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June 3, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Docket No. R-1314 (Unfair or Deceptive Acts or Practices)

Dear Ms. Johnson:

Bank of America is pleased to submit these supplemental comments to the Federal Reserve Board's proposed amendments to Regulation AA. We appreciate the opportunity to comment on ways the Board could provide greater clarity and certainty under these rules.

We offer the following additional specific comments, and requests for clarification:

Section 227.24 Unfair acts or practices regarding increases in annual percentage rates.

Comment 227.24(b)(3)-2. The Agencies propose to amend comment 24(b)(3)-2 to clarify when a transaction is deemed to have occurred for purposes of §227.24(b)(3).

Prior to this change, comment 24(b)(3)-2 had provided that transactions authorized within seven days (now fourteen days under the Credit CARD Act of 2009) but settled later, after provision of the notice, were eligible for the rate increase and need not be included in the protected balance. That approach would reduce operational burden by permitting the bank to establish the protected balance as of a set date in time, and perform all necessary calculations related to the newly established protected balance (e.g., amortization cap and payment allocation). Put another way, the transaction's posting date (not transaction date) serves as the clear, easily identifiable period of time in which this assessment can be made.

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The proposed change in the commentary gives rise to a costly processing burden due to the open-ended nature of the obligation to continuously track and modify the protected balance as trailing transactions and payments are posted to the account. Processing systems would need to identify every transaction that occurs after the date the protected balance is established and evaluate whether to retrofit each transaction into the protected balance, just in case it has a transaction date that precedes the protected balance date.

Therefore, we request that protected balance is set on the 45th day, consisting of transactions with: 1) a posting date prior to the 45th day; and 2) a transaction date equal to or earlier than the 14th day.

Section 227.24(b)(5) Workout and temporary hardship arrangement exception.
Section 227.24(b)(6) Servicemembers Civil Relief Act exception.

Each of these exceptions to the prohibition on increasing annual percentage rates provides that an annual percentage rate increase applicable to a category of transactions after a decrease cannot exceed the rate that applied to that category of transactions prior to commencement of the program. However, we request clarification on this restriction specifically with regard to previously disclosed rate increases, such as step rates disclosed at account opening and penalty rates, that would become effective during the term of the program and which would have applied but for the application of the decreased rate. It is our view that, like variable rate changes, rate increases otherwise permitted by §227.24 should be permitted to apply at the expiration or termination of workout, temporary hardship, or SCRA program. This is supported by comment 24(b)(5)-1 ("...bank cannot increase an annual percentage rate pursuant to a workout or temporary hardship arrangement *unless otherwise permitted by §227.24.*") and further supported by comment 24(b)(5)-2 (If the annual percentage rate before the rate decrease was a variable rate, then the rate after the decrease must be determined using that variable rate formula).

Interaction of Regulation Z and Regulation AA

In our original comment letter, we noted that Regulation Z might be a more appropriate regulatory scheme for the bulk of the issues addressed by the proposed Regulation AA. The recent passage of the Credit CARD Act of 2009, which directly addresses the same concerns and amends the Truth In Lending Act, revives and reinforces the importance of this approach.

If there were two rules and potentially two interpretations around the same underlying actions and facts there may be significant confusion. Simplicity and clarity in execution and enforcement are best served by rescinding the proposed UDAP rules and instead using them as a framework for the Regulation Z commentary to the changes brought by the Credit CARD Act of 2009.

For example, the 45 notice, now required within 90 days of enactment of the Credit CARD Act of 2009, will draw from both UDAP and proposed Regulation Z changes. The Board should take the opportunity to have one discussion of the 45 day notice, including the fact that the notice can be sent in advance of the actual 60 day delinquency under the Credit CARD Act of 2009; that discussion should be in the context of Regulation Z.

Conclusion

Our comments are intended to recommend changes to the clarifications which we think would improve the balance between consumer benefit and compliance burden. We recognize and appreciate the flexible approach taken by the Agencies in crafting these proposed rules. Thank you for the opportunity to present Bank of America's views on this important proposal.

Respectfully Submitted,



Gregory A. Baer