BBVA Compass

Roger D. Trana
Senior Corporate Counsel
roger.trana@compassbank.com

Legal Department
2001 Kirby Drive, Suite 311
Houston, TX
Phone 713-831-5677
Fax 713-831-5735

April 14, 2010

Via E-Mail to regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: **Docket No. R-1384: Truth in Lending Act (Regulation Z)**

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "Board") on behalf of Compass Bank, an Alabama banking corporation ("Compass"), in response to the Board's request for comment on the proposed regulations under Regulation Z, which implements the Truth in Lending Act ("TILA"), as well as the staff commentary to Regulation Z. In this letter, we refer to the proposed amendments to Regulation Z as the "Proposed Rules".

Compass is a Sunbelt-based, regional commercial financial institution owned by Compass Bancshares, Inc. a bank holding company that is wholly owned by BBVA (NYSE: BBV) (MAD: BBVA). Compass has approximately $60 billion in assets and, through its operating companies, maintains more than 720 branches in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas. Compass is among the top 15 largest banks in the U.S. based on deposit market share.

Compass appreciates the time and effort of the Board, in preparing the Proposed Rules, and hopes that these comments will be helpful to the Board in its effort to promulgate reasonable and workable standards to inform consumers about credit cards and to allow consumers to better understand their credit responsibility and to effectively compare the terms of credit card accounts.

We appreciate the opportunity to comment on those Proposed Rules to Regulation Z that affect credit cards. We welcome the proposed revisions to the extent that they make the disclosure of credit terms clearer and more meaningful to the consumer. Such disclosures provide consumers with valuable information that assists them both in shopping for new credit cards and in understanding the costs of existing credit card accounts. However, we believe that some of the proposed revisions impose substantial and unwarranted burdens on credit card issuers. Credit card use is a valuable tool available to responsible consumers. Credit card transactions fuel growth of the American economy by facilitating the sale of consumer goods and services under a safe and convenient process. The imposition of many of these new burdens will increase the issuers' costs of providing credit cards, which will adversely affect both the cost and availability of credit for all consumers, all to the detriment of the American economy at a time where the availability of credit is crucial. In this letter we comment or request clarification on those Proposed Rules that we believe present particular problems for credit card issuers and consumers.

Proposed Rules Relating to Regulation Z

Final CARD Act Changes to Regulation Z

On March 3, 2010, the Federal Reserve Board (the Board) proposed the third and final set of amendments to Regulation Z (the Proposed Rules) to implement those provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act) that go into effect on August 22, 2010.

1. Reasonable and Proportional Penalty Fees -- New Section 226.52(b)

The Proposed Rules generally provide that:

- o Penalty fees imposed on credit card accounts must be reasonable and proportional to the violation of the account terms; and
- o for any annual percentage rate (APR) on a credit card account that is increased on or after January 1, 2009, the issuer must reevaluate factors relevant to the increase at least once every 6 months after the increase and, if appropriate, reduce the increased APR.

Under the Proposed Rules Penalty fees are defined as fees for violating the terms or other requirements of a credit card account and includes Penalty fees permitted under the Proposed Rules include Late Payment Fees, Over-the-Limit Fees, and Returned Payment Fees. The Board proposes to place limits on these fees under Section 226.52(b).
It is customary for card issuers to assess these fees as a discipline for violation of contractual terms of the cardholder agreement. These fees also allow the lender to recover operating costs. The reasonableness of these fees is influenced by, among other things, existing federal regulations, state statutes, and competitive market forces. The Federal Reserve seeks to impose its own new definitions of "reasonable" and "proportional." In addition the Federal Reserve proposes new and costly requirements for the reevaluation of rate increases as well as disclosure of specific reasons for rate increases. These changes will have a significant impact on lenders operations and will drive up associated costs of managing and collecting loan portfolios in the future. Lenders will be required to redesign their existing penalty fee structures and consider a restructuring of entire credit card portfolios. Among other things these changes will require another set of revisions to lenders, credit card agreements. Consumers can hardly digest the latest contractual changes mandated before we must again revise and restate our agreements. It is only logical that the consumer ponder: "Can I opt out? Am I entitled to a 45 day notice period? Do I receive the benefit of protected balances? Is there some issue wrong with my credit card lender?"

- These ongoing changes to the regulations intended to protect the consumer are creating a fog of confusion that is difficult for the consumer as well as the issuer to absorb. We suggest to the Board that "less may be more" is what the consumer and the entire industry need.

We would ask that the Board consider a moratorium on well intended regulatory changes and the accompanying thousands of pages of rules to allow for a period of adjustment to the most recent Rules implemented.

2. 226.52(b)(2)(i)(A) Prohibited Fees- Fees That Exceed Dollar Amount Associated With Violation

Under the Proposed Rules an issuer must not charge a penalty fee that exceeds the dollar amount associated with the violation. The Proposed Rules specify that the following amounts would be associated with the following violations:

- Late Payment – amount of the required minimum periodic payment
- Returned Payment – amount of the required minimum periodic payment
- Over-the-Limit Transaction – amount of credit extended in excess of the credit limit

  For example:

  - A consumer who is late making a $12.00 minimum payment could not be charged more than a $12.00 late fee. This moving target creates additional programming and operational costs to the issuer while holding down the opportunity to recovery associated costs.

  - A consumer having a returned payment (NSF) on a $12.00 minimum payment could not be charged more than $12.00, an amount well below industry standards for returned items.

  - A consumer who exceeds their credit limit by $5 could not be charged an Over-the-Limit Fee of more than $5. Again, this moving target creates additional programming and operational costs to the issuer while holding down the opportunity to recovery associated costs.

  - One consumer breaching their contract under any combination of the 3 violations described above could be limited to a $12.00 maximum fee despite the seriousness of the breach and the cost to the bank to manage those violations. Within the credit card industry these multiple violation, multiple fee situations have often been managed through customer service units. The consumer first offender or hardship case often receives a fee waiver or concession. These waivers and concessions are seldom the subject matter of a consumer complaint.

These fee restrictions would require system programming changes, as well as changes to consumer credit card applications, agreements and other account opening disclosures, over limit opt-in notices, and periodic statements.

- **Late Payments**-Addressing late payments and returned payments results in direct issuer expenses. Early collection efforts expended by the issuer's collection department drive costs that could easily exceed a customer's minimum payment requirement. A $10.00 minimum payment that is late triggers collection calls and tracking that will greatly exceed that minimum payment requirement (and resulting example fee cap of $10.00). Issuers are likely to increase minimum payment requirements to levels in the range of $25.00 to $40.00 to recover their costs.
- **Returned Payments**-When a customer's payment is returned, costs are encountered, including collection costs and a manual processing of NSF items. These costs exceed low level minimum payment requirements and would also encourage issuers to increase minimum payment requirements to a higher level. If these fee restrictions remain, and issuers do not increase their minimum payment requirements (and are otherwise prevented from recouping theses costs from the violating consumer), this could result in many card issuers exiting the business, thereby limiting consumer's options for credit cards in the market place.
- **Over-The-Limit Transactions**- Customers who exceed their credit limit have an opportunity to avoid the inconvenience and embarrassment of a rejection of a transaction through the over-the-limit review and approval process. This process can assist the customer at the gas pump, dinner table, or hotel with additional credit flexibility to permit transactions that exceed their approved credit limit. This credit accommodation requires real time immediate review and decisions. This process creates expenditures for manpower, programming, account tracking and customer communications. The availability of additional emergency credit for a fee in the range of $39 (charged only when used) is valuable to the consumer and is clearly disclosed in our agreements. The fee is commensurate with the costs incurred and should be permitted without capping at the amount of the transaction. Limiting issuers from recouping their true costs for this convenience could result in increased unavailability over-the-limit transaction approvals to the detriment of the consumer.

We ask the Board to reconsider withdrawing any penalty fee limitations that include such complex restrictions, and prevent the issuer from recouping costs incurred. Rules that permit recouping transaction costs as well as operational overhead costs would be more appropriate. This would also allow issuers to pass on the costs to the specific users rather than the entire loan portfolio via increased APRs.

Responsive the Boards specific request for comments:
-We submit issuers should be allowed the options of tiering fee amounts based on the number of violations (e.g. charging a higher fee for the second late payment in a 12 month period) or imposing incremental fees (e.g., a fee of $5 for each day a payment is late).

These are reasonable alternatives to consider to balance the reasonableness of the fee with cost and credit discipline issues. Research will be needed to determine vendor and internal costs for programming changes and communications. In addition, time will be needed to define and conduct appropriate testing to determine the deterrence effectiveness at appropriate fee levels.

-We submit issuers should be allowed the option to include losses and associated costs in fee determinations under proposed Section 226.52(b)(1)(i) (i.e., fees based on the issuer's determination of costs and not the safe harbor).
Costs to provide credit services and losses are real and can vary based upon product description and attributes, credit profile of the customer base, geography, demographics, and issuer size. Flexibility in passing necessary and appropriate costs on to the customer base will encourage the availability of credit and the number of issuers in the market.
Issuers with a small or new customer base, especially require such flexibility if they are to survive and continue to offer consumers their unique level of customer care.

-We submit issuers should be allowed the opportunity to be compensated for the additional costs created by late payments, returned payments, and over-the limit-transactions. These activities create costs as described below:
Late Payments-Account analysis, review and monitoring, collection calls, customer communications through statement messages and customized letters.
Returned Payments-Account adjustments and reposting, collections activity, customized customer communications by phone and mail.
Over-the Limit Transactions-Review for authorization, account review and analysis, customer and merchant communications by phone and mail.

Compliance Burdens Resulting from prohibition of fees that exceed the dollar among associated with the violation under proposed Section 226.52(b) (2) (i) (A)
We recognize transacting credit card accounts represent a moving target for the creditor and consumer to account for responsibly. The limits on fees and complexity suggested by the Board increase the likelihood of error in determining the appropriate fee ceiling (also a moving target). Such errors would create loss of confidence by consumers and could result in compliance violations as well as litigation over technical errors in the handling of fees charged. Charges indeed need to be fair to both the consumer and the issuer. They also need to clear, safe, and manageable within the context of our competitive, high volume industry.

3. 226.52(b) Limitations on Fees

The Proposed Rules provide further that an issuer must not charge a penalty fee unless the issuer has determined the dollar amount of the fee based on **one** of the following:

> **Fees Based on Costs** – The issuer must be able to show that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer as a result of the violation. The amount of the fee must be reevaluated at least every 12 months and adjusted as applicable.

We submit that issuers should be allowed additional time to research, define, and implement the appropriate penalty fee strategies. This requirement of the Proposed Rules should have a required implementation date beyond the August 22, 2010 Proposed Rules implementation date. Issuers and our vendors will need additional time to intelligently re-examine fee/cost issues and develop the necessary programming changes and customer communications.

While it may be appropriate to reevaluate the model for Fees based on Costs, "every twelve months" may not be a productive schedule. Any period of review should allow for a portfolio wide schedule to be done simultaneously. If done annually, new accounts could fall into the schedule with a history of only a few months. This would not provide enough relevant history on the short term accounts and dilute the data. Many accounts could have 90 days or less history under the penalty. If reviewed on a schedule of, not less than every twenty-four months (or such other longer period that may be appropriate) more relevant history would be available on all accounts and a much lower percentage of accounts would fall into the short-term experience categories, i.e., 90 days or less. "Better data in, better data out."

> **Fees Based on Deterrence**: A card issuer must show that the dollar amount of the fee is reasonably necessary to deter the violation using an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations. The amount of the fee must be reevaluated at least every 12 months and adjusted as applicable.

Under the Proposed Rules issuers would not be permitted to consider both costs incurred and deterrence of violations in their fee analysis; but instead would be required to elect only one of these criteria. In addition, an issuer would not be able to consider individual consumer conduct in setting penalty fees.

Penalties and fees have been used by lenders as a credit discipline tool for decades. A "one size fits all" approach inhibits placing credit discipline tools where most needed and instead allows the issuer to only address large segments of a loan portfolio. Discipline may appear to look like a fee opportunity only, when in fact that may not be the case. The (fee) deterrent drives many calls to customer service for payment date extensions, or auto-debits. Enforcing prudent credit discipline creates costs (notices, fees, calls, account holds) for the issuer which should be passed on to the offending cardholders. The inability to assess appropriate fees upon cardholders in breach of their contract would likely result in increased APRs for all cardholders.

Responsive the Boards specific request for comments:

The Board proposes issuers determine the lowest amount reasonably necessary to deter a type of violation and arrive at a fee model that is "empirically derived, demonstrably and statistically sound" and satisfactorily tested.

-We submit issuers should be allowed additional time to adequately research, understand and document the deterrence effectiveness of their various fees. This will require considerable market testing and analysis. In view of the August 22, 2010 effective date it is highly unlikely that issuers will be able to define and test such a model. If, after August 22, 2010, such a model is perfected justifying higher fees, implementing higher fees at that time would require additional consumer communications (more issuer costs) with the potential for loss of customer confidence.

We request the Board to provide issuers with additional time to research, define, and test appropriate penalty fee strategies beyond the stated effective date of the Proposed Rules. Simply put, more time and account history will be needed to evaluate the model if the evaluation is to be "empirically derived, demonstrably and statistically sound" and satisfactorily tested.

4. 226.52(b) (3) Limitations on Fees- Safe Harbor:

The Proposed Rules allow, alternatively, an issuer may impose a penalty fee that does not exceed the specific dollar amounts, to be provided by the Board in the future, as amounts that are presumed to be reasonable and proportional to the violation. Under this safe harbor, a penalty fee would be limited to the greater of:

- o a flat dollar amount to be determined by the Board; or
- o 5% of the dollar amount associated with the violation transaction, not to exceed a second amount to be determined by the Board.

Under the Proposed Rules any amount charged under this safe harbor would also be further limited by the overriding prohibition against charging any penalty fee that exceeds the dollar amount associated with the violation.

This issuer and others will be required to revise the penalty fees disclosed in their Consumer Card Documents. This revision will require the issuers to; (a) send a 45-day Change in Terms Notice to affected accounts, and (b) update the way in which vendor processes are impacted by the affected credit card accounts.

It is difficult to assess the impact of the yet unpublished "flat fee." It is also difficult to assess the impact of the "5% of the dollar amount associated with the violation transaction" since it may be subject to an additional ceiling (yet unpublished) to be imposed by the Board.

We request the Board to allow issuers additional time beyond the August 22, 2010 Rule implementation date, to research, define, test, and install (with the benefit of the Boards published "flat fee") the appropriate penalty fee strategies.

5. 226.52(b) (2) (i) (B) Dollar Amounts Associated With Other types of Violations

The Proposed Rules provide that, if there is no dollar amount associated with a violation, a card issuer must not charge a fee for that violation. The Proposed Rules provide that, for the purposes of this prohibition, there is no dollar amount associated with (i) a transaction declined by the issuer, (ii) account inactivity, or (iii) closure or termination of an account.

Compass does not collect fees for transactions declined by the issuer or for closure or termination of an account. We view account inactivity fees as a tool that can work for both the consumer and the issuer. The prohibition against charging an inactivity fee would require changes to many Consumer Card Documents, as well as programming changes with vendors. Real capital costs are incurred by issuers for keeping credit lines open and funds available. An inactivity fee is simply a method of accurately passing that cost to the beneficiaries of the approved credit line. A prohibition of charging inactivity fees will encourage issuers to close inactive accounts that consumers might wish to keep open as a source of additional credit availability, back-up or emergency credit. An inactivity fee is often used in the credit agreement instead of an annual fee. For marketing purposes, annual fees may discourage some consumers from applying for a credit card. The inactivity fee allows the consumer the option of avoiding a fee by using their card, or paying a fee to keep their credit line available. By eliminating the opportunity to treat differently those customers who are profitable through normal activity (purchases, finance charges), from those who are not profitable (inactive) issuers are left with the less attractive alternatives. This issuer may shut down unused credit lines earlier (12 months) removing consumer credit availability, or follow a strategy of charging an annual fee on all accounts. Furthermore, as a practical matter, many issuers quickly discontinue efforts to collect an inactivity fee if a consumer is nonresponsive, protests, or requests a waiver of the fee. Customer satisfaction remains an important ingredient in our relationship banking culture.

6. 226.52(b) (2) (ii) (B) Multiple fees based on a single event or transaction

The Proposed Rules also provide that, an issuer must not charge more than one fee for any violation of the account terms that is based on a single event or transaction. For example, an issuer must not charge both a Late Payment Fee and a Returned Payment Fee if the consumer fails to make a timely payment because the check given for that payment is returned for insufficient funds.

A Late Payment Fee and a Returned Payment Fee represent two different violations of the credit agreement and create two or more operational events for the issuer. Enforcing these important credit disciplines creates internal issuer costs and recovery of such reasonable costs should be permitted for both contractual violations.

This restriction would require major changes to consumer credit card agreements, and dilute the message to consumers that they must be responsible in managing their credit and finances.

7. Reevaluation of Increased APRs -- New Section 226.59

The Proposed Rules provide that an issuer who increases (or has increased) an APR on a credit card account on or after January 1, 2009, must reevaluate factors relevant to the increase at least once every 6 months after the increase and, if appropriate, reduce the increased APR. If the reevaluation indicates that a rate reduction is required, the issuer must reduce the increased APR no later than 30 days after completion of its reevaluation. Each issuer must have and follow written policies and procedures for this reevaluation.

Although the reevaluation requirement will not significantly affect existing (recently revised to address new Federal Regulations) Consumer Card Documents, it will impose significant and continuing administrative and operational burdens. In addition, an evaluation of the appropriate APR to be charged based upon a period of credit history as short as 6 months would not generally provide a sufficient span of credit behavior to warrant a pricing change. In all likelihood at least a 12-month period will be needed to be meaningful. Generating such an exercise every 6 months may well be a futile expenditure of resources.

If ongoing re-evaluations of increased APR's are to be required at all, we request the Board consider every 12 months as an appropriate schedule rather than 6 months.

At least 60 days should be allowed to implement rate changes after completion of the credit reevaluation. Implementation within 30 days will conflict with customer billing cycle schedules. Once the reevaluation results have been determined, changes will be required to accounts in various products lines and under different terms and conditions. Changes will require communication of results to our vendors which requires lead time to assure that calculations, notices, and payments and accurate and published correctly. These issues are requirements that are not common in the industry and will require programming as well as other operational changes and communications.

Reasonable Written Policies and Procedures Section 226.59(b)
-We suggest that the Board provide issuers with an express 12-month "safe-harbor" in which to fully develop their reevaluation written policies and procedures. During this suggested 12-month refinement period the policies and procedures would not be subject to regulatory citation. After 12 months (and possibly additional insight via Commentary from the Board) issuers would be required to have policies and procedures in place under a better defined standard than "reasonable."

"Look Back" obligation for increased rates due to delinquency Section 226.59(f)
-We submit that an account review for re-pricing should not be required in perpetuity. Accounts should be reviewed for a defined time frame. Our suggested period would be a maximum of 3 years. If, after 3 years an account has not qualified for a rate decrease, further revaluations would be optional by the issuer. After 3 years of history sufficient opportunity for consumer credit behavior improvement has provided and tracked. Credit improvement beyond that time frame falls off considerably making the value of ongoing tracking and maintenance difficult to justify. If a consumer's credit should improve after more than 3 years, they can appeal to customer service for a rate decrease or line increase. Another alternative for the consumer is to consider other card issuers in the market who may grant a balance transfer under their product terms.

Acquired Account Alternatives Section 226.59(g)
-We submit that a "reasonably practicable" transition period of up to 1 year be provided issuers before account reevaluations are mandated on acquired accounts. Acquired Accounts, despite good contracts, good intentions, and best efforts, often are accompanied

by delays. Differences in systems, new vendors/processors and adaption to the purchasers credit structures, can result in unplanned delays. Account history obtained from the seller may be limited and may not match up well with the data elements and account configurations of the purchases. These common delays require additional time to scrub files to assure accuracy of account histories.

8. Reasons for Rate Increases Section 226.9(c) and 9(g)

The proposed Rule would require an issuer to disclose up to four principal reasons for rare increases on an account. The reasons must be:

- Listed in order or importance,
- Limited to four reasons, and
- May be described in general terms.

Providing reasons for rate increases may be able to be done using current industry tools. It will, however, require additional issuer programming costs and customer communications. The customer communications are costly and in addition may not be appreciated as a valuable or meaningful learning experience by the consumer.

We are also concerned that the notice of reasons to consumers could be elevated, by some well intentioned reviewers, to Regulation B and FCRA standards. This would simply serve to further drive up costs of this exercise to the issuers and credit reporting agencies and at the same time create new exposure for unwarranted consumer litigation.

We request the Board withdraw this requirement from the Proposed Rules or make it optional. In the alternative, we ask the Board to make it more clear under the Proposed Rules that these standards are, and shall be, separate and distinct from notice standards under Regulation B and the Fair Credit Reporting Act.

CONCLUSION

We would like to remind the Board of the important role that the responsible use of credit cards plays in supporting a healthy American economy. Credit cards give consumers greater opportunities and flexibility. As an issuer with a relationship banking philosophy we continually strive for clearer disclosure of credit card terms, along with customer education and improved communications. We believe this promotes more responsible behavior by cardholders and reduces the cost of credit for everyone. At this critical time, when our economy is under unusual stresses, the public's faith in credit card lending and the American banking system should not be subjected to unnecessary controversy and complexity. Continued rewriting and shifting of regulations, such as have been experiencing over the past two years, strains the resources and confidence of issuers and sends confusing messages to consumers. The net effect of many aspects of the Rules shall be to drive increased interest rates and higher minimum payment requirements while placing more pressure on consumer cash flow needs. The ultimate costs and impact on creditors and consumers, as well as the resulting impact on the credit system and the American economy are not only the Board's concern, but ours as well.

We thank the Board for considering our comments to the Proposed Rules and appreciate the Board's challenge in promulgating reasonable and workable standards to inform consumers about credit card practices and allow consumers to effectively compare the terms of credit products. We urge the Board to consider the multitude of unintended consequences of the Proposed Rules. Lastly we request that any disclosure requirements adopted under Regulation Z give institutions sufficient flexibility to provide consumers with clear and meaningful information needed to make educated choices about credit cards.

If you have any questions concerning this letter or if you would like us to provide any additional information, please do not hesitate to contact me.

Respectfully submitted,

Roger D. Trana
Senior Corporate Counsel
Compass Bank