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November 16, 2009

By Electronic Delivery

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1370

Re: Proposed Rule on CARD Act Requirements Effective February 22, 2010

Dear Ms. Johnson:

This comment letter is submitted by Morrison & Foerster LLP on behalf of several credit card issuers in response to the proposed rule ("Proposed Rule" or "Rule") to implement the "Credit Card Accountability Responsibility and Disclosure Act of 2009" (the "CARD Act" or "Act"). The Proposed Rule issued by the Federal Reserve Board ("Board") implements provisions of the CARD Act that are scheduled to become effective on February 22, 2010. We appreciate the opportunity to comment on this important matter.

Due to the short period of time between the close of the comment period and the effective date of a final rule, we understand that the Board will have limited time to read and analyze lengthy comment letters. Thus, we have made an effort to provide concise and pointed comments. Since this letter does not provide as much background or analysis as the comment letters we ordinarily submit, please do not hesitate to contact us should you need additional information.

The Proposed Rule would make significant changes in the requirements for credit card accounts. While some of these changes build on provisions previously adopted by the Board in its amendments to Regulation AA and Regulation Z, many of the changes raise entirely new issues, many of which have yet to be fully vetted from an operational and technical standpoint. Because the Proposed Rule will dramatically affect the delivery, pricing and availability of credit card features, promotions and services, some issuers have curtailed or ceased the offering of promotions and workout programs, or have delayed program changes, due to the inability to comply with the Rule as proposed or because of the lack of clarity in the Proposed Rule.

We understand that the Board will adopt a final rule in late December 2009 or early January 2010. At that point, issuers will have less than two months to implement the final rule. Given such a short implementation period, it is essential that the Board resolve certain key issues and provide important clarifications, including implementation guidance, in the final rule. Below is a discussion of some of the principal issues. In addition, we have attached a list of issues in need of clarification, together with suggested implementation guidance on the application of certain requirements to accounts opened prior to February 22, 2010.

Effective Date

The supplementary information accompanying the Proposed Rule states that "In order to implement the [CARD Act] in a manner consistent with the January 2009 Regulation Z Rule, the Board intends to make the effective date for the final rule pursuant to this proposal February 22, 2010." The Board also indicates that it is considering accelerating the effective date for at least some provisions of the January 2009 Regulation Z Rule.

We strongly urge the Board to refrain from accelerating requirements in Regulation Z that are not part of the CARD Act that currently are scheduled to go into effect in July 2010. Card issuers, as well as the processors on which the majority of card issuers rely, have indicated that it would be impossible for them to comply with a February 22, 2010 compliance date for all of the Regulation Z requirements.

Notwithstanding the effective date of the final rule, it is essential that issuers be provided relief in complying with the formatting requirements, especially in the context of periodic statement disclosures. Until the final rule is published, issuers and their processors are unable to finalize the design and formatting of required disclosures. It typically takes issuers six to eight months to develop and implement new statement designs. Since issuers will have little time before the effective date to fully understand the legal and compliance obligations and convert these new obligations into new form designs, and because many issuers, particularly those with retailer relationship programs, have multiple form sets, issuers should be permitted for a period of time to provide required disclosures in a manner that is not technically compliant with the formatting requirements, such as through the use of statement messages and/or statement inserts for periodic statement disclosures. We also recommend similar accommodations for other disclosure forms, particularly the new account-opening disclosures.

Consideration of Ability to Pay (Section 226.51)

As proposed, Section 226.51(a) will substantially undermine the credit underwriting process associated with opening a credit card account, particularly in branch offices or at the point-of-sale, and will greatly complicate increasing credit limits on existing accounts. Proposed Section 226.51(a) purports to implement the CARD Act prohibition against the opening of a credit card account for a consumer, or the increasing of the credit limit for a consumer's existing account, unless the issuer has considered the ability of the consumer to make the required payments under the terms of the account. The Proposed Rule, however, goes well beyond the statute by specifically requiring an issuer to consider the consumer's income or assets, and the consumer's current obligations, before opening an account or increasing the credit limit on an existing account. In underscoring this requirement, the supplementary information states that "A card issuer has not complied with this provision if . . . a card issuer does not review any information about a consumer's income, assets, or current obligations, or issues a credit card to a consumer who does not have any income or assets."

The requirement that issuers consider income or assets is problematic, especially in the context of prescreened offers and account acquisition at the point-of-sale, where it is not possible to obtain income or difficult to request income in the presence of other store customers. It is also problematic for credit line increases where the issuer may not have previously obtained income information or where the income information available is dated, and yet the consumer's performance on the account, together with current information from consumer reporting agencies, clearly demonstrates that the consumer is qualified for a credit line increase. Accordingly, we strongly recommend that the Board amend the Proposed Rule and related commentary provisions to eliminate requirements not found in the Act itself or, at a minimum, to allow issuers to meet the requirement of considering income by using income estimates based on the issuer's evaluation, or a third party's evaluation, of the consumer-specific information from the issuer's own files and from the consumer's credit report or file maintained by a consumer reporting agency, in order to create a consumer-specific estimate. The Proposed Rule already permits an issuer to rely on information on obligations received from a consumer reporting agency, and the final rule should make it clear that an issuer can also rely on income information, including income estimates, received from a consumer reporting agency.

In this regard, it is our understanding that all three consumer reporting agencies have developed reliable individual income estimator products. We understand that these models were created using actual consumer information from completed mortgage loan files and/or tax returns, for example, from hundreds of thousands of consumers in the case of one company, to more than a million consumers in the case of another company, to validate the models. As a result, these companies report that their models are empirically derived, demonstrably and statistically sound, consistent with the qualification standard for a validated credit scoring system under Regulation B. Under such circumstances, an issuer, at a minimum, should be able to rely on income information received from a consumer reporting agency using such an empirically derived, demonstrably and statistically sound model, because it is a consumer-specific estimate that in most cases would be far more reliable than unverified income information received directly from a consumer.

In addition, the Board should grandfather existing accounts from the requirement to consider income when increasing credit lines. More specifically, the Board should exempt accounts opened before February 22, 2010 even though there is no income information in the consumer's file, provided that the performance information in the consumer's file, together with other information available to the issuer, including information from a consumer reporting agency, demonstrates the ability of the consumer to handle the increase. Even for accounts opened after February 22, 2010, an issuer should not be required to seek current or updated income information when the issuer already has income information or when the consumer's performance on the account and information received from a consumer reporting agency is sufficient to support the credit line increase. This interpretation is supported by proposed Commentary Section 226.51(a)-2 which allows a card issuer to rely on information "known to the card issuer . . . when the card issuer considers increasing the credit line on an existing account." However, proposed Commentary Section 226.51(a)-4 states that "[a]ny current or reasonably expected assets or income may be considered." In this regard, the Board should clarify that an issuer may, but is not required to, consider updated income.

The Board also should clarify that alternatively an issuer can meet the income requirement by putting consumers on notice of a minimum income requirement for a credit account and the consumer's representation that he or she meets this income requirement by applying for the account. For example, the Board should revise the commentary to permit an issuer to use a minimum income notice at the point-of-sale, especially if the notice is coupled with the consumer's written, oral or electronic acknowledgment of the minimum income requirement when requesting the account.

Partial Grace Requirement (Section 226.54)

Proposed Section 226.54(a)(1) implements the CARD Act requirement that an issuer offering a grace period not impose finance charges for partial payments under certain circumstances. Specifically, the Proposed Rule mirrors the statutory language in stating that "a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account . . . if those finance charges are based on . . . [a]ny portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period."

We commend the Board for proposing several commentary provisions and examples clarifying the scope and application of this prohibition. For instance, underscoring the significance of the account agreement language, proposed Commentary Section 226.54(a)(1)-1 states that the partial grace period requirement does not require an issuer to provide a grace period, nor does it prohibit a card issuer from placing limitations or conditions on a grace period to the extent consistent with the statutory prohibition.

In this regard, we recommend that the Board further clarify that a cardholder must be eligible for a grace period under the terms of the account before the partial grace period requirement becomes applicable. Accordingly, Proposed Commentary Section 226.54(a)(1)-5, which could be read to suggest that the partial grace period requirement applies to all partial payments, should be modified to read (modified language is underscored):

> *Prohibition on imposing finance charges on amounts paid within grace period.* When a balance on a credit card account is eligible for a grace period, under the terms of the account, and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, § 226.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with § 226.54(a)(1)(ii). However, when the partial grace period prohibition applies, a card issuer complies, for example, with § 226.54(a)(1)(ii) if it applies the consumer's payment to the balance subject to the grace period at the end of the prior billing cycle (in a manner consistent with the payment allocation requirements in § 226.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

The conditions on the application of the partial grace requirement are significant. If the requirement is applied too broadly, issuers could be forced to eliminate grace periods from accounts altogether. The elimination of grace periods neither serves the interests of the consumer nor the purpose of the statute. In order to avoid forcing issuers toward less consumer-friendly practices in order to limit the applicability of the partial grace period, we recommend that the Board further clarify the interrelationship between the partial grace period requirement and the terms of the account which establishes when the consumer is eligible for a grace period, by stating specifically that the partial grace period provision has no application unless, under the terms of the account, the consumer is eligible for the full grace period in that billing cycle but instead makes only a partial payment. In this regard, proposed Commentary Section 226.54(a)(1)-6.iii already explains that if, under the terms of the account, a consumer is required to have repaid the entire account balance during the prior billing cycle in order to be eligible for the grace period in the current billing cycle and the consumer did not pay the entire balance in the prior cycle, the partial grace period provision has no application in the current cycle because the consumer is not eligible for a grace period.

It is important, however, for the Board to clarify that this is simply one example of how the terms of the account can limit the eligibility of consumers for a grace period and, thus, limit the application of a partial grace period. Specifically, the Board should add another example to Commentary Section 226.54(a)(1)-6 to read:

> iv. The terms of the account can otherwise limit a consumer's eligibility for a grace period. For example, assume that under the terms of the account, in order to be eligible for a grace period, the consumer must

> not have any unpaid purchase balance remaining from the prior billing cycle. Assume also that in February a consumer repays $200 of his $600 purchase balance, that the remaining $400 appears on the March statement along with $300 in March purchases and the consumer pays $250 of the total balance due of $700. Under these circumstances, § 226.54 does not apply because the unpaid purchase balance from February made the consumer ineligible for a grace period.

In addition, to further clarify the application of the Rule, we recommend that the Board adopt supplemental information explaining that if, under the terms of the account, the grace period only applies to consumers who regularly pay their account in full, then Section 226.54 would only apply to a consumer who regularly pays in full, but makes less than a full payment in a particular month.

Lastly, we recommend that the Board clarify that issuers are not required to describe the application of the partial grace requirement when disclosing, pursuant to Sections 226.5a, 226.6 and 226.7, any grace period provided. Requiring issuers to disclose the application of the partial grace requirement would add significant complexity and little meaning to already complex disclosures.

Dual Notice for 60-Day Delinquency (Sections 226.9(c) and 9(g))

The ability of an issuer to provide consumers with a dual notice is essential to implement the Act as written. That is, an issuer that has already provided a 45-day notice of an increased rate due to delinquency should not be required to give a second 45-day notice in connection with applying an increased rate to the outstanding balance if a consumer becomes 60 days delinquent after the first notice is provided, but before the effective date of the change. This approach is consistent with the Board's clarification to the January 2009 Regulation Z rule.

Without clarification that such a dual notice is permissible, the Board could essentially eliminate the true 60-day delinquency exception contemplated by the CARD Act; it will essentially become a 105-120-day delinquency exception, well beyond what was provided for in the Act. There is no language in the Truth in Lending Act that requires an additional notice to be provided after the consumer has become 60 days delinquent. In fact, providing the consumer notice of the consequences of becoming 60 days delinquent as part of the initial delinquency notice would be more meaningful to consumers.

Scope of Act (Section 226.2)

The Board proposed to interpret the term "credit card account under an open-end . . . consumer credit plan" to exclude a debit card that accesses an overdraft line of credit. Specifically, the Board states in the supplemental information that "debit cards that access overdraft lines of credit should not be subject to the regulations implementing the provisions of the [CARD Act] that apply to 'credit card accounts under an open end consumer credit plan.'"

We fully support the Board's conclusion that debit cards should not be treated as credit cards under the CARD Act merely because they provide incidental access to a line of credit. Accordingly, we commend the Board for excluding overdraft lines accessible by a debit card from the definition. We also commend the Board for excluding home-equity lines accessible by a credit/charge card.

The Board also should make it clear that this exclusion applies to a line of credit accessible by a debit card where such access is only available at an ATM. Such an exception is consistent with the legislative history of the CARD Act. That is, Congress was clearly focused on traditional credit cards, not debit cards or other lines of credit. Such an exception also is consistent with the Board's historical treatment of such accounts, as evidenced by the current exclusion of such accounts from Section 226.5a(a)(3). Moreover, the CARD Act provisions do not make sense in the context of a debit card that can only access a line of credit at an ATM, and the coverage of such limited purpose products may have unintended consequences and will significantly increase the scope of the CARD Act.

If you have any questions regarding these comments, please contact me, at (202) 887-1566.

Sincerely,

Rick Fischer

L. Richard Fischer

Enclosures: Clarification list and suggested implementation guidance

November 6, 2009

Clarification List

General Disclosure Requirements (Section 226.5)

Proposed Commentary Section 226.5(b)(1)(i)-6.i provides that when there is a replacement of an existing account with another account, the card issuer must either provide notice of the terms of the new account under Section 226.6(b) or notice of the change in terms under Section 226.9(c)(2). [Federal Register page 54272]. Proposed Commentary Section 226.5(b)(1)(i)-6.ii states that "Listed below are facts and circumstances that are relevant to whether a substitution or replacement results in the opening of a new account . . . ." [Federal Register page 54273].

The Board should clarify that the list is non-exhaustive and that an issuer may consider other relevant facts and circumstances. In particular, the Board should clarify that one such additional relevant fact is a consumer-initiated request for an upgrade or change in an account. Accordingly, the following should be added to the list: "G. Whether the cardholder requested the new or upgraded account."

Account-Opening Disclosures (Section 226.6(b)(2)(i)(D))

The Board should clarify that the 60-day delinquency provision is simply an exception to the retroactive rate increase prohibition, and that it is not a trigger term that must be disclosed as a penalty provision in the account-opening disclosure in Section 226.6(b)(2)(i)(D). Section 226.6(b)(2)(i)(D) states that "if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment . . . the creditor must disclose pursuant to [this provision] the increased rate that may apply." [Federal Register Page 54211]. The commentary should include a provision substantially similar to the following: "This section only requires the disclosure of specific penalty rates and does not require an issuer to disclose at account opening the fact that the 60-day delinquency exception in section 226.55(b)(4) could result in a rate increase that will apply to the outstanding balance."

Renewal Disclosures (Section 226.9(e))

Proposed Section 226.9(e) states that "[A] card issuer that imposes any annual or other periodic fee to renew a credit or charge card account . . . **or** any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 226.6(b)(1) and (b)(2) . . . shall mail or deliver written notice of the renewal . . . ." (Emphasis added). [Federal Register page 54218]. The Board should clarify that renewal notices are not required if there is no annual fee or similar fee assessed for account renewal.

Specifically, if there is no annual fee or similar fee at renewal, the Rule should make it clear that no renewal notice is required even if there has been a change in the account as described under proposed Section 226.9(e). This can be accomplished by changing "**or any** card issuer that has changed" to "**and the** card issuer has changed."

Payments (Sections 226.10(a)-(b))

The Board should clarify that an issuer may continue to establish certain payments as non-conforming for purposes of Section 226.10(b)(4), which provides that "If a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt," rather than as of the day of receipt. [Federal Register page 54219]. In this regard, the Board should:

a. Clarify that an issuer can specify "one particular address for receiving payments."

b. Clarify that an institution does not have to treat payments made at a branch as conforming if the institution does not promote branch payments.

c. Clarify that an issuer that promotes branch payments is not required to treat payments made at a branch after the business hours of that branch as conforming (for example, the payment left through the branch mail slot), even if the branch closes before 5pm.

d. Clarify that an issuer that promotes branch payments can specify reasonable procedures for such payments (*e.g.*, branch payments must be made with a branch teller) and payments otherwise left at a branch (*e.g.*, at a loan desk or mail station) can be treated as non-conforming.

e. Clarify that Proposed Commentary Section 226.10(b)-2 does not require an issuer that specifies a 5pm payment cut-off, but receives payments after 5pm via the Web, to treat such payments as conforming. Commentary says "any payments," but should say "any payments received by the creditor's specified cut-off time." [Federal Register page 54297].

Also, Section 226.10(b)(4) should be modified to say: "Notwithstanding any other provision of this § 226.10 or related commentary, if a creditor specifies, on or with the periodic statement, requirements consistent with this section for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt." Additionally, the second sentence of Section 226.10(b)(3)(i) should be revised by adding to the end of thereof: "If a card issuer that is a financial institution has specified that payments can be made in person at a teller station in a branch or office, such a payment shall be considered received on the date on which the consumer makes the payment provided such payment is made in person at a teller station before the close of business of that branch or office."

Limitation on fees related to method of payment (Section 226.10(e))

Commentary Section 226.10(e)-2 should be revised to provide that "expedited" applies to representative-assisted payments that are scheduled to occur on a specific date or dates in the future, provided the payments will be immediately credited on the scheduled date or dates specified by the consumer. [Federal Register page 54298]. For example, a consumer leaving on a 45-day trip could ask the representative to make two payments on two specific future dates.

This clarification is consistent with the exception. A payment is processed using an actual customer service representative and is credited on the specific day or days requested by the consumer. Otherwise, the consumer would have to make the payments in advance or make arrangements for the payments to be made on or before the scheduled payment due dates.

Limitations on Increasing Annual Percentage Rates, Fees and Charges (Section 226.55)

Temporary Rate Exception (Section 226.55(b)(1))

1. The temporary rate exception provides that an issuer can increase a rate if certain conditions are met, including that "[t]he card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the annual percentage rate that applied to those transactions prior to the period." [*See* Proposed Section 226.55(b)(1)(ii)(A). Federal Register page 54226]. The Board should clarify that where there are two or more consecutive periods, the phrase "rate . . . prior to the period" means prior to the first period. Specifically, Section 226.55(b)(ii)(A) should be modified to say:

   > The card issuer must not apply an annual percentage rate to transactions that occurred prior to the period that exceeds the annual percentage rate that applied to those transactions at the beginning of the period.

   The Board also should clarify in the commentary for Section 226.55(b)(ii)(A) that rolling or consecutive rate reduction periods are permissible so long as the "go to" rate does not exceed the rate in effect prior to the initial reduced rate period; and that stepped rates for consecutive periods are permissible if properly disclosed prior to the first such period.

2. In addition, the Board should clarify when the specified period begins for purposes of the requirement that promotions be a minimum of six months. The examples in the commentary (*see, e.g.*, § 226.55(b)(1)-2.iv) describe scenarios in which a specific/single transaction apparently is required to get the benefit of the promotional rate for six months from the date of the transaction, even if the consumer has a window of time in which to engage in the transaction under the offer. [Federal Register page 54320]. Specifically, the Rule and Commentary should clarify that an issuer can offer a six-month promotion starting from <u>either</u> the date the opportunity for the promotion is made available to the consumer, or the transaction date of the promotion. Accordingly, for example, the Board should revise Commentary Section 226.5(b)(1)-2.iv to read:

   > Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply thereafter. On September 1, a $5,000 transaction is charged to the account for the purchase of an appliance. Section 226.55(b)(1) would permit the card issuer to disclose that interest at the 18% rate will begin to accrue on the $5,000 transaction on December 1 of year one, or disclose that the 18% rate will begin to accrue six months from the date of the transaction which in this example is on March 1 of year two.

3. Moreover, the Board should clarify through an additional commentary example, that an issuer is permitted to extend an existing promotion that is six months or more for a period of

time that is less than six months. For example, an issuer should be permitted to offer a six-month promotion and during that promotion give the customer an additional three months, so long as the promotion is properly disclosed and the same terms apply.

4. The temporary rate exception requires the issuer to disclose the "return to rate" in writing prior to the start of the temporary rate or promotional period. Compliance with this requirement for existing accounts, however, can be difficult, if not impossible, because the issuer can have hundreds of different current rates on tens of thousands (perhaps millions) of accounts that the issuer would need to identify as the "return to rate" or rates. It is operationally impossible, or at least impractical, to separately mail to current cardholders notices that accurately disclose the current rates on their accounts which would serve as the "return to rate" at the end of the promotional period. It is similarly impractical to communicate current rates to point-of-sale clerks and expect those clerks to accurately fill in those rates on a form to be provided to the consumer before a promotional transaction is completed. However, accurate current rate information is shown on each consumer's periodic statement for the account. Therefore, we request the Board to clarify that an issuer can satisfy the advance notice requirement for a promotional arrangement on an existing account by use of a statement message on, or statement insert with, a periodic statement provided for that account that refers to the current rate or rates on that statement. For example, the issuer should be able to disclose in such a statement message that if, during the next six months, the consumer makes any purchase greater than $500, the interest rate for that purchase or purchases for the remainder of that six-month period will be 5% and that, at the end of that period, the rate applicable to the remaining balance for the purchases will be the regular rate for purchases shown on this statement.

   In addition, the issuer should be able to tell the consumer orally or by a sign in the store that identified purchases will have a reduced rate of 5% beginning on the date of the consumer's next statement which will confirm the promotional rate and disclose the applicable rate at the end of the promotional period by reference to the regular purchase rate shown on the statement. As discussed below in the context of the workout exception, the Board should also clarify that the issuer can, but is not required to, waive the interest difference between the regular rate and the promotional rate for the days from the purchase date and the statement date without losing the exception.

60-Day Delinquency Exception (Section 226.55(b)(4))

The Board should clarify that an issuer can provide a 60-day delinquent change notice under either Section 226.9(c) or 226.9(g) where no penalty rates have been disclosed in advance. Both 9(c) and 9(g) involve a 45-day notice, in either case a rate/fee change can apply to the existing balance and the consumer has no right to reject; in addition, the six-month cure provision applies to both 9(c) and 9(g). Section 226.55(b)(4)(i) indicates that either notice is permissible [Federal Register Page 54227], but Section 226.9(c)(2)(i) provides that "Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms . . . must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) . . . ." [Federal Register page 54216]. The beginning of this sentence should be modified to read: "Increases in the rate due to the application of a specific penalty rate disclosure pursuant to 226.6(b)(2)(i)(D) . . . must be disclosed pursuant to paragraph (g) . . . ."

Servicemembers Civil Relief Act Exception (Section 226.55(b)(6))

The Servicemembers Civil Relief Act should be broadened to apply equally to similar state-enacted laws.

Workout and Temporary Hardship Exception (Section 226.55(b)(5))

The Board should clarify that an issuer, at its option, can either delay the start of a workout or temporary hardship arrangement until the date of the next statement sent to the consumer for the account or waive the interest from the date of the conversation with the consumer to the next statement date in order to enable the issuer to provide the required advance written notice to the consumer regarding the terms of the arrangement and the rate that will apply at the conclusion of the arrangement by reference to the current rate or rates shown for the consumer on that periodic statement. In this regard, it is important to recognize that most workout and hardship arrangements begin orally, as part of a telephone conversation, which makes prior written notice of the terms and rate impossible where the arrangement must start promptly. This clarification would give the issuer the option to advise the consumer during the call that the issuer is required to provide written notice of the terms and rate and, thus, the arrangement will not start until the date of the consumer's next statement which will confirm the terms and rate at the conclusion of the arrangement. The Board also should clarify that the issuer may, but is not required to, waive the interest from the date of the call to the date of the next statement without losing the exception. The same should be true for the temporary waiver of one or more fees at the beginning of, or during the term of, a workout or temporary hardship arrangement.

November 6, 2009

Implementation Guidance

Applying certain requirements in the proposed rule to existing accounts would in effect require compliance well before the effective date of those requirements. Accordingly, we request that the Board clarify that the following requirements do not apply to accounts opened prior to February 22, 2010, or any other applicable effective date:

- First year account is opened. The one-year limitation under Section 226.55(b)(3)(iii) should not apply to accounts opened before the effective date. For example, if an account was opened on October 1, 2009, an issuer should be permitted to increase a rate or fee with proper notice pursuant to Section 226.9(c).

- Period of six months or longer. The requirement under Section 226.55(b)(1) that promotional rates apply for a period of six months or longer before an increase in the rate should not apply to promotions commenced prior to February 22, 2010.

- Ability to pay. The requirement under Section 226.51(a) that an issuer consider a consumer's ability to pay should not apply to accounts opened prior to February 22, 2010. For example, for the purpose of Section 226.51(a) an issuer should not be required to obtain information on income or obligations on accounts opened prior to February 22, 2010, subject to any other requirements for underwriting credit applications that may apply. Similarly, an issuer should not be required to consider income before increasing the credit limit on an account opened prior to February 22, 2010 because the issuer may not have obtained income information for such accounts; but instead would use its experience information on such accounts, together with credit bureau information obtained for those cardholders.

- Fee limitations. The fee limitation under Section 226.52(a)(1)(i) should not apply to accounts opened prior to February 22, 2010. That is, Section 226.52 should not affect fees charged to credit card accounts prior to February 22, 2010, even if some or all of those fees have not been paid in full as of the effective date.

We also request that the Board clarify that the following implementation guidance applies:

- For rate increases due to the consumer's default or delinquency or as a penalty, the relevant date for purposes of penalty rate increases should be the date on which the increase is triggered. For example, if a consumer makes a late payment on January 15th, the issuer should be able to send the consumer a 45-day notice (with a right to reject the increase for new transactions) increasing the rate that will apply to existing and new balances, even if the rate increase is not scheduled to go into effect until after February 22, 2010.