



*Submitted via email to: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*

November 20, 2009

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th St. & Constitution Ave. N.W.  
Washington, DC 20551

**Re: Comments of Citizen Works on the Board of Governors of the Federal Reserve System's Proposed Amendments to Regulation Z—Docket No. R-1370, 74 Fed. Reg. 54124-54332 (Oct. 21, 2009).**

Citizen Works\* thanks the Federal Reserve System Board of Governors for this opportunity to submit these comments on proposed amendments to Regulation Z, which implements the Truth in Lending Act, to conform with the provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act").

We note the significant steps Congress has taken this year to curb the consumer-unfriendly tactics of credit card issuing banks vis-à-vis their cardholders, who all too often are disadvantaged by an imbalance of power in their contractual relationships with the issuers. There is much to commend in the proposed rule, and we are especially encouraged by the disclosure requirement to post credit card agreements online. Citizen Works submits the following comments to focus on certain aspects of the proposed amendments we believe the Federal Reserve could implement, without departing from the requirements of the CARD Act, to increase transparency and/or further Congress's intent to help level the contractual playing field between banks and credit card holders.

## COMMENTS BY SECTION

### Section 226.5 – General Disclosure Requirements

#### Section 226.5(a)(2) – Terminology

Proposed Section 226.5(a)(2) addresses the use of the term “fixed,” or any similar term to describe an annual percentage rate, specifying that such a term may not be used unless the creditor also specifies a period of time during which that rate will be “fixed,” *i.e.*, will not be increased. If no time period is specified, any indication that the rate is fixed must be interpreted to mean that the rate will not be increased at any time while the account/plan in question remains open. The proposed limitation on the use of terms such as “fixed” ensures that consumers will not be misled or confused as to the duration of any commitment on the part of creditors not to raise an applicable interest rate. Maximum clarity and transparency as to applicable interest rates is in the best interests of cardholders. As such, in addition to restricting the use of terms such as “fixed,” Citizen Works suggests the addition of a requirement that, where an interest rate is disclosed and *not* described as “fixed,” creditors explicitly describe the rate as “variable,” “subject to change,” or another accurate statement as to the potential that the rate will increase in the future. While we recognize that the proposed Regulation Z contains many disclosure requirements relating to interest rates, we believe that requiring an express statement as to the potential for an increase to accompany the listing of any interest rate can only further the interests of clarity and consumer comprehension.

### Section 226.7 – Periodic Statement

#### Section 226.7(b)(11) – Due Date; Late Payment Costs

Section 226.7(b)(11) requires that creditors disclose conspicuously on each periodic statement the due date for any payment and the amount of any fee and/or increased interest rate that will be imposed for late payments.

Section 226.7(b)(11)(B)(ii) provides that the fee and interest rate disclosure requirements do not apply to charge cards, accounts which require payment in full every billing period and do not allow a balance to be carried from one billing period to the next. In the interest of increased transparency, we believe that any fees imposed for late payments, as well as any other consequences thereof, should be disclosed on periodic statements for charge card accounts. The Board justifies the charge card exemption by noting that certain charge card issuers do not impose late fees unless cardholders fail to make payments in two consecutive billing cycles, and suggesting that a disclosure of such a late fee policy might encourage a cardholder to “routinely” delay payments until such time as a late fee would be assessed. Citizen Works believes that, in the interest of transparency, charge card late fee policies should be conspicuously disclosed on periodic statements. We do not believe that the vast majority of responsible charge card holders would

repeatedly delay payments – which would likely constitute a breach of their agreements with the issuer – simply because of the disclosure of the issuer’s late fee policy.

According to the Board’s comment 7(b)(11)-3, the late fee and penalty interest rate disclosures would not be required on each monthly statement if such consequences were only triggered by “multiple events,” *e.g.*, two late payments in a six month period. Rather, the Board would interpret the requirements to compel disclosure only on monthly statements where late payment could trigger the negative consequences, *e.g.*, where the consumer had already made one late payment. We believe that maximum clarity would be achieved by requiring disclosure of the issuer’s policy on late fees and penalty interest rates on each periodic statement, whether or not the cardholder could trigger such consequences by making a late payment with respect to that particular billing period. We believe that complete and accurate late payment disclosures on each and every periodic statement would be a benefit to consumers. Using the Board’s example, where a fee or penalty rate is triggered by two late payments in six months, and the consumer has already made one such late payment, the Board could require an additional disclosure that the consumer is effectively “one late payment away” from such consequences. Requiring disclosure on every statement, and an enhanced disclosure in cases where consumers are at greater risk of triggering fees or penalties, is preferable to permitting issuers to avoid disclosure entirely unless and until a consumer has already made one late payment.

In comment 7(b)(11)-5, the Board provides that, where the maximum penalty interest rate on a particular account has already been triggered, an issuer may delete the disclosure of such interest rate and the warning that it may be imposed as a result of late payments. Alternatively, the issuer would be permitted to indicate that the penalty APR had been imposed because of such late payments. Citizen Works believes that the latter alternative should be mandatory. Even where the maximum penalty interest rate has already come into effect because of a consumer’s late payments, that consumer might benefit from the reminder that, because of his previous failures to make timely payments, he is being penalized and paying more in interest than would otherwise be the case. Such disclosure might motivate the consumer to make future payments in a timely fashion, potentially resulting in the reduction of the applicable interest rate in accordance with the terms of the cardholder’s agreement.

#### Section 226.7(b)(12) – Repayment Disclosures

Section 226.7(b)(12) requires certain disclosures on each periodic statement detailing the consequences of making only the minimum required payments on an account, the total cost to a consumer in principal and interest of paying the outstanding balance by making only the minimum payment, the monthly payment required to pay off the balance in 36 months, and a toll-free number where consumers may receive information about credit counseling and debt management services.

Section 226.7(b)(12)(v)(B) would exempt issuers from providing the required repayment disclosures on periodic statements following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero balance, or had a credit balance. The

Board suggests that the exemption reflects an appropriate balance between consumer benefits and burden on issuers. We believe that the repayment disclosures should be required on any periodic statement that reflects a balance, regardless of the consumer's payment or balance status in the two prior payment periods. Where a consumer makes one or more purchases using a credit card during a billing cycle, the repayment disclosures should be provided on the first statement that reflects those charges, enabling that consumer to make an informed decision about paying off that balance. Making a payment in any amount less than the full balance can result in the accrual of interest, even where the consumer carried no balance in the preceding two billing periods, and we do not believe the incremental burden in providing these disclosures to the subset of consumers who carried no balance in the prior two billing periods would be significant.

### **Section 226.9 – Subsequent Disclosure Requirements**

#### Section 226.9(c)(2)(iii) – Charges Not Covered by § 226.6(b)(1) and (b)(2)

Section 226.9(c) addresses notice requirements when an issuer changes the terms of a consumer's account. The proposed regulation, to conform with the mandates of the CARD Act, requires that, with certain limited exceptions, increases in applicable interest rates, required minimum payments, and other "significant" changes to the terms of the agreement between the issuer and the cardholder, be disclosed, in writing, 45 days in advance of taking effect. The Act also requires that consumers be given the opportunity to opt out of certain such changes before they are implemented. These requirements are among the key protections established by the CARD Act, and should play a significant role in approaching a balance of bargaining power between card issuers and cardholders.

Section 226.9(c)(2)(iii) provides that, where the change to an account encompasses a charge not enumerated in Sections 226.6(b)(1) or (b)(2), the 45-day written notice would not necessarily be required. Rather, the proposed rule would permit issuers to provide notice of any such charges prior to their imposition "at a time and in a manner that a consumer would be likely to notice the disclosure of the charge [sic]," including providing only oral notice. Citizen Works believes that any previously undisclosed charge imposed on a consumer by a card issuer is potentially significant, and that issuers should be subject to notice requirements that are less ambiguous, and designed to accomplish the CARD Act's goals of ensuring that consumers are fully informed as to any changes to the agreements into which they entered with the issuers. Issuers should not be permitted to impose previously undisclosed charges of any kind on consumers without ample notice. Citizen Works believes that a uniform 45-day advance notice requirement for both the enumerated "significant" account changes and other previously undisclosed charges would be the most sensible solution. Even if the Board were to decide on a different notice period, the imposition of any new charges should be required to be disclosed in writing, rather than orally. Written disclosure is superior to oral disclosure, among other reasons, because it will avoid any disputes as to the adequacy and precise contents of the disclosure that might be occasioned by disclosure made over the telephone and because the consumer will be able to refer back to the written disclosure should questions arise in the future.

## **Section 226.10 – Payments**

### Section 226.10(b) – Specific Requirements for Payments

Section 226.10(b)(2) is intended to provide examples of reasonable requirements for the making and acceptance of payments. Section 226.10(b)(2)(ii) deems reasonable a requirement that payments be received by a specific time no later than 5 p.m. on the date such payments are due. However, it specifies that the time that governs is that “at the location specified by the creditor for the receipt of such payments.” In response to the Board’s query, we would suggest that it is, in fact, more reasonable to use as a benchmark the time at the location of the cardholder’s billing address. While we recognize that most issuers service cardholders across the United States, in several time zones, as between individual cardholders and issuers, the issuers, in most cases sophisticated financial institutions, are better equipped to bear whatever minimal burden is entailed by the difference in time. Consumers on the west coast should not be penalized for making a “late” payment simply because the issuer has designated a Post Office Box in Wilmington, Delaware as the “location of payment,” especially since telephone and internet payments are likely to be “received” and processed somewhere altogether different.

### Section 226.10(d) – Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

Section 226.10(d) generally provides that, when the due date for a credit card payment falls on a weekend, holiday, or other day that the creditor does not accept payments by mail, payments received on the next business day cannot be treated as late. The proposed rule provides, however, that, where the creditor accepts payments on the due date by a method other than mail – such as electronically or via telephone – payments made on the next business day by such non-mail method need not be treated as timely. In other words, if the due date for a payment falls on a Sunday, when mail is not delivered, but the creditor accepts electronic payments on Sunday, a payment made the following day, Monday, would need to be considered timely if made by mail, but not if made electronically. Citizen Works recognizes that the availability of alternative methods of making payments is generally a benefit to consumers, and that, at least in part because of the CARD Act’s requirement that the due date for monthly credit card payments fall on the same calendar date each month, situations where payments are due on dates that the United States Postal Service does not deliver mail are inevitable. We are concerned, however, that this proposed rule might result in some confusion on the part of consumers, effectively establishing multiple, conflicting due dates for different payment methods. An easily implemented solution would be to establish an across-the-board rule that payments received on the business day following a due date on which mailed payments are not accepted must be considered timely, regardless of how that payment is made. In the absence of such a rule, however, we encourage the Board to require explicit, conspicuous disclosure of all available methods of making payment, including, where applicable, that payments will be accepted by particular methods on weekends, holidays, or other days on which consumers might not expect creditors to accept payments.

## **Section 226.56 – Requirements for Over-the-Limit Transactions**

Section 226.56, and particularly Section 226.56(b), requires that a creditor may not assess any fee or charge to a consumer as a result of the consumer's completion of a transaction that results in the account balance exceeding the credit limit unless the consumer affirmatively consents, or "opts in," to the creditor's approval of such transactions after the disclosure that a fee or charge will be imposed. This is an important protection for consumers who, all too often under their current agreements with creditors, are hit with excessive fees for over-the-limit transactions without prior knowledge that such transactions would be processed by the card issuers. It is a reasonable assumption that, should a consumer attempt to engage in a transaction that would result in the consumer's balance exceeding the account credit limit, the issuer would decline such a transaction. Instead, issuers will approve the transaction, triggering significant, and often consecutive, over-the-limit fees. Requiring a consumer to consent to the approval of transactions that would result in exceeding the account's credit limit will eliminate the "element of surprise" and ensure that consumers who so choose can keep their credit card debt within the limits established and disclosed by the creditors.

In its Section 226.56(c), the Board proposes to allow cardholders to consent to the approval of over-the-limit transactions "in writing, orally, or electronically." The Board specifically solicited comments on whether, once such consent had been obtained, creditors should be required to issue written confirmation of such consent to verify that the consumer truly intended to grant such consent. Citizen Works believes that written confirmation should be required. This will provide an extra layer of protection for consumers, particularly those who might grant consent to over-the-limit transactions by telephone, while engaging in a transaction at the point of sale, for example. As with notice of fees and charges, written disclosure and/or confirmation of all significant developments is the most reliable way to ensure that consumers are fully aware of the details of their arrangements with card issuers and have continued access to the terms of those arrangements.

Section 226.56(f) proposes that the consent of any one of multiple consumers who are jointly liable on an account may be considered sufficient to constitute an opt-in to the payment of over-the-limit transactions and the imposition of fees. We propose that the consent of all joint account holders be required. While this might minimally increase the burden on issuers to obtain such consent, where multiple individuals are liable for the debts incurred on an account, each of them should be given every opportunity to avoid the imposition of such potentially repetitive and excessive fees. Unanimous consent of all jointly liable cardholders (but not those individuals who are merely authorized users) should be required.

## **Section 226.57 – Special Rules for Marketing Open-End Credit to College Students**

Section 226.57, as proposed, imposes certain restrictions on card issuers' marketing of credit cards to college students, a segment of the population that has been proven prone to

accumulation of excessive credit card debt. In addition to marketing restrictions, such as the prohibition on offering students certain inducements to open an account, the section also provides that any agreements between card issuers and colleges or universities be publicly disclosed, and that each issuer provide an annual report to the Board detailing such agreements. We believe such disclosure and reporting requirements to be extremely important in ensuring that the precise contours of the relationships between issuers and higher education institutions, and the effects of such partnerships, are understood. Therefore, we urge the Board to require that the information to be disclosed is accurate, complete, and includes all relevant details, including, but not limited to, differences in terms between student and non-student accounts, comparative rates of default and average outstanding balances, and any monetary or non-monetary compensation to the institution or its officers or employees for lending its imprimatur to such credit card accounts.

### **Section 226.58 – Internet Posting of Credit Card Agreements**

Section 226.58 of the proposed amendments is designed to implement the requirement that credit card agreements be made available to consumers online. Citizen Works supports this requirement and in the interest of ensuring that the online posting requirement achieves its dual purpose of educating consumers shopping around for the card that best meets their individual needs, and of enabling existing cardholders to easily access the most current versions of the agreements that govern their relationships with creditors, we suggest that the universe of information required to be available online be as complete and accurate as possible. Specifically, Regulation Z should require that all agreements made available should be up-to-date, both those applicable to existing customers and those available to the general public. Issuers should be required to present not only the agreements themselves, but all supplemental information necessary to enable consumers to make meaningful comparisons among available cards. When a change is made to an agreement, the Board should require that the online version of that agreement be updated within a specific period of time, no greater than 72 hours. We also suggest that issuers be required to archive prior versions of such agreements, and enable consumers to access those prior versions online as well, for purposes of comparison.

### **ANTI-EVASION PROVISION**

In addition to the above suggestions on particular sections of the proposed amendments, we strongly urge the incorporation into Regulation Z of a provision to prohibit card issuers from devising and implementing “creative” ways to evade the spirit of the protections encompassed by the CARD Act. In the months since the passage of the Act, some issuers have already shown a willingness to devise terms not explicitly prohibited under current law to generate additional revenue prior to the effective date of the restrictions embodied in the Act, all at the expense of consumers. Some issuers have already begun to employ anti-consumer tactics that, while arguably not in violation of the Act as written, accomplish by other means the very effects sought to be outlawed. In this context, the profit-maximizing ingenuity of issuers should not be rewarded over the recognized intent and urgent need to protect consumers from unfair and deceptive

practices. The Board should, in the exercise of its authority to enforce the provisions of the CARD Act, include in its Regulation a prohibition on tactics designed to circumvent any provision of the Act. Such a prohibition should nip in the bud, for example, efforts to escape the restrictions on fee harvester cards by reducing credit limits, the effective imposition of rate floors on “variable” rate cards, and inducements offered to cardholders to persuade them to opt in to the potentially very costly approval of over-the-limit transactions.

The CARD Act and the Board’s proposed amendments to Regulation Z represent some progress in empowering consumers in their contractual relationships with the banks and financial institutions that provide members of the public with credit, an integral function in the United States economy. Citizen Works thanks the Board for this opportunity to participate in the rulemaking process. If you have any additional questions or concerns, please feel free to contact me at [elipman@citizenworks.org](mailto:elipman@citizenworks.org) or at (202) 265-6164.

Sincerely,

/s/

Eric Lipman, Esq.

On behalf of Citizen Works