



September 18, 2009

VIA E-MAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitutional Avenue, N.W.,
Washington, DC 20551
Docket No. R-1364
regs.comments@federalreserve.gov

RE: Docket No. R-1364; Interim Final Rule on Truth in Lending

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (FRB) interim final rule revisions to Regulation Z that are intended to implement certain provisions of the Credit Card Accountability Responsibility and Disclosure Act (CARD). In particular, WBA wishes to comment on revisions that affect: (1) the timing of payments and delivery of periodic statements; (2) the ability to treat a payment as late for any purpose under the conditions required for delivery of a periodic statement; and (3) the applicability of the interim final rule provision requiring 45-day advance notice for change in terms to non-home secured open-end lines of credit accessed by certain card devices.

Timing of Payments and Delivery of Periodic Statements.

FRB issued its interim final rule, in part, to implement amendments CARD made to Section 163 of the Truth in Lending Act (TILA). In doing so, the timing of payments and delivery of periodic statements in connection with all open-end lines of credit have been dramatically affected.

By way of background, Section 163 formerly required a statement to be mailed or delivered at least 14 days prior to the date specified in the statement by which payment must be made before a finance charge is imposed. Regulation Z, in implementing this section, provided that creditors mail or deliver periodic statements 14 days before the date by which payment is due for purposes of avoiding not only finance charges as a result of the loss of a grace period, but also any other charges such as late fees. This meant, among other things, that creditors were permitted to mail or deliver periodic statements 14 days in advance of the date by which

4721 SOUTH BILTMORE LANE
MADISON, WI 53718

P. O. BOX 8880
MADISON, WI 53708-8880

608-441-1200
FAX 608-661-9381

www.wisbank.com

payment must be made before the expiration of any period of time under state law or contract before a late fee could be assessed.

As amended, Section 163 generally prohibits a creditor from treating a payment as late or imposing additional finance charges unless the creditor has adopted reasonable procedures to ensure periodic statements are mailed or delivered at least 21 days before the “payment due date” and the expiration of any “grace period”.

Under the interim final rule, “payment due date” means the date by which the creditor requires the consumer to make the required minimum periodic payment in order to avoid the payment from being treated as late for any purpose. However, oddly enough, the rule states the payment due date does not include any additional period of time during which a late payment fee will not be assessed either as required by state law or established under informal policy or practice, referred to as a “courtesy” period. While WBA certainly supports the exclusion of any additional period of time that is established through some informal policy, we vehemently disagree with the exclusion of an additional period of time that is mandated by state law or written contract. In fact, WBA believes the exclusion of time periods that are tied specifically to the ability to treat a payment as late completely contradicts the definition as well as the examples in the rule which illustrate what is meant by treating a payment as late.

In addition, “grace period” under the interim final rule now means a period of time within which any credit extended may be repaid without incurring a finance charge. It no longer includes a period of time within which any credit may be extended without incurring any other charge, such as late fees.

WBA believes the changes Congress made to Section 163 are intended to give consumers an additional week within which to review their periodic statements and make payments. WBA generally supports this additional period of time. However, WBA does not believe Congress intended the adverse consequences described below that are created by the definitions of payment due date and grace period found in the interim final rule.

WBA members have reported severe and costly operational difficulties in implementing these changes. In some cases, institutions have even discontinued offering certain open-end credit products because, from an operational standpoint, the product’s billing cycle in relation to the product’s payment due date and generation of periodic statement cannot be easily modified to meet the 21-day delivery requirements under the interim final rule.

For an institution to comply with the 21-day timeframe under the interim final rule, many have been forced to standardize all payment due dates for a particular open-end credit product to be one set date. This has happened, in part, because many third party vendors that prepare periodic statements for institutions do not have the operational capability to “drop” statements on a particular date. Instead, these vendors have the operational capability to “drop” statements based on a specified number of “lead” days in advance of providing the statements to the institution. In such instances, the institution cannot direct the vendor to drop statements on a particular day of the month. As a result, this situation has forced WBA members to discontinue offering consumers flexibility in electing a particular payment due date best suited to fit the consumer’s financial situation (e.g. to coincide with receipt of the consumer’s paycheck or to stagger payment due dates of various obligations so that not all come due at the same time each month). This has been a frustrating and costly consequence for both consumers and financial institutions alike.

In addition, WBA members report that in order to meet the requirements of the 21-day timeframe under the definition of payment due date, periodic statements must be generated before the expiration of required state law timeframes for making a payment before a late fee may be imposed or can be considered late. This has led to massive customer confusion and concern, as customers do not typically expect to receive the next month's statement before the time period for making a timely payment under the state law has expired.

Furthermore, implementation of the interim final rule has resulted in substantial costs to financial institutions due to the rushed hiring of professional and technical experts to: recommend how the financial institution should proceed under the interim final rule, including changing contract terms and creating new products; complete operational re-programming and testing to mechanically meet the new timing requirements when possible; train staff; and in many situations, generate advance notices of change, and other consumer notices and alerts regarding the changes being implemented by the institution.

These are just a few of the many unintended consequences resulting from the interim final rule's departure from long-standing treatment of payment due dates and grace periods.

For these reasons, WBA strongly urges FRB to exercise its authority under Section 106 of CARD by amending the definition of payment due date to include any period of time mandated by state law or contract which must expire before a payment may be treated as late including imposition of a late fee. Likewise, WBA urges FRB to exercise its authority to adopt an interpretation of "grace period", similar to that which it had prior to the interim final rule, which would include a period of time within which any credit may be extended without incurring a finance charge or any other charge, such as a late fee.

Treating a Payment as Late.

As discussed above, the timing of payments and delivery of periodic statements impact the ability of a creditor to treat a payment as late. The interim final rule provides commentary to illustrate what would constitute "treating a payment as late for any purpose". The illustrations, which are not exclusive, are: increasing the annual percentage rate (APR) as a penalty; reporting the consumer as delinquent to a credit reporting agency; or assessing a late fee or any other fee based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The examples do, however, specifically exclude the imposition of a finance charge due to a periodic interest rate for an account that does not have or ceases to be eligible for a grace period.

WBA believes that while FRB has identified a number of actions which are to be included in the meaning of the phrase, further clarification as to the breadth or limit of the meaning of the phrase is needed. WBA recommends FRB further clarify that the phrase "treating a payment as late for any purpose" should not be interpreted so broadly that financial institutions would later be barred from considering the open-end credit plan in default due to consumer's failure to make timely payments.

Under the terms and conditions of an open-end non-credit card credit agreement, the consumer is made aware of and agrees to provisions setting forth when a payment is due and the amount of the payment due—whether it is a set dollar amount or a percentage of a

particular outstanding balance. These are terms known to the consumer regardless of the timing of delivery of a particular periodic statement. In accepting those terms and conditions by entering into the agreement, consumers accept the responsibility of making the required payments, agree to make a payment by the payment due date, and agree to any penalty or other default provisions due to the consumer's inability to fulfill the terms and conditions.

If despite the delivery of a periodic statement, the consumer fails to be responsible to make the required payment by the payment date known to the consumer, a financial institution must be given the ability to fully review whether or not the open-end credit product should instead be terminated, or not renewed. The financial institution's decision to terminate or not renew an open-end credit plan due to the consumer's failure to make timely payments should not be found to be in violation of TILA despite when a periodic statement may otherwise be delivered.

WBA requests FRB specifically comment that the phrase "treating payment as late for any purpose" does not prohibit a financial institution from terminating (or not renewing) an open-end line of credit because the consumer has failed to make timely payments regardless of when the periodic statement is delivered to the consumer. Financial institutions must not be forced into a position where they would be required to continue in, or renew, an open-end product for a consumer who has failed to meet the payment terms he/she has agreed to upon entering into the agreement. The phrase "treating payment as late for any purpose" should not bar a financial institution from determining that the consumer is in default because of his/her failure to make timely payments in accordance with terms of the open-end credit agreement.

45 Day Advance Notice Requirements for Changes in Certain Open-end Consumer Credit Plans

FRB has also adopted revisions to Regulation Z under the interim final rule to implement new TILA Section 127(i), enacted as part of CARD. New TILA Section 127(i) generally requires that creditors provide consumers with 45 days' advance notice of rate increases and other significant changes to the terms of their "credit card account under an open-end consumer credit plan"; however, CARD does not define that term.

In promulgating the interim final rule, FRB has used its authority under TILA Section 105(a) and Section 2 of CARD to interpret the term "credit card account under an open-end consumer credit plan" as that term is used in new TILA Section 127(i). In doing so, FRB excluded from coverage accounts that are home-equity lines of credit (HELOC) subject to section 226.5b, even if those accounts may be accessed by a credit card device. Thus, the provisions in new TILA Section 127(i) would not apply to HELOC accounts. However, FRB failed to exclude any other type of open-end consumer credit plan.

WBA vehemently urges FRB to further exercise its authority under TILA Section 105(a) to expressly exclude from the term "credit card account under an open-end consumer credit plan" those lines of credit which are excepted from coverage under 12 CFR 226.5a(a)(3)—overdraft lines of credit that are tied to asset accounts accessed by check-guarantee cards or by debit cards and lines of credit accessed by check-guarantee cards or by debit cards that can only be used at automated teller machines. These types of accounts are not accessed or used in the same manner as a typical credit card account and, therefore, should not be treated as a

typical credit card account. WBA believes that FRB holds a similar view given that FRB excepted these accounts from coverage of the provisions in 226.5a, the section of Regulation Z that applies to credit and charge card applications and solicitations. Furthermore, there is nothing which clearly supports an idea that Congress intended for these types of accounts to be covered by TILA Section 127(i).

Conclusion

While WBA recognizes that FRB was acting in accordance with the statutory timeline of August 20, 2009, established by Congress to implement these provisions of CARD, the process foisted upon WBA members to implement such broad changes in such a short period of time has been detrimental to consumers, as well as extremely frustrating, costly and, in some cases, impossible to execute.

WBA strongly believes the recommendations it makes today are not contrary to Congressional intent, nor outside of FRB's authority to interpret these CARD provisions. Again, WBA urges FRB to adopt the changes it recommends today.

WBA appreciates the opportunity to comment on these important matters.

Sincerely,



Rose Oswald Poels
Senior Vice President and Counsel