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

Re: Docket No. R-1393, RIN No. 7100-AD55
Truth in Lending, Proposed Rule, Request for Comment

Ladies and Gentlemen:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the notice and request for public comment on the proposed Regulation Z, 12 C.F.R. pt. 226, amendments published by the Board of Governors of the Federal Reserve System ("Board") at 75 Fed. Reg. 67458 (Nov. 2, 2010) (the "Proposal"). MasterCard has an interest in the Proposal because it processes millions of transactions on credit cards that are subject to the requirements of Regulation Z. We appreciate this opportunity to provide our comments on the Proposal.

As a general matter, we applaud the Board for taking the time to provide clarifications regarding Regulation Z obligations. The past several years have seen a tremendous volume of changes to Regulation Z, including three separate rulemakings in the past 18 months to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). These rulemakings, while enacting major changes to the long-standing regime of disclosure rules under Regulation Z, were proposed and finalized within very short timeframes for comment and implementation. As a result, there are numerous areas of uncertainty and confusion. We appreciate the Board's effort to address several of these in the Proposal. We urge

[1] MasterCard Worldwide (NYSE:MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 20 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to approximately 23,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

the Board to continue to offer guidance – both through formal amendments as well as informal conversations – in view of the complexity of the recent amendments.

We believe that numerous aspects of the Proposal provide important and helpful clarity and guidance to affected creditors. We support all of the following elements of the Proposal, and we urge the Board to retain these in a final rulemaking:

- Broadening of the exception for rate increases following the termination of coverage under the Servicemembers' Civil Relief Act, in Reg. Z § 226.55(b)(6) and § 226.9(c)(2)(iv)(B). Absent these changes, creditors may well have narrowed the scope of protection given to affected servicemembers because they would not have been able to expire the protections after a servicemember's eligibility ended. The clarified rule appropriately gives creditors more flexibility to offer protection to servicemembers, particularly in this time of great sacrifice by those affected.

- Flexibility in the disclosure of balance calculation methods under § 226.6 and § 226.7. This flexibility allows issuers to be more clear in how they describe their calculation methods without resorting to unnecessary complexity. We also support the clarification in § 226.55 to provide that § 226.55 does not prohibit changes to a balance computation method. This eliminates any uncertainty that such a change – which could incidentally lead to a higher finance charge in some months – would be subject to the limitations that apply to rate increases.

- Permission to use rounding for repayment disclosures under § 226.7(b)(12). This will give issuers flexibility to make the disclosures more straightforward for consumers.

- Flexibility in placement of deferred interest disclosures under § 226.7(b)(14). This allows issuers to provide the disclosures in a location that corresponds to the underlying information to which the disclosure relates.

- Use of convenience check tabular disclosures to provide promotional information for check and non-check promotional transactions, under § 226.9(b). Allowing issuers to combine the disclosures in one table eliminates unnecessary, and potentially confusing, duplication of disclosures to cover both check and non-check transactions.

- Use of the account-opening table to provide temporary APR disclosures under § 226.9(c)(2)(v)(B). When promotional rates are disclosed in the account-opening table, it would serve little purpose to require issuers to provide the same disclosures in yet another place in order to satisfy the exception in § 226.9(c)(2)(v)(B) from the change-in-terms disclosure rules.

- Elimination of the right to reject promotional terms that are disclosed by telephone, in Comment 226.9(c)(2)(v)-5, in certain cases. It makes little sense to offer the consumer a right to reject if the rejection will only result in higher fees or charges; thus, elimination of this aspect of Regulation Z is sensible and simplifies disclosures.

- Changes to the rule on penalty fees that clarify how multiple fees can be charged in a single month and that allow fees to be waived as a customer accommodation, in § 226.52(b).

- New payment allocation exception for cards that include a secured balance, in § 226.53. The new exception, which applies only upon consumer request, provides needed flexibility for issuers to respond to consumer requests to pay off a balance in order have a security interest released.

- Clarification of contents for cardholder agreements for purposes of § 226.58. In particular, we support the clarification that the billing rights notice need not be included in the cardholder agreement. There is no need to require inclusion of this information in cardholder agreements under § 226.58 when it is simply a restatement of legal rights under Regulation Z, and is provided to all cardholders on a regular basis. See Reg. Z § 226.9(a). We also support the deletion, from the mandatory pricing amendment, of the information required by § 226.6(b)(4). The appropriate scope of the information for the pricing addendum is the information included in the account-opening table, which represents the core financial terms of the account. The more detailed provisions in § 226.6(b)(4), such as the method of calculating finance charges, are not well suited for inclusion in the addendum.

- Clarification in Comment 59(f)-2 that an issuer need not reduce an APR to below the original APR as the result of the review requirements. We do not believe that the statute supports an interpretation that would require an issuer to decrease the APR, as a result of the review process, to a rate *lower* than the initial rate.

In addition to these comments, we have specific comments on some of the other sections of the Proposal, and we ask that the Board consider these comments in connection with a final rule.

Household Income. We disagree with the Board's proposed amendments to the § 226.51 commentary, which would require issuers to consider a consumer's "independent" income or assets, and would deem a request for "household income" not to satisfy the requirement of the rule. We ask that the Board reconsider this conclusion, as we believe that it is an unnecessary and harmful interpretation of the relevant TILA provision, and is not in the interests of consumers.

First, we respectfully disagree that Congress's direction to consider "the ability of the consumer to make the required payments under the terms of [an] account," in TILA § 150, forbids use of household income. Congress did not even require the use of income at all – that arises only in the Board's Regulation Z. We also believe that when Congress wanted to limited issuers to consideration of a consumer's individual income, Congress made that requirement specific. Thus, in the requirements for issuing a card to persons under 21, the law specifies that the person must demonstrate "an *independent means* of repaying" the debt. TILA § 127(c)(8)(B)(ii).

Moreover, we think that the focus on the consumer's legal entitlement to income is misplaced in the context of this requirement. As a practical matter, consumers may well rely on household income to repay their obligations, even if they do not have a legal ownership interest in that income. We think that the latter issue – the consumer's practical ability to make payments – is more important than an analysis of the legal entitlement to income.

Second, forbidding the use of household income creates a mismatch between the information available about a consumer's income and the information available about a consumer's obligations through a credit report. A consumer's obligations on a credit report are very likely to include *household* obligations – for example, a mortgage on which two spouses are obligated; a car loan on which two spouses are obligated; or other credit card debt that is a joint obligation. Under the Proposal, if one of the two spouses now applies individually for a credit card, the issuer would need to consider these joint obligations but could not consider the household income – even though total household income is almost certainly used as a basis to repay the joint debts.

Third, we appreciate the Board's statement as part of the Proposal that an issuer would not violate Regulation B by refusing to consider the household income in the context, for example, of a non-working spouse. However, we urge the Board to consider that, as a policy matter, this is at odds with the long history of protecting non-working spouses and their ability to establish credit. The Proposal would preclude any credit card issuer from extending credit to a non-working spouse (with the potential exception of community property states). This is true even if the spouse, as a practical matter, has the ability to make the payments from household income (and, in a divorce proceeding, might well be entitled to payments from the working spouse such as alimony). This refusal to allow non-working spouses to develop an independent credit history is problematic and unfounded. It is also contrary to the provisions of Regulation B, which has long recognized that a person should be able to establish creditworthiness based on his or her role on credit accounts held by that person's spouse. See 12 C.F.R. § 202.6(b)(6). The impact of the Board's Proposal is likely to be especially difficult for women, who are disproportionately responsible for child care – this is the very interest that the Regulation B provisions were designed to address.

Fourth, the exception to allow consideration of household income in community property states is of little practical import. Credit card lending is often carried out on a national scale, and developing uniform documents is very important. Moreover, relying on the consumer to understand the community property laws of their state of residence would be fraught with peril.

For all of these reasons, we urge the Board to grant greater flexibility to allow issuers to consider household income for purposes of evaluating ability to pay under § 226.51(a). We believe that the use of household income fully addresses Congress' purposes and yet removes a practical – and problematic, from a policy perspective – obstacle. Of course, for purposes of § 226.51(b), we recognize that issuers would continue to be required to follow the more specific underwriting requirements for consumers under 21.

Scope of Change-in-Terms Notice Obligations. The Proposal would extend the obligation to provide a change-in-terms notice, under § 226.9(c)(2), to cover changes to any of the terms required to be disclosed under § 226.6(b)(4) as well as those items that are included in the account-opening disclosure table in § 226.6(b)(2). We believe that such an expansion is unnecessary. The key credit card plan disclosures are the ones included in the account-opening disclosure table, and it is logical to tie the change-in-terms obligation to that table. With respect to changes in the details required to be disclosed under § 226.6(b)(4), we believe that the requirement to provide notice is better addressed by state law and/or contract law. Highlighting these additional changes in the manner required by § 226.9(c)(2) risks overdisclosure – overshadowing the key changes to those terms included in § 226.6(b)(2) by requiring equally prominent notices for terms that are far less important from a consumer's perspective. We request that the Board withdraw this aspect of the Proposal.

If this expansion of the notice requirement is not withdrawn, we request that the Board provide that changes to the terms under § 226.6(b)(4) do not trigger the right to reject under § 226.9(c)(2)(iv)(B). The right to reject should not apply to these more detailed provisions of the card agreement if they do not affect the disclosures in the account-opening table. In addition, it would be anomalous if a change to the APR was exempt from the right to reject but somehow a change to one of the specific disclosures in § 226.6(b)(4) regarding the calculation of rates resulted in a right to reject. Given that the Board has express statutory authority to define the scope of the right to reject, TILA § 127(i)(3), we request that any changes in the § 226.6(b)(4) terms be excluded.

Waivers/Rebates Provided as Part of Workout Programs Should Not Be Subject to new § 226.55(e). In the Commentary to proposed § 226.55(e), addressing what it means to "promote" a rebate/waiver program that would be subject to the new subsection, we request that the Board expressly exclude rebates/waivers that are offered as part of a workout or similar hardship program. "Promoting" suggests an action by the creditor that advertises the availability of the waiver/rebate as a way to incent use of the card. A workout or similar plan should not be considered "promotional" because it is an accommodation offered to a consumer in distress. Such accommodations should not be made subject to rules that would make it more difficult for creditors to offer them. That can only lead to a diminished available of such consumer-friendly accommodations.

Conforming Payments. As part of the revisions to § 226.10 regarding conforming payments, we request that the Board provide clarity for the situation where the issuer advises the consumer about the ability to make payments via a third-party service, particularly in order to make an expedited payment. For example, the issuer may advise the customer about the ability to make a payment through a third-party money transmitter (*e.g.*, WesternUnion or Moneygram). Such payments should be deemed to be received by the issuer when the payment is actually available to the issuer, and not when the consumer provides the payment amount to the third party. Although the issuer may advise about the ability to use the third party, that should not result in the issuer's being required to consider the payment received at the time it is provided to that third party.

Similarly, such third parties, who are neither the agents nor servicers of the issuer, should not be subject to the limitation in § 226.10(e) regarding fees related to method of payment. We request that the Board clarify that a third party does not become subject to this requirement simply because an issuer informs consumers about the ability to make payments through the third party. Moreover, the fact that an issuer makes administrative arrangements to receive payments through the third party, or arranges for a discounted payment rate for customers who make payments through the third party, should also not subject the third party to these restrictions. It would not be in a consumer's interest to effectively limit the methods to make payments or to increase the costs by precluding such arrangements to facilitate third-party payments.

Review of Rate Changes Between Variable and Non-variable Rates. We request that the Board reconsider the proposed rule that would require issuers to continually monitor any rates that have been changed from variable to non-variable (or vice-versa) and treat them as subject to the § 226.59 review requirement if the change ever results in a higher effective rate than would have applied absent the change. *See* Proposed Comment 59(a)(1)-3.

We urge the Board to modify the Proposal and conclude that the change from a variable rate to a non-variable rate (or vice-versa) is only subject to the review requirement if it results in an immediate rate increase. When issuers make such changes, they do not know whether the change will result in a higher rate or a lower rate at any point in the future. Because the index is outside of the issuer's control (by virtue of the requirements in § 226.55(b)(2)), future changes to the effective APR are outside of the issuers' control. As a result, from a policy perspective, it seems unnecessary to tie such a change to the review requirements. Variable and non-variable rates carry different risks and benefits – to both issuers and consumers. Here, the proposal would provide a windfall to consumers – giving them the benefit if the new rate structure results in a lower effective APR but not the burden if the new structure results in a higher effective APR. There is no reason to provide all of the benefits, but none of the downsides, of one type of rate by subjecting such changes to the APR increase review rule.

We also urge the Board to reconsider this aspect of the Proposal because of the substantial logistical burden that it would impose. Already the new requirements in § 226.59 are imposing significant burdens on issuers, including the requirement to track those accounts that become subject to the review requirement. This interpretation would impose an additional layer of tracking: to monitor accounts where the type of rate (variable or non-variable) has been changed, in order to then mark such accounts for review under § 226.59 if the effective rates ever diverge. It would also require the issuers to continue to track the old rates applicable to the accounts even when those rates are no longer applicable. This may be particularly problematic, for example, if the reason for the change was that the issuer no longer supported the use of the index that had been used.

We also note that such changes from one rate type to another are already subject to multiple protections are Regulation Z: 45-days advance notice is required under Section 226.9(c), and any increase can be applied only prospectively to new balances. In that context, the additional rate review requirement is simply not necessary in light of the burden.

We urge the Board not to adopt this interpretation, which imposes substantial burdens without any corresponding customer benefits.

Delayed Mandatory Compliance Date. The Proposal does not address an effective date or a mandatory compliance date for the changes to Regulation Z. We urge the Board to provide an immediate effective date, but a delayed mandatory compliance date for one year following publication of the final rule.

The Proposal presents a hodge-podge of various changes to the Regulation – some of them are entirely clerical in nature; some of them are clarifications of existing ambiguities; some of them are extensions of or substantive changes to the existing rules. For the first two categories, immediate effectiveness is appropriate. Elimination of clerical errors and ambiguities should be accomplished as soon as possible, to avoid potential litigation or liability over these matters.

However, other aspects of the proposal – for example, the prohibition on the use of household income to satisfy the requirements of § 226.51(a), if retained in the final rule – are substantive changes that will require many creditors to adjust their forms, disclosures, and processes. It will take time to implement such changes. Moreover, the need for additional time is compounded by the vast array of changes that have recently been imposed under Regulation Z as well as other regulations (for example, changes to privacy policies under Regulation P and the new risk-based pricing notice under Regulation V).

A delayed mandatory compliance deadline is the appropriate mechanism to allow issuers additional time to adjust to these new rules. In this way, issuers are free to rely upon and make changes more quickly if they are able to. However, issuers will also have sufficient time to come into compliance.

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Again, MasterCard appreciates the opportunity to provide our comments on the Proposal. Please do not hesitate to contact the undersigned at (914) 249-5061, or our counsel at Sidley Austin LLP in connection with this matter, Michael McEneney at (202) 736-8368, James Huizinga at (202) 736-8681, or John Van De Weert at (202) 736-8094.

Sincerely,

Shawn Miles