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HSBC

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, D C 2 0 5 5 1

Re: Docket No. R-13 14

Dear Ms. Johnson:

This comment letter is submitted by H S B C Bank Nevada, National Association ("H S B C") in response to the proposed rule issued jointly by the Board of Governors of the Federal Reserve System ("Board"), along with the National Credit Union Administration and Office of Thrift Supervision (collectively, the Agencies"). The proposed rule suggests amendment to Regulation A A and Official Staff Commentary (together, the "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 joint efforts to clarify certain technical points of the highly complex January 2009 rulemaking to amend Regulation A A 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:

I. Deferred Interest Plans

A. Pre-existing Plans

Within the Proposed Rule, the Agencies clarified there was no intent to cause a deferred interest plan established prior to the effective date of the January 2009 Rule (a "Pre-existing Plan") to be converted into an interest free loan. While H S B C appreciates the direct statement as to the enforceability of such Pre-existing Plans, we are nevertheless concerned by related wording within the Supplemental Information. Specifically, the Agencies indicated that sending "any periodic statement" in a non-compliant manner or not "fully" complying with payment allocation rules creates uncertainty as to an institution's ability to impose deferred interest on a Pre-existing Plan.

While H S B C intends and expects to be fully compliant with the indicated consumer protections as of the effective date, the proposed standard does not allow for inadvertent error, and H S B C believes the Agencies intended only that substantive protections be met as of the effective date as to such Pre-existing Plans. Therefore, H S B C requests additional clarification that the Agencies did not intend that a Pre-existing Plan becomes unenforceable upon an instance of non-compliance of a deferred interest plan requirement under Regulation Z or Regulation A A after the effective date of the January 2009 Rule.

B. Unfair Balance Computation Method

H S B C appreciates the proposal to add a new comment 25(a)-3, clarifying that the protections under §227.25 were not intended to prohibit an institution from charging accrued interest under a deferred interest program. However, H S B C is concerned that by limiting the exception to the specific circumstance when "the balance is not paid in full prior to the specified date," the comment could be interpreted to exclude other legitimate circumstances under which a financial institution should be permitted to charge interest accrued under a deferred interest program. For example, many deferred interest plans require the consumer to make principal payments during the term of the promotional period and provide that failure to make such payments on time can result in the assessment of accrued interest. Under such a plan, therefore, if a consumer becomes 30-days delinquent, a financial institution should be permitted to charge accrued interest without violating the protections under §227.25.

There is ample indication within the Proposed Rule that the Board intended to similarly include the delinquency-triggered imposition of accrued interest as an exception to the Unfair Balance Computation Method prohibition. Within the discussion of clarifications related to *Section _.24—Unfair Acts or Practices Regarding Increases in Annual Percentage Rates,* the Board indicated that a deferred interest program would be subject to the same "hair trigger" prohibitions contained in § 227.24. Specifically, the discussion provided:

> "... those programs are subject to all of the protections in §227.24, including the general prohibition on so-called 'hair trigger' or 'universal default' repricings of existing balances. *See* proposed comments 24(a)-2.iv and 24(b)(3)-4.iii. Thus, for example, if a consumer relies on this type of promotional program when making a purchase, the institution cannot deny the consumer the opportunity to avoid interest charges on that purchase by paying the purchase in full prior to expiration of the promotional period *unless the consumer is more than 30 days' delinquent on the account."* [emphasis added]

page 3. Furthermore, under the Board's separate proposal to amend Regulation Z, the Board's model disclosure under G-22 also contemplates the imposition of accrued interest due to delinquency:

> "(a) For Issuers Subject to 12 C F R 227.24 or Similar Law.
>
> Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by deferred interest period/date *or if you make a late payment."* [emphasis added]

To clarify that accrued interest can be charged in the event of delinquent payment, H S B C requests that the Board modify their proposed comment 25(a)-3 to instead clarify that protections under §227.25 do not affect the operation of deferred interest plans.

B. Impact of the CARD Act to Deferred Interest Program Proposals

H S B C is cognizant of the Agencies' request that comments to the Proposed Rule focus on the technical clarifications. However, given the recent enactment of the Credit Cardholders' Bill of Rights Act of 2009 (the "CARD Act"), and the potential that provisions in the Proposed Rule may be modified to ensure consistency with the CARD Act, H S B C is submitting comment on one potential impact. As the Proposed Rule repeatedly references §227.24 in proposing protections related to deferred interest programs, H S B C notes that subjecting deferred interest programs to materially revised §227.24(b)(4) protections will expose financial institutions to increased risk, and consequently could significantly limit the availability of deferred interest programs to consumers.

page 4. H S B C calls the Board's attention to pertinent colloquy involving the sponsor of the H.R. 627, found on page S5570 of the Congressional Record from May 19, indicating lack of legislative intent concerning deferred interest programs:

> Mr. SHELBY. Would the Senator from Connecticut yield to me for the purpose of engaging in a colloquy?
>
> Mr. DODD. Yes, I would be happy to yield.
>
> Mr. SHELBY. As the Senator knows, credit card issuers often offer so-called ''deferred interest'' programs for the benefit of cardholders. To my knowledge, the legislation would not affect the ability to offer these types of programs, is that the Senator's understanding?
>
> Mr. DODD. That is my understanding.

The Senators' continued conversation revealed that, in particular, there was no legislative intent that the prohibition on double-cycle billing, in the amended Section 127(j)(1)(A) of the Truth-in-Lending-Act, should impede the imposition of deferred interest in instances permitted by applicable law.

While the Proposed Rule suggests 30 days as an acceptable delinquency default as to deferred interest plans, it does so under a stated intent to align deferred interest protections with "hair trigger" repricing prohibitions contained in §227.24. However, H S B C believes that "hair trigger" has become an obsolete reference point for delinquency pricing upon enactment of new protections within the CARD Act. Specifically, H S B C anticipates that future Board rulemaking will implement the CARD Act by increasing the § 227.24(b)(4) delinquency exception to require 60-day delinquency before a delinquency A P R may be applied to existing balances, greatly exceeding the timeframe the Board deemed reasonable.

Historically, H S B C has avoided any semblance of "hair trigger" imposition of accrued interest when offering deferred interest programs. In fact, H S B C consumers must become 30 days delinquent to default under a deferred interest plan, which is aligned with the protections in the Proposed Rule. Notwithstanding the noted similarities between the increasing of A P R's and imposition of interest under deferred interest arrangement, we believe deferred interest plans are sufficiently unique, being subject to unique periodic statement disclosures proposed by the Board, to support a unique delinquency default trigger.

In summary, the Senators acknowledged that the availability of deferred interest programs is a benefit to consumers, and the colloquy illustrates that the CARD Act was not intended to affect the ability to offer such programs. Therefore, H S B C strongly encourages the Board to retain the proposed 30-day delinquency as an acceptable delinquency default for deferred interest programs. page 5. Without question, requiring a 60-day delinquency for default could significantly affect the availability of such beneficial programs; seemingly an unintended consequence of the CARD Act. For clarity, other H S B C comments in this letter pertaining to delinquency default on deferred interest plans reference the Board's 30-day delinquency proposal.

II. Determination of Outstanding Balances

In the May 2008 proposed rulemaking, the Board suggested a 45-day advance disclosure requirement for certain changes in account terms. In doing so, they proposed "outstanding balances" be unaffected by new terms. Outstanding balances were proposed to be "the amount owed on a consumer credit card account at the end of the fourteenth day after the bank provides a notice" of intent to increase account A P R's.

Citing comments received, the January 2009 Rule reduced the determination of outstanding balances from 14 to 7 days after notice is provided. However, the Board introduced complexity by deviating from an established cut-off time and instead specifying that a transaction may be part of the outstanding balance if the actual transaction occurred within the 7-day period. That being said, H S B C was supportive of the concept because the Board supplemented this concept with commentary suggesting transactions that are "settled" after the 7-day window need not be considered part of the outstanding balance.

The Proposed Rule has departed from the previous rulemaking in amending the "settled" commentary. As described in the proposal:

> "The Agencies understand, however, that this distinction has created some confusion because, for example, authorization may not be obtained for all transactions and because the term 'settled' could refer to different points in the payment process, including settlement between the acquirer and the merchant or settlement between the consumer and the card issuer. Accordingly, for consistency and clarity, the Agencies propose to amend comment 24(b)(3)-2 to clarify that when a transaction occurred for purposes of §_.24(b)(3) is determined by the date of the transaction (without regard to when the transaction is authorized, settled, or posted to the consumer's account)."

This amendment to the commentary would cause financial institutions to track and reconcile each individual transaction to ensure every transaction was presented by the acquiring bank on the actual date of transaction. Further, it would require retroactive calculation error adjustments whenever the transaction was determined to have occurred prior to expiration of the 7-day period. While H S B C understands and appreciates the reasoning behind the Agencies' suggested approach, such a concept would add significant confusion to determination of the outstanding balance, and would be expected to expose financial institutions to inadvertent non-compliance. page 6.

The CARD Act tracks closely to the Agencies' initial May 2008 proposal in defining outstanding balance as "the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice... ." While H S B C remains concerned that 14 days will allow consumers a window of time during which new transactions may take advantage of expiring terms, H S B C nevertheless believes the outstanding balance should be that balance existing as of a specified cut-off time. Therefore, H S B C encourages the Agencies to give effect to the outstanding balance definition provided in the CARD Act.

III. Card Replacement/Consolidation

In the Proposed Rule, the Agencies indicate that when a consumer transfers a balance from one card to another card issued by the same financial institution, the transferred balance retains protections as if it were still associated with the original account. Specifically, the Proposed Rule provided:

> "i. *Between accounts issued by the same bank.* If a balance is transferred from a consumer credit card account issued by a bank to another credit account issued by the same bank or its affiliate or subsidiary, the account continues to be the same consumer credit card account for purposes of Subpart C with respect to that balance unless the account to which the balance is transferred is an open-end credit plan secured by the consumer's dwelling. For example, if a consumer credit card account has a $2,000 purchase balance with an annual percentage rate of 15% and that balance is transferred to another consumer credit card account issued by the same bank that applies an 18% rate to purchases, the bank would be prohibited from applying the 18% rate to the $2,000 balance unless permitted by one of the exceptions in §227.24(b)."

Conversely, the proposal goes on to provide that if the same balance is transferred to an unaffiliated bank's account, that bank is free to impose its account terms without regard to terms existing on the original account.

H S B C appreciates the implicit concern that a financial institution may circumvent new consumer protections by initiating the replacement of one credit card with another credit card containing less favorable credit terms. However, the proposed concept seems overly focused on annual percentage rates, and disregards other aspects of a credit card account which may be desirable to a consumer (e.g. no annual fee, a rewards program). Given the technological consequences of segmenting account balances, as would be required under the

Proposed Rule, it is difficult to imagine a financial institution would allow its cardholder to transfer a balance from one account to another account issued by that financial institution. page 7.

As a large issuer of a variety of credit cards, H S B C currently receives numerous requests monthly from H S B C customers desiring to consolidate several H S B C credit card balances onto a single H S B C-issued credit card. Often these requests seek to consolidate away from annual fee credit cards, transfer a balance to an account with a rewards program, or to reduce multiple minimum payment obligations to a single minimum payment obligation. It may, therefore, not be technologically feasible to continue offering account consolidations given a requirement to treat balances as if they still belong to a prior account, and it is possible this ability may simply not be offered in the future. And, as a consequence of not being able to meet the changing needs of its customers, an issuer is likely to lose those customers to other financial institutions that are free from the balance transfer constraints. For these reasons, H S B C strongly encourages the Board to reconsider this proposal, as it seems to be an overly complicated layer of consumer protection, which may only serve to make it more difficult for consumers to obtain the type of credit card account which best meets individual needs.

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