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June 4, 2009

Via Electronic Mail

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-1314

Dear Ms. Johnson:

Barclays Bank Delaware ("BBD") is pleased to be able to submit this comment letter in response to the proposed clarifications to the regulation pertaining to unfair or deceptive acts or practices and its Official Staff Commentary (the "UDAP Rule") that were published by the Board of Governors of the Federal Reserve (the "Board") in the *Federal Register* on May 5, 2009 ("Current Proposal").

BBD commends the Board for issuing the Current Proposal to clarify various portions of the UDAP Rule. BBD believes that most of the specific proposals in the Current Proposal are helpful clarifications and well thought out. BBD's comments are limited to those issues that are most impactful to it.

Section 227.21(c) Definitions: Consumer Credit Card Account

The Board proposes to clarify in the UDAP Rule the meaning of "account." For example, the proposed clarification explain that closed accounts and accounts acquired through a merger or acquisition continue to be the same account and subject to the provisions of Subpart C with respect to repricing the balance. Accordingly, for example, the APR could not increase on the account unless an exception applied. The Current Proposal also explains that the account "continues to be the same consumer credit card account . . . unless the account to which the balance is transferred is an open-end credit plan secured by the consumer's dwelling."

The proposal illustrates with an example. A customer has a $2,000 purchase balance on one account with a 15% APR and that balance is transferred to another account at the same institution that applies an 18% APR. The 15% APR would have to continue to be applied to the $2,000 balance that was transferred unless an exception applied. The Current Proposal

further describes additional circumstances in which a balance is considered transferred for purposes of this comment:

- A retail card with an outstanding balance that is replaced with another account offering different features;

- An account with an outstanding balance that is replaced with another account offering different features.

We strongly disagree with this proposed treatment of transferred balances just because the account receiving the transfer happens to be held at the same institution rather than a different institution, when it is the customer making the express choice to transfer a balance from one account to another account. Under the Current Proposal , customers wishing to upgrade their account or wishing to choose or use an account with different features and prices may have to continue to pay fees for one of the accounts and to monitor, make payments to, and otherwise manage two accounts rather than one. For example, assume account A has an annual fee and the customer wishes to transfer the account A balance to account B that has no annual fee, even though the account B interest rate is higher. Under the Current Proposal, the customer may have to continue to maintain account A and to pay an annual fee until the balance is repaid.

Most of the other examples in the Current Proposal refer to transferring balances from accounts that are "replaced," suggesting that the choice is the card issuers' and not the customers'. Accordingly, in these cases, it is more reasonable that the transferred balance continue to be treated as a separate balance. However, such constraints are unnecessary when it is the customer initiating the transfer and expressly choosing to open or use a different account, especially when the rule would not apply if the customer were to choose the same product from a different institution.

For these reasons, we suggest that the final UDAP Rule make clear that so long as the customer is separately initiating the balance transfer and the consumer has the option to obtain additional extensions of credit for more than 15 days after the account is opened, the card issuer may treat any transferred balance as a balance of the account receiving the transfer. This gives customers more control, choice, convenience, and flexibility. It also avoids unnecessary and expensive complications associated with, in effect, marrying certain aspects of two separate accounts and maintaining separate balances of accounts that the customer has elected to open.

Other Balance Transfers

As currently drafted, it is not clear whether the Board would hold institutions responsible for "balance transfers" that are not obvious to the institution. For example, if the institution provides the consumer with a cash loan that the consumer uses to pay off the institution's credit card account, we assume the institution is not expected to treat the new loan as though it were the "old" credit card account. Similarly, if a cardholder uses a convenience

check accessing a line of credit or credit card account provided by the institution to pay off all or part of a credit card balance owed to the institution, it would be unreasonable to expect the institution to manage, for purposes of compliance with the UDAP Rule, the balance created through use of the check as though it were the credit card balance.

Accounts acquired through a merger or acquisition

Under the Current Proposal, Comment 21(c)-2 addresses circumstances where a card issuer has acquired a consumer credit card account with an outstanding balance, through a merger or acquisition and that account is subject to a variable rate calculation that uses an index that the acquiring card issuer does not currently use. As proposed, the acquiring card issuer's only option is to convert the existing balances on an acquired account to a non-variable rate that is equal to or lower than their existing rate.

BBD believes this requirement will have a negative impact on both the cardholders and the card industry's willingness and ability to purchase and sell credit card accounts and receivables. If an acquiring bank cannot adjust interest rates on existing balances in the purchased card portfolio that were once subject to a variable rate formula and instead has to establish a nonvariable APR for those existing balances, the price they will be willing to pay for a card portfolio could decrease substantially and/or the interest rate that they must charge cardholders for new transactions could increase significantly to make up for the difference. The consumers most impacted will be those cardholders participating in a credit card cobranded retail reward programs where the retail partner has selected a new credit card provider and the new card provider is unwilling to purchase the card portfolio because of the variable rate restriction, with the end result being these cardholders will be unable to participate in the retail partners new reward program with the new provider unless they apply for a new credit card account.

We suggest that the acquiring card issuer be permitted to replace the index used on the variable rate accounts to the index utilized by the acquiring institution as long as the variable rate APR that is applied when the account is transferred to the acquiring institutions card processing platform is the same or a lower rate than the APR that applied immediately prior to the transfer.

Section 227.23(b) Unfair Acts or Practices Regarding Allocation of Payments: Deferred/Waived Interest Programs

The Board proposes to add a new part (b) to section 227.23. This new part (b) would address deferred or waived interest plans with the requirement that the lender must allocate amounts paid in excess of the minimum payment "first to that balance during the two billing cycles immediately preceding expiration of the specified period." It requests comment on whether proposed (b) should apply during the last two billing cycles of the deferred or waived interest period or during a longer or shorter time period. We believe that two billing cycles is appropriate.

Section 227.24 Unfair Acts or Practices Regarding Increases in APR

Meaning of "account opening"

Under Section 227.24(a) of the UDAP Rule, lenders must disclose at account opening the APRs that will apply, and lenders may not increase such APRs unless one of the exceptions apply. The Board proposes to clarify in the UDAP Rule, the meaning of "account opening":

i. **Multiple accounts with same bank**
When a customer has a credit card account with a bank and the consumer opens a new credit card account with the same bank (or its affiliate or subsidiary), the opening of the new account constitutes an "account opening". . .if, more than 15/30 days after the new account is opened, the consumer has the ability to obtain additional extensions of credit on each account.

ii. **Replacement or consolidation**
A consumer credit card account has not been opened for purposes of Section 227.24 when a consumer credit card account issued by a bank is replaced or consolidated with another consumer credit card account issued by the same bank (or its affiliate or subsidiary). Circumstances in which a consumer credit card account has not been opened for purposes of Section 227.24 include when:

- A retail credit card is replaced with a cobranded general purpose card that can be used at a wider number of merchants;
- An account is replaced with another account offering different features; or
- An account acquired through a merger or acquisition is replaced with an account issued by the acquiring institutions.

Under the Current Proposal related to multiple accounts, banks may charge a higher rate on a new account than the rate applied to the customer's existing account without triggering change in terms notices and limits on the application of the higher rate to new transactions. We agree with the proposed comment on multiple accounts with the same bank, but suggest that the Board clarify that the account is a new account if the consumer has the "option" rather than "ability" to obtain additional extensions of credit on each account. For various reasons, customers may wish to close one of the accounts, e.g. if it was a joint account and they are opening a separate account or an annual fee is coming due. They should have the option to close the account.

Section 227.24(b) Unfair Acts or Practices Regarding Increases in APRs: Exceptions

Advance Notice Exception

Timing of Transactions

Under the UDAP Rule, a bank may apply the increased rate to any transaction that occurs after the 7th day (now the 14th day under the Credit CARD Act of 2009) day following notice, but must wait 45 days to begin accruing interest at that higher rate. The Board is proposing to explain that whether a transaction occurred prior to provision of a notice or within seven days after notice is determined by the ***date of the transaction***. The proposed comment explains that if a merchant places a hold on the available credit for an estimated transaction amount when the final amount will not be known until a later date, the date of the transaction is the date the merchant determines the actual transition amount. The UDAP Rule indicates that the transaction date is determined without regard to when the transaction is authorized, settled, or posted to the consumer's account.

While the association network rules generally provide that merchants must submit transactions for processing within 30 days of the transaction, unusual occasions occur when merchants submit transactions after that period. If as the Current Proposal proposes the protected balance include all transactions made but not posted within the 7 day (now 14 day period) banks will be compelled to continue monitoring accounts indefinitely for the remote possibility that a transaction may have been delayed.

Given the change from 7 days to 14 days through the Credit CARD Act of 2009, we strongly recommend that the Board provide a safe harbor by providing banks a date certain on which to determine the protected balance (that is, the balance not subject to the increased rate.) Specifically, the UDAP Rule should provide that banks do not violate the provision if the protected balance includes transactions that have actually posted to the account by the end of the 14 day period after the change in terms notice is sent. This is a date in time that the consumer will understand and can easily be explained to the consumer in the required change in terms notice.

Workout and Temporary Hardship Arrangement Exception

The Board proposes to clarify in the UDAP Rule that the exception to rate increases for workout arrangements also applies to "temporary hardship arrangements." The Board is addressing confusion as to whether this exception applies to temporary hardship arrangements that assist consumers in overcoming financial difficulties by lowering the APR for a period of time. As the Board notes, such arrangements can provide important benefits to consumers. In addition, excluding them will discourage banks from making such accommodations. Accordingly, we agree that they should be included in the exception.

Servicemembers Civil Relief Act Exception

The Board has proposed to clarify § 227.24 in so far as it applies to the Servicemembers Civil Relief Act ("SCRA"). Specifically, an APR that has been decreased pursuant to the SCRA may be increased once the SCRA no longer applies, provided that the increased rate does not exceed the APR that applied prior to the period of military service. We ask the Board to consider revising the Current Proposal to permit an issuer to increase the APR to a level that would otherwise be permitted if the protections of the SCRA had not been applied to the account in the interim. For example, a military servicemember may have an account with a 5.99% APR in the first year and 12% thereafter. If the SCRA protections are applied in the first year (when the APR is 5.99%), and removed in the third year (when the APR would otherwise be 12%), the issuer should be permitted to increase the APR on the account to 12%, since that is what would have applied on the account in year three. Without this clarification, some issuers (especially those that cater to the military) may be hesitant to offer promotional, discounted, or temporary rates for fear that those rates may get "locked in" by virtue of the application of the SCRA's protections at any given time. We suspect this was not the Board's intent.

Delayed Implementation of Rate Increase

The Board proposes to clarify that in a circumstance where an institution is permitted to apply an increased APR where the disclosed date (such as the first day of the calendar month) for the increase is a date that is not the first day of a billing cycle, then the institution may delay application of the increased APR until the first day of the following billing cycle without relinquishing the right to apply that APR.

The Current Proposal is reasonable and addresses an important limitation that many card issuers have with respect to reconciling the end date of a promotional offer with the actual billing cycles in which the offer will be applicable. We recommend the Board retain this clarification.

Deferred Interest

The Board's initial interpretation of the UDAP Rule would have resulted in a prohibition on deferred interest programs. The Current Proposal, however, would permit such programs while clarifying that they are subject to all of the protections described in §227.24. We applaud the Board for proposing to clarify their interpretations of the UDAP Rule in this manner, as it will allow consumers continued access to these beneficial offerings while ensuring that the programs are subject to the protections specified by the Board. We recommend the Board retain this clarification.

According to the Supplementary Information, a deferred (or waived) interest program established prior to the effective date of the UDAP Rule (now likely to be the effective date

of the operative provisions of the Credit CARD Act) is "valid," even if it expires after the effective date, provided that: (i) any periodic statement mailed after the effective date complies with the disclosure requirements in § 226.7 (as proposed); and (ii) the issuer complies with the UDAP Rule. We commend the Board for explicitly noting that existing deferred interest programs will not be rendered unenforceable after the effective date of the UDAP Rule. We do not believe that the Board intended to cause a deferred interest program established prior to the effective date to be *invalid* if the issuer violates Regulation Z or the UDAP Rule after the effective date, as the Supplementary Information implies. We ask the Board to revise the Supplementary Information to indicate that as of the effective date the substantive provisions of § 226.7 and the UDAP Rule will apply, and that violations of those provisions will be grounds for enforcement under the appropriate regulatory regime, not grounds to consider the program invalid.

Proposed Regulation Integration with Credit Card Accountability Responsibility and Disclosures Act of 2009 ("Credit CARD Act")

Since publication of the proposed changes to Regulation AA, the Credit CARD Act has been enacted, which amends the Truth in Lending Act in such a way that much, if not all, of Subpart C of Regulation AA is now incorporated into the Truth in Lending Act. To expedite and make more efficient the regulatory process and thus give lenders more time to review and implement the final regulation, we suggest that the Board incorporate final regulations to this Current Proposal into its regulations interpreting the Credit CARD Act. We believe that a regulation of this nature will facilitate compliance. We also strongly recommend that the Board and the other applicable agencies withdraw Subpart C of Regulation AA in its entirety as it will be replaced by and be redundant with Regulation Z, which implements the Truth in Lending Act. There is simply no reason to have dual regulatory regimes. While Congress has endorsed much of the Board's policy conclusions, it has clearly elected a different legal foundation for its mean baseline of fairness.

Again, BBD appreciates the opportunity to provide its comments on the Current Proposal. If you have any questions or comments, please do not hesitate to contact me at dcebrick@barclaycardus.com or (302) 255-8089. Thank you.

Sincerely,

Diana Clift Cebrick

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