1120 Connecticut Avenue, NW
Washington, DC 20036

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Nessa Feddis
Vice President &
Senior Counsel
Center for Regulatory
Compliance
Phone: 202-663-5433
Fax: 202-828-5052
nfeddis@aba.com

By electronic delivery

18 July 2008

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-1286**
Proposed changes to Regulation Z
Truth in Lending Act
***73 Federal Register* 28866, 19 May 2008**

The American Bankers Association ("ABA") is pleased to submit its comments to the Federal Reserve Board's ("Board") proposed amendments to Regulation Z, which implements the Truth in Lending Act. The Board in June, 2007 published proposed comprehensive amendments to Regulation Z and its Staff Commentary related to open-end credit that is not secured by a home. Those amendments primarily affected disclosures provided with credit card applications and solicitations, at account-opening, on periodic statements, when terms are changed on an account, and in advertisement. The Board is now seeking comment on additional revisions.

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.

We stress to the Board that it should balance the need to improve consumer understanding of credit card terms and cardholder responsibility against the cost of additional regulations, especially as those costs and requirements impact smaller institutions and their ability to continue to offer a wide range of products. Ultimately, those additional costs are reflected in the prices borrowers pay.

The proposal affects a number of various provisions. Our comments will focus on those related to:

- Account-opening disclosures and membership fees;
- Communication of the meaning of grace period;
- Notices related to a rate increase due to defaults or delinquencies;

- Establishment of a 5 p.m. cut-off hour for receiving payments by mail; and
- Treatment of payments that arrive after a due date that falls on a week-end or holiday.

Subpart B -Open-end Credit

226.5 General disclosure requirements .

(b) Time of disclosures
(1) Account-opening disclosures
(i) General rule and (iv) Membership fees

Currently, Section 226.5(b)(1) of Regulation Z requires that initial (account-opening) disclosures be provided for open-end credit plans before the first transaction is made under the plan. Under the Commentary, these disclosures must be given before the consumer makes the first purchase, receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee. The fourth bullet point below this provision contains the statement, "If after receiving the disclosures, the consumer uses the account, pays a fee, or negotiates a cash advance check, the creditor may consider the account not rejected for purposes of this section. "

This provision appears only to apply plans involving up-front membership fees or agreements to pay a membership fee at the time of application, as the only reference to "rejected" is in a prior bullet referencing such fees and agreements. Accordingly, it does not impact plans without those features.

Under the June 2007 proposal, intending to address concerns about subprime card accounts that assess fees at account opening, the Board added to the end of the fourth bullet described above, "If the only "use" of the account is the creditor's assessment of fees (such as start-up fees), the consumer is not considered to have accepted the account until the consumer is provided with a billing statement and makes a payment." However, under the June 2007 proposal, this provision as it would be amended is inserted as a Comment 1(i) to Section 226.5(b)(1)(i), which has the heading, "Account-opening disclosures: General rule: Disclosures before the first transaction." In addition, in the June 2007 proposal, the Board also proposed deleting the prior three bullets, including the one containing the references to up-front membership fees and agreements to pay membership fees. Thus, the current fourth bullet, if retained and amended as proposed, would no longer have a connection to up-front membership fees or agreements to pay membership fee and the consumer's right of rejection. The bullet containing those connections, under the current proposal, would be moved to another section, 226.5(b)(1)(iv) under the heading "membership fees."

To make clear that the June 2007 proposed Comment 1(i) to 5(b)(1)(i) only applies in instances involving up-front membership fees or agreements to pay a membership fee prior to receiving account-opening disclosures, the Board should move that Comment to 5(b)(1)(iv).

In addition, the proposed Commentary provides that a consumer "does not 'use' the account by activating the account, such as for security purposes." We strongly recommend deletion of this proposed statement that suggests "activating" a card by making a phone call and in effect confirming acceptance does not constitute acceptance of the card.

If the consumer has received the disclosures, account terms, and the card and takes the affirmative action to make the call and provide the information necessary to activate the account, the consumer clearly intends to accept the account and create a contract. In effect, the activation is the equivalent of a signature. The proposed provision is contrary to common contract law which provides that contracts may be created by ratification or use. There is simply no justification to limit the ways that contracts may be consummated or for the Board to interfere with contract law.

226.5a Credit and charge card applications and solicitations.

b) Required disclosures
5) Grace Period

The Board is proposing to require use of the heading "How to Avoid Paying Interest on Purchases" to explain any interest-free period offered. We believe that the Board should reconsider and retest the term "interest-free" period.

First, we believe that because the proposed heading, "How to Avoid Paying Interest on Purchases" anticipates the status quo with regard to the availability of the interest-free period, it will not communicate terms accurately or clearly and indeed may be misleading or confusing. For example, the proposed heading assumes that a grace period will be available on all purchases. However, a card issuer may decide that for purchases subject to a promotional rate or certain other purchases, the interest-free period will not be available. The Board should anticipate that in the future the interest-free period may apply more narrowly than it is applied today.

Second, the Board appears to be sacrificing accuracy for other goals. Use of the term "interest-free period" will help consumers better understand the concept generally and will reinforce that they pay interest from the date of the transaction (date of the loan) for other transactions.

622.6 Account opening disclosures.

(b) Rules affecting open-end (not home-secured plans)
(4) Tabular format requirements for open-end (not home-secured) plans
(vii) Available credit

In the proposed Commentary to section 6(b)(4)(vii), subprime credit card issuers must include in their account-opening disclosures, the notice, "You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement." The Board seeks comment on whether this provision should be applied beyond subprime cards. As discussed in our comments to Section 5(b)(1), this provision should make clear that it only applies when the plan includes up-front fees or an agreement to pay a membership fee prior to receipt of the account-opening disclosures.

226.7 Periodic Statements.

(b) Rules Affecting Open-end (not Home-secured) plans
(11) Due date: late Payment Costs

The Board has proposed that to comply with the requirement in Section 226.10(b) to provide a reasonable payment instruction, a creditor's cut-off hour for receiving payments by mail can be no earlier than 5 p.m. in the location where the creditor has designated the payment to be sent. The Board is requesting comment on whether there continues to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically.

We suggest that the regulation permit card issuers to provide with the due date a notice that cut-off times are explained on the back of the statement. Providing them on the front simply clutters the periodic statement for information about the difference in a few hours over the course of two or three weeks, which is only relevant to a small percentage of card holders.

Section 226.9 Subsequent Disclosure Requirements.

(g) Increase in Rates Due to Delinquency or Default as a Penalty

In the June 2007 Proposal, the Board proposed to add a new section which would require that a creditor provide a customer with 45 days' advance notice when a rate is increased due to the customers' delinquency or default, or if a rate is increased as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit. The Board is also proposing to amend Regulation AA to prohibit the application of a penalty rate to balances that are outstanding at the end of the fourteenth day after a notice disclosing the change in the APR is provided to the consumer, except if the customer fails to make a payment within 30 days from the due date.

The Board proposes to add new illustrations to provide guidance on the impact of the substantive protections regarding the application of increased APRs to pre-existing balances on the timing requirements of 45 days' advance notice before delinquency or default rates or penalty rates may be imposed.

First, we again strongly urge the Board to adopt a 30-day advance notice rather than the proposed 45-day advance notice. We recognize the value of providing consumers choice and advance notice about changes to terms and rate increases, but note that there will be significant consequences to the proposed 45-day advance notice requirement. Thirty days is more than sufficient for customers to understand the disclosures and make alterative arrangements if they are dissatisfied with the new terms. In addition, decreasing the advance notice to 30 days reduces the impact of the proposal on card issuers' ability to manage risk. Any advance notice delays card issuers' ability to respond to changes in risk, adversely impacts the portfolio as a whole, and results in riskier borrowers being subsidized by those who manage their credit well.

Finally, it makes more sense to have the advance notice correspond with the billing cycles and the calendar. Requirements inconsistent with the billing cycle may lead to mid-cycle changes, a lengthening of the periodic statements, and even to longer billing cycles for certain customers.

Second, we strongly recommend that the regulation provide that if the customer has already received within the last 12 months the 30-day delinquency notice due to any delinquency or default, it is not necessary to resend the 30-day delinquency notice in the event of subsequent delinquencies or default. Thus, for example, using the facts in illustration D under 226.9(g)(1)(ii) of the proposed Commentary, assume the card issuer has sent out a notice similar to the notice in proposed Appendix G-21 model notice (combined notice explaining the consequences of late payment triggering penalty rate on new transactions and consequences of 30-day delinquency triggering penalty rate on existing balances) for the first late payment (which is under 30 days). If, later in the year, as assumed in illustration D, the customer is more than 30 days late, the card issuer would not have to resend the 30-day delinquency notice it had already sent out earlier. The 30-day delinquency notice would not provide the exact date when the penalty rate goes into effect for existing balances, but would indicate that it will go into effect 30 days after the due date if payment is not received.

Under the June 2007 proposal, consumers will have already repeatedly been warned about the consequences of late payments, in the applications, account opening, and on each periodic statement where a warning will appear alongside the due date. Accordingly, consumers will be aware of the consequences of paying late.

Furthermore, the length of the 30-day delinquency, coupled with the 45-day advance notice inordinately delays card issuers' ability to manage risk, especially with regard to those who are seriously late and therefore seriously risky.

We also note that the proposal appears to support this concept to a certain extent, though there appears to be some inconsistency among the regulation, the illustrations in the Commentary and model disclosure in Appendix G-21. The proposed section 226.9(g)(3)(i) provides, "If a creditor is *increasing* the rate due to delinquency or default or as a penalty, the creditor must provide the following. . ." (Emphasis added.) However, Appendix G-21 provides a notice that combines the information related to the initial late payment along with the information about the consequences of a 30-day delinquency even though the card issuer is not yet "increasing" the rate in that manner. Appendix G-21 appears to be consistent with Illustration B of 226.9(g)(1)(ii), which appears to permit the imposition of the 30-day penalty rate on existing balances 45-days after the initial late-payment notice. However, Illustration D in the Commentary requires a separate 30-day delinquency notice to be sent if the customer has already triggered the penalty rate for "new" transactions which would be sent after the payment is 30 days late and would not go into effect for 45 days after the notice is sent. Thus, the ability to impose the 30-day delinquency rate would be delayed in some instances, but not in others.

We believe that an initial notice for the first late payment that contains general information about the consequences of a 30-day delinquency will alert customers -- and potentially encourage them not to pay late.

In addition, this approach will make compliance simpler and easier to understand.

Section 226.10 Prompt crediting of payments.

(**b)Specific requirements for payments**
(2) Examples of reasonable requirements for payments

Under the proposal, creditors may specify reasonable requirements for payments that enable most consumers to make conforming payments. In the examples of "reasonable requirements for payment," the proposal includes "setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person. . ." The proposal continues and specifically provides, "[T]hat it would not be reasonable for a creditor to set a cut-off time for payments by mail that is earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments. The Board requests comment on the operational burden that the proposed rule would impose on creditors.

It is worth noting that the proposed provision not only applies to credit cards, but also to other open-end credit, including home equity lines of credit. Thus, it impacts the entire banking industry.

Some large card issuers indicate that they process seven days a week, and pick up mail after 5 p.m. Accordingly, for them the proposal may be workable. However, for others banks, including both large and small institutions, the 5 p.m. deadline poses operational and logistical challenges that make the proposed deadline too early to be workable. We suggest a deadline of 2 p.m.

Banks need sufficient time after retrieving mail to deliver and process payments and to update accounts and produce accurate periodic statements. Remittance processing includes time to confirm transactions and detect and remedy errors and handle "exception" items. If they are unable to complete the update, the payment may subsequently be revised and backdated, but the payment will not be reflected in the statement sent to the customer, making the statement inaccurate. In addition to the remittance process, accounts then have to be updated and statements produced. Institutions must also build in some "cushion" time in the event that there are errors or systems glitches in order to complete their work in a timely fashion.

In effect, the proposal imposes a rule on all open-end creditors to adopt a 5 p.m. post office run. This is rush hour, which means in metropolitan areas, there may be significant delays in delivering the payments, exacerbating the challenges in completing the required work in a timely fashion. In addition, some post offices may officially close earlier than 5 p.m., but continue to process mail and insert mail into mail "boxes."

The Board does not offer the reasons for selecting 5 p.m., but there is no evidence that consumers expect a 5 p.m. deadline. Certainly, consumers are familiar with the deadline cut-offs for access to deposits, which are earlier than 5 p.m. For example, Regulation CC, which regulates when funds from deposits must be available, provides that funds are considered "deposited on the next banking day. . . after a cutoff hour set by the bank. . .of 2:00 p.m. or later, or for the receipt of deposits at ATMs . . .of 12:00 noon.

(12 CFR 229.19(a)(5))

Given the operational impediments, particularly for in7stitutions that are not large card issuers, that make a 5 p.m. cut-off too late, we recommend that the Board change the cut-off time to 2 p.m.

The Board also asked whether the disclosure of cut-off hours near the due date for payment methods other than mail should be retained. As note earlier in our comments to proposed Section 226.7(b)(11), to avoid cluttering the periodic statement, we suggest that the regulation permit card issuers to provide with the due date a notice that cut-off times are explained on the back of the statement. Providing them on the front simply clutters the periodic statement for information about the difference in a few hours over the course of two or three weeks, which is only relevant to a small percentage of card holders.

(d) Crediting of payments when the creditor does not receive or accept payments on due date.

The Board also proposes to require creditors to treat a payment received by mail the next business day as timely, if the due date for the payment is a day on which the creditor does not receive or accept payment by mail, for example, if the U.S. Postal Services does not deliver mail on that day.

As with the previous propose provision, this also applies all open-end credit and is not limited to credit cards. Accordingly, it applies to all lenders offering open-end credit.

Any requirement to will impose operational challenges and costs for all banks. All lenders offering open-end credit will have to alter systems to accommodate the change. It is not clear why the rule is necessary. Consumers by practice, and now under the regulation's proposed 21-day rule, have a generous amount of time to pay a bill that is technically due upon receipt.

We appreciate the opportunity to comment on this important proposal.

Sincerely,

Nessa Feddis

Nessa Eileen Feddis