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4 June 2009

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

Re: **Docket Number R-1286**
Proposed changes to Regulation Z
Truth in Lending Act
74 *Federal Register* 28866, 5 May 2009

The American Bankers Association (ABA)[1] 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. On December 18, 2008, the Board adopted a final rule amending Regulation Z's provisions, which rule applies to open-end (not home-secured) credit plans. The proposed rule was published in the 29 January *Federal Register*. The Board now proposes clarifications with certain aspects of that final rule in order to facilitate compliance.

226.6 Account-Opening Disclosures.

(b) Rules Affecting Open-end (not home-secured plans).

The rule published in January 2009 preserved certain existing rules for home equity plans subject to Section 226.5b until completion of the Board's separate review of rules applicable to home-secured credit. It also applied separate new disclosure requirements to open-end credit not subject to Section 226.5b of Regulation Z. However, the Board believes that it may be appropriate to permit creditors offering open-end credit secured by real property that is not the consumer's dwelling to continue to comply with the existing rules. We strongly urge the Board to do so.

[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.

Currently, the provisions related to home equity plans apply only to open-end credit plans secured by “the consumer’s dwelling,” as the purpose of the provisions is to provide special disclosures when the place where the borrower lives is at risk. However, many banks, to reduce the risk of inadvertently not providing disclosures when required and to simplify compliance and operational procedures, treat home equity lines of credit as being subject to Section 226.5b even when not required, such as when the property securing the loan is a consumer’s dwelling, but is not the *borrower’s* dwelling. For example, a borrower might choose to use residential rental property as security for a home equity line of credit. In that case, the property is not “the consumer’s dwelling,” and therefore is not “subject to” Section 226.5b, but is nonetheless still subject to Regulation Z as it is a consumer-purpose loan. Thus, under the rule published in January 2009, these home equity credit lines secured by “a” consumer’s dwelling, but not by “the” consumer’s dwelling, would be subject to the new rules affecting open-end plans that are not “home” secured, in-as-much as those new provisions would apply to all open-end plans other than those “subject to” Section 226.5b. This means that if the open-end plan is secured by a home – but not “the” consumer’s home – it must comply with the new requirements for non-home secured open-end credit plans rather than the existing requirements for home equity credit lines. This would require banks to ascertain and document for every home equity line of credit whether the borrower occupies the property securing the loan and separate and treat differently those rare loans secured by a home that the borrower does not occupy.

We recommend that the Board permit, but not require, open-end credit plans secured by a home other than “the” consumer’s dwelling to comply with the requirements for home equity lines of credit secured by “the” consumer’s dwelling, rather than being required to comply with the new disclosure requirements for open-end credit plans not secured by a dwelling. Permitting this option will ease compliance and operational procedures without harming consumers.

(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans.

(i) APR.

The regulation requires creditors generally to disclose the specific annual percentage rates (APRs) that will apply to the account in the table provided at account opening, but permits an exception when the APRs of accounts opened in person may vary by state. The Board proposes to extend this exception and allow creditors to provide the specific APR information outside of the table at point of sale when rates vary based on the consumer’s creditworthiness. In these instances, creditors may disclose in the account-opening table either of two options: (1) the specific APR; or (2) the range of APRs if the disclosure includes a statement that the APR varies by state or depends on the consumer’s creditworthiness, as applicable, and refers the consumer to an account agreement or other disclosure provided with the account-opening summary table where the APR applicable to the consumer’s account is disclosed. The APR could be disclosed, for example, in a separate document provided with the account-opening table.

We agree with this proposed expansion of the exception. As the Board notes, without the flexibility, there would be a tendency for lenders to use a single rate for all customers rather than vary rates based on eligibility. In such a circumstance, some customers might pay a higher rate than they would merit. Moreover, customers are not harmed under the proposal as they will still be informed of the actual APR at the point of sale.

In addition, we recommend that the Board also permit the same flexibility for promotional rates offered at point of sale. Promotional rates are often offered at account opening at point of sale but may change on a daily basis. For example, a special low rate might apply to particular appliance purchases one week and a different low rate for a different appliance the next. Requiring that the disclosures be provided in the account opening table would entail reprinting and replacing disclosures for every new offer, which would discourage beneficial and popular promotions and unnecessarily increase costs. Providing the promotional information separately will not harm customers as they will receive with the account-opening disclosures the “go-to” or regular rate, which is higher than the promotional rate.

(4) Disclosure of Rates for Open End (not Home-Secured) plans.

(ii) Variable-Rate Accounts.

The proposal clarifies that a variable rate is accurate if it is a rate as of a specified date and this ***rate*** was in effect within the last 30 days before the disclosures are provided. We agree with this clarification that means the account-opening disclosures need not be given within 30 days of the “as of” date. Such a requirement would require unnecessary reprinting and replacement for no discernible benefit.

Section 226.7 Periodic Statement.

(b) Rules Affecting Open-End (Not Home-Secured) Plans.

Interest and fees for acquired or modified accounts.

Under the regulation, creditors must disclose the total amount of interest charges and fees for the statement period and calendar year to date. The Board proposes new comments that would clarify creditor’s obligations under 227.7(b)(6) when it acquires a plan or account from another creditor or when the underlying account relationship with the creditor is changed in some way, for example, upgraded or replaced. The proposed comments would generally provide that the creditor must include the interest charges and fees incurred by the consumer prior to the account acquisition or change in the aggregate disclosures for the statement period and calendar year to date after the change. In the alternative, the creditor may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. We support the proposal which anticipates operational challenges or limitations by offering flexibility in providing this disclosure.

Section 226.9 Subsequent Disclosures Requirements.

(c) Change in Terms.

(2) Rules Affecting Open-End (not Home-secured) Plans.

The Board proposes to amend the rule to provide that notice of a change in terms is not required when the change in terms is applicable only to a check or checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with 226.9(b)(3). The 45-day advance notice would still apply to balance transfer offers by other means, such as by telephone or written solicitation on finance charge terms higher than those previously disclosed for a balance transfer.

We agree that there is no need for a separate advance notice if the terms are disclosed on the page containing the checks, as required. The Board's consumer testing found that consumers are more likely to notice and understand terms when presented in this fashion. Duplicate disclosures provide no additional consumer benefit, but they could cause confusion. We recommend that the Board further clarify that this provision applies even if the customer may use the checks electronically or by phone, an option many customers find convenient. Customers will still have the disclosures in front of them in a noticeable format as they need the checks in order to use them in these alternative ways.

We further recommend that the provision be expanded to apply to balance transfers made by written offers if the appropriate disclosures are made. As with the balance transfers made by check, disclosures provided with a written offer and with the information necessary to use the option are more likely to be noticed and read than those in a separate, unrelated document. It is not clear why there should be a distinction among the types of channels for accessing the feature so long as appropriate disclosures are made.

Proposed comment 4 would clarify that when a creditor adds a credit feature or delivers a credit access device for an existing open-end plan, it must provide the finance charge disclosures for the added feature and satisfy any applicable change-in-terms notice requirements, including any advance notice requirement. The proposed example illustrates that "if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature . . . as well as comply with the change-in-terms notice requirements . . including providing notice of the change at least 45 days prior to the effective date of the change." The example is a bit confusing as it is not clear what "change in terms" might apply to a new feature. We suggest that the Board illustrate what term changes might apply to this new feature.

(i) Changes where written advance notice is required.

Specific consumer agreement exception.

The Board is proposing to amend the Commentary to emphasize the limited scope of the consumer agreement exception to the advance notice requirement by adding an example of an occurrence that would not be considered an “agreement” for purposes of relieving the creditor of the requirement to provide an advance change-in-terms notice. The proposed comment provides that an “agreement” does not include a consumer’s request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features. Thus, a creditor would be required to provide the consumer 45- days advance notice before increasing the rate for new transactions or increasing the amount of any applicable fees to the account in these circumstances.

We recommend that the Board clarify that if in fact the customer is opening a new account and not replacing the account, the advance change-in-terms notices are not required if the customer may continue to make additional extensions of credit on the original account for more than 15 days after the account is opened, consistent with the Board’s proposed changes to the Commentary to Regulation AA (Unfair or Deceptive Acts or Practices). Otherwise, customers may be limited in their choices for accounts or delayed in their ability to use them. (See ABA comment letter to Docket Number R-1314, filed 4 June 2009.)

(iv) Notice not required.

Change-in-terms requirements for temporary rate reductions.

In Section 226.9(c)(2), the heading to part (i) is “Changes where written advance notice is required”, and part (iv) is entitled “Notice not required.” The Commentary provides exceptions in both sections so that part (i), which explains when the notice is required, also explains when it is not, and part (iv) which explains when notice is not required, also explains when it is required. To make the regulation more orderly, we recommend that the Commentary, rather than provide exceptions to both parts, simply list them in their respective parts.

226.13 Billing Error Resolution Provision.

The Board proposes to clarify in the Commentary that creditors may require (not simply just request) a signed statement supporting a billing error, providing the signed statement would not subject the cardholder to potential criminal penalty. We agree that creditors should be permitted to require a signed statement indicating that the cardholder’s claim is legitimate. Documentation helps to discourage false claims and is often needed in order to investigate or process a claim.

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ABA appreciates the opportunity to provide our comments to these important clarifications to Regulation Z.

Sincerely,

Nessa Eileen Feddis