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November 17, 2009

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

RE: Docket No. R-1370
Regulation Z (Truth in Lending)

Dear Ms. Johnson:

This comment letter is submitted in response to the recently published proposed revisions to Regulation Z, largely intended to take effect on February 22, 2010, to implement certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Credit Card Act"). I submit these comments in my personal capacity only, and not on behalf of any client or colleague.

The Federal Reserve Board (the "Board") has specifically requested comment on a few issues, including (inter alia) implementation of 15 USC Section 1637(b)(12) (concerning late payment fee and directly related disclosure requirements for periodic statements), Section 1637(c)(8) (concerning credit card applications from consumers under the age of 21), Section 140A of the Truth in Lending Act (concerning timely settlement of credit card accounts of deceased obligors), and Section 1632(d) (concerning Internet posting of credit card agreements and related requirements). In this regard, kindly consider the following issues before finalizing the proposed revisions to Regulation Z:

15 USC Section 1637(b)(12) (concerning late payment fee and directly related disclosure requirements for periodic statements)

Existing Section 1637(b)(9) requires disclosure (if applicable) on an open-end credit periodic statement of the time period within (or date by) which payment may be made without incurring additional finance charges. (If there is such a time period, 15 USC Section 1666b(b) also requires that the periodic statement be sent at least 21 days before the expiration of such time period.) Creditors that do not offer finance charge "grace periods" (including creditors that assess periodic finance charges on open-end credit advances from the date of the advance, regardless of whether the

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advance is paid in full by a certain date) are not subject to this disclosure requirement. In addition, creditors that do not impose any periodic finance charge whatsoever (including, for example, certain “charge card” creditors) are not subject to this disclosure requirement.

Existing Section 1637(b)(12)(A) only requires disclosure of the payment due date (“or, if different, the earliest date on which a late payment fee may be charged”) on an open-end credit periodic statement if a late payment fee will be imposed if payment is made after a certain date. The revisions to Section 1637(b)(12)(A) scheduled to take effect on February 22, 2010 do not significantly change the disclosure requirements of existing Section 1637(b)(12)(A). If the creditor does not impose a late fee or a penalty Annual Percentage Rate in connection with late payments, 15 USC Section 1637(b)(12)(A) would not apply, and (in such a case), 15 USC Section 1666b(a) would appear to allow certain open-end creditors (including, for example, certain “charge card” creditors) to send periodic statements every 2 months or every 3 months, provided (inter alia) no required periodic payment due under the open-end consumer credit account is due less than 21 days before the date the periodic statements are mailed.

Furthermore, a credit card issuer that does not impose any late payment fee or equivalent penalty for late payment, and that also is not subject to the finance charge “grace period” disclosure requirement of 15 USC Section 1637(b)(9), is not statutorily required to disclose a payment due date on an open-end credit periodic statement. Such a creditor might be subject to Section 1637(o) as of February 22, 2010 (requiring the payment due date for open-end consumer credit card accounts to be the same day each month), and might also be subject to Section 1666b(a) (which does not require disclosure of the payment due date on a periodic statement), but 15 USC Section 1637 does not require all credit card issuers to disclose the payment due date on their periodic statements – only a subset of credit card issuers is subject to the payment due date disclosure requirement.

This in turn raises the following issues with respect to proposed **12 CFR Section 226.7(b)(11)(i)(A)**:

1. There is presently is no express requirement in Regulation Z that the periodic billing cycle correspond to the frequency of required payments on an open-end consumer credit plan. For example, an open-end creditor could theoretically require monthly payments and could provide Regulation Z-compliant periodic statements of account quarterly (every 3 months), or (vice versa) could use monthly billing cycles for periodic statement purposes while requiring quarterly payments. Such practices may be unusual, but do not appear to be incompatible with current Regulation Z periodic statement requirements (particularly if the open-end credit account is, by way of example, a retail store account with annual participation fees, but no periodic finance charges and no late fee or penalty Annual Percentage Rate that would be triggered by a late payment). It may also be possible to provide quarterly Regulation Z statements in connection with certain lines of credit where payments are made automatically from amounts deposited by the consumer in a linked or pledged deposit or asset account, since such lines of credit typically do not have finance charge “grace periods” and might not always include late fees or penalty Annual Percentage Rates.

Significantly, current 12 CFR Section 226.7 (and proposed Section 226.7(b)(12)) does not require disclosure of the required minimum payment amount due – thus, the Regulation Z periodic statement has not been required to function as the consumer’s payment invoice or reminder. The Commentary to Section 226.2(a)(4) acknowledges that some open-end creditors might not send invoices or bills “in the traditional sense,” and might instead only send “statements of account

activity.” Appendix E to Part 226 also acknowledges that some retail credit card issuers may provide invoices or statements that reflect each individual use of a credit card (so-called “transaction invoices”). Other examples of these types of nontraditional periodic statements could include a small pharmacy’s in-house retail revolving charge account statement, that might reflect insurance and other payments received from third parties (potentially including payments transferred from health savings accounts or other sources), and that might only impose annual participation fees instead of periodic finance charges.

Under the current statutory regime (as well as the current version of 12 CFR Section 226.7), open-end creditors that choose at their option to have their periodic statements serve the dual function of a payment invoice as well as a statement of account, may include information about the minimum payment due (and its due date) on the tear-off portion of the periodic statement that is supposed to be returned to the creditor by the consumer with the consumer’s payment. Imposing a new across-the-board requirement that credit card periodic statements always include disclosure of the payment due date will require creditors to add the payment due date disclosure to a portion of the periodic statement that the consumer may keep for future reference – information on the tear-off portion of the periodic statement does not meet the requirement of 12 CFR Section 226.5(a)(1) that periodic statement disclosures required by 12 CFR Section 226.7 be provided in a form the consumer may keep for future reference.

Similarly, any requirement to disclose the actual minimum payment amount due on the periodic statement (a requirement that could potentially be inferred from proposed 12 CFR Section 226.7(b)(13), but that is not included as a required disclosure in current 12 CFR Section 226.7 or in proposed Section 226.7(b)(12)) would require creditors to add the minimum payment amount to a portion of the periodic statement that the consumer may keep for future reference. This could be a complicated disclosure for a retail store that allows its revolving credit customers to pay balances off in full within a period of two or three billing cycles without incurring any periodic finance charge or late charge.)

2. It may be important to continue to observe the distinction between open-end credit periodic statements (which only need to be provided quarterly under Regulation Z, particularly if no periodic finance charges are assessed) and contractually-required payment due dates that might be more frequent than quarterly, as well as the distinction in Regulation Z between a periodic statement of account and an actual payment invoice or bill. For example, although certain credit card monthly payment due dates may need to fall on the same numerical date each month, the fact that the card issuer contractually requires monthly payments should not automatically require the card issuer to use monthly billing cycles for Regulation Z periodic statement purposes (particularly if the card issuer does not assess any periodic finance charges). Thus, for example, an open-end creditor should be allowed to use a 2-month (60-day) periodic statement billing cycle, although the consumer’s contractual obligation is to make monthly payments. (Such bi-monthly statements could potentially include reminders that monthly payments are due by no later than the 25th of each month, by way of example, without disclosing actual payment due dates.)

The distinction between contractually required payment due dates and periodic billing statements may be especially important since certain in-store accounts with no periodic finance charges (and potentially no late charges) are proposed to be subject to some of the new payment due date disclosure requirements in Section 226.7. The distinction between contractually required payment due dates and periodic billing statements may also be important with respect to certain retail open-end credit accounts that include zero percent Annual Percentage Rate features, provided that the

amount financed as part of an individual purchase transaction is paid in full by the consumer by a specified date or within a specified time period (with the exact timing and dollar amount of the individual payments made by the consumer prior to the end of that specified period largely in the consumer's discretion), with finance charges accruing on any unpaid balance only after the specified period has ended.

3. The Board should also consider, when revising the open-end credit provisions of Regulation Z, that there are many relatively small retail revolving credit account portfolios being serviced in-house with relatively simple, uncomplicated computer systems. Although some of these retail revolving credit accounts might be eligible for the proposed disclosure exemption set forth in proposed 12 CFR Section 226.7(b)(12)(v), they may remain subject to proposed Section 226.7(b)(11)(i)(A), which could create significant computer programming and statement printing issues for smaller retailers offering in-house revolving charge accounts. (Such retailers also may not all be eligible for the special rules in proposed revised Appendix E to Part 226.)

4. A related issue arises with respect to proposed 12 CFR Section 226.7(b)(12)(v), for smaller retailers offering in-house revolving charge accounts that might require payment in full of individual transactions over a 90-, 120- or 180-day time period (by way of example). Such retailers would not all be eligible for the proposed exemption set forth in proposed Section 226.7(b)(12)(v)(A) or (C), particularly if the consumer is allowed to repay transactions without incurring any periodic finance charge over a 2- or 3-billing cycle time period. It would be very helpful if proposed Section 226.7(b)(12)(v) included the additional exemptions found in 12 CFR Section 226.7(b)(12)(v)(E) and (F) (as originally scheduled to take effect in July 2010).

5. It would also be useful to add an exemption to Sections 226.7(b)(11) and (12) for lines of credit accessed solely by account numbers. This would simplify compliance issues, particularly for smaller retailers offering in-house revolving charge accounts, in view of some case law indicating that a reusable account number could constitute a "credit card" for purposes of 12 CFR Section 226.2 et seq.

15 USC Section 1637(c)(8) (concerning credit card applications from consumers under the age of 21)

1. The Board has broad statutory authority, under 15 USC Sections 1603(5) and 1604(a), to issue regulations excepting certain transactions from the scope of specific provisions of the Truth in Lending Act, including Section 1637(c)(8). It may be appropriate to include an exception from Section 1637(c)(8) that is exercisable at the creditor's option for consumers under the age of 21 who were formally declared "emancipated" under applicable state law prior to reaching the age of majority under applicable state law. (The age of majority in Connecticut and most other jurisdictions is 18, so a formal legal proceeding to emancipate a minor would not be necessary once the individual has reached the age of 18 in most jurisdictions.)

For example, Connecticut allows a minor who has reached the age of 16 to petition the Superior Court or the Probate Court "for a determination that the minor named in the petition be emancipated." (See Conn. Gen. Stat. Section 46b-150.) Section 46b-150b allows the court to declare the minor to be legally emancipated if the court determines that "(1) The minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; or (2) the minor is on active duty with any of the armed forces of the United States of America; or (3) the

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minor willingly lives separate and apart from his parents or guardian, with or without the consent of the parents or guardian, and that the minor is managing his own financial affairs, regardless of the source of any lawful income; or (4) for good cause shown, it is in the best interest of the minor, any child of the minor or the parents or guardian of the minor.” If the court enters an order declaring that the minor is emancipated, the emancipated minor acquires several rights pursuant to Section 46b-150d, including (inter alia) the following: “(1) The minor may consent to medical, dental or psychiatric care, without parental consent, knowledge or liability; (2) the minor may enter into a binding contract; (3) the minor may sue and be sued in such minor's own name; (4) the minor shall be entitled to such minor's own earnings and shall be free of control by such minor's parents or guardian; (5) the minor may establish such minor's own residence; (6) the minor may buy and sell real and personal property...” A declaration of emancipation effectively relieves the minor’s parents of the legal obligation to act as the emancipated minor’s guardians, and of the legal obligation to provide financial support to the emancipated minor. An emancipated minor may enroll in a school or college, or in the armed forces of the United States, without parental consent. (See Conn. Gen. Stat. Section 46b-150d.)

A declaration of emancipation is therefore incompatible with requiring an emancipated minor applying for a credit card to provide a parent or legal guardian as a co-signer. (Furthermore, depending on the specific circumstances giving rise to the minor’s judicially declared emancipation, the minor may be estranged from his/her parent or legal guardian.) At the card issuer’s option, if an individual who was declared to be “emancipated” prior to reaching the age of majority in the individual’s state of residence applies for a credit card, the card issuer should be permitted to treat that individual as exempt from the requirements of 15 USC Section 1637(c)(8).

For another example of statutes pertaining to the formal emancipation of minors, please see 750 Illinois Stat. Section 30/1 et seq. (the Illinois Emancipation of Minors Act), permitting the “complete emancipation” of a minor aged 16 or older if “the court determines that the minor is a mature minor who is of sound mind and has the capacity and maturity to manage his own affairs including his finances, and that the best interests of the minor and his family will be promoted by declaring the minor an emancipated minor.” (See 750 Ill. Stat. Section 30/9.) (As is the case with Connecticut, the age of majority in Illinois is 18.) After an individual has been formally declared “emancipated” by a court, it does not appear appropriate to require creditors to continue to treat such an individual as subject to the provisions of 15 USC Section 1637(c)(8).

As a practical matter, many credit card issuers do not allow joint accounts (and thus do not allow co-signers or guarantors on credit card accounts), effectively ruling out 15 USC Section 1637(c)(8)(B)(i) as an option for such issuers. Excusing a fully emancipated minor (or a person between the ages of 18 and 21 who, prior to reaching the age of majority in his or her state, was declared to be a fully emancipated minor pursuant to court order) from the provisions of 15 USC Section 1637(c)(8)(B)(ii) (and proposed 12 CFR Section 226.51(b)) would not excuse such person from the scope of Section 150 of the Truth in Lending Act (and proposed 12 CFR Section 226.51(a)).

2. Technically, 15 USC Section 1637(c)(8) and proposed 12 CFR Section 226.51(b) would not apply if the consumer requesting the credit card has turned 21 years of age by the time the credit card account is “opened.” Thus, at the creditor’s option, a consumer who applies for a credit card account a day or two before the consumer’s 21st birthday could be considered exempt from the requirements of Section 226.51(b) if the creditor will not “open” the account until on or after the consumer’s 21st birthday.

3. It would be useful to add an exemption to Section 226.51(b) for lines of credit accessed solely by account numbers. This would simplify compliance issues, in view of some case law indicating that a reusable account number could constitute a “credit card” for purposes of 12 CFR Section 226.2 et seq.

Section 140A of the Truth in Lending Act (concerning timely settlement of credit card accounts of deceased obligors)

1. Proposed **12 CFR Section 216.11(c)(2)(i)** would preclude a credit card issuer from continuing to accrue finance charges and late fees on a credit card account after receiving a request for balance or pay-off information from the deceased accountholder’s executor or administrator (subject to an exception if a joint accountholder continues to be personally liable to repay amounts owed on the credit card account). The Board has specifically requested comment on whether creditors “should be permitted to resume the imposition of fees and charges if the administrator or executor of an estate has not paid the account balance within a specified period of time.”

Creditors should not be required to stop accruing finance charges or late fees on credit card accounts of decedents simply because the administrator or executor of the decedent’s estate has asked for the account balance (whether for pay-off or other purposes). First, this proposed prohibition in all probability contravenes the contractual provisions governing the credit card account (and also potentially deprives the creditor of the contracted-for penalty Annual Percentage Rate for an account that was already past due when the accountholder passed away, or the post-promotional “regular” Annual Percentage Rate contractually scheduled to take effect at the close of a special “introductory” or promotional time period for a given consumer credit advance). Second, this will tend to discourage prompt payment in full by the administrator or executor, and encourage the administrator or executor to first pay off other debts of the decedent’s estate. Third, the proposed prohibition puts the credit card issuer at a disadvantage relative to other creditors who are not subject to this proposed prohibition, if the decedent’s estate ultimately is determined to be worth less than the total of the decedent’s debts. Fourth, the proposed prohibition disregards the inevitable and occasionally lengthy, drawn-out process of liquidating a decedent’s estate in order to pay the decedent’s creditors. If a decedent’s estate consists largely of illiquid assets (such as real estate), the executor or administrator may prefer to negotiate installment repayment plans with the decedent’s creditors and/or continue to make the contractually required minimum monthly payments called for under the decedent’s consumer credit obligations, while the real estate is readied for sale. Particularly in the present economic environment, real property could deliberately be kept in a decedent’s estate for a significant period of time (potentially generating rental income for the estate’s use in making monthly payments to creditors) before the property is actively marketed for sale. Finally, since it is commonplace for creditors to continue to impose interest or finance charge on a daily basis until all outstanding amounts are paid in full (mortgage servicers, for example, routinely provide pay-off figures that include a specific additional dollar amount to be added for each day that payment in full is received after a specified date), and pay-off figures given to executors and administrators of decedents’ estates will typically include the additional “per diem” interest amount that will continue to accrue if the pay-off figure is not received by a specified date, there is no reason to believe that executors and administrators of decedents’ estates will be hindered in their ability to determine the total amount due on a decedent’s credit card account, inclusive of daily interest or finance charge accruals.

It would be more appropriate to allow a decedent's creditors to negotiate forbearance and modification agreements with the decedent's executor or administrator on a case-by-case basis, instead of promulgating an across-the-board prohibition against the continuing accrual of interest or finance charge (and late fees) on a decedent's outstanding credit card account balances. Because of the fact-specific issues that may arise with a given decedent's estate, and given the potentially complicated intersection of state contract law, probate law, and laws of inheritance and intestacy, it would be preferable if proposed Section 226.11(c) did not impose substantive prohibitions on creditors that contravene the express terms of the consumer credit card contract and applicable state law.

2. Under **proposed Comment 11(c)-4**, the Board would apparently allow the deceased accountholder's executor or administrator to request a credit card account balance (whether for pay-off or other reasons) by telephoning the creditor. Please recall in this regard that due to federal and state privacy requirements (including, by way of example, Federal Reserve Board Regulation P and equivalent federal regulations issued by other federal agencies, including the Federal Deposit Insurance Corporation, Federal Trade Commission, Office of the Comptroller of the Currency, and Office of Thrift Supervision), creditors (and account servicers) receiving telephone calls from non-acountholders claiming to be authorized representatives of an accountholder (whether deceased or living) will likely not want to disclose account information (including account balance or pay-off information) without first verifying the due authorization of the person claiming to be the authorized representative of the accountholder. Verification for the representative of a decedent's estate will typically include certified copies of the decedent's death certificate and an appropriate probate court order designating the administrator or executor of the decedent's estate. The creditor (or account servicer) has no control over when the representative of the decedent's estate will provide the requested verification (and requests for account balance or pay-off information received in connection with unsecured consumer credit card accounts may be made by relatives of the deceased accountholder, not lawyers and not persons who have already been specifically appointed by a probate court to act as the decedent's executor or administrator, which could complicate the creditor's ability to verify the legitimacy of the account balance or pay-off information request). Consequently, an initial telephone inquiry from a third party (someone other than the accountholder) asking for account balance, pay-off, or other account-related information should not start the clock running on the creditor's (or account servicer's) duty to provide the requested information to such third party. (See, e.g., by way of analogy, Official Staff Comment 2 to Section 226.36(c)(1)(iii), which allows a mortgage loan servicer to "take reasonable measures to verify the identity of any person acting on behalf of the consumer and to obtain the consumer's authorization to release information to any such person before the 'reasonable time' period begins to run" in which the servicer must provide a pay-off figure for the mortgage loan.)

If the Board wishes to require credit card issuers to respond promptly to an executor's or administrator's request for credit card account balance information (to implement Section 140A of the Truth in Lending Act), it may be more appropriate to follow the general approach used in 12 CFR Section 226.36(c)(1)(iii). Provisions similar to Official Staff Comments 2 and 3 to Section 226.36(c)(1)(iii) would also be useful in the context of regulations implementing Section 140A of the Truth in Lending Act.

After the appropriate verification documentation has been received, it would not be unreasonable to require the creditor (or account servicer) to respond to written requests for account pay-off or balance information from an authorized representative of the decedent's estate within 30 days of receipt of such written requests. (Creditors and account servicers also could, at their option and in

their discretion, agree to accept and respond to certain follow-up telephone inquiries from an authorized representative of the decedent's estate.) A 30-day time period for responding to a specific written request for the pay-off amount (including any applicable per diem interest or finance charge amount that would continue to accrue if the pay-off amount were received after a specified date) should generally suffice for credit card account servicers (barring unforeseen account anomalies or systems issues, and further assuming that all appropriate documentation has been provided confirming the requesting party's authority to receive the requested information, and provided further that the written request conforms to the creditor's or servicer's reasonable requirements).

3. A tangentially related issue arises with respect to a decedent's credit card account, where an authorized user (typically residing at or using the same mailing address as the decedent accountholder) continues to use the account and also continues to remit monthly payments to the creditor on the account – in such a case, the creditor will often be unaware that the accountholder is deceased, and may remain unaware of this for a significant period of time. Periodic statements would continue to be mailed by the creditor to the attention of the decedent, and would be opened and read by the authorized user (who would also typically continue to remit monthly payments to the creditor). In such a case, arguments may be made under applicable state law that the authorized user's continuing use of the account and continuing remittance of monthly payments after the accountholder's death, constitutes the authorized user's agreement to be bound by the account's contractual terms and conditions, at least with respect to the authorized user's account transactions after the accountholder's death (including the authorized user's agreement to have finance charges accrue on the authorized user's account transactions). Depending on the specific factual circumstances, arguments may also be made under applicable state law that the authorized user has voluntarily agreed to repay some or all of the decedent's account transactions.

In situations where a creditor is not advised of the accountholder's death for a significant period of time after such death, and continues to receive monthly payments from an authorized user (payments which state law would generally allow the creditor to retain and credit against the total amount owed on the decedent's account), the creditor may be required under applicable state law to bifurcate the amounts owed on the account between amounts owed by the deceased accountholder's estate and amounts owed by the authorized user – such bifurcation would generally take into consideration account balances in existence on the accountholder's date of death, and new transactions posted to the account by the authorized user after the accountholder's date of death (with finance charges continuing to accrue on all such balances and transactions in accordance with the terms of the credit card agreement). The creditor also may be able to enter into a voluntary agreement with the authorized user concerning a repayment schedule for some or all of the account balance attributable to the deceased accountholder (an agreement that would generally be enforceable under applicable state law). In many instances, such agreements would be with an authorized user who may also be the primary heir of the deceased accountholder and/or the administrator of the decedent's estate (in which case the need to carefully distinguish between the decedent's contractual obligations and the authorized user's personal contractual obligations may be reduced, in view of the multiple different roles simultaneously occupied by the authorized user in such a scenario). In some instances, the decedent may have died intestate (without a will) and with a small estate that is exempt from formal probate court proceedings under applicable state law, and the surviving authorized user may be acting, practically speaking (although not necessarily with formal imprimatur of a probate court), as both the administrator and primary (or sole) heir of the deceased accountholder (as well as a user of the account). (Consistent with the foregoing, proposed Official Staff Comment 5 to Section 226.11(c) acknowledges the possibility that a credit card issuer

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might provide “the [account] balance amount to appropriate persons, other than the administrator or executor, such as the spouse or a relative of the decedent, who indicate that they may pay any balance.”)

As already noted in 1. above, due to the fact-specific variations that may arise, and the potential intersection of state contract law, probate law, and laws of inheritance and intestacy, it would be preferable if proposed Section 226.11(c) avoided imposing substantive requirements on creditors that could contravene the express terms of the credit card contract and/or the implied or actual contract terms that an authorized user may have agreed to after the account holder’s death (whether before or after the creditor received actual notice of such death).

4. It would be useful to specifically state in Section 226.11(c)(2) and (3) that these provisions only apply to “credit card accounts under an open-end (not home-secured) consumer credit plan” (a specifically defined term in Section 226.2). This would be consistent with the express scope of Section 226.11(c)(1).

5. It would also be useful to add an exemption to Section 226.11(c) for lines of credit accessed solely by account numbers. This would simplify compliance issues, in view of some case law indicating that a reusable account number could constitute a “credit card” for purposes of 12 CFR Section 226.2 et seq.

15 USC Section 1632(d) (concerning Internet posting of credit card agreements and related requirements)

As alluded to earlier in this letter, the Board has broad statutory authority, under 15 USC Sections 1603(5) and 1604(a), to issue regulations excepting certain transactions from the scope of specific provisions of the Truth in Lending Act, including Section 1632(d). Consistent with this, the Board has proposed a *de minimis* exemption from certain provisions within Section 1632(d), based on an issuer’s total number of open (including certain inactive) accounts as of the close of a calendar quarter. In addition to the proposed *de minimis* exemption in 12 CFR Section 226.58(e), it would be useful to include additional exceptions for the following types of credit card issuers and credit card accounts:

1. Retail credit card issuers that do not market to a national audience. For example, a store that sells furniture or appliances that generally require either in-person store pick-up or use of the store’s own local delivery service, and that offers its own in-house retail credit card account to eligible consumers, but does not conduct a national mail or telephone order business (and that might not even accept credit card applications over the Internet or telephone) may be appropriately excluded from Section 1632(d). Such an exclusion would appear to be appropriate for an in-house retail credit card account program offered by (or through or on behalf of) a retailer if the majority of the retailer’s sales involve either in-person pick-up or local store delivery of merchandise, and in-person selection of merchandise, as opposed to telephone, mail order, or Internet sales. As another hypothetical example, a community-based pharmacy or drug store that does not conduct a national mail or telephone order business for members of the general public (and that might not even have its own web site) could also be excluded from Section 1632(d). These are just two examples of community-based retail consumer credit card issuers that could be excluded from Section 1632(d) – Section 1632(d) appears to be more appropriately aimed at retailers that market nationally and that

accept mail, telephone and Internet orders, as opposed to smaller community-based retailers that generally only market within their own geographic footprint.

It is important to note in this regard (by way of example) that a small community-based home furnishings, appliance, drug store or grocery store could have quite a few open accounts for individual customers, although the store may not have a transactional web site and may not market beyond its geographic footprint. It would not be inconceivable for a community-based store to have more than 10,000 open (including inactive) accounts if the store catered to (for example) area senior citizen residential communities such as continuing care retirement communities or other types of congregate housing facilities for the elderly or infirm within a large metropolitan statistical area. A community-based retail store that accepts telephone orders from its local customers and/or that offers limited local delivery service could theoretically develop a clientele of infirm, home-bound or mobility-impaired customers, and could reasonably decide to accommodate some of these customers through in-house charge or in-store credit accounts. Some of these stores may also offer “credit cards” to their customers (as “credit card” is defined at 12 CFR Section 226.2), although the customer base may as a practical matter be largely limited to those within the stores’ local delivery area. These do not appear to be the types of credit card issuers meant to be covered by 15 USC Section 1632(d) (including without limitation proposed 12 CFR Section 226.58(d) and (f)).

The above reasoning and exemption should apply equally to community-based retail sellers that operate multiple store locations, provided that their marketing of in-house charge or credit accounts targets individuals who live within the geographic footprint of such store locations, who are able to either pick up purchased items in-store or accept delivery of purchased items within the stores’ local delivery areas. The above reasoning and exemption should also apply equally to third party creditors (whether affiliated or unaffiliated with retail sellers) that partner with community-based retail sellers to offer “private label” retail charge or credit accounts to customers, if such accounts are marketed primarily to customers who live within the retail seller’s geographic footprint, and are not marketed nationally to members of the general public.

2. Another useful exemption from 15 USC Section 1632(d) (including without limitation proposed 12 CFR Section 226.58(d) and (f)) would be lines of credit accessed solely by account numbers. (Cf., e.g., 12 CFR Section 227.21(c)(4), scheduled to take effect July 1, 2010.) This would be a useful exemption for smaller community-based retailers offering in-store charge or credit accounts, particularly in view of some case law indicating that a reusable account number could constitute a “credit card” for purposes of 12 CFR Section 226.2 et seq.

3. Credit card accounts with terms and conditions that are not (or are no longer) available to the general public or to subgroups of the general public described in proposed Official Staff Comment 1 to Section 226.58(b)(3). For example, if certain credit card accounts with “grandfathered” terms and conditions remain open, but those terms and conditions are no longer available to new credit card customers, such accounts should be excludable from (not required to be counted towards) the 10,000 *de minimis* threshold set forth in proposed Section 226.58(e).

4. Proposed 12 CFR Section 226.58(f)(2)(ii) presumes that the credit card issuer has a web site that may be used by consumers to transmit requests directly to the issuer, as well as a toll-free telephone number. Proposed Section 226.58(f)(1) also appears to presume that the credit card issuer has a publicly available web site. Some smaller retailers either do not have a publicly available web site, or only have an abbreviated web presence (such as a single web page hosted by a local chamber of commerce or similar organization). 15 USC Section 1632(d)(5) specifically authorizes the Board to

establish exceptions to Section 226.58(d) and (f) “in any case in which the administrative burden outweighs the benefit of increased transparency.” It would be reasonable to include an exception for credit card issuers that do not have a publicly available web site, or that only use web pages hosted by a local or regional trade association, chamber of commerce, governmental or quasi-governmental entity, or similar third party.

In addition, for reasons discussed above, Section 226.58(f)(2)(ii)(A) and (B) should not apply to private label or in-house credit card accounts that may be used only at community-based retail sellers discussed more fully in 1. above.

Additional definitional and related issues

1. In the proposed definition for “credit card account under an open-end (not home-secured) consumer credit plan,” 12 CFR Section 226.2(a)(15)(ii) could be revised to refer to “any *open-end consumer* credit account accessed by a credit card” (instead of “any credit account accessed by a credit card”). This would help clarify that card-accessed closed-end consumer credit plans are not meant to be included within this defined term. In addition, Section 226.2(a)(15)(ii)(A) could refer to “any home-equity plan subject to the requirements of § 226.5b”. (All home-equity plans subject to the requirements of § 226.5b are presumably meant to be excluded from the defined term, “credit card account under an open-end (not home-secured) consumer credit plan,” regardless of whether such home-equity plans are actually accessed by, or are or may potentially be accessible by, a so-called credit card.) Similarly, Section 226.2(a)(15)(ii)(B) could exclude all overdraft lines of credit (regardless of whether they are accessed or accessible by a so-called “debit card” – a term that is not specifically defined in Regulation Z) that “permit credit extensions (under a preexisting agreement between a consumer and a creditor) only when the consumer’s designated or tied asset account is overdrawn or to maintain a specified minimum balance in the consumer’s designated or tied asset account.” (See, e.g., by way of analogy, 12 CFR Section 205.12(a).) Section 226.2(a)(15)(ii) also could be slightly better coordinated (and made more consistent) with Section 226.5a(a)(5)(i) through (iii).

2. In Sections 226.10(b)(3) and (e), and also Sections 226.16(g)(1), 226.54 and 226.55, it would be useful to add an exemption for lines of credit accessed solely by account numbers. This would simplify compliance issues, in view of some case law indicating that a reusable account number could constitute a “credit card” for purposes of 12 CFR Section 226.2 et seq. This would also be consistent with proposed Official Staff Comment 3.i.D. to Section 226.55(d), which appears to expressly acknowledge the difference between a “credit card account” and a “line of credit that can be accessed solely by an account number.” (See also Section 226.5a(a)(5)(iv) by way of analogy.)

Credit CARD Technical Corrections Act of 2009

As the Board is undoubtedly aware, President Obama signed this Act (H.R. 3606) on November 6, 2009. 15 U.S.C. Section 1666b(a), as amended by Section 106(b) of the Credit Card Accountability Responsibility and Disclosure Act of 2009, is amended by inserting “a credit card account under” after “payment on”. Consequently, proposed 12 CFR Section 226.5(b)(2)(ii) should be limited to consumer credit card issuers, instead of applying to all creditors offering consumer-purpose open-end credit plans. In addition, for consistency with the Board’s general approach in 12 CFR Sections 226.6 and 226.7, it would be useful to limit proposed 12 CFR Section 226.5(b)(2)(ii) to “credit card

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accounts under an open-end (not home-secured) consumer credit plan,” and to further exclude from proposed 12 CFR Section 226.5(b)(2)(ii) lines of credit accessed solely by account numbers.

Thank you very much for the opportunity to present these comments. Please do not hesitate to contact me at (203) 776-1911 during regular business hours (Eastern Time) if you have any questions about any of the matters discussed in this letter or would like any further information.

Sincerely,

/s/ *Elizabeth C. Yen*

Elizabeth C. Yen

(admitted in Connecticut only)