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June 2, 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 Nos. R-1286 and R-1314 — Comments on Proposed Clarifications to Regulations Z and AA

Dear Ms. Johnson:

GE Money Bank ("GEMB") is submitting this letter to comment on the proposed clarifications to the recent revisions to (i) Regulation Z that were published by the Board of Governors of the Federal Reserve System (the "Board"); and (ii) Regulation AA that were published by the Board and the Office of Thrift Supervision and the National Credit Union Association (together with the Board, the "Agencies"). GEMB is a federal savings bank located in Utah. As a major credit card issuer, GEMB partners with hundreds of retail brands to provide consumers with over 100 million private label and co-brand credit card accounts. The availability of store credit, including credit provided by GEMB as part of its private label and co-brand programs, is a critical driver of the economy because it provides increased purchasing power to consumers. Consumers also have special affinity with our retail partners and receive valuable discounts and promotions in connection with the use of private label and co-brand cards.

Summary

As an initial comment, we would like to thank the Agencies for drafting a thoughtful and well-reasoned approach toward improving federally-mandated credit card disclosures. We especially appreciate that the Agencies have decided to continue to allow deferred interest promotions. While we believe that the Agencies have done an excellent job in drafting the revised rules and proposed clarifications, we request that the Agencies make the following further clarifications:

- Disclosure of Variable Rate. Credit card issuers should be able to disclose the current variable rate outside of the account-opening table for point of sale applications.

- Disclosure of Promotional APRs for Transaction-Based Promotions. Credit card issuers should not be required to disclose promotional APRs for transaction-based promotions in the Schumer box and account-opening table.

- Disclosure of Promotional Offers Made to Existing Cardholders. If a credit card issuer makes a promotional offer to an existing cardholder and discloses the terms of the offer in the promotional materials, including the fact that the rate for new transactions will increase to the standard rate at the end of the promotional period, the credit card issuer should not be required to provide a change-in-terms notice pursuant to 12 CFR 226.9(c).

- Payment Allocation Under, and Disclosure of, Payment-Based Plans. Some credit card issuers offer cardholders plans where the credit card issuer offers reduced or no interest on certain balances if the cardholder pays a monthly payment that is higher than the usual minimum payment. In such a situation, the higher minimum payment should be considered the minimum payment on the account, and the creditor should be permitted to allocate such minimum payment to the promotional plan balance. In addition, if the cardholder fails to make the higher minimum payment for the plan, the credit card issuer should be able to impose the standard APR for the account on the entire promotional plan balance, without having to provide a change-in-terms notice pursuant to 12 CFR 226.9(c).

- Unsolicited Balance Transfers. If a cardholder uses a convenience check or balance transfer check to transfer balances between accounts owned by an institution, without prompting from the institution, the institution should not be required to treat the two accounts as the same account with respect to the transferred balance.

- Exception to Payment Allocation Rule for Consumer Requests. Credit card issuers should be able to honor requests from consumers to allocate payments in a way that deviates from the revised rules.

- Timing for Rate Increases at the End of the First Year. If a credit card issuer provides a change-in-terms notice that discloses an increase in the interest rate 45 days prior to the end of the first year after account opening, the credit card issuer should be able to charge the higher rate as of the first day of the second year to all transactions that occur more than seven days after the notice is provided, including transactions that occur prior to the end of the first year.

Discussion

I. Disclosure of Variable Rate

The revised Regulation Z rules include a new requirement for credit card issuers to disclose the specific APRs that will apply to the account in an account-opening table. In the proposed clarifications, the Board proposed some flexibility when APRs are assigned based on the consumer's creditworthiness (i.e., risk-based pricing) and permitted the disclosure of the consumer's actual APR in a separate document. While we applaud the Board for allowing the flexibility in disclosing risk-based APRs, we believe that the Board needs to clarify that the same flexibility applies to disclosing the current variable rate.

Currently, our programs typically provide for variable APRs that vary in accordance with the prime rate. The APR as of the date the application was printed is disclosed in the Schumer box as an application disclosure, and we provide the updated rate on a temporary shopping pass or other document before the customer makes a transaction on the account. If we were required to reprint and replace all point of sale applications every time the prime rate changed, we would have to replace millions of applications in thousands of stores several times a year (the prime rate has changed an average of five times per year over the past five years). We also are concerned about the logistics and reliability of reprinting and replacing the application inventory in the short, 30-day timeframe the rules prescribe for accuracy of printed disclosures. In fact, it takes longer than 30 days to print, ship and display new application inventory. We believe that the costs of these efforts would far exceed any consumer protection benefits.

The alternative we propose (to provide a Schumer box and account-opening table current as of the printing date and an updated rate on the shopping pass or other document provided before the first transaction) is a very reliable, systematic way to disclose to the customer the latest rate information at the relevant time when they are contemplating a purchase. We urge the Agencies to adopt the same flexibility for variable rates that they have wisely adopted for risk-based rates.

II. Disclosure of Promotional APRs.

Clarification also is needed on how to disclose transaction-based promotions. Our retail partners commonly offer promotional terms for certain transactions ("transaction-based promotions"), such as (i) an offer where the consumer will not be charged any interest for 6 months on purchases over a certain amount; or (ii) an offer where the consumer would be charged an APR of 5.99% for 12 months on purchases of certain products. Transaction-based promotions vary frequently throughout the year and may vary between different departments in a particular store, depending on several factors, such as the cost of the promotion, the margin on the underlying merchandise, and the desire to induce additional sales. Transaction-based promotions typically are offered to new and existing cardholders alike. Requiring transaction-based promotions to be disclosed in the account-opening table would significantly impair a retailer's ability to offer a variety of such promotions and to change them as circumstances warrant. Because of the complexity of replacing credit application materials, requiring transactional promotions to be in the Schumer box or account-opening table would necessitate a reduction in both the variety and seasonality of promotions at a minimum, and in some cases, may require retailers to entirely revamp their marketing approach. The Board already has clarified that it is acceptable to offer promotional rates to existing cardholders. We believe that it also is appropriate to clarify that transaction-based promotional rates need not be included in the Schumer box or the account-opening table.

III. Disclosure of Promotional Offers Made to Existing Cardholders

We believe that credit card issuers should be allowed to disclose the terms of a promotional offer in advance to cardholders without having to provide a notice pursuant to

section 226.9(c) prior to the date that the promotional rate is increased to the standard rate. This approach would be consistent with the terms of the Credit CARD Act of 2009, which allows a credit card issuer to apply a standard rate to transactions made during a promotional period, so long as the duration of the promotional period is disclosed in advance. Our suggested approach also is consistent with the proposed clarification that states that the "Agencies believe that, if the consumer receive advance notice of the terms of the discounted rate and the rate that will apply after the that term expires, a promotional stepped rate offer on an existing account can provide the same benefits as a promotional stepped rate offer at account opening so long as the offer cannot be used to increase the rate that applies to pre-existing balances." The proposed clarifications, however, are inconsistent regarding the need to provide a notice under section 226.9(c) because the proposed clarifications also reference the need to provide a notice pursuant to 12 CFR 226.9(c) prior to increasing a promotional rate for existing balances. Under the revised rules, a notice under section 226.9(c) is not required for discounted rates disclosed in the account-opening table. We believe that the same rule should apply to existing accounts when the terms of the promotion are disclosed in advance.

If, however, a notice pursuant to section 226.9(c) will be required, we request clarification on whether the content and tabular format requirements of section 226.9(c) would be required because the proposed clarifications of Regulation AA imply that the notice would only need to "state the period of time during which the lower rate will apply after expiration of [the promotional] period." We recommend a streamlined version because of the difficulty in providing the disclosure in the form contemplated by section 226.9(c).

IV. Payment Allocation Under, and Disclosure of, Payment-Based Plans

Under some of GEMB's programs, GEMB offers cardholders payment-based plans where the cardholder receives a reduced interest rate for certain balances, so long as the cardholder makes a minimum payment that is higher than the standard minimum payment. For example, GEMB offers a plan on some department store credit programs (referred to as "club plans") where the cardholder can elect to pay a higher than normal minimum payment (consisting of the normal minimum payment on regular balances and an additional club plan payment of a fixed amount or percentage of the club plan balance) and in return, is charged no interest on the club plan balance. In months where the cardholder only pays the normal minimum payment on the account but not the extra club plan payment, the cardholder is assessed interest at the standard rate on the club plan balances. However, if the cardholder makes the normal minimum payment plus the additional club plan payment, he or she is assessed no interest on the club plan balance. This gives the cardholder the best of both worlds—in months when the cardholder is able to make a higher minimum payment, he or she is rewarded with a waiver of interest on club plan balances. To preserve this valuable cardholder benefit, we request that the Agencies clarify that where a credit card issuer defines an additional (even if optional) minimum payment applicable to a particular plan and the cardholder makes the additional minimum payment, the issuer be permitted to allocate the additional minimum payment to that plan.

V. Unsolicited Balance Transfers

In the proposed clarifications, the Agencies sought to clarify that the transfer of a balance within an institution should be treated as the continuation of an existing relationship so that the institution could not circumvent the rules limiting when an institution can increase the interest rate on existing balances. In proposed comment 21(c)-3, the Agencies state that if a cardholder transfers a balance from one account to another account at the same institution, the account continues to be the same consumer credit card account with respect to that balance. We request that the rule be clarified to exclude from the requirements any transfers made by a consumer without any active solicitation by the institution.

The proposed rule would create significant challenges for credit card issuers, such as GEMB, that issue multiple credit cards that may be held by a single consumer. Under the proposed comment, GEMB would need to implement tools to track when a cardholder has used a convenience check or balance transfer check on one account to pay a bill on another GEMB account. The tools would need to be sophisticated enough for GEMB to identify particular checks in the remittance process and then to either dishonor those checks to prevent the transfer or to honor those checks and limit any rate increases on the balance paid by the check. We do not believe that the increased burden of developing these tools is warranted where the credit card issuer did not solicit the balance transfer from one account to another. In the proposed clarification, the Agencies wisely concluded that a balance transfer from one institution to another should not be considered the same account for purposes of the limit on increasing interest rates on existing balances. We believe that unsolicited balance transfers initiated by the cardholder by writing a check to pay another account of the same institution should be treated in a similar manner. Accordingly, we would like the Agencies to clarify that an unsolicited balance transfer initiated by the cardholder by writing a check would not be subject to the rules limiting rate changes on existing balances that apply to an institution's internal account transfers.

VI. Exception to Payment Allocation Rule for Consumer Requests

The revised rules and the Credit CARD Act of 2009 impose new payment allocation rules (generally requiring payments in excess of the minimum payment to be allocated to highest APRs first) and require credit card issuers to allocate payments in excess of the minimum payment first to deferred interest balances during the last two billing cycles of the promotional period. While GEMB supports these approaches generally, we would like the Agencies to clarify that a credit card issuer can use a different payment allocation method upon request by a consumer. The exception would apply to any promotion, not just deferred interest promotions, and at any time during the promotion's life cycle. We have found that there are circumstances when a consumer would prefer a different payment allocation method. For example, consumers may have a number of promotional balances on their accounts at one time. They may prefer to manage their payments on a particular promotional balance over the life of the promotion so as to pay it off before expiration. We request a limited exception to the rule that would provide issuers, upon request from a consumer, the flexibility to allocate payments to any balance.

VII. Timing for Rate Increases at the End of the First Year

Under the new Regulation AA, a credit card issuer may not increase the APR for a category of transactions during the first year after an account is opened (subject to certain limited exceptions). Comment 24(a)-2(i)(A) states that a credit card issuer could provide a notice 45 days prior to the end of the first year an account is opened to increase the APR that will apply to new transactions as of the first day of the second year. The comment does not, however, clarify whether the increased rate would apply to new transactions that occur seven days after provision of the notice or on the first day of the second year. Accordingly, we are requesting clarification that once the first year is over, the increased APR would apply to new transactions that occurred more than seven days after the provision of the notice.

Conclusion

GE Money Bank appreciates the effort the Agencies and their staffs have made in issuing the proposed clarifications. GE Money Bank strongly supports the Agencies' decision to continue to allow deferred interest promotions and the flexibility they have provided for risk-based pricing. We believe that our suggested clarifications can help reduce the burden to credit card issuers without sacrificing important consumer protections. Please do not hesitate to contact me if GE Money Bank can be of further assistance in this matter.

Sincerely,

Kurt Grossheim

Kurt Grossheim C.K.
President, GE Money Bank