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By electronic delivery

June 4, 2009

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, Northwest
Washington, DC 20551
Re: Docket No. R-12 86

Dear Ms. Johnson:

This comment letter is submitted by H S B C Bank Nevada, National Association ("H S B C") in response to proposed rulemaking issued by the Board of Governors of the Federal Reserve System ("Board") to amend the open-end credit provisions of Regulation Z and its Official Staff Commentary (together "Proposed Rule"). H S B C appreciates the opportunity to provide its comments on the Proposed Rule.

H S B C is part of the H S B C Group, one of the largest financial services organizations in the world. H S B C North America Holdings Inc. is one of the top ten financial services companies in the United States. H S B C North America comprises all U.S. and Canadian businesses with assets totaling \$546 billion at March 31, 2009. H S B C North America's businesses serve customers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, and global banking and markets.

H S B C appreciates the Board's efforts to clarify certain technical points of its highly complex January 2009 final rule to amend Regulation Z and Official Staff Commentary (the "January 2009 Rule"). In particular, H S B C applauds the decision to revisit prior guidance concerning deferred interest programs. A great number of credit cardholders benefit from the ability to purchase goods and services under promotional terms. H S B C agrees with the decision to avoid drawing a technical distinction between deferred and waived interest, and to instead focus on enhanced consumer disclosures through the proposed advertising and periodic statement requirements.

H S B C offers the following additional comments in response to the Proposed Rule:

page 2. I. Deferred Interest Plans

The Proposed Rule requires a deferred interest expiration disclosure to be displayed on the front of the periodic statement during the two billing cycles immediately preceding the billing cycle in which the promotion will expire. Specifically, the periodic statement disclosure must indicate the date by which the outstanding promotional balance must be paid in full in order to avoid imposition of deferred finance charges accrued thereon. H S B C supports this disclosure, and notes that it is similar to the periodic statement disclosure H S B C provides today in connection with deferred interest programs.

H S B C also supports the Board's proposed use of a disclosure "similar" to that provided on model form G-22, rather than using a "substantially similar" standard. H S B C agrees with the Board's reasoning that the disclosure may need to be modified or supplemented, considering the characteristics of a particular deferred interest plan. In fact, H S B C currently supplements its "expiring plan" disclosure at times when multiple promotional plans exist on an account, because each plan has its own minimum payment requirement. In such a scenario, a customer may be under the impression that paying the exact amount shown in this type of deferred interest plan notice will cause the promotion to be fully paid, when in fact a portion of the payment may be directed to meet minimum payment needs on other non-expiring plans. H S B C appreciates the ability to continue providing supplemental disclosures it deems necessary to better inform its consumers.

H S B C does, however, request additional Board guidance with respect to two additional disclosures contemplated within the Proposed Rule. First, H S B C seeks confirmation that newly introduced Official Staff Comment 5a(b)(1)-9 should not be interpreted to require new tabular disclosures in connection with deferred interest promotions. Second, H S B C seeks guidance as to any required disclosures which must be provided before a bank may impose accrued interest in the event a consumer defaults under a deferred interest program due to delinquency.

A. Tabular Disclosures

The Proposed Rule introduces new Official Staff Comment 5a(b)(1)-9 which would prohibit a financial institution from disclosing deferred interest promotions using "0% A P R" within tabular disclosures. The Board reasoned that 0% is a conditional A P R which applies only when a customer meets terms of a promotional offer. H S B C understands the reasoning and supports the new staff comment. However, because this new staff commentary supplements §226.5a(b) disclosures, H S B C is concerned that this placement of such a comment might be

deemed to required financial institutions to disclose then-available deferred interest retail promotions within tabular disclosures, which today are typically provided separately from standard account terms. page 3.

H S B C offers deferred interest promotions primarily in connection with its retail credit programs. Typically, a retail customer first applies for a retail credit card account, after receiving §226.5a required disclosures of *standard* account pricing terms. Upon approval, the retail customer would be provided §226.6 disclosures, again disclosing standard account terms. It is not uncommon that a retail consumer utilizes the new credit card account shortly following account opening to purchase a product being offered in connection with the then-current retail promotion. However, in such an event, H S B C provides terms and conditions of the deferred interest promotion on a separate form.

H S B C believes there should be no requirement to disclose deferred interest plans within tabular disclosures. Within its January 2009 Rule, the Board defined *introductory rate* under §226.16(g)(2)(ii) as "a promotional rate offered in connection with the opening of an account." H S B C suggests that a promise to defer interest obligations, and waive accrued interest in the event a purchase is paid by a specified date, is not a promotional rate, but rather a promotional arrangement. In fact, the Board's proposed prohibition against disclosing deferred interest promotions as a 0% A P R offer within tabular disclosures indicates agreement with that position. Consequently, disclosing deferred interest plans as an "introductory rate" under §226.5a(b) and §226.6 would seemingly not be required. Additionally, secondary requirements to disclose "directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked" appear to be similarly inapplicable. H S B C's deferred interest plans typically calculate finance charges at a standard purchase A P R, and no A P R is revoked or replaced with a different A P R when a consumer defaults under a deferred interest plan.

H S B C believes its existing disclosure methodology should meet §226.5a(b) and §226.6 disclosure requirements, as deferred interest balances calculate and accrue finance charges using the standard A P R for purchases, which is disclosed in tabular disclosures.

If the Board disagrees with the foregoing analysis and believes that deferred interest promotions should be disclosed as an introductory rate or other APR in addition to standard account terms, H S B C comments that any such disclosure requirement will create significant operational challenges in connection with point of sale retail promotions, similar to those discussed in greater detail below within section II.A *Disclosure of Short Term Promotional Offers*. Similarly, if the Board requires supplementary deferred promotion disclosures directly beneath the tabular disclosures (e.g., the duration of a promotion or the type of product subject to the promotion, etc.), this too would present significant operational challenges, given the fact new promotions can be

introduced on a weekly basis. H S B C therefore requests the Board's additional consideration of this topic. Specifically, we ask the Board either to clarify that the proposed comment was not intended to create a requirement to disclose deferred interests plans within tabular disclosures, or alternatively to allow the flexibility to provide any necessary deferred interest plan disclosures on a separate form in connection with point of sale retail credit programs.

B. Disclosure upon Delinquency Default

H S B C would appreciate additional Board guidance as to the expected procedure when a cardholder defaults under a deferred interest plan due to delinquency. While the Board indicated intent under separate rulemaking to amend Regulation A A that deferred interest programs be subject to protections under §227.24, H S B C notes that there is no notice requirement under §227.24. Delinquency notice requirements related to §227.24(b)(4) have previously been promulgated by the Board within Regulation Z rulemaking. Yet, within the Proposed Rule, clarifications under §226.9(g) were limited to termination of hardship programs. Although disclosures pertaining to deferred interest programs were specifically contemplated within the Proposed Rule, the only proposed disclosure related to delinquency default was an advertising disclosure in the form of Sample G-22. No modification was suggested with respect to model form G-21, which provides disclosure to consumers once delinquency A P R has been triggered. In the event the Board does expect a disclosure to be provided to consumers in connection with delinquency default under a deferred interest plan, H S B C offers the following comment.

Notwithstanding the noted similarity between the imposition of accrued interest under a deferred interest plan and the application of a delinquency A P R, H S B C urges that the Board not use the same disclosure concept for the two scenarios. When a delinquency A P R is to be imposed on existing balances, notice under model form G-21 would generally be provided only after the 30-day delinquency has occurred, and there is an ensuing 45-day period under which interest is calculated using existing A P R's. Such an untimely disclosure will not serve to alert a cardholder as to the potential default under a deferred interest plan. Further, H S B C sees no purpose for an additional 45-day period when the promotional balance will continue to accrue interest at the same A P R, albeit segregated from the account balance. H S B C urges that any required notice of delinquency default be provided as soon as an account becomes delinquent, and requests guidance that a financial institution may impose accrued interest immediately upon 30 day delinquency if the account is not brought current.

II. Disclosure of Other Retail Promotions

The Proposed Rule modifies the January 2009 Rule in regard to point of sale retail credit programs. Recognizing the need for range based pricing, and

the operational challenges resulting from real-time disclosure, the Board proposed flexibility in allowing certain disclosures to be provided in a separate form, specifically noting scenarios where A P R's vary by state, and instances where an applicant's creditworthiness is used to determine account A P R's. page 5. Separately, in connection with variable rate effective dates on disclosure forms, the Board clarified that such forms would not be required to specify an actual date, so long as terms met the accuracy requirements, because "[s]uch a requirement could pose operational challenges for disclosures provided at point of sale as it would require creditors to reprint disclosures periodically." H S B C strongly supports these proposals.

Under the same reasoning the Board provided flexibility as to the above disclosures, H S B C requests that the Board also consider allowing greater flexibility as to two additional disclosures in connection with point of sale retail credit offers. For the reasons set forth below, H S B C requests that the Board allow separate delivery of terms for often-changing retail credit promotions. Further, H S B C requests that the Board consider allowing flexibility in regards to the content of and/or delivery method for individualized "available credit" disclosures, which are required to be given at account opening. Providing both types of disclosure within tabular format will create significant technological challenges and would cause unnecessary disposal and reprinting of largely template disclosure documents.

A. Disclosure of Short Term Promotional Offers

The January 2009 Rule would require that the terms of promotional retail offers, which often change on a weekly basis, be disclosed in a tabular format. Specifically, §226.5a(b)(1)(vii) application and solicitation disclosures require that, "issuers that are subject to 12 C F R § 227.24 or similar law must disclose in the table any introductory rate applicable to the account." Additionally, under §226.6(b)(2)(i)(B) and (F), the account-opening table required to be provided prior to the first transaction on the account must include introductory rates offered in connection with the opening of an account. Separately, §227.24 of the amended Regulation A A requires that "at account opening, a bank must disclose the [A P R's] that will apply to each category of transactions on the... account."

Because the Board has broadly defined an introductory rate as "a promotional rate offered in connection with the opening of an account," H S B C is concerned that the preceding requirements would necessitate the disclosure of short term promotions within the tabular disclosures. For example, a point of sale retail credit promotion may offer 12-month 2.9% promotional interest terms on televisions priced over \$499 one week, 24-month 0% promotional financing on all refrigerators the following week, etc. In fact, there may be a 1-day holiday/occasion promotion on select products at any given time. Often, the credit card account is opened by a consumer wishing to take advantage of a

running promotion. page 6. Consequently, such promotions would arguably fit the Board's definition of an introductory rate offer, requiring unique tabular disclosure. H S B C does not believe it is operationally feasible to incorporate such disclosures into stock disclosures on a weekly basis.

Given the varying capabilities of H S B C's retail partners, H S B C expects the technology required to disclose such weekly promotions within § 226.5(a) and § 226.6 tabular disclosures to be significant, and potentially prohibitive as to its ability to make such programs available to consumers. H S B C cannot envision a way to utilize template disclosures if weekly sales require creation of revised tabular forms. In addition to the seemingly unneeded replacement of template forms, H S B C is concerned that any such requirement would require enhanced oversight and training of retail store employees, who would be asked to manage the ongoing replacement of obsolete disclosures in order to avoid inadvertent disclosure error as to promotions available on a particular day.

Point of sale retail promotions provide significant value to consumers, and as such, H S B C requests additional clarification similar to that proposed by the Board in connection with range base A P R point of sale offers. Specifically, H S B C proposes flexibility allowing for required promotional disclosures in a manner more easily supported in a point of sale retail environment, such as in a separate form provided along with the account opening materials. As a final comment on this topic, H S B C notes that any requirement to place such supplementary disclosures in tabular format would require significant technology, and therefore H S B C requests that there be no format requirements for supplementary disclosures, so long as they meet a clear and conspicuous disclosure standard.

B. Available Credit Disclosures

Within its May 2008 proposed rulemaking to amend Regulation Z, the Board indicated a concern with certain credit promotions imposing fees that exceed 25% of the potential minimum line assignment. In response to the proposal, H S B C commented that it understood the Board's reasoning, and did not object to the Proposal's enhanced disclosures. However, the January 2009 Rule deviated from proposal in two significant ways. First, it lowered the disclosure threshold to fees exceeding 15% of the potential minimum line assignment. More significantly, it introduced an individualized disclosure under §226.6. This new account-opening disclosure is required to be provided before the first transaction is made on an account.

H S B C's point of sale retail credit is currently offered to a broad segment of consumers. While H S B C does not typically assess annual fees in connection with its point of sale retail credit programs, it continues to gauge the cumulative impact of the January 2009 Rule, the January 2009 final rule amending Regulation A A and the Credit Cardholders' Bill of Rights Act of 2009 (the "CARD Act") to its business. In any event, consumers of these programs are largely seeking to finance a pre-determined purchase, and would be expected to pay

particular attention to the credit limit assigned on a new account. page 7. Further, H S B C notes that the CARD Act will provide for additional consumer protections in prohibiting a financial institution from imposing fees exceeding 25% of an assigned credit line during the first year of an account.

Consequently, H S B C strongly urges the Board to allow greater flexibility as to this individualized disclosure requirement in connection with point of sale retail credit offers, which would present significant technological challenges. H S B C suggests allowing financial institutions to provide the same available credit disclosure as is provided on applications and solicitations again at account opening. While that disclosure is not based upon the actual credit line assigned, such a disclosure at account opening should sufficiently inform consumers as to the implication of any annual fee applicable to a new account in the event he/she was issued a minimum credit line.

Conclusion

Again, H S B C appreciates the opportunity to provide its comments on the Proposed Rule. Please do not hesitate to contact me at (9 5 2) 3 5 8-4 8 4 7 or Donna Radzik at (2 2 4) 5 4 4-2 9 5 2 in connection with this comment.

Sincerely,

James S. Hanley
Senior Counsel