARD Act's intended protections, and HSBC therefore requests an exception for this circumstance.

5. **The Board should provide an exception for re-allocating payments at the direction or request of a consumer.**

A consumer may be unaware of strict payment allocation requirements and attempt to remit payment to pay off a deferred interest purchase at a time when it is most convenient for the consumer to make a large payment [e.g. upon receipt of a tax refund, annual bonus, or other circumstance]. While a creditor would initially allocate this payment in a high APR to low APR manner without regard to consumer intent, a consumer may file a complaint that his/her intentions were not adhered to and the creditor would be effectively prohibited from accommodating a differing allocation intent of the consumer. Particularly when the payment was of a significant amount, the consumer may complain that the payment should be redirected, as he/she would otherwise be obligated to make another significant payment at a later time in order to pay the balance in full by the deferred interest plan expiration date. HSBC seeks commentary from the Board that a creditor may, but is not obligated to, honor consumer requests to re-allocate payments in a manner directed by the consumer.

Disclosures

I. Billing Statement Disclosures

1. **The Board should provide flexibility with respect to the periodic statement 'minimum payment' disclosures for promotional credit terms.**

The Proposed Rule requires creditors to provide certain minimum payment disclosures on the periodic statement. These disclosures include information about how long it would take to repay the balance if the consumer makes only the minimum payments on the account. In some circumstances, a creditor may offer promotional programs that involve a reduction in the required minimum payment for a limited time period.

In these circumstances, the minimum payment would increase at the end of the promotional period to the minimum payment disclosed in the account agreement. It is unclear how the creditor should disclose the repayment, and HSBC suggests that the Board provide a creditor with the flexibility to choose whether the periodic statement repayment estimates are based on a minimum payment equal only to the fixed payment or on the minimum payment as they will be calculated over the duration of the account.

2. **Creditors should be allowed to refer consumers to the U.S. Trustee's web site for up-to-date information on credit counseling agencies.**

The Proposed Rule requires creditors to provide information on periodic statements about the availability of credit counseling, including name, address, phone number and web information for at least three approved credit counseling and debtor education organizations. This information may also be provided by an automated system as long as the statement references an 800 number for information about credit counseling. HSBC appreciates that the Proposed Rule allows creditors to rely on the U.S. Trustee when providing information about credit counseling, and believes that the U.S. Trustee's web site contains reliable and updated credit counseling and debtor education information.

Consequently, we suggest that, rather than requiring the creditor to disclose information about at least three approved credit counseling agencies, it would be far more efficient if the Board instead requires creditors to disclose the U.S. Trustee's web site. As the U.S. Trustee's web site provides regularly updated information about credit counseling and debtor education information, it would introduce unnecessary complexity and risk of non-compliance to require creditors to track and update this information. Using the U.S. Trustee's web site eliminates the concern that outdated information could be unintentionally provided on the periodic statement, and consumers would get information on many credit counseling and debt management organizations, and not just the three that were chosen by the creditor.

3. **No interest promotional programs should not be considered to be "deferred interest programs".**

The Proposed Rule requires that the periodic statement display the expiration date of the deferred interest program in the two billing cycles immediately preceding the billing cycle in which a deferred account balance must be paid in full to avoid finance charges. HSBC offers some programs in which no interest is assessed for a promotional period and no interest will ever be charged for the promotional period, regardless of whether the transaction balance is paid before or after the expiration of that promotional period. We note that Comment 16(h)-1, specifically excludes this type of no interest program from the definition of "deferred interest or similar offers", and request a similar exemption from the periodic statement deferred interest program disclosures.

4. The Board should confirm that staff comment 7(b)-1(ii) intends to require the disclosure of the amount which must be paid in order to avoid finance charges on a deferred interest plan.

HSBC requests clarification of staff comment 7(b)-1(ii). Section 226.7(b)(5) requires disclosure of the amount of the balance to which a periodic rate was applied, using the term "Balance Subject to Interest Rate." Comment 7(b)-1(ii) to 226.7(b) requires that for deferred interest balances, statements during the promotion should disclose the amount under 226.7(b)(5) by a different term, such as "deferred interest balance." The May 2009 clarifications indicated that, "[t]he Board also proposed that each periodic statement be required to disclose the amount of the deferred or waived interest balance on which interest may be imposed, so that consumers will be aware of the amount that they are required to pay to avoid being obligated for the deferred or waived interest amount."

However, HSBC notes that the balance on which interest is computed is not the same as the amount to pay to avoid deferred interest, and in fact it should be expected to vary significantly. The balance on which interest is computed is based on balances for all days in the billing cycle under an average daily balance method, whereas the amount to pay in full the deferred interest plan and avoid the deferred interest charge is generally the balance on the last day of the billing cycle. HSBC agrees with the intent of the May 2009 clarifications and asks that the Board clarify that the "deferred interest balance" represents the amount the consumer must pay to avoid the deferred interest charge.

5. An issuer must be able to provide additional clarification to periodic statement disclosures when an account has deferred interest plans and is subject to additional minimum payment obligations.

Section 226.7(b)(14) requires a repayment disclosure during the last two billing cycles of a deferred interest plan. This disclosure alerts consumers that the balance must be paid in full to avoid finance charges. This notice must be substantially similar to the form Sample G–18(H). HSBC is concerned that the suggested disclosure will be confusing to consumers when the consumer has other payment obligations separate from the deferred interest plan.

For example, the consumer might have a separate purchase on the same credit plan which requires a minimum payment each month. In this instance, providing a repayment notice that merely references the deferred interest balance may cause a consumer to send insufficient additional payment to meet other obligations. If the consumer were to send in the amount of the deferred interest plan, a portion of that payment would be used to meet other plan requirements, and a consumer could fail to satisfy the repayment requirements of the deferred interest plan.

HSBC believes this confusion can be avoided if the creditor is allowed to supplement the model form provided in Sample G–18(H) of Appendix G. For example, the creditor could disclose "You must pay your promotional balance in full by [date] to avoid paying accrued interest charges. Please remember if you have minimum payment obligations for other purchases, you must pay those amounts in addition to the amount of your promotional balance." HSBC believes such a disclosure would avoid consumer confusion, and requests Board add commentary allowing such supplemental disclosure when necessary to accurately describe repayment requirements.

II. Internet Disclosures/Posting of Cardmember Agreeements

Generally speaking, the CARD Act requires creditors to post agreements for credit card plans on web sites and to submit agreements to the Board for posting on a publicly available web site established by the Board. HSBC believes, however, that the proposed implementation of these requirements in some areas of the Proposed Rule is too burdensome.

With respect to the requirement to submit agreements to the Board, we agree with the Proposed Rule that creditors only submit to the Board those agreements that the creditor currently offers to the public. The primary benefit of making such agreements available on the Board's web site is to assist consumers in shopping for a credit card. Adding agreements that are no longer in effect would not assist consumers towards that goal.

1. **Creditors should not be required to provide credit limit information on displayed card agreement,**

Section 226.58(b)(4) defines "pricing information" to include, among other things, the credit limit. HSBC disagrees that creditors should be required to provide credit limits when we are submitting the agreements to the Board or posting them on a web site. The CARD Act requires the posting of C*redit Card Agreements* and HSBC believes that this requirement should not be expanded to include the display of information not contained in a card agreement. Furthermore, HSBC respectfully disagrees that the Board has included credit limit within a definition entitled "pricing information," as the credit limit assigned to an account should not be considered a *pricing* term.

HSBC provides the credit limit on card carriers and periodic statements, but does not display credit limit on a consumer agreement. It would be highly burdensome to determine a manner of displaying credit limits with consumer agreements. There are numerous credit limits that are assigned to consumers, and they often fluctuate during the life of an account. A consumer should not be encouraged to search for a credit card based on credit limits established for other consumers. Given these factors, the burden of including credit limits with the agreements outweighs the benefits.

2. **Clarification is needed concerning the display of variable APRs and promotional transaction terms.**

HSBC also requests clarification on the requirement that pricing information include annual percentage rates. Given the fact that the index used for variable rates may fluctuate frequently, the Board should clarify in the definition of "pricing information" that the requirement that the annual percentage rate be provided for variable rate accounts is satisfied by providing the applicable index plus the spread. Further, the Board should also clarify that the standard annual percentage rate, not temporary promotional rates, is included in the definition for purposes of this section. To include the burden of providing temporary promotional rates in the requirements set forth in the section may well have a chilling effect on these popular promotions.

3. **A creditor's obligation to resubmit card agreements to the Board should be limited to circumstances where materially substantive changes have been made to the plan.**

Section 226.58(d)(3) would require issuers to resubmit agreements to the Board following any change, regardless of whether that change affects the substance of the agreement. As systems improve, as businesses change, and as the law develops, it is inevitable that creditors will make technical, non-substantive changes to agreements without simultaneously making substantive changes. In such cases, requiring issuers to resubmit agreements following any change (however minor) would impose a significant burden on issuers. Given these difficulties, we suggest that the Board generally limit the requirement in this section to substantive or material changes.

Additionally, HSBC requests that a specific exception be provided for variable APR credit plans. If a variable APR changes due to a change in the applicable index (e.g. Prime Rate increase or decrease), then the creditor should not be required to resubmit all such variable APR cardholder agreements. Alternatively, the Board should allow a creditor the ability to describe variable APR information in a narrative manner which does not require constant updating. For example, a creditor may describe that the APR on purchases is "the current Prime Rate + 9.65%," which would remain accurate even as the Prime Rate increases or decreases

4. The Board's de minimis standard should not discriminate against larger institutions.

As for the de minimis exception defined in Section 226.58(e), HSBC believes that the Proposed Rule seeks to establish a de minimis standard that is unfair to larger creditors. The requirement to submit agreements to the Board is expected to require significant effort, and the burden on the Board will likewise be great. The threshold of 10,000 open credit card accounts should not be generally based on the number of credit card accounts at an institution. A more appropriate measure would be portfolio based.

A standard for private label credit cards, for instance, could easily be established. Unlike general purpose cards, private label credit cards may only be used for purchases from one retailer. Consumers primarily shop for private label cards based on where the card can be used. For such cards, the de minimis exception could therefore be based on the number of open accounts for each private label credit card that an institution offers, and would thus eliminate the burden of submitting agreements to the Board for small private label portfolios.

HSBC also recommends that a more appropriate minimum number is 25,000, rather than 10,000, to reduce the burden of this requirement.

5. Creditors must be given reasonable time to send a copy of the card agreement upon consumer request.

Section 226.58(f)(2)((ii)(B) requires a creditor to send to the consumer or otherwise make available to the consumer a copy of the consumer's agreement no later than 10 business days after the issuer receives the consumer's request. HSBC believes this time period is appropriate. The proposed time period should not be shortened because of the operational burden of complying with the request in a shorter period.

6. Further Board clarification is needed concerning the requirement of creditors to make card agreements available on a web site.

Section 226.58(f) also requires that creditors maintain a web site and make agreements available on the web site. We ask for clarification on whether issuers are required to maintain a single web site with all of its agreements or whether creditors can make agreements available on specific portfolio sites. We recommend that each issuer be given the flexibility of determining on what web sites to make its agreements available, as some web sites are more apt to be accessed for a specific type of credit card.

The Proposed Rule would require issuers to update agreements on the web site following any change, regardless of whether that change affects the substance of the agreement. As we mentioned earlier, creditor systems will improve, and it is inevitable that creditors will make technical, non-substantive changes to agreements without simultaneously making substantive changes. In such cases, requiring issuers to update the agreements on the web site following any change (however minor) would impose a significant burden on issuers. Given these difficulties, we suggest that the Board generally limit the requirement in this section to substantive or material changes.

The Proposed Rule requires that agreements provided under § 226.58(f)(2) include provisions and pricing information that is complete and accurate as of a date no more than 60 days prior to the date on which the agreement is posted on the creditor's web site under Section 226.58(f)(2)(i), or the date the consumer's request is received under Section 226.58(f)(2)(ii). The Board has asked for comments on whether this period should be shorter or longer. HSBC believes that, given the burden of the requirement that the terms applicable to a specific consumer be provided, the period of time should be lengthened to 90 days. A 90 day period would also be consistent with the requirement that creditors supply quarterly updates to the Board of current agreements.

7. The Board should not require creditors to display pricing terms.

HSBC questions the objective of displaying a form of every pricing variation of otherwise form cardholder agreements. The pricing terms made available to one consumer may be unavailable to another. Alternatively, the pricing terms may be much more costly than terms actually available to that consumer. HSBC believes the highly individualized nature of pricing terms provides little informative value when reviewed individually. Furthermore, the requirement to display perhaps dozens of pricing variations of every credit plan type would lead to information overload for consumers, only locating terms applicable to their own credit profile by happenstance.

HSBC notes that the CARD Act does not specifically require pricing terms. Moreover, the Board has been given discretion to establish exceptions to the requirements of Section 204 in any case in which the administrative burden outweighs the benefit of increased transparency. Considering the display of all pricing variations for all creditors, HSBC questions whether the display of tens of thousands of cardholder agreements adds 'transparency,' when the variations are predominantly pricing changes within the same universal account terms offered by a creditor. We ask that the Board reconsider whether the administrative burden associated with compiling a library of thousands of individualized terms furthers any pursuit of transparency.

Finally, we request that the Board allow creditors an option to provide variable pricing terms in a range-based format. The range-based disclosures could either be presented within cardholder agreement forms, or on supplementing forms, depending on the structure of a creditor's cardholder agreement. Certainly, ranged pricing terms on otherwise form agreements would be far more informative to consumers, and would significantly reduce the volume of displayed form types.

8. **If a creditor must provide pricing terms, the Board should allow creditors to include the pricing terms on a separate form.**

If the Board determines a need for pricing terms to accompany cardholder agreement forms, then the Board must consider that some creditors provide individualized pricing terms on a supplementary document that is provided with the cardholder agreement. As the cardholder agreement contains universal credit terms which may be printed in mass, the separate delivery of variable/individualized information adds efficiency. If a final rule were to require specific pricing information to be displayed *within* the cardholder agreement forms, we would have no form cardholder agreements which meet this requirement. HSBC, and certainly other creditors, will need to provide pricing terms on separate individualized forms. HSBC requests the Board to permit creditors this flexibility in the disclosure of pricing terms.

9. **The Board should clarify that the posting of cardholder agreements does not apply to ancillary agreements, such as optional debt cancellation contracts or debt suspension agreements.**

HSBC is concerned that the requirements under Section 226.58 could be interpreted to require the posting of ancillary agreements between the creditor and the consumer. For example, at any time a consumer may enroll in an optional debt cancellation contract or debt suspension agreement, at which time specific program terms and conditions are sent to the consumer. HSBC believes that including all terms and conditions for debt cancellation contracts or debt suspension agreements which may be available through a credit plan will further inundate a consumer with information which may or may not be relevant. As these are optional programs, and their terms are not typically disclosed in the cardholder agreement, HSBC seeks Board clarification that Section 226.58 is limited to the cardholder agreement itself, and does not encompass separate ancillary agreements entered into with the consumer.

Change in Terms

1. **The Board should provide promotional rate disclosure exceptions for promotions offered at retail point of sale, by telephone, and over the Internet.**

The Proposed Rule provides that creditors are not permitted to increase an APR, fees for issuance/availability, fixed /minimum finance charges, or fees required for debt cancellation unless an exception applies

Section 226.9(c)(v)(B)(1) provides an exemption from change-in-terms requirements for promotional offers. However, the exemption will only apply when the creditor provides a consumer with a written notification, prior to the commencement of the promotional period, which includes (i) the precise APR that will apply after the promotional APR expires, and (2) the term of the promotional period. As mentioned in a prior comment letter, HSBC has found that the requirement to provide the "go to" APR in writing prior to the commencement of the promotional period presents operational difficulties with respect to in person point of sale transactions, telephone transactions and Internet transactions, which may result in less credit being made available to consumers at low promotional rates.

i. Challenges with providing the specific "go to" APR.

Many retail credit card programs utilize risk-based pricing, which means that each consumer can have a different "go to" APR. Additionally, many retail credit card programs have variable "go to" rates, in which the interest rate will change based upon changes in an index, such as the prime rate. Disclosing a consumer's precise "go to" rate in the store prior to them making a purchase would require a complex technical solution that would take significant time to implement. Such a solution would involve the consumer identifying themselves (probably while standing at the cash register) and the store associate looking up and printing their "go to" interest rate through their point of sale system all prior to completing the transaction.

In view of these operational challenges, the Board has supplemented its guidance to the Interim Rule to state that for a brief period of time, creditors offering promotional rate programs at the point of sale may disclose a range of rates or an "up to" rate rather than a single rate. HSBC believes that the requirement to disclose the "go to" APR at point of sale is unnecessary and costly, and does not provide a significant benefit to consumers. The Board has allowed creditors to disclose the highest APR that could apply in other disclosures (226.6(b)(2)(i)(D), 226.7(b)(11)(i)(B)), and HSBC requests that the Board provide for this flexibility in the final rule. We ask that the Board clarifies that the "go to" APR may be disclosed as an "up to" rate on the receipt, using the highest APR offered on the particular credit card program or that the "go to" APR is the "standard" APR.

For Variable APR promotional plan disclosures, HSBC requests that the Board provide creditors with flexibility respect to the disclosure of the variable rate. For example, the Board could clarify that for variable rate indexed plans, a disclosure of the APR as a spread above the index is permitted for in store sales instead of the exact APR at the time of the sale. Alternatively, the Board could add a provision that specifies that a variable APR is one that is accurate if it was in effect as of a specified date provided in the disclosure (which rate must be updated from time to time but no less frequently than every 60 days).

ii. Challenges with providing required disclosures "in writing in a clear and conspicuous manner" and "prior to" plan commencement.

As we mentioned in our earlier comment letter, there are significant challenges in providing the disclosure in writing at point of sale prior to the purchase being finalized. Most purchases are made using electronic signature pads and the sales receipt prints out after the consumer has agreed to the purchase by signing the electronic signature pad. Section 101(c) of the Electronic Signatures in Global and National Commerce Act 15 U.S.C. 7001 *et.seq.* ("E-sign") provides that if a statute or regulation requires that consumer disclosures be provided in writing, certain notice and consent procedures must be followed in order to provide the disclosures in electronic form. The E-sign signature pad solution would take years to be implemented industry wide, and most retailers need a solution that does not involve the consumer providing the necessary E-sign consents, since gaining those consents is not possible using most currently available signature pads.

Providing clear and conspicuous written disclosure prior to purchase would require retailers to either abandon electronic signature pads and revert to having consumers sign paper receipts containing the required disclosures or to change their process to print a set of disclosures prior to the purchase being finalized, give them to the consumer to read, and then have the consumer sign the signature pad. While this process is somewhat manageable for new applications because the disclosure can be provided with the application disclosures, the point of sale disclosure process is very difficult to manage for existing consumers. In view of these operational difficulties at point of sale, HSBC asks the Board to clarify that a separate mailing of the promotional plan disclosures made to existing consumers meets the "in writing in a clear and conspicuous manner" and "prior to" plan commencement disclosures for existing consumers. Much like the account opening disclosures, the promotional plan disclosures should not be required to be provided more than once unless the terms of the promotional offers change.

We also ask that the Board provide creditors flexibility in how to format the promotional plan disclosures. Making changes in the format of electronic signature pads and sales receipts requires extensive and time consuming technical resources. For example, requiring these disclosures in a tabular format would be very challenging.

The Proposed Rule added a requirement that the length of the promotional period and the "go to" APR must be set forth in close proximity and in equal prominence to the disclosure of the promotional APR. We ask that the Board clarify that this requirement was not intended to require the creditor to disclose the “go to” APR and promotional term in such a manner whenever the promotional APR is mentioned by the creditor. For example, creditors and retailers often have in-store signs and banners that advertise the promotional APRs. These signs and banners are addressed to the general public, and it is not possible to provide individualized “go to” APRs.

iii. Challenges with Telephone Transactions.

The Board has proposed to allow creditors to provide the promotional disclosures orally for purchases made over the telephone if certain conditions are met. In order to take advantage of this exception, the creditor must first orally disclose, as part of the offer to finance the purchase, that the consumer may reject the promotional offer and return the goods free of charge, and then provide a written disclosure of the promotional terms as soon as reasonably practical after the transaction was initiated. We ask that the Board consider placing a reasonable timeframe on the right to return the goods free of charge. For example, it would be reasonable to provide the consumer with a 30 day period to return the goods free of charge starting five days after the written disclosure was mailed or delivered to the consumer.

We also request that the Board permit creditors to provide other types of promotional offers over the telephone. For example, a consumer may call a creditor to request a lower APR, and the creditor may be willing to provide a lower APR on a temporary basis. This type of offer is not clearly permitted under the Interim Rule or the Proposed Rule without the creditor first providing the consumer with a prior written disclosure of the term, promotional APR and “go to” APR. We believe that the creditor should be permitted to provide these disclosures orally if followed by a written disclosure within a reasonable period of time.

iv. Challenges with Internet Transactions.

As we mentioned in our comment letter on the Interim Rule, compliance with the Interim Rule in connection with promotional transactions made on the Internet presents unique operational difficulties. In order to provide a prior written disclosure, E-sign would require that the credit creditor first obtain the consumers consent to E-sign transactions and then provide the promotional disclosures electronically before the consumer completes the promotional rate transaction. Because most retailers do not have E-sign consent built into their Internet purchase process, many have discontinued offering promotional rate Internet sales programs.

At this time, many retailers are struggling to update their Internet technology in order to meet the in writing requirements of E-sign. We again request that the Board exempt the promotional rate, term and “go to” rate disclosures from the E-sign consent requirements. This is not to say that the promotional disclosures would not be provided to consumers in an Internet transaction.

However, we believe that requiring a consumer to provide E-sign consent simply to obtain promotional financing on Internet purchases is unnecessary overkill that will significantly detract from consumers' Internet shopping experience. HSBC asks that the Board allow the promotional disclosures to be given in writing electronically without being subject to the consent requirements of E-sign.

2. "No interest" promotions should be excluded from the requirement that a promotional offer must be a 6-month period or longer duration.

The Board has clarified that a creditor may increase an APR upon the expiration of a specified period of six months or longer, provided that certain conditions are met. As mentioned earlier in this letter, HSBC offers some programs in which no interest is assessed for a promotional period and no interest will ever be charged for the promotional period, regardless of whether the transaction balance is paid before or after the expiration of that promotional period. HSBC requests that the final rule exempts this type of program from the six month term limitation because of the unique benefit this program offers to consumers

3. The final rule should ratify transition guidance provided by the Board in the Interim Rule.

HSBC requests that the Board's final rule reiterate transitional flexibility as to requirements for the promotional term disclosures apply to promotional plans beginning on or after February 22, 2010. Specifically, creditors should be subject to the Interim Rule (including its transition guidance) for promotions that began prior to February 22, 2010.

4. The Board should provide creditors with flexibility with respect to workout or hardship programs.

A creditor is permitted to increase the APR and certain fees due to the consumer's completion of a workout or temporary hardship arrangement, or the consumer's failure to comply with such an arrangement, provided that prior to the commencement of the arrangement, the creditor has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement.

As we mentioned in our comment letter on the Interim Rule, the vast majority of hardship programs are agreed upon during telephone interactions with the consumer. Currently, the hardship arrangement is given immediate effect, and written confirmation of program terms are sent shortly thereafter. A consumer receives immediate benefit from APR reductions, account fee waivers, reduced minimum periodic payment requirements and suspended collection efforts. We ask the Board to consider the benefit to the consumer in receiving immediate benefits from a rate reduction, and allow creditors to provide an oral disclosure of the terms of the arrangement on the telephone followed by a written disclosure as soon as reasonably possible, such as on the next periodic billing statement.

We noted that the Board did not address the standard industry practice of reducing the minimum periodic payment requirements as part of a hardship programs. A reduction of monthly payments provides significant relief to those in financial turmoil. HSBC requests that the reinstatement of prior minimum payment requirements be similarly excluded from any change in terms requirements because the reinstatement of the higher APR and fees without a corresponding reinstatement of an increase in minimum payment will result in negative amortization on the consumer's account for a few months due to the 45 day notice requirement. This is an unfortunate consequence to consumers who received a rate reduction benefit.

HSBC also requests that the Board clarify that hardship program exceptions for increases in the APR, certain fees and minimum monthly payment, should apply to any workout arrangement entered into after August 20, 2009. Without this exception, creditors may be uncertain as to how the expiration of, or default on, a workout program should be handled.

5. **The Board must provide an exception for the reinstatement of prior account terms at the conclusion of benefits required under the Servicemember Civil Relief Act (SCRA).**

The Board provided an exception to the prohibition on increasing APRs at the conclusion of an SCRA benefit period. Because the exception in the Proposed Rule applies only to 226.55, and not to 226.9, it appears that although a creditor could increase an APR when the SCRA no longer applies, the creditor would have still have to provide 45 days notification. This will extend the SCRA benefits by a minimum of 45 days beyond the period required by the SCRA, which does not seem appropriate.

As we mentioned in our comment letter to the Interim Rule, as a practical matter, creditors suspend the imposition of account fees and reduce minimum payments requirements when applying an SCRA benefit to a consumer. The reduction in fees and minimum payment provide needed relief to the consumer, and HSBC requests that the reinstatement of prior fees and minimum payment requirements should be excluded from any change in terms requirements. As we noted with respect to hardship programs, the reinstatement of the higher APR and fees without a corresponding reinstatement of an increase in minimum payment will result in negative amortization on the consumer's account for a few months due to the 45 day notice requirement. We believe that this is an unfortunate consequence to consumers who received a rate reduction benefit.

Lastly, we ask that the Board clarify that the effective date for the SCRA exceptions from the change in terms requirements for increases in APR, fees and minimum payment were effective August 20, 2009.

6. The Board should allow an anticipatory notice of penalty pricing.

The CARD Act permits a creditor to impose a penalty APR on existing balances if the consumer becomes 60 days delinquent. While prior rulemaking by the Board permitted the sending of an anticipatory penalty pricing notice, the Proposed Rule now requires a creditor to provide a 45 day notice of the APR increase after the consumer becomes 60 days delinquent. In effect, the Board has imposed a waiting period of a minimum of 105 days, which in practice is more than 105 days because APR increases do not generally apply mid-cycle, after the consumer becomes delinquent before the creditor can implement penalty pricing. The creditor should not be required to wait until an account becomes 60 days past due before sending the first notice.

Consumers would benefit from proactive notice that significant delinquency will result in penalty pricing. Such a notice may cause a consumer to make prompt payment, so as to avoid the consequence of penalty pricing This benefit is lost if the creditor has to wait until the consumer first becomes 60 days past due. HSBC requests that the Board allow a creditor to disclose, upon initial delinquency, the consequences of allowing the account to become 60-days delinquent. This will encourage the consumer to take action to avoid these consequences when it is still possible to do so, and will allow the creditor to sooner react to risky behavior if the warning is unheeded.

Interest/Fees

I. Limitations of fees for "Fee Harvester" programs.

1. The CARD Act did not intend to regulate optional fees, or fees not charged to the credit plan.

Under a section titled "*Standards applicable to initial issuance of subprime or 'fee harvester' cards"* the CARD Act provided that a credit plan may not "require the payment of any fee" in excess of 25% of the credit authorized at account opening. While the Proposed Rule provides some valid rationale for an expansive application, the end result is impact that goes well beyond "subprime or fee harvester" credit plans, a clear departure from legislative intent.

i. Optional transactional fees should not be considered when calculating required fees.

The Proposed Rule includes within coverage certain fees which are not required to be paid by the creditor. These fees include fees for cash advances, balance transfers, and foreign currency exchange. These are entirely optional credit line utilization features, and are not in any way associated with subprime or fee harvester credit plans. While creditors do make these line-utilization options available to consumers because they are circumstantially desirable or needed, a credit card is commonly understood to be a device to use for purchases. Before categorizing these fees as 'required,' the Board neglected to consider the uniqueness to each type of transaction.

For example, it is not expected that a consumer will make significant foreign purchases, but foreign currency exchange is a desirable and convenient feature for consumers who make purchases while travelling, and providing this feature causes expense to creditors beyond that of a domestic transaction. Balance transfers often provide consumers the benefit of transferring a high interest loan to one with promotional pricing. As such, the balance transfer fee is typically offset by consumer benefit which is not being given consideration by the Board. Presumably, a consumer will pay a fee to transfer a balance only when he/she determines the terms of the offer to be of adequate value. Certainly, it would be illogical to consider a $10 balance transfer fee to be within the scope of a consumer protection limitation without considering (for example) a $20 repayment savings under favorable terms. Finally, while cash advances are an optional means of accessing the credit line, these are significantly riskier transactions for a creditor, and that risk is typically offset by a higher APR and advance fee. Nevertheless, cash advances are of value to consumers in circumstantial need, and the decision to withdraw cash rather than make purchase transactions is a discretionary decision of the consumer.

In summary, the optional transaction fees being included within the Proposed Rule are not required by creditors. These fees are in no way associated with subprime lending, and the broad interpretation of 'required' fees will force all creditors, including prime lenders, to build systems capable of detecting when an individual account which is not expected to exceed 25% in required fees, in fact does so. Further, any determination concerning optional transaction fees must consider all offsetting benefits to consumers. HSBC strongly urges the Board to reconsider its proposals, and to exclude fees associated with optional transactions its effort to give effect to subprime or fee harvester protections.

ii. Fees not charged to the credit plan should not be included in the calculation of 'harvested' fees.

Proposed staff comment 52(a)(1)(ii)-1 provides that any fees paid by a consumer "through other means" must be included when calculating the 25% limitation. While it is true the CARD Act used terminology which could be interpreted to pull in "any" fee as the Board has suggested, the CARD Act also contains wording which indicates an intent only to regulate fees charged to the credit card account.

For example, as mentioned previously, the title to these protections is to place limitations upon "fee harvester" credit cards, which unmistakably references the imposition of fees to a credit plan. Fees that are paid separately by a consumer through other means are not, in fact, being "harvested" on the credit account, and are neither subject to repayment terms, nor do they occupy what would be available credit to utilize under the plan. Further, the specific wording used by legislators in drafting the intended protection was:

> *"…no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds)* ***may be made from the credit made available under the terms of the account****."* [Emphasis added]

HSBC believes it is implicit that when legislation has specified payment of fees exceeding the limit "may not be made *from credit made available under the plan*," that it did not intend an absolute prohibition of such fees from any other means. Had there been such a legislative intent, the CARD Act would have specified "no payment of any fees… may be made *through any means*." In fact, this is wording that intends to limit a specific practice of imposing fees exceeding the 25% threshold *on the credit plan*.

In summary, HSBC believes there is sufficient indication through the title and wording of Section 105 of the CARD Act that the legislative intent was limited to protections against fees being 'harvested' on the credit card account, and not to regulate or restrict in any way payments made through other means. HSBC believes it is illogical to regulate fees not charged to the account, when a consumer maintains the ability to utilize 75% or more of credit extended under the credit plan, and such fees are not subject to repayment terms of the credit plan. Therefore, HSBC comments that fees not paid using credit made available under the plan should be generally excluded from the protections contemplate in proposed Section 226.52(a).

II. Over-Limit Fees

1. **Board clarification is requested in regards to a "reasonable belief" standard used in Section 226.56.**

The Proposed Rule states that Section 226.56 does not apply to a creditor that has a policy and practice of declining to pay over-the-limit transactions when the creditor has a "reasonable belief" that the transaction will cause the consumer to exceed the credit limit on the consumer's account. HSBC requests clarification on how the Board defines a "reasonable belief" on the part of the creditor in such an instance.

2. **The Board should permit creditors to use a check-box on the credit application to collect opt-ins to overlimit fees.**

HSBC agrees with the Board's determination that creditors should segregate over-the-limit consents from other consents provided by a creditor. The most reasonable manner of obtaining consumer consent would be at time of application, using a check-box consent on the credit application itself. While HSBC largely agrees with the wording provided by the Board under Model consent sample G-25(A), it doubts there is adequate space on a typical credit application to provide such notice. HSBC urges the Board to consider allowing a simplified check box on the credit application, which provides the most important information, but refers the applicant to separate terms and conditions which give the remaining disclosures listed in sample G-25(A). For example, HSBC believes there is space on a credit application to provide the following consent:

> I want you to authorize transactions that exceed my credit limit. I understand that if I go over my credit limit, I will be charged a fee of $__ and my APRs may be increased. I understand I may revoke my opt-in at any time, and I have read additional *Your Right to Request Over-the-Credit Limit Coverage* disclosures provided in the terms and conditions on the reverse.

3. **A creditor should not be required to proved consumers with written confirmation of an opt-in consent.**

The Board has sought comment whether a creditor must provide a consumer with written confirmation of the consumer's consent to allow over-the-limit transactions. HSBC does not feel that this is necessary, and any such requirement would increase costs to creditors with seemingly no benefit to consumers. As an initial matter, HSBC notes that the CARD Act does not require such a notice. The requirement that the over-the-limit consent be separate from other consents on the credit application already minimizes any possibility that the consumer could inadvertently consent to allow over-the-limit transactions, therefore separate written confirmation of this election from the creditor is not necessary.

4. **The Board should allow flexibility with respect to a creditor's manner of receiving opt-in consents and revocations.**

The Board requested comment on whether creditors should be required to allow consumers to opt in and to revoke that consent using each of the three methods (that is, orally, electronically, and in writing). HSBC agrees with the flexibility in proposed rules that allows the creditor to determine available methods for opting in, and would disagree with requiring all three methods.

5. **When setting revocation request processing timeframes, the Board should consider the revocation risks to a creditor.**

The Proposed Rule requires compliance with a revocation request as soon as reasonably practical, but has solicited comment on outlining a 5 business day safe harbor for honoring revocation requests. HSBC anticipates that consumers may expect an ability to opt-in to over-the-limit transactions in a real-time scenario, for example when attempting to make a purchase at a retailer location. While HSBC intends to pursue technological solutions to meet this anticipated consumer request, it does not believe it is feasible to require honoring of revocations under the same timing.

Prior to an opt-in, a creditor's system protections were presumably in place to reject over-the-limit transaction attempts, and there is only benefit to consumers when a creditor reacts as quickly as demanded to authorizing over-the-limit transactions upon opt-in request, for example when a consumer is attempting to make a purchase. However, once a creditor's systems are modified to consider authorizing over-the-limit transactions following an opt-in request, it may be impossible for systems to be reinstated before new over-the-limit transactions are attempted. HSBC is concerned that a consumer may attempt to opt-out of over-the-limit fees, and then inadvertently transact over the assigned limit before a creditor may update its systems to decline over-the-limit transactions. In fact, a transaction may have been done before the revocation demand, and had not yet been fully processed. HSBC believes any revocation concept must recognize the risks to a creditor.

As to consumers who have opted-in to over-the-limit fee assessments, HSBC suggests that the Board (1) provide that consumer may opt-out of over-the-limit fees only after the account remains or has been brought under the credit limit for an entire billing cycle, and (2) allow a creditor reasonable time to implement an opt-out request (e.g. 5 days), so that a consumer may not opt-out of such fee assessments, and then immediately transact over the assigned credit limit before a creditor can update its systems to decline over-the-limit transactions.

III. Double Cycle Billing

1. **Creditors should be allowed to waive trailing interest as a consumer courtesy, and not be required to treat all accounts as being 'subject to a grace period' when partial payment is received.**

A creditor may have a consumer-friendly practice of waiving trailing interest when a consumer has paid in full in any given billing cycle. HSBC is concerned that the Proposed Rule and staff commentary could be interpreted to require such a creditor to treat all payments received as technically being toward balances 'subject to a grace period.' Under such an interpretation, creditors will be strongly discouraged from offering traditional single-cycle grace periods, or otherwise proactively waiving interest to the benefit of its consumers.

Given the title and topic matter of newly created TILA section 127(j)(1), it appears that the legislative intent was to specifically effect multi-cycle grace periods. It would not be feasible for such a section to have broad application to every payment received from consumers. Under such a broad application, creditors will be discouraged from offering grace periods at all, as a revolving account balance could receive some interest-free benefit for every payment made for the whole of the billing cycle, including days prior to receipt of the payment. HSBC requests that the board clarify that §226.54(b) is only applicable in the specific instance where (1) a creditor offers a grace period contingent upon a prior cycle balance being paid in full, and (2) after that condition has been met, a partial payment is remitted in the following cycle.

Young Consumers

HSBC appreciates the Board's efforts in providing guidance to institutions who will offer credit to individuals under the age of 21. While the Proposed Rule is generally clear and helpful, HSBC submits the following comments seeking further clarifications from the Board.

1. **For credit card offers that do not permit co-applicants, creditors should be allowed to make credit decisions based solely on independent ability to pay, and should not be required to offer the option of adding a co-applicant.**

Within the Proposed Rule, the Board indicated that a creditor may choose to evaluate an application of a consumer who is less than 21 years old solely on the basis of the information provided under § 226.51(b)(1)(ii) [ability to pay]. However, ensuing Board discussion indicates that a cosigner may not be refused to applicants, if doing so would violate the protections of Regulation B.

Specifically, the Board's discussion provided: "For example, if the card issuer permits *other applicants of nonbusiness credit card accounts* who have attained the age of 21 to provide the signature of a cosigner, guarantor, or joint applicant, the card issuer must provide this option to applicants of nonbusiness credit card accounts who have not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract)." [Emphasis added]

A creditor may make an array of credit card offers available to consumers. These may be online, direct mail, or retail credit offers. While certain offers may in fact offer an applicant the opportunity to apply with a cosigner, this is done on an offer by offer basis. Therefore, while the creditor may not have permitted application with a cosigner on a specific offer, it may have in circulation unrelated offers of credit which do permit "other applicants of nonbusiness credit card accounts" to apply with a cosigner.

HSBC does not interpret the Board's guidance as requiring uniform practices at an institutional level. HSBC believes that so long as all applicants of a specific credit offer are given the same opportunity or inability to add a cosigner, there should be no risk of violating Regulation B protections. HSBC requests Board confirmation of this understanding.

2. **The Board should clarify that independent ability to pay may consider the income of a spouse who is also under the age of 21, if the spousal income is provided on a credit application.**

As noted above, Section 202.5(c)(2)(iii) implies that it is permitted for an applicant to include the income of a spouse "if the applicant is relying on the spouse's income as a basis for repayment of the credit requested." Further, 202.6(b)(5) provides that a creditor shall not discount or exclude from consideration the income of an applicant *or the spouse of an applicant* because of a prohibited basis… ."

HSBC believes there will be circumstances when an applicant under the age of 21 provides income at time of application which includes income of a spouse who has also not yet attained the age of 21. While such an occurrence may not technically demonstrate "independent" ability to pay, HSBC believes that a creditor is nevertheless obligated to treat such a scenario no differently than when both spouses exceed the age of 21. HSBC requests confirmation of this understanding, or alternatively, guidance on how independent ability to pay must be determined in such a scenario.

Student Cards

Under TILA Section 140(f)(2), no creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such creditor or creditor, if such offer is made on the campus of an institution of higher education, near the campus of an institution of higher education, or at an event sponsored by or related to an institution of higher education. The Board has proposed to implement this provision in § 226.57(c), which generally would track the statutory language. Further, the Board has provided staff commentary to clarify some areas of ambiguity. As a creditor who does not generally target college students with credit offers, HSBC's primary concern is that these regulations may have an unintended impact upon HSBC's business. HSBC offers the following comments on these provisions:

1. **The definition of "near the campus of an institution of higher education" should only include those institutions with a physical campus, and should be reasonably limited in order to avoid encompassing retailers who are within close proximity to a campus.**

The Board solicited comment on the appropriate ways to determine a location that is considered 'near the campus of an institution of higher education". Given the existence of institutions of higher education which largely operate over the Internet, HSBC would appreciate a clarification that any proximity requirements are limited to those institutions which in fact have a physical campus, to avoid illogical arguments that an individual taking classes at his or her homestead is a ‘campus’ of an institution of higher education.

Further, while HSBC is generally supportive of the Board’s proposal to define ‘near’ proximity as being within 1000 feet of a campus, HSBC is concerned of the possibility that various retail businesses for whom HSBC offers retail credit may have locations within 1000 feet of a campus. HSBC requests a general exception for retail credit programs located within any proximity requirement, as national retail credit promotions would not be expected to specifically target college students. Alternatively, HSBC would appreciate further consideration by the Board to establish a ‘near campus’ proximity which would reasonably be expected to cover the types of student-targeted promotions which instigated the CARD Act protections, while not encompassing retail credit plans which do not target students.

2. **Direct mail solicitations and retail credit promotions which do not intend to target students should be generally excluded from coverage.**

Many credit card lenders send credit offers via direct mail, which are not intended to target college students. One example is a prospect list received from a credit bureau which contains prospects determined to meet the creditors predetermined criteria for a firm offer of credit. Another example would be in connection with an affinity or co-brand program, where a bank may make offers of credit to all members or consumers of the affinity/co-brand partner. In the event a prospect in such a file is a student, this information would be unknown to the creditor at the time it “offers” credit, and may result in an inadvertent violation of the Proposed Rules.

Handling of Estates

With respect to proposed Section 226.11(c)(3), HSBC recommends that creditors should not be required to provide an administrator, executor, or personal representative (a “Personal Representative”) of an estate with the amount of the balance on a deceased consumer’s account merely upon an oral request. Given the privacy issues and concerns surrounding such information, this requirement should be revised to permit creditors to first require written requests, along with evidence that the consumer is actually deceased and that the Personal Representative has the authority to act on behalf of the estate, before providing such information.

HSBC believes that a creditor should be permitted to resume the imposition of fees and charges if an account balance has not been paid within a specified time period after a request has been made for the payoff balance. We suggest that an appropriate time period would be 30 days after a Personal Representative is provided with the amount of the balance on a deceased consumer's account. Such a right will encourage the Personal Representative to make timely payment of the debt to the creditor. It would be unreasonable to require the creditor to provide an interest free loan for an extended period of time in cases where an estate has the ability to pay off an account.

Finally, HSBC believes that 30 days is a sufficient period of time for a creditor to comply with a request for a statement of the balance on a deceased consumer's account.

Conclusion

HSBC appreciates the opportunity to provide its comments on the Proposed Rule. If you have any questions regarding our comments, please do not hesitate to contact James Hanley at (952) 564-7600 or Donna Radzik at (224) 544-2952.

Sincerely,

James Hanley — Senior Counsel

Donna Radzik — Associate General Counsel