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June 4, 2009

By Electronic Mail

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1314

Regulation Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Re: OTS-2009-0006

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

Re: RIN 3133-AD62

To Whom It May Concern:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the proposed amendments to the recently issued regulation pertaining to unfair or deceptive acts or practices ("UDAP Rule") and its Official Staff Commentary ("Commentary") ("Proposal") issued by the Board of Governors of the Federal Reserve System ("Board"), the Office of Thrift Supervision, and the National Credit Union Administration (collectively, "Agencies"). MasterCard appreciates the opportunity to provide its comments on the Proposal.

[1] MasterCard Worldwide (NYSE: MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 16 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

In General

MasterCard commends the Agencies for issuing the Proposal to clarify various portions of the UDAP Rule. Many of the provisions in the Proposal are helpful clarifications to credit card issuers, and we are particularly pleased that the Proposal would explicitly permit issuers to continue offering deferred interest programs. We do have comments, however, on several of the provisions, including those relating to the definition of a consumer credit card account, deferred interest programs, and the determination of protected balances.

Definition of Consumer Credit Card Account

The Agencies propose to clarify the definition of "consumer credit card account" in several ways. For example, the Agencies proposed to clarify that, if a balance from the credit card account is transferred to another credit account (not necessarily a credit card account) held by the same institution (or an affiliate), the account continues to be the same credit card account for purposes of the UDAP Rule with respect to the balance (with limited exceptions). We do not believe this interpretation is appropriate, and it creates unnecessary difficulties for consumers. For example, an affiliate of a card issuer could not provide a closed-end loan consolidation product involving the card issuer's balance without significant operational problems that an unaffiliated competitor would not encounter in connection with a similar transaction. Such difficulties—such as may result from the closed-end loan having a nonvariable APR that is slightly higher than the current variable APR on the credit card account or having a repayment schedule that is less favorable than that permitted for a protected balance—could result in the anomalous result that the card issuer (or its affiliate) can offer loan consolidation options to anyone so long as it does not involve the issuer's credit card balance. Consumers will not understand why their bank or credit union cannot help them with a closed-end loan consolidation product simply because the transaction involves a balance on a credit card issued by the institution or its affiliate.

It is also not clear whether the Agencies would hold institutions responsible for "balance transfers" that are not obvious to the institution or its affiliates. For example, if the institution (or its affiliate) provides the consumer with a cash loan that the consumer uses to pay off the institution's credit card account, we assume the institution is not expected to treat the new loan as though it were the "old" credit card account. Similarly, if a cardholder uses a convenience check accessing a line of credit provided by the institution (or its affiliate) to pay off all or part of a credit card balance owed to the institution, it would be unreasonable to expect the institution to manage, for purposes of compliance with the UDAP Rule, the balance created through use of the check as though it were the credit card balance.

We also believe it would be important for the Agencies to discuss how the UDAP Rule would apply if the issuer's affiliate to whom the balance was transferred is not a depository institution. For example, if a finance company affiliate of a credit card issuer offers a loan consolidation product to a consumer, and the consumer happens to include among the loans consolidated a credit card balance from the finance company's bank affiliate, it is not clear how the Proposal would (or could) be applied.

Payment Allocation

As we discuss below, the Proposal would permit credit card issuers to continue to offer deferred interest products to consumers (subject to the Board's proposed revisions to Regulation Z imposing new disclosure requirements). In connection with this clarification, the Agencies have provided rules pertaining to payment allocation requirements when such programs are offered. We believe it is appropriate for the Agencies to address payment allocation issues relating to deferred interest programs, as the application of "high-to-low" payment allocation (which will be the only acceptable method as a result of the Credit CARD Act) could result in a consumer essentially having to pay off an entire account balance simply to enjoy the deferred interest promotion. It is reasonable, for example, to require a card issuer to allocate payments above the minimum amount to deferred interest balances in the two billing cycles immediately preceding the expiration of the deferred interest period. We believe, however, that there are other appropriate circumstances in which an issuer should be permitted to deviate from the "high-to-low" allocation method. For example, MasterCard believes that card issuers should be permitted (but not required) to allocate payments in a manner requested by consumers, especially if the consumer is attempting to repay a deferred interest balance. We ask the Board to provide this flexibility.

The Agencies also request comment on whether the payment allocation provisions should permit a bank to allocate payments in excess of the minimum first to specific balances that have specific grace periods. We believe this flexibility is important to provide consumers with the benefits of a grace period. For example, there may be a grace period provided on a certain balance on an account so long as the cardholder pays that certain balance, but not necessarily the whole balance on the account. We do not believe it would be appropriate to force issuers to apply payments in a manner that results in the loss of a grace period, especially since it would result in unnecessary consumer confusion and harm.

Increasing APRs

Timing of Transactions

The date of a transaction is important for purposes of § __.24(b)(3) and the application of the 7-day rule (soon to be 14-day rule under the Credit CARD Act) for purposes of determining a protected balance. The Commentary states that an institution may apply an increased APR pursuant to § __.24(b)(3) to transactions that are authorized within seven days, but are settled more than seven days, after provision of the applicable notice under Regulation Z. The Proposal, however, would revise this to indicate that the date of the transaction for purposes of § __.24(b)(3) is determined by the actual date of the transaction, regardless of when the transaction was authorized, settled, or posted. Furthermore, the Agencies state that if a merchant places a "hold" on the available credit on an account for an estimated transaction amount, the date of the transaction is the date on which the merchant "determines the actual transaction amount."

With respect to the timing of transactions generally, MasterCard requests that the Agencies provide issuers with a date certain for purposes of determining the protected balance. The Proposal as drafted would result in issuers having to remain vigilant and to screen all future

transactions to ensure that they did not occur at a time prior to 7-day cut-off date, and handle them accordingly if they did. This creates significant operational burdens with virtually no benefit to cardholders. We believe the original calculation method relating to settlement in the UDAP Rule was more appropriate (*i.e.*, the original 7-day hard deadline). Even if the Agencies retain the concept of using the date the transaction occurred for purposes of allocating the transaction appropriately, it would be useful to provide card issuers with a hard deadline of some sort, such as by stating that if the transaction settles 30 days after notice of the increased APR was provided, the transaction need not be included in the protected balance regardless of the date of the transaction.

We also note that the measurement of time associated with merchant "holds" is problematic because an issuer will not necessarily know the date that the merchant "determines the actual transaction amount." We do not believe that a special rule for such circumstances is necessary, as the issuer will generally know the date of the transaction (*i.e.*, the date the consumer makes the payment) regardless of when the merchant determines the actual transaction amount.

Servicemembers Civil Relief Act

The Agencies have proposed to clarify § __.24 in circumstances pertaining to the Servicemembers Civil Relief Act ("SCRA"). Specifically, an APR that has been decreased pursuant to the SCRA may be increased once the SCRA no longer applies, provided that the increased rate does not exceed the APR that applied prior to the period of military service. We ask the Agencies to consider revising the Proposal to permit an issuer to increase the APR to a level that would otherwise be permitted if the protections of the SCRA had not been applied to the account in the interim. For example, a military servicemember may have an account with a 10% APR in the first year and 12% thereafter. If the SCRA protections are applied in the first year (when the APR is 10%), and removed in the third year (when the APR would otherwise be 12%), the issuer should be permitted to increase the APR on the account to 12%, since that is what would have applied on the account in year three. Without this clarification, some issuers (especially those that cater to the military) may be hesitant to offer promotional, discounted, or temporary rates for fear that those rates may get "locked in" by virtue of the application of the SCRA's protections at any given time. We suspect this was not the Agencies' intent.

Deferred Interest

The Agencies interpretation of the UDAP Rule would have resulted in a prohibition on deferred interest programs. The Proposal, however, would permit such programs while clarifying that they are subject to all of the protections described in § __.24. We applaud the Agencies for proposing to clarify their interpretations of the UDAP Rule in this manner, as it will allow consumers continued access to these beneficial offerings while ensuring that the programs are subject to the protections specified by the Agencies. We strongly urge the Agencies to retain this clarification.

According to the Supplementary Information, a deferred (or waived) interest program established prior to the effective date of the UDAP Rule (now likely to be the effective date of the operative provisions of the Credit CARD Act) is "valid," even if it expires after the effective

date, provided that: (i) any periodic statement mailed after the effective date complies with the disclosure requirements in § 226.7 (as proposed); and (ii) the issuer complies with the UDAP Rule. We commend the Agencies for explicitly noting that existing deferred interest programs will not be rendered unenforceable after the effective date of the UDAP Rule. We do not believe that the Agencies intend to cause a deferred interest program established prior to the effective date to be *invalid* if the issuer violates Regulation Z or the UDAP Rule after the effective date, as the Supplementary Information implies. We ask the Agencies to revise the Supplementary Information to indicate that as of the effective date the substantive provisions of § 226.7 and the UDAP Rule will apply, and that violations of those provisions will be grounds for enforcement under the appropriate regulatory regime, not grounds to consider the program invalid.

Two-Cycle Billing

The Agencies propose to amend the Commentary pertaining to the prohibition on two-cycle billing to clarify that the prohibition does not prohibit an institution from charging accrued interest under a deferred interest program if the balance is not paid in full prior to the specified date. We ask the Agencies to further clarify the Commentary to note that the two-cycle billing ban does not affect the operation of deferred interest programs more generally. We are concerned that the Commentary as proposed may be inappropriately viewed by some as narrower than what the Agencies likely intend. For example, the Agencies expressly note elsewhere in the Proposal that an issuer could charge accrued interest for reasons other than the expiration of the program, such as if the consumer is 30 days (likely to be 60 days under the Credit CARD Act) delinquent. Yet, as drafted, the clarification to the Commentary may be viewed—incorrectly, we believe—by some as precluding such a result.

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Again, MasterCard appreciates the opportunity to provide comments on the Proposal. If you have any questions regarding our comments, please do not hesitate to call me at (914) 249-5978 or our counsels at Sidley Austin LLP in this matter, Michael F. McEneney at (202) 736-8368 or Karl F. Kaufmann at (202) 736-8133.

Sincerely,

Jodi Golinsky

Jodi Golinsky
Vice President
Regulatory and Public Policy Counsel

cc: Michael F. McEneney, Esq.
Karl F. Kaufmann, Esq.