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November 20, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20 and C Streets, NW
Washington, D.C. 20051

Re: **Docket Number R-1370**
Regulation Z
Truth in Lending Act and
Credit CARD Act
74 *Federal Register* 54124, October 21, 2009

The American Bankers Association (ABA) [1] and the Consumer Bankers Association[2] are pleased to provide our comments on the Federal Reserve Board's (Board) proposed changes to amend Regulation Z to implement certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) including those that are effective February 22, 2010. Among the proposed provisions are those related to—

- Increases in interest rates due to delinquency or default or as a penalty;
- Requirements to consider the applicant's ability to repay;
- Limitations on imposing finance charges as a result of a loss of the interest-free period;
- Special rules for marketing of open-end plans to college students;
- Internet posting of credit card agreements;

[1] The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

[2] The Consumer Bankers Association is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery. CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

- Limits on certain fees (fee harvesting);
- Minimum payment disclosure requirements; and
- Timely settlement of estate debts.

Passage of the Credit CARD Act has fundamentally changed the economics of the credit card business model. Federal Reserve Board Chairman Bernanke has publicly recognized that this change would occur, as the basic card loan is now more risky. Although card terms had in some cases become too complex and clearer consumer disclosures and improvements in terms were needed, it is important that everyone understand the trade-off the Congress has made with regard to the negative impact of these changes on the availability and affordability of credit.

While many people think of and use credit cards as merely convenient payment devises, they are ultimately lending vehicles. The Act has changed this underlying card loan, as a practical matter, from a short-term line of credit to a medium-term line of credit, which is more risky. The result – more risk and less ability to distinguish and adjust according to risk – will have the following business implications (which industry and outside experts predicted before enactment of the new legislation):

(1) Less credit will be available generally, which means some consumers and small businesses will not be able to obtain credit cards (particularly younger people and start-up small businesses); others will have smaller credit lines.
(2) Interest rates will generally be higher across the board to cover the increased risk.
(3) Those who have managed their credit well and currently have very good credit card deals will find that credit card companies are limited in their ability to distinguish between them and those who do not manage their credit well; the result will be some subsidy from those that manage their credit well to those who do not, negatively affecting the terms available to the former.

The Board should also be conscious of the cumulative impact of the cost of unnecessarily complicated and expensive requirements that ultimately add to the cost of credit and increase the price paid by customers. In addition, this "death by a thousand cuts" makes it more difficult for creditors to stay in the business and for new ones to enter the market. Ultimately, the result will be more consolidation in the credit card market and less competition. These results are not recriminations—they are rational economic responses to the new business model constraints which the industry as a whole will be powerless to escape or prevent.

We ask that in finalizing the rule the Board be sensitive to ensuring consumer choices and access to credit. For example, if the requirements to demonstrate and document an applicant's ability to repay are too stringent or onerous many deserving borrowers will be denied credit, again prompting complaints from bank critics that some people lack convenient and quick access to affordable loans (including credit cards). Already, there are widely-voiced complaints from people and small businesses who are finding credit cards more difficult to obtain, their accounts closed, and their limits lower. In addition, the Board should recognize that the rule will mean the disappearance of some popular offers, such as the 90-day interest free loans that are often used to make a particular purchase possible and affordable.

The Board has the ability to mitigate to some degree adverse economic effects and business constraints when implementing the Act, while still delivering on the real goals of improving transaction transparency and promoting more informed consumer choice. We urge the Board to pursue such balance when considering these comments and adopting a final rule.

We commend the Board for its efforts in drafting proposed regulations, especially in light of the very short time constrictions and the breadth of the statutory provisions. We also appreciate the challenges in interpreting the statute as written while ensuring that its goals are achieved.

Discussion of Specific Provisions

ABA and CBA have several constructive suggestions for making the final rule more effective in meeting its consumer protection goals while preserving the benefits of consumer credit access without erecting undue business barriers. We believe that in this round of rule-making, the provisions on ability to repay and on increasing rates due to delinquency have significant repercussions for the credit card business model that can be better addressed to preserve credit access and still afford improved consumer protection. Our other suggestions on the proposal will streamline regulatory standards, reduce unnecessary compliance costs and enhance for bankers and consumers the clarity of the rules as well as the card agreements that will follow.

Increases in rates due to delinquency or default or as a penalty. (§226.9(g))

Under the Credit CARD Act, as of August 20, 2009, credit card companies must provide a 45-day advance notice of a rate increase due to the customer's default or delinquency or as a penalty before the higher rate may be imposed. Among the exceptions to this requirement is an exception that permits creditors to impose the higher penalty rate on "existing" balances once a customer is 60 days late in making a minimum payment. Pursuant to the Credit CARD Act, effective February 22, 2010, customers will also have the right to cure, that is, to have the rate lowered if the creditor receives six consecutive minimum payments on time. The proposal includes an explanation of this right to cure in the 45-day advance notice.

The Board proposes to make clear that before applying the penalty rate on existing balances once the borrower is 60 days late, creditors must provide a notice of the increase at least 45 days *prior to the effective date of the increase*. Accordingly, credit card companies must wait until the customer is actually 60 days late before sending the 45-day advance notice, in effect, requiring the customer to be 105 days late before the penalty rate may be imposed on existing balances.

We strongly disagree with this approach that requires creditors to wait until the borrower is actually late before sending the 45-day advance notice. First, the statute does not warrant it, and second it is less beneficial to consumers. We believe that creditors should be able to send the 45-day advance notice once the borrower is late and at risk of triggering the penalty rate increase.

Section 127(i) of the Act requires that the creditor provide the notice" *not later* than 45 days prior to the effective date of the increase." (Emphasis added.) Thus, the statute clearly permits creditors to provide it earlier than 45 days.

Indeed, providing earlier notice, when the customers' action, paying late, suggests that they are vulnerable to a rate increase, but when they still have the opportunity to avoid the rate increase, is arguably more beneficial to customers than advising them later when it is too late to change their behavior and avoid the increase altogether. In other words, an earlier notice sent after they are late but when the rate increase is still avoidable informs them how to avoid the rate increase so that they never have to cure.

The Supplementary Information suggests that the Board believes providing the notice 45 days prior to the actual effective date is necessary to ensure customers receive the notice to cure it at a time when it is most useful. It notes:

> Disclosures associated with this ability to cure will be the most useful to consumers if they receive them after they have already triggered such penalty pricing based on a delinquency of more than 60 days. . . The notice will state the effective date of the rate increase, which will give consumers certainty as to the applicable 6-month period during which they must make timely payments in order to return to the lower rate.

Certainly an earlier notice could provide the same information regarding the date the rate would increase, which would address concerns about understanding the cure date. However, if the Board's concern is to provide information about the cure date at the most useful time, the notice should be provided at *the time of or after* the actual rate increase, as it is then that customers will undoubtedly be more acutely aware of the rate increase and its impact. They are more likely to overlook it in a notice provided 45 days before the effective date. Thus, the Board could permit credit card companies *either* to provide the notice 45 days after the interest rate increase goes into effect, as proposed or, in the alternative, provide the notice of a potential increase once the customer is late, but may still avoid the rate increase, and then require a second notice about the ability to cure when the rate goes into effect. We believe that this alternative offers consumers clear benefits and is consistent with the Credit CARD Act.

Ability to repay (§226.51)

Under the proposal, card issuers must consider the ability of the credit applicant to make the required minimum payment based on the applicant's income or assets and the consumer's current obligations and have reasonable policies and procedures to consider this information. Card issuers do not comply if they do not review these factors or issue a card to someone without income or assets.

Flexible approach. We generally commend the Board for its flexible approach, which is consistent with concerns that creditworthy applicants continue to have access to credit, and it will minimize disruptions in the marketplace. However, we strongly recommend that the Board omit any specific requirements to consider income or assets. Section 109 of the Act only requires the card issuer "to consider the ability of the consumer" to make the required payments. Indeed, earlier proposed language referring to income was specifically considered and rejected in the final bill. Moreover, because income is far less predictive of how people manage their credit cards than other factors, card issuers do not rely heavily on income when making the credit decision. Rather, they look to other factors, such as past performance with credit, which are more predictive than income. Therefore, we stress that income should not be a required consideration to the consumer's ability to repay. Moreover, compared to mortgages, where income is more significant given that they involve much larger loans and monthly payment amounts, consideration and confirmation of income are less necessary for credit cards because small loans and amounts are involved. In addition, creditors have a vested interest and natural incentive to provide credit only if the borrower is likely to repay it: the creditor suffers an unsecured loss. Accordingly, they will use the most reliable predictors available, whether they be income or other more predictive factors.

The regulation should also avoid any requirements for debt-to-income ratios, empirically validated standards, and other more prescriptive standards which will only serve to stifle competition, deprive consumers of choice, delay processing, and more importantly deny worthy borrowers of a source of credit. The result of such requirement as well as any income consideration or income confirmation requirement will be bank critics again decrying the lack of credit availability, especially the lack of "affordable small dollar loans," which are often defined as loans that fit the characteristics of credit cards. For example, the features of the loan product described in the FDIC's Small-Dollar Loan Pilot Program include, amounts up to $1,000; payment periods beyond a paycheck cycle; APR below 36%; and low or no origination fees. Notably, the FDIC affordable small dollar loan program also stresses ***streamlined underwriting and***

prompt application processing. Complicated, expensive, and time-consumer application and underwriting processes would appear to be contrary to this goal.

Income determination. If the final rule requires income or assets to be considered, we agree with the Board that credit card issuers may rely on the income stated in the application without the need to verify. As noted above, income is far less predictive with regard to credit card management and performance.

We also suggest that the Commentary indicate that credit card issuers may rely on other indicators of income. For example, they should be able to assume that customers who have consistently made monthly payments of a certain amount have the income to make minimum monthly payments of that amount. Similarly, creditors should be able to rely on regular and consistent deposits made into a deposit account.

Ability to make minimum payments. The proposal provides a safe harbor in determining whether the applicant has the ability to make the minimum payment, which allows credit card issuers to assume utilization of the full credit line the issuer is offering. We agree with this approach, which most card issuers already use. In addition, as proposed, credit card issuers should not be required to make this assumption about other lines of credit the applicant has open. Otherwise, many eligible applicants would simply be rejected without justification, and competition would be further curtailed as it would be more difficult for cardholders to switch to a competitor without first closing other accounts. In addition, there would be an adverse impact on the value and predictability of credit scores as they would lose an important predictive component. Credit scores, in part, rely on utilization rates of available lines of credit. Customers with low utilization rates tend to have higher credit scores because data have shown that those with access to lines of credit who demonstrate the discipline to use only credit they can manage and not use it simply because it is available tend to be more creditworthy and less likely to default. However, if the assumption is that they have used all available lines, they are less likely to qualify for additional cards, which means their utilization rates will now be higher. Utilization rates thus become less predictive and thus less usable. The result is that credit scores lose part of this valuable predictive component.

Treatment of joint accounts. We suggest that the Commentary make clear that for joint accounts it is not required that each account-holder qualify independently and have the ability to repay. Requiring that each applicant qualify independently will mean people unable to qualify on their own will be unable to get credit cards or help build a credit history. This includes, for example, spouses or young people who lack credit histories or sufficient income. In addition, it would appear to be inconsistent with the spirit of Section 202.10 of Regulation B (Equal Credit Opportunity Act), which requires creditors reporting information to designate accounts "to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account. . ." The purpose of this provision is to ensure that spouses who have demonstrated responsible credit management, though lacking official income or legal liability for the debt, may nevertheless develop credit histories and ultimately qualify for credit without a spouse or other applicant or co-signer.

Relationship to Regulation B prohibitions against age discrimination. We also recommend that the Board acknowledge in both the final regulation and Regulation B that this provision of Regulation Z overrides certain provisions of Regulation B. Regulation B generally prohibits discrimination in credit decisions on the basis of age. Thus, notwithstanding the Credit CARD Act, it is generally illegal to impose different credit requirements for applications based on age. The Credit CARD Act quite specifically overrides this prohibition with regard to people under 21 and requires that such applications either have a co-signer or an "independent" means of repaying the loans. The final regulation should specifically acknowledge that treating young applicants differently as required under Regulation Z does not violate Regulation B to ensure that both creditors as well as examiners understand that creditors may (and in some cases, must) treat applicants under 21 differently from other applicants. The clarification is important not only to assist in compliance, but also to provide guidance to Regulation B examiners.

In addition, the age determination should be based on the applicant's age at account opening, not the age at the time of application. The Credit CARD Act is straightforward: "No credit card *may be issued to* . . . a consumer who has not attained the age of 21 . . ." (Emphasis added.) There is no reason for people who have attained the age of 21 to be treated as though they have not and make them wait until sometime after their birthday in order to receive a card.

Rules affecting young consumers. Pursuant to the Credit CARD Act, consumers less than 21 years old must either have a cosigner, guarantor, or joint applicant who is at least 21 years old or an "independent ability" to make the minimum payments. We agree with this straightforward approach in the regulation and use of the adjective "independent" to distinguish from the standard for other borrowers, as the statute does. The term "independent" differentiates the standard applied to those under 21 from the standard applied to those over 21 in that a spouse over 21 may have an ability to repay but not necessarily an "independent" means of repayment. However, the spouse should not necessarily be denied credit.

In addition, we agree that the regulation should not limit which sources creditors may consider when determining the borrower's ability to repay. For example, money earned and saved during summer school break may be sufficient to qualify a borrower. While the intent of the legislation is to add scrutiny to evaluations of applications from young borrowers, that objective should be balanced with the recognition that not all young people will have someone willing to cosign a loan and an appreciation of the value that credit cards provide to young people. In addition to the convenience of a credit card as a payment mechanism and its value in emergencies, it builds a credit history so that they may later qualify for a car loan or mortgage.

Limitations on imposing finance charge as result of loss of grace period (§226.54)

Under the proposal, card issuers must not impose finance charges as a result of the loss of a grace period if those finance charges are based on (1) balances for days in billing cycles that precede the most recent billing cycle; or (2) any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. The Commentary offers useful examples of the mechanics of this provision. The Board should make clear borrowers who do not pay in full by the due date for one billing cycle are not eligible for a partial grace period for transaction made in the following billing cycle.

Special rules for marketing open-end credit to college students (§226.57)

Under the proposal, credit card issuers may not offer students any tangible item to induce them to apply for any open–end credit plan if the offer is made on or near campus (within 1,000 feet of the campus border) or at an event sponsored by the educational institution. Tangible item includes physical items. The term "offer" includes mailed applications and solicitations. The impact of the proposal is that lenders may not offer tangible items of gifts to students in person on or near campus in connection with a credit card account, home equity line of credit, or other open-end consumer credit offer, but they also may not make such offers by mail to any student within one thousand feet of the campus.

Definition of "campus" and application to mailed solicitations. A major issue is the lack of definition of "campus." The definition of institution of higher education under the Higher Education Act is broad and includes many institutions beyond traditional universities and colleges, so it will include fairly small and not well-known institutions. Moreover, many "campuses" lack precise or official borders. This raises a number of problems, both with regard to bank branches that may be "near a campus" or near a building owned or used by an institution of higher education and with regard to mailed applications and solicitations.

We are not aware of any list of the names, addresses, and geographical borders of all the institutions that fall under the definition of institution of higher education under the Higher Education Act. Nor are we aware that all covered institutions necessarily even have an "official' campus, especially those institutions that operate in metropolitan areas and are interspersed among businesses and residences. Moreover, universities and colleges are constantly expanding and contracting so that their borders are constantly changing, sometimes in a very discreet manner. Thus, it would be impossible, as a practical matter, for a branch located in a business or residential district, for example, to know with any certainty that it is – or is about to become – "near" a campus. Similarly, it would not be possible for a lender to know whether a recipient of a mailed application resides on or near a campus. In addition, it is not possible to know whether a particular application recipient is a student, as defined under the regulation, and we are unaware of any databases of current registered students.

Thus, as a practical matter, all open-end consumer applications, not just those for credit cards but also those for home equity line of credit and overdraft line of credit, which offer a tangible item for opening an account must include boilerplate language explaining that students are not eligible for the tangible item or gift and requiring that they indicate whether or not they are a student. This information will not be relevant in the vast majority of cases, so it adds more clutter and "noise" to the application, potentially making more important information less noticeable. Moreover, realistically, those students who want the tangible item will simply not indicate that they are students. For mailed applications, because it is not a face-to-face application, it is easier and more tempting to be inaccurate. Accordingly, the additional disclosure on applications will be fairly ineffective.

We suggest that the final regulation exempt from the requirement branches that are not located on officially designated campuses and that it also exempt mailed applications and solicitations. The target of the statutory provision was the on-campus credit card "tables" where students are the focus and are offered t-shirts, coupons for food, etc., and where the offer is only available for the limited time that the creditor is actually on campus. Branches that happen to be near but not on the official campus of an institution of higher education were not the focus of the provision, and the proposal would unfairly affect institutions that are or, due to the institution's expansion, suddenly become "near" an institution of higher education, as broadly defined, when in fact they are located in a primarily residential or business area and focus on those markets. In effect, any tangible item offer associated with an open-end credit applications would be subject to the restriction.

In addition, we suggest that the final regulation exempt mailed applications. As noted, there is no way for creditors to know whether a particular address is within 1,000 feet of a campus, as defined by the regulation. Nor is it possible to be certain whether a particular application recipient is a student, as defined under the regulation. Moreover, mailed solicitations, and certainly home equity lines of credit and overdraft lines of credit, were not the target of the legislation. As noted, the concern was on-campus credit card "tables" where the offer is only available for the limited time that the creditor is on campus. In contrast, mailed applications offering tangible gifts lack the urgency or pressure of an immediate decision and the more visceral temptation associated with seeing or holding the actual tangible item or gift. For these reasons, we recommend exempting mailed applications and solicitations.

Definition of the term "tangible item." We agree with the Board's proposed definition of "tangible item" and its exclusion of non-physical inducements such as discounts, rewards, points, or promotional credit terms. Clearly, the target of the provision was the t-shirts and other physical items offered for completing an application. Expanding the provision to include nontangible items would be so vague as to embrace any feature of a credit card including such basics as the interest rate.

Internet posting of credit card agreements (§226.58)

Under the proposal, credit card issuers must submit to the Board—

- Agreements offered as of last business day of the preceding calendar quarter that have not previously been submitted;
- Any agreement previously submitted that was modified; and
- Notification of withdrawal of any previously submitted agreement.

In addition, issuers must establish and maintain a publicly available website and make their credit card agreements available through the website. "Agreement" means a written document evidencing terms of the legal obligation between issuers and consumers under a credit card account and includes the pricing information.

We generally support the proposed approach. Providing information about available accounts is useful to consumers as it provides information critical for shopping for and selecting a credit card. Information about past agreements simply has no value to consumers interested in credit cards or to the general public.

It appears from the proposed Appendix that ranges of prices are permitted in disclosing the prices. We suggest that this option be more visible by putting it into the regulation itself.

In addition, the final regulation should not require credit limits to be disclosed. It is not clear what value this provides to consumers as the ranges can vary widely, and exceptions might always be made. Indeed, some cards do not have explicit "limits." Moreover, credit limits should not have to be disclosed, as they are not required to be included in application or account opening documents. Thus, it is not clear what value they add for purposes of shopping. In addition, it will mean credit card issuers may not simply rely on the disclosures they already must provide but will have to make adjustments to those existing disclosures and documents in order to provide additional information to the Board or online as required. We believe that to facilitate compliance, the Board should only require issuers to provide information they must already include in other disclosure documents.

We also suggest that the final Commentary provide that credit card issuers have the flexibility either to pull out different terms for the addendum or simply to provide each of the agreements with their individual pricing. This flexibility will make compliance less costly, without adversely affecting consumers.

Limitations on fees (fee harvesting) (§226.52)

Under the proposal, with the exception of late payment, over-the-limit, returned payment, and optional fees, if a card issuer charges any fee to a credit card account during the first year, it may not charge fees that total more than 25% of the credit limit when the account is opened. The term "fees" includes not only annual fees and others that have been the subject of criticism with regard to subprime cards, but also other routine but avoidable fees such as cash advance fees and foreign transaction fees.

We appreciate the Board's intent to ensure that the rule may not be circumvented by requiring customers to pay fees to access the basic features of the account. However, the impact of including fees such as cash advance fees and foreign transaction fees will mean that all credit card issuers will have to establish expensive and complicated programs to monitor for the rare event that such fees might exceed the limit when the account was opened. Accordingly, we recommend that the Board exempt these fees from the calculation. If in the future there is any evidence of abuse, the Board could then address it. Understanding that the Board will address any abuses will itself inhibit such abuses.

The purpose of the this provision was to address "fee harvesting," where the account has a low credit limit, but high fees, such as annual fees, program fees, monthly servicing fees, account set-up fees, that leaves the customer with little usable credit. We agree that these types of accounts should be restricted as proposed. However, the proposed rule goes beyond the intended target by including what are relatively small fees related to transactions that are far less common or core to the account than domestic purchase transactions. The result is all credit card issuers are affected.

Including these fees will mean all credit card issuers must create complex systems to keep track of such fees, make calculations, and not charge the fee or deny certain transactions. Such a system is expensive, and its costs in part are borne by all customers. In addition, it represents one more complexity, one more compliance item to be implemented and audited, and more potential liability. The cumulative effect of this and the myriad of other compliance traps not only increases costs, but potentially decreases competition, as it not only raises the costs and risk for existing competitors, but also raises the barrier for new entrants.

For these reasons, we suggest that the Board exclude from this provision foreign transaction fees and cash advance fees. If the Board in the future observes abuses, it can address them at that time.

Repayment Disclosures (minimum payment disclosures) (§226.7(b)(12))

Under the proposal, credit card issuers must include with the information related to the minimum payment information, "The name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee. . .to provide credit counseling services in the state in which the billing address for the account is located or the state specified by the consumer." We strongly recommend that the Board simplify and shorten the disclosure by requiring a statement that information about credit counseling services is available at the United States Trustee website and providing the website address of the United States Trustee.

First, customers may easily and erroneously assume that by providing the names of the credit counseling organizations, the credit card issuer is endorsing or recommending them. Consumers should make their own selection. Second, the list of organizations and their contact information unnecessarily lengthens and clutters an already long disclosure without adding information that is more useful than a straightforward, simple statement that they should go to the United States Trustee website for information about credit counseling. Third, the requirement will require customized periodic statements based on the customers' address, a more expensive and complicated effort. Finally, the legislation does not support this additional disclosure: the legislation only requires that credit card issuers provide "a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services." The United States Trustee website does exactly that.

Treatment of credit balances; timely settlement of estate debts (§226.11(c))

Under the proposal, credit card issuers must have procedures to ensure that estate administrators may resolve outstanding balances of deceased customers in a timely manner. "Resolve" means determine the amount owed and pay the balance. Lenders must provide the amount of balance in a timely manner (30 days is considered timely.) and may not impose "fees and charges, such as a late fee or finance charge" on deceased consumer's account after receiving request from an estate administrator. While we agree with the proposal that lenders must provide the amount of balance in a timely manner and the related 30-day safe harbor, we disagree that estates should have the right enjoy an interest free-loan indefinitely.

New Section 140A of the Truth in Lending Act directs the Board to prescribe regulations to require credit card issuers to "establish procedures to ensure that any administrator of an estate of any deceased obligor with respect to such account can resolve outstanding credit balances in a timely manner." However, the proposed regulation goes further than the statute and in effect provides that credit card issuers may not impose fees and charges, including finance charges such as interest, on such accounts after receiving a request with no time limitation on when the account or estate should be settled. In effect, this obligates lenders to provide interest-free loans indefinitely. Certainly, there are many instances when estates are not settled for years – or even decades – and this provision provides no incentive to settle the account in a prompt fashion, though the administrator has the means and authority to do so. Accordingly, we suggest that the final regulation omit the prohibition against charging fees or finance charges after receiving a request from the estate administrator.

In addition, we suggest that the final rule make clear that the institutions may require administrators to provide documentation indicating their compliance with applicable state laws for establishing a person's position as administrator.

Effective date of provisions not related to the Credit CARD Act.

The effective date of the Board's January 2009 Regulation Z rule is July 1, 2010. However, the effective date of the provisions of the Credit CARD Act implemented by this proposal is February 22, 2010. In the Supplementary Information, the Board raises the question of whether provisions contained in the January 2009 rules that are not affected by the Credit CARD Act should be also be effective February 22, 2010. Specifically, the Board is considering the earlier effective date for the formatting requirements applicable to account-opening disclosures, portions of the periodic statements, disclosures provided with convenience checks, change-in-terms notices, and notices of certain rate increases. While the industry has been and remains very supportive of the new, updated disclosures and we expect that many institutions will comply as soon as possible, we urge the Board to retain the July 1, 2010, effective date for provisions not related to the Credit CARD Act.

Many institutions and their vendors have based their information technology schedules on the July 2010 effective date. Re-arranging schedules and priorities on such short notice is disruptive and expensive. Moreover, many institutions and vendors "freeze" year-end information technology changes in order to create a stable processing environment when important tasks related to the end of the year, such as IRS reporting, must be done. To ensure quality compliance and avoid errors, it is important to provide sufficient time to make the technical changes and to test systems to ensure correct implementation. Suddenly and significantly shortening the implementation period, especially to a date close to the end of the year, will invariably mean errors, potential liability, and unnecessary expense.

Moreover, banks had begun the process of implementing the January 2009 regulations but then faced changes and additions to those provisions and a shorter implementation period due to the new law. This has meant changing course in the middle of implementation, slowing the implementation process, not only for the provisions related to the Credit CARD Act, but also for other provisions of the January 2010 rule which are of course intertwined with the Credit CARD Act provisions. If institutions must focus on those important provisions for which there is a very short deadline between final rules and the February 2010 effective date, they should not have to be distracted with other provisions that had been scheduled for a later effective date on which banks and their vendors had been relying.

Conclusion

ABA and CBA appreciate the opportunity to respond to this important proposal. We appreciate the Board's effort in implementing a difficult statute in a very short period. We urge the Board in drafting final regulations to be sensitive to ensuring consumer choices and access to credit and also to be conscious of the cumulative impact of the cost of unnecessarily complicated and expensive requirements that ultimately increase the cost of credit.

Sincerely,

Nessa Feddis

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