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June 2, 2009

Via Electronic Mail and U.S. Mail

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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: OTS-2009-0006

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Federal Reserve System: Docket No. R-1314
Federal Reserve System: Docket No. R-1286
Office of Thrift Supervision: OTS-2009-0006
National Credit Union Administration: RIN 3133-AD62

Dear Ms. Johnson:

I. INTRODUCTION AND OVERVIEW

Chase Bank USA, N.A. ("Chase"), the credit card bank subsidiary of JPMorgan Chase & Co., appreciates the opportunity to comment on clarifications to regulations and accompanying staff commentary to: 1) the Board's final rules amending Regulation Z's provisions that apply to open-end (not home-secured) credit published in the **Federal Register** on January 29, 2009 (the "Regulation Z Rule"); and 2) the final rule under the Federal Trade Commission Act that was also was published in the **Federal Register** on January 29, 2009 (the "UDAP Rule") (collectively, the "Final Rules").

These comments supplement the previous comments we made to the original and revised proposed revisions of these rules that led to the clarifications we are addressing now. We appreciate the Board's effort to continue to clarify the rules to ensure consumers have the information they need, and to enhance creditors' understanding of them. We are pleased to offer these specific comments, with citations to appropriate sections of the applicable rule.

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As a preliminary matter, in light of the passage of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Act"), we believe it is important to make some brief but important observations about the Act. First and foremost, credit card issuers were already under enormous pressure to make the changes necessary to comply with the Final Rules, but the new requirements of the Act significantly magnify that effort. It is critical that we have clarification and finality for all the requirements as soon as possible. We urge the Board to propose regulations, and permit a shortened comment period, first as to those provisions of the Act that will be effective on August 20, 2009 (90 days from enactment of the Act) and thereafter an additional comment period for those proposed regulations that will be effective 9 or 15 months after enactment. As the Board recognized when it first promulgated the changes to regulations AA and Z related to credit card practices, issuers will need time to develop the necessary systems and operational support.

With respect to the rules that will be effective on August 20, we urge the Board not to adopt provisions similar to those it adopted for the transition requirements for the Final Rules. There simply is not sufficient time to provide clarity to issuers as to what they can or must do prior to the August 20 effective date. For example, issuers should be permitted to provide notices of change in terms pursuant to the existing 15-day rule in Regulation Z and not have to provide notices pursuant to the 45-day requirement in the Act. Since clarity and finality will not be provided until the Board implements new rules (presumably by early August), issuers should be allowed to rely on the existing, effective statute and regulation. Similarly, (1) with respect to the new 21-day requirement for statement mailing, that requirement should only become effective for statements mailed on or after August 20, and (2) any determination as to what will be a significant change in terms requiring an opt out should not become effective until some time after the Board has determined what is the definition of a "significant change" to a cardholder agreement.

As the Act generally amends the Truth in Lending Act (other than for specific provisions amending the Fair Credit Reporting Act, the Electronic Funds Transfer Act and the Omnibus Appropriations Act, 2009), we urge the Board to rescind the UDAP Rule, and move all relevant regulations into a revised Regulation Z. We believe this clearly was the intent of Congress.

The balance of this letter offers comments regarding the proposed clarifications to the Regulation Z Rule and the UDAP Rule.

II. SPECIFIC COMMENTS

A. Rate Waiver for Stepped Rates tied to Time Periods. A new Comment 227.24(b)-1 is added regarding whether a bank waives the right to impose an increased rate under Section 226.24(b) if it does not do so immediately upon expiration of the specified time period within the billing cycle. The clarification that a bank may delay application of the increased rate until the first day of the following billing cycle, without losing the ability to apply that rate, is extremely helpful. Many banks' computer programs tie rate increases to billing cycles, not specific dates; therefore, this clarification will aid their ability to comply with the rule. Customers will benefit as well because during this brief time period they will be charged a lower interest rate than would otherwise be allowed.

B. Stepped Rates tied to Time Periods on Existing Accounts. Clarification is provided regarding the application of discounted promotional rates to existing accounts. A new

comment 24(b)(3)-4 is added that states a bank may lower the annual percentage rate (APR) that applies to an existing balance or to new transactions. Further, if a lower rate is applied to an existing balance, the bank cannot subsequently increase the rate on that balance unless it has provided the consumer with advance notice of the increase pursuant to Reg. Z 226.9(b) or (c). We believe this clarification is extremely important for banks so they know they can continue to make promotional rate offers without losing the right to raise rates later. The notification requirements provide appropriate protection to consumers, and are consistent with similar rules in Regulation Z regarding promotional rates.

C. Deferred Interest. We support all the revisions and clarifications regarding deferred interest programs, including the grandfathering of existing programs, enhanced disclosure in advertising and on statements, the special payment allocation rule, and the prevention of "hair trigger" events causing a consumer to lose the benefits of such offers. These programs are extremely important to various retailers, as well as consumers who often use such programs to make purchases. With regard to the Board's specific question if there are sufficient consumer protections and creditor flexibility for such programs as proposed, we believe there are. The consumer protections listed above (enhanced disclosures, the payment allocation rule for deferred interest, and limits on losing these benefits) will ensure consumers are aware of the terms of such offers and get their full benefit. Creditors will be able to offer deferred interest programs that are similar to those offered in the industry today, so there should be adequate flexibility for them. In response to the Board's specific question as to whether the proposed rule under Section 227.23(b) to allocate excess payments during the last two billing cycles prior to the expiration of the deferral period first to the deferred balance is appropriate, we believe that 2 billing cycles is an appropriate length of time.

D. Point of Sale Disclosures of APRs. We also support the revisions and clarifications regarding the disclosure of APRs at a point of sale, including provisions under Section 226.6(b)(2)(i)(E) that a range of APRs could be used in the account opening table and the specific APR applicable to an account can be provided separately, as well as how to comply with the variable rate estimate requirement under Section 226.6(b)(4)(ii).

E. Grace Period on Specific Balances. The Board specifically requested comment whether under 227.23(b) a bank should be permitted to allocate excess payments first to a specific balance that has a specific grace period if such balance is paid in full each month. We applaud the Board for recognizing the importance of grace periods to consumers. This is a feature unique to credit cards, which, because of its existence over decades, consumers have come to understand and expect. Forcing payments to be applied in a way that would interfere with any available grace period would not inure to the benefit of consumers and would likely cause deep confusion. Chase urges the Board to adopt this clarification.

F. Product Trades. The Board proposes to clarify 227.21(c) to require that existing balances that are transferred from one consumer credit card account issued by a bank to another consumer credit card account issued by the same bank must be treated as a continuation of the existing account relationship rather than the creation of a new account relationship so the UDAP limits apply to the balances transferred to the other account. We believe many consumers want to upgrade their accounts to products that carry reward or similar

programs that are more expensive to the bank than a product without such a benefit. The Board acknowledges that many banks offer existing customers an upgrade to accounts offering different terms or features (such as upgrading to an account that offers a particular type of rewards). We believe the Board should not restrict a bank's ability to raise the APRs on the balances transferred to the new account, provided the bank has disclosed and the consumers have agreed to pay the higher APRs as a condition of the offer, because consumers want the reward feature. If the bank's costs are higher to maintain the new account, the balances transferred to that account should be charged the APRs on the new account.

The Board believes these "upgrade" offers generally are not conditioned on a balance transfer, which implies that it may be cost-effective for institutions to make these offers without repricing an outstanding balance. The Board solicits comment on the extent to which the UDAP restrictions would affect a bank's ability to make offers to existing customers. As noted above, certain products such as those that carry a reward feature are priced higher to cover the extra costs to support such a product. A bank prices such an account for any balances that would be charged to such an account, even transferred balances. The fact that a balance on the first account is at a lower rate does not negate the fact that the new product is priced differently. The same is true for balances transferred from another creditor, which the Board acknowledges banks should be permitted to charge the APRs in effect for the new product. Whether the lower APR balance is from another account with the same issuer or a different issuer does not affect the pricing on the new account. In both cases, we believe a bank should be permitted to raise the rate on such transferred balances to the APRs for the new product provided such balance transfers are made knowingly and at the consumer's request.

G. Multiple Accounts. The Board provides guidance in Comment 227.24-4 regarding when the limits on opening a new account (e.g., the limits against raising an APR in the first year after an account is opened) apply where a bank has previously issued an account with a consumer. The Board explains if more than 15/30 days after the new (i.e., second) account is open the consumer can obtain credit on each account, then the opening of the second account is an "account opening" for purposes of 227.24. In this context, the Board also understands that the replacement of one consumer credit card account with another generally is not instantaneous and there may be a delay before the balance on the account being discontinued can be transferred over to the second account and the first account can be closed. The Board solicited comment whether the appropriate amount of time for the replacement of one consumer credit card account with another is 15 days, 30 days, or a different period**.** We believe 30 days or one billing cycle would be a sufficient amount of time for the replacement.

H. Acquired Accounts. The Board proposes to clarify under Comment 227.21(c)-2 that the UDAP restrictions under 227.24 as written will apply with respect to any outstanding balances on acquired consumer credit card accounts. This means, in part, that a buyer would not be permitted to substitute its own variable rate index for the variable rate index applied by the seller on the accounts that are acquired. See Comment 24(b)(2)-6. A buyer that does not utilize the index used to determine the variable rate for an acquired balance could, however, convert that rate to an equal or lower non-variable rate, subject to the notice requirements of Section 226.9(c). See Comment 24(b)(2)-5.

We believe these rules are unduly restrictive. We urge the Board, with respect to accounts acquired from a third-party, to permit the buyer to substitute a variable rate index. These restrictions would: (1) only permit a change in the index and margin if the original index becomes unavailable; (2) require historical fluctuations in the original and replacement indices to be substantially similar; and (3) require the replacement index and margin to produce an APR similar to the APR that was in effect at the time the original index became unavailable. The first two restrictions are unreasonable in the context of buying or selling a credit card portfolio. As a general matter, the Board has expressly condoned a "variable rate" exception from the restrictions on raising a rate under Section 227.24(b)(2) for the reasons stated in the next paragraph.

The Board acknowledged that variable rates are one of the ways under the UDAP restrictions that banks will be able to adjust for increases in their cost of funds. Using the Board's own words:

> The proposed rule provided that the prohibition on applying an increased annual percentage rate to an outstanding balance would not extend to variable rates. This exception was intended to allow institutions to adjust to increases in the cost of funds by utilizing a variable rate that reflects market conditions because, if institutions were not permitted to do so, they would be less willing to extend open-end credit. The Agencies reasoned that, although the injury caused by application of an increased variable rate to an outstanding balance is not reasonably avoidable insofar as the increase is due to market conditions that are beyond the consumer's ability to predict or control, the proposed exception would protect consumers from arbitrary rate increases by requiring that the index for the variable rate be outside the institution's control and available to the general public. This exception was supported by most commenters. Accordingly, because allowing institutions to utilize variable rates provides countervailing benefits sufficient to outweigh the increased interest charges, the Agencies have adopted the proposed exception for variable rates as § __.24(b)(2) with some stylistic changes. 74 FR 5525 (Jan. 29, 2009).

Different banks have different funding strategies that can affect the variable rate index used to charge consumers interest that best matches the bank's anticipated funding costs. A buyer of a card portfolio should be able to retain an index that matches its funding strategy even with respect to acquired accounts. Finally, the operational burden to support a new variable rate index may also chill a buyer's willingness to acquire such accounts. These funding and operational issues may be particularly problematic and represent a broader risk to the economy and the federal government (i.e., the FDIC) if the seller is a troubled bank that lacks the capital or expertise to continue to its credit card program. Further, the variable rate index used by a troubled bank may be part of the cause for its financial difficulties.

We do agree with the third restriction, however, that the buyer's replacement index and margin should produce an APR similar to the APR that was in effect at the time the portfolio was purchased or converted to the buyer's processing system. In effect, this restriction will prevent a buyer from raising existing rates on acquired accounts directly, and only potentially result in a higher APR (and also potentially a lower APR) based on movements in the buyer's variable rate index that are beyond its control. Retaining this

restriction will provide adequate protections for consumers from rate increases directly caused by a buyer. In sum, we strongly urge the Board to permit a limited waiver allowing the substitution of a buyer's variable rate index, while retaining the third restriction described above, when it acquires credit card accounts from a third party.

III. CONCLUSION

Chase appreciates the opportunity to comment on the Proposal. We hope that our comments will assist the Board in completing revisions to Regulation Z. Please contact me with any questions about our comments using the contact information at the bottom of the first page.

Sincerely,