From: First Data Corporation, Joe Samuel

Subject: Regulation Z - Truth in Lending (Credit Card Act)

Comments:

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November 20, 2009 Ms. Jennifer 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, Proposed Revisions to Regulation Z to Implement Provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 Dear Ms. Johnson: On behalf of First Data, I am writing to express our concerns with the proposed revisions of Regulation Z to implement the February 2010 provisions of the Credit CARD Act of 2009. We understand the revised rules are intended to prohibit entities from engaging in certain acts or practices in connection with consumer credit card accounts, but we are concerned that the current proposals may also create significant operational and costly compliance challenges for entities that act as service providers to financial institutions. As background, First Data is a leading processor of electronic payment transactions. We are a Fortune 300 company that employs approximately 25,000 employees globally, with a majority of those employees in the U.S. Our services help consumers, businesses and governmental entities make payments for goods and services using virtually any form of payment - credit card, debit and stored value card, electronic checks and paper checks - at the point of sale and over the Internet. We own and operate the STAR debit network, one of the leading nationwide electronic funds transfer (EFT) networks, as well as the Instant Cash ATM network. Additionally, our Financial Services business segment provides credit and debit card processing services to financial institutions and other issuers of cards, such as consumer finance companies. These services include maintenance of cardholder accounts, authorizing and posting of consumer transactions, generating and printing cardholder statements, card embossing and fraud and risk management services. Our comments span three areas within the proposed rules: 1) point of sale disclosure of terms and conditions; 2) same due date each month; and 3) 36-month calculation for minimum payment due disclosures. 1. Point of sale disclosure of terms and conditions Proposal: This proposal, consistent with section 226.9(c)(2)(v)(B) of the July 2009 Regulation Z Interim Final Rule, requires disclosure of the specific rate that will apply to a given consumer's

account after the expiration of a deferred interest or other promotional rate offer. The Board believes that, in general, the statutory requirement is best implemented by a rule stating that a single rate must be disclosed. However, the Board is supplementing its transition guidance to the July 2009 Regulation Z Interim Final Rule to state, that for a brief period necessary to update their systems to disclose a single rate, issuers offering a deferred interest or other promotional rate program at point of sale may disclose a range of rates or an "up to" rate rather than a single rate. The Board notes that stating a range of rates or "up to" rate is only permissible for a brief transition period and expects that merchants and creditors will disclose a single rate that will apply when a deferred interest or other promotional rate expires in accordance with §226.9(c)(2)(v)(B) as soon as possible. The Board is retaining in the proposal comment 9(c)(2)(v)-6 from the July 2009 Regulation Z Interim Final Rule (redesignated as comment 9(c)(2)(v)-7) to clarify that an issuer offering a deferred interest or similar program may utilize the exception in § 226.9(c)(2)(v)(B). The comment also provides examples of how the required disclosures can be made for deferred interest or similar programs. The Board continues to believe that the application of § 226.9(c)(2)(v)(B) to deferred interest arrangements is consistent with the Credit Card Act and that this clarification remains necessary in order to ensure that the proposed rule does not have unintended adverse consequences for deferred interest promotions.
We understand the point of sale disclosures available under section 226.9(c)(2)(v)(B) to be an optional exception that issuers can use to satisfy the notice requirement under section 226.9(c)(2). That is, the true requirement is notice under 226.9(c)(2), and one of several means of satisfying that requirement could be point of sale disclosures under 226.9(c)(2)(v)(B).
While the Board mentions "operational issues" associated with this exception, we feel the need to expand on the significant challenges this exception creates for processors, acquirers, the credit card networks, and merchants, particularly if the Board views section 226.9(c)(2)(v)(B) as a firm requirement rather than an exception. In addition, we believe that issuers, processors, and other participants in the payment systems would greatly benefit from the Board specifying the duration of the "brief transition period" applicable to that section. We recommend that the transition period extend through uly 2010.
The point of sale exception has many operational challenges, partly due to the tremendous amount of data that would be added to the authorization stream. Every entity in the authorization process would need to change their systems, from the acquiring bank, to the credit card networks such as Visa and MasterCard, to the processor and finally to the point of sale terminal itself. Merchants across the country would likely have to upgrade to more expensive and technologically sophisticated terminals (at potentially a thousand dollars or more per terminal) that could handle the data that would need to be transmitted and displayed on the screen. The screens would have to be quite large to accommodate the disclosure of the rates associated with the account and descriptions of the terms, all in a font large enough for the general public to read and understand. We estimate that there are approximately 5 - 6 million merchant locations in the U.S. If, on average, each location operated 3 - 5 point of sale terminals, industry wide replacement costs (to be borne by merchants) could range from $15 billion to $30 billion. Additionally, the disclosure would have real-world implications on the customer experience, as well. A process that has been streamlined over the years to take less than one second would now take much longer, as each of the aforementioned entities must now transmit lines and lines of data through their systems. Moreover, once the data appears on the screen, the consumer will have to read through it and sign it before finishing the transaction. Again, what generally takes several seconds to occur could likely add up to several minutes per person, and these types of

delays during the checkout process may infuriate and confuse consumers who do not understand the reason for this longer process. Further, this type of disclosure could shift the burden to the payments processor (acting on behalf of the card issuing financial institution) to make real-time decisions about terms and conditions that should apply to each consumer. For example, once the authorization flows to First Data, as the payments processor, we would have to evaluate the characteristics of the transaction and the consumer and make a decision about the terms and conditions applicable to that transaction. To effectively make this decision millions of times per day across several million merchant locations would add tremendous complexity and strain to our payment processing systems, which are not designed to pass such data-intensive transactions back and forth. Additionally, it would shift customer service issues to the clerks staffing the check out registers and the POS devices. Clerks are not the correct individuals to manage these types of customer service issues as they are decisions driven by the card issuer not the merchant. Finally, it would be impossible to provide disclosures at the point of sale 100 percent of the time. Each day, telecommunications failures occur and systems shut down to perform routine maintenance, resulting in "stand in" processing. From a processing perspective, for instance, First Data has agreements with the credit card networks so that if our system doesn't respond to an authorization in a given time period, the credit card network will stand in to ensure the transaction is not interrupted. During a transaction in which stand in processing occurs, the credit card network would not have access to any of the data necessary to make a decision about the terms and conditions and would therefore not be able to make the disclosure. 2. Same payment due date each month Proposal: 7(b)(11)(6). Same day each month. The requirement that the due date be the same day each month means that the due date must be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, would not comply with this requirement. This proposal affects First Data's operations with regard to creation, printing and mailing of periodic statements. For more than 35 years, First Data has provided back-office services to financial institutions of all sizes that issue general-use credit cards, ATM and debit cards. We offer end-to-end card issuing solutions for every stage of our clients' customer lifecycle, including card issuing and activation; account and transaction processing; billing and payment processing; advanced print, electronic and voice customer communications; analytics and decisioning; and assistance with Association and governmental compliance. Additionally, we mail the periodic statements associated with that card to the cardholder and operate call centers that respond to cardholders who have questions or need to report a lost or stolen card. In this capacity, First Data is the United States Postal Service's second largest customein the country, and we annually mail over 1 billion periodic statements on behalf of our clients. As a result of this statement service, the provision that requires the same payment due date each month would inordinately burden First Data. This is because February only has 28 days, so it effectively eliminates card issuers from allowing payment dates on the 29th, 30th and 31st of each month. Thus, First Data would not be able to generate statements on certain days during the month, squeezing our systems to print and mail millions of statements in a smaller time period each month. For example, for a client that has a 25-day grace period, we would not be able to create statements on the 4th, 5th, or 6th. For an account with a 25-day grace period, if it were to cycle on the 4th, the minimum payment date would be the 29th. Since not every month has 29 days, the minimum payment date would need to be fixed on the 1st day of the following month, causing those accounts to have an extended grace period. That causes our statement production to have an unnatural valley in the early part of the month, straining our resources to meet the proper timeframes for millions of cardholder accounts. Most cardholders pay a few days before their minimum payment date. Because a minimum payment date cannot be on the 29th through 31st, we will have a large decline in volume late in the month. Additionally, customer service calls increase around the time a cardholder receives his or her statement. By not being able to create statements on each day during the month, the customer service call centers will have an unnatural increases and decreases in call volume throughout the month, creating staffing challenges. Would the Board be willing to grant an exception from the same payment due date requirement for the month of February? 3. 36-month calculation of minimum payment due disclosures In Appendix M2 to part 226, a sample calculation of repayment disclosures for repayment in 36 month is provided. We feel that the sample calculation used incorrect numbers if the account has an introductory rate that was different from a go-to rate. The FRB calculation utilizes an average interest rate over the 36-month window. The outstanding balance on an account will be the highest during the earliest months of the 36-month window. By averaging the initial and go-to rates, the effect of the initial rate will be understated because that is when the highest principal will exist. With an account that is in an introductory period with a higher go-to rate, the FRB calculation will result in a monthly payment amount higher than needed to pay within 36 months. Conversely, if the rate will be increasing within the 36-month window, the FRB calculation will provide a lower payout than will be required to pay the account within 36 months. Those cardholders will have an outstanding balance at the end of the 36 month window even if they pay the calculated amount. An example account under the FRB calculation with a 0% introductory rate and a 21% go-to rate with an 18-month introductory period will have a payout amount approximately 10% higher than required. Conversely, an account with an introductory rate of 21% and a go-to rate of 15% will result in a payout that is about 3% lower than what should be required. First Data would like the flexibility to utilize additional calculation algorithms, provided they can be proven to offer accurate results. Would the Board allow flexibility with this requirement by enabling the industry to develop and use other calculations deemed to provide more accurate information to cardholders? In conclusion, we understand the Federal Reserve Board's work to enact the mandates of the CARD Act. However, we strongly urge the Agency to give considerable attention to the costs and significant operational challenges from these proposed regulations that we have enumerated. Thank you for the opportunity to comment on such an important public policy issue. Please feel free to contact me with any questions, comments, or concerns you may have. Sincerely, Joe Samuel Senior Vice President, Public Policy and Community Relations