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January 3, 2011

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

Re: Docket No. R-1393, and RIN 7100-AD55

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 Regulation Z and accompanying staff commentary published in the Federal Register on November 2, 2010 (the "Proposed Clarification").

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. These clarifications are important to creditors in light of the numerous changes to Regulation Z prompted by the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Card Act"). We are pleased to offer these specific comments, with citations to appropriate sections of the applicable rule.

As a preliminary matter, we urge the Board (and the successor rulemaking authority, the Bureau of Consumer Financial Protection) to return to a set cycle of issuing final rules by April 1 of a calendar rule, and permitting optional compliance until the following October 1 and mandatory compliance thereafter. Banks continue to make the necessary technological, systems, and operational effort to comply with ongoing development of Regulation Z requirements. Significant staffing and prioritization challenges remain as we implement the newest changes on top of the normal conduct of the business. We believe returning to a normal cycle of rulemaking will permit banks adequate time to fully comply with these requirements.

II. SPECIFIC COMMENTS

Equivalent Treatment of Promotional or Reduced Fees (Sections 226.9(b), 226.9(c), 226.55 and 226.55(b)(1)). The Proposed Clarification would ensure that promotional or reduced fees are treated within Regulation Z in a manner similar to promotional or reduced APRs, as well as encourage creditors to make promotional fee offers. For example, the clarifications would: 1)

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expressly permit an issuer to impose a fee increase after a temporary fee reduction without providing 45 days advance notice and without being subject to rate and fee limitations, provided appropriate disclosures are made in advance; 2) provide that the account-opening table meets the equal prominence and close proximity requirements for the temporary rate exception, even if the duration of the promotional period is disclosed in a smaller, non-bold font; 3) remove the requirement to provide consumers with the right to reject a promotional rate offer made by telephone, provided certain required disclosures are subsequently made in writing; and 4) expand the exemption for reductions in APR required by the Servicemembers Civil Relief Act ("SCRA") to cover reductions in fees as well. We fully support all these changes as they will enable creditors to continue to make reduced rate offers to consumers that will lower their costs as well as promote prudent borrowing, and also facilitate treatment of accounts held by consumers in the military who are entitled to the benefits of the SCRA.

Combined 226.9(b) and 226.9(c)(2) Disclosures. The Proposed Clarification would provide that an issuer may combine temporary rate disclosures required for non-check transactions with the disclosures required for supplemental credit devices like access check within the table disclosures required for those devices, provided that the transactions are subject to the same terms. The Board recognizes that it is possible to meet both the format and location requirements for both sets of disclosures within a promotional offer for multiple transaction types (check and non-check transactions) that includes an appropriate table with all required disclosures. We fully support this clarification, as it will simplify disclosures and make such offers easier for consumers to understand.

Effect of Leap Year on the Annual Percentage Rate (Sections 226.9(c), 226.14, 226.55). The Proposed Clarification provides that a creditor does not need to take into account any variance in the APRs that occur in a leap year. The Board would also clarify that if a creditor uses 366 days in a leap year, a variance in rate that occurs would not require a change in terms notice under Section 226.9(c) or trigger the rate or fee limitations under Section 226.55. We fully support these practical clarifications, and appreciate that the Board has addressed the leap year issues in the recent changes to Regulation Z that were made as a result of the Card Act.

Conforming Payments (Section 226.10(b)). The Proposed Clarification would provide that if a creditor promotes a specific payment method in any way, any payment made through that method prior to the cut-off time specified by the creditor would be considered a conforming payment. The Board has broadly interpreted what constitutes "promoting a payment" to include providing an option to pay by phone in a menu of options on a VRU/voice response unit, and advertising in-person payments in a branch. While we agree in principle with the Board's view, we believe to avoid inadvertent compliance issues that the final rule should be revised to indicate there must be active advertising or promotion of a particular payment method that encourages such a method, rather than a mere listing of a payment method. Billing statements typically list various payment options, but also identify what is considered a conforming payment method and what is not. Such statements or other mere listings of a payment option, such as a VRU option, should not be considering promoting or advertising a particular payment method. Further, the Proposed Clarification is not in consumers' interests because it would encourage creditors to list only the required disclosures for conforming payments under Regulation Z in its disclosures to

consumers, and discourage describing other non-conforming payment options available to consumers.

Time to Resolve Billing Errors (Section 226.13(c)). The Proposed Clarification would address situations where a consumer has received a credit from the issuer and later receives a credit from the merchant that had honored the credit card. Under the clarification, even if an error investigation is not completed within two billing cycles, a creditor may later reverse amounts it has previously credited where the account has been credited more than once for the same billing error. We fully support this clarification, since we believe it meets the requirements of Regulation Z and avoids an unintended benefit.

Ability to Pay (Section 226.51). The Proposed Clarification would change the "ability to pay" requirements by prohibiting the use (solely) of household income in evaluating a consumer's ability to pay. This clarification is not consistent with Section 301 of the Card Act, which requires an issuer to consider the consumer's "independent" ability to make required payments only with respect to young consumers. The clarification unnecessarily expands the Card Act requirement to all consumers regardless of their age. The Board views the general statement in Section 150 of the Card Act -- that a creditor must consider a "consumer's" ability to pay -- as meaning all consumers of any age are subject to the specific "independent" ability to pay rule in Section 301. This interpretation is not consistent with general principles of statutory construction that more specific language controls more general language. We believe that Congress intended a different underwriting standard for young consumers, and reflected that in the carefully worded language in the Card Act. Neither the Card Act nor Regulation Z require the interpretation that creditors are restricted from using household income to satisfy the requirements for a consumer who is over the age of 21, and we urge the Board not to take that view in the final rule.

As a practical matter, many lenders, based on longstanding guidance from their federal bank regulators, have requested income from applicants by requesting "household income". This term encourages consumers to provide all the income that they may rely upon to repay debt, and as a result allows the fairest review possible by the lender in making a credit decision. This term also avoids the confusing and operationally difficult approach of asking for income in one manner in community property states (e.g., California and Texas, where a request for household income would be appropriate under the proposed rule since the income from both spouses is the property of each other), and in a different manner in a non-community property state. This proposal also undermines one of the original threshold tenets of Regulation B to promote credit for non-working applicants who are married and otherwise may have difficulty obtaining credit in their own names. In today's environment, this concern remains. Further, there could be negative impact on other classes of individuals such as classes based on gender or sexual preference, minorities, or retired persons where one person's income in a household may be substantially greater than another's. Therefore, the Board's clarification raises concerns for issuers to reconcile the "ability to pay" rules with the prohibitions in Regulation B against discriminating against, or discouraging, an applicant on a prohibited basis. The Board should weigh the severity and importance of traditional, long-standing credit discrimination standards, against a technical reading of a new ability to pay rule that is not required by the Card Act. We urge the Board to withdraw these problematic rules in Regulation Z's "ability to pay" provisions, and thus allow

creditors to continue to obtain household income information consistent with Regulation B standards.

Penalty Fees (Section 226.52(b)). The proposed rule provides a number of clarifications concerning the application of penalty fees. We fully support most of these clarifications, including the provision under the safe harbor rules that permits an issuer to impose a $35 penalty fee for a subsequent violation that occurs during the same billing cycle or during the next six billing cycles (such as repeated separate non-sufficient funds payments). However, we believe it is problematic to propose as part of the safe harbor rules that an issuer must have actually imposed the initial fee of $25 before it can then charge the higher $35 fee for the second violation. The Board indicates that if the issuer waives the $25 fee for the first violation, the issuer can only impose a $25 fee for the second violation, not a $35 fee. As a result, the proposed rule will discourage an issuer from ever waiving a penalty fee, such as is common with workout programs. Further, consumers often ask issuers to refund fees that have been charged to the account, and issuers may oblige such requests for consumer service and retention purposes. In such situations, an issuer should not be deemed to waive the fee.

Waiving a penalty fee as part of a workout program is common sense because of a consumer's financial condition. It is not the same as promoting an annual fee waiver as part of a marketing promotion. Further, waiving a penalty fee at a consumer's request is similar to the proposed exception under 226.55(e) that would permit a waiver or rebate of an annual fee in connection with resolving a dispute or other concerns. For example, under the proposed exception, if a creditor waives an annual fee when a consumer complains after the fee is charged on a billing statement, imposing the annual fee in a later year is permitted. This is not promoting a waiver of an annual fee and therefore is not subject to the prohibitions under 226.55(e) which otherwise limit a creditor from raising an annual fee unless a specified exception applies. Similarly, if a creditor merely waives a penalty fee that is charged for default after a consumer sees the charge on his or her billing statement, that should not be considered a waiver and the higher fee should be allowed for a subsequent violation of the same type.

Therefore, we urge the Board to remove the proposed penalty fee "waiver" rule altogether and permit an appropriately stepped-up fee for a second violation regardless if the fee was enforced for the first violation. Alternatively, we urge the Board to modify the proposed rule to make clear that only a fee waiver program that is promoted by an issuer can trigger the rule, but not a refund of a fee for a first violation that is already charged and then credited at the request of the consumer.

Application of Lower Promotional Rates During Specified Periods (Section 226.55). The Proposed Clarification would add an example of the application of Section 226.55 when the specified time periods for multiple and overlapping temporary rates overlap. We fully support this clarification, which addresses a common situation where a consumer may have been offered multiple promotional offers over a period of time that remain unexpired.

APR After Temporary Workout (Section 225.55(b)). The Proposed Clarification would revise an example in the existing Regulation Z which currently provides that after completion of or failure to complete a workout program, an issuer may return the rate up to the rate that existed

before the workout, including the penalty rate. Under the current Regulation Z, if a consumer's standard APR is 17% and that rate is increased to a penalty APR of 29% when the account becomes 60 days late, a consumer can be offered a workout program with a lower payment/lower APR and reapply the 29% APR if the consumer fails off the program. Under the clarification, if an issuer increases a consumer's APR due to a 60 day late payment, the consumer enters a workout program, and then the consumer makes six consecutive payments under the workout program by the due date, the APR must be reduced to the preexisting standard APR. Therefore, upon completion or failure of the workout program, the APRs may not be increased higher than the preexisting standard rate unless, in the future, the consumer again becomes 60 days late. Under the example above, this means the creditor would have to restore the 17% APR if the consumer makes 6 minimum payments at the reduced level, even if he or she later fails off the program.

We do not agree with this clarification because it discourages banks from offering payment programs while a consumer is in a six-payment cure period after being 60 days late, and therefore encourages creditor practices that will not benefit consumers. When consumers are in financial difficulty, it is a critical time that often necessitates immediate relief in the form of a reduced rate. The failure to provide such relief can lead to increased charge-offs and worsened consumer credit records. This change in existing rules will further confuse customers for little apparent benefit. The complexity of the systems changes would further discourage issuers from offering workout programs.

We also disagree with this clarification which we view as a distortion of the Card Act. When the minimum payment is reduced as an accommodation because of a consumer's financial difficulties (e.g., a workout), the consumer is not making the normal "required" minimum payment (under the 60-day late rule). These consumers are high credit risk and should not be treated in the same manner as a customer who is in default but then exhibits creditworthy behavior by making six full minimum payments.

We strongly urge the Board to remove this clarification from the final rule.

Internet Posting of Credit Card Agreements (Section 226.58). The Board has proposed to simplify the credit card agreements that must be submitted to the Board. We fully support these clarifications both because it will reduce possible consumer confusion as well as facilitate the operational efforts needed to prepare the quarterly submissions to the Board. In particular, the definition of pricing information would be amended to exclude variable rate and other information required under Section 226.6(b)(4), such as periodic rates. In addition, the proposed rule would clarify that the billing rights notices are not deemed to be part of the agreement for purposes of Section 226.58 and, therefore, need not be submitted to the Board.

Regarding the change in the definition of "pricing information", we believe consumers are most likely to shop for credit primarily based on APR information. We agree with the Board that periodic rates can be confusing to consumers in the context of disclosing a range of APRs and variable rate margins. Further, we believe it should be clarified that rate changes not due to an index or formula under 226.6(b)(4)(iii), such as introductory or promotional rates, should be excluded from agreements submitted to the Board. That information is temporary in nature, may

not apply to particular applicants for credit, and in any event when disclosed in a range does not offer meaningful information for consumers shopping for credit. Consumers may have the wrong impression about the true cost of credit in seeing a range of promotional rates that may or may not apply to any particular applicant, and therefore be confused in shopping for credit. Rather, standard rate and penalty rate information only should be required to be provided. We also believe it is possibly confusing to distinguish between potential fixed and variable rates, particularly when promotional rates are involved. By clarifying that promotional rates are not required to be disclosed, the Board will alleviate that situation. There is other information in Section 226.6(b)(4) that continues to be useful to disclose, however, particularly the types of transactions to which rates apply, which we believe should be retained in the agreements submitted to the Board.

Regarding the removal of the billing rights notices, consumers will receive this information in the account opening documents and, for most creditors, each billing statement. Therefore, we agree this is not information used for comparison shopping and is not necessary for agreements submitted to the Board.

We caution that many creditors have complex and technical systems support for creating the agreements submitted to the Board. Some disclosures are part of account opening "rate and fee" tables, and some are part of pre-printed contractual language. Therefore, we urge the Board in the final rule to permit creditors the flexibility to retain or remove the disclosures that may not ultimately be required in the agreements submitted to the Board, depending on operational considerations and consumer understanding of the agreements submitted.

Rate Re-evaluations (Section 226.59). The Proposed Clarification provides certain changes regarding the 6-month reviews of rate increases. We believe the following clarifications are very prudent in light of safe and sound underwriting considerations: 1) a provision that indicates in the initial two rate reviews, default criteria can be used in addition to new account review factors if the issuer relies on the safe harbor rules; and 2) a provision that an issuer can cease reviewing an account once the rate is reduced back to the rate prior to an increase even if new account factors relied on by the consumer indicate a lower rate would be charged on a new account. These clarifications are appropriate since they are reflective of the credit risks faced by issuers and are consistent with the Card Act. As noted in Chase's previous comment letters, we also continue to generally support the approach taken by the Board in allowing creditors to use their own reasonable standards to review rate increases.

However, we disagree with another proposed clarification. This provision would require rate reevaluation for an increase in rate when an issuer changes the type of rates that would apply to an account (e.g., a variable rate is changed to a non-variable rate or a non-variable rate is changed to a variable rate) if a decrease or an increase in the variable rate index subsequently causes the actual rate to be higher than the original rate. A change in a variable rate index is not within the control of the issuer, and should not be a factor in whether a review is required. Further, the Board recognizes that a change in a variable rate index is not a change in terms under Section 226.9 of Regulation Z because the index is not within the control of the issuer. A change in an index alone should not trigger a 6-month review obligation. If the Board were to retain this provision, it should limit it to such changes in a type of rate that occurs after the effective date for the final rules resulting from the Proposed Clarification.

We also reiterate certain comments that we made previously. Specifically, the Board should not require more than three reviews of APR increases. Such a limit is a reasonable estimate of the interest rate cycle and sufficiently protects customers from an increased rate because of a lack of review. Conversely, by not limiting reviews, bank capital will be placed at risk as returns throughout the cycle may be below the legitimate expectations of creditors. Downward repricing applies to an entire balance while rate increases would apply only to new balances. Thus, risky balances would be under-priced from a risk standpoint. While the Board's rules are driven by a philosophy that the less risky customers compensate for the "under-pricing" of the risky customers, without a limitation on reviews, the necessary subsidization cannot occur. Thus, over time, even less credit will be granted to consumers and the price of new credit will continue to be forced upward. This cycle, resulting in higher costs of borrowing and less available credit, would continue unabated without a limitation on reviews.

Rate increases on accounts resulting from 60 day late payments should not be reviewed except for the 6-payment cure required in §226.55(b)(4) of present Regulation Z. Rather, because of the seriousness of the triggering event, this cure provision that is the only review required by the Card Act should be the only review that creditors should have to perform on such accounts.

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 should you have any questions about our comments using the contact information at the bottom of the first page.

Sincerely,