Woodstock Institute

407 South Dearborn Ave.
Suite 550
Chicago, Illinois 60605
Phone 312/427-8070
Fax 312/427-4007
woodstock@woodstockinst.org
www.woodstockinst.org

August 25, 2005

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

Dear Ms. Johnson:

I am writing on behalf of Woodstock Institute to comment on Bank of America Corporation's proposal under Section 3 of the Bank Holding Company Act to acquire 100 percent of the voting shares of MBNA Corporation. Woodstock Institute is a Chicago-based research and policy organization that for over 30 years has worked to promote economic development in lower-income and minority communities. We strongly encourage regulators making decisions on this merger to get the buying company to commit to addressing the rate structures, fees, terms, and conditions of the credit cards issued by both parties to the merger, and to reduce or eliminate complex practices that create a deceptive effect on the average credit card consumer. Such issues fall under the companies' CRA responsibilities to help meet the credit needs of the communities they serve.

But we have a more fundamental concern with this proposed acquisition. The combined company will control deposits in excess of 10 percent of total U.S. deposits in contravention of Section 3(d) of 12 USC 1842(d)(2)(A). The argument in B of A's application that the appropriate time to test compliance with the nationwide deposit cap is after the merger is the equivalent of saying that a jewelry thief seen stuffing his pocket with gems in a store should be allowed to go home and not questioned about his activities until several months later. It is in short, an open invitation to the Federal Reserve Board to break the law and we assume that the Board is concerned to uphold the law. The nationwide deposit cap is a critical assurance of some level of competition in retail banking and should not be weakened in general and certainly not by a ruling of the Board that circumvents Congressional intent.

Woodstock Institute's recently released report, *"Blindfolded Into Debt: A Comparison of Credit Card Costs and Conditions at Banks and Credit Unions"* sheds light on the variety of practices among credit card issuers that have a deceptive effect on credit card purchasers. The common practices in credit cards issued by large national banks such as Bank of America and MBNA Corporation that we are concerned about include:

- Terms of cardholder agreements which change as much as 2 or 3 times a year
- An advertised wide range of possible annual percentage rates (APRs) with no indication of what rate a consumer would actually qualify for
- Limited disclosure of the highly variable APRs for different types of transactions, including the rates for purchases, cash advances, balance transfers, and rate increases for defaults and penalties

- Misleading promotional introductory rates that can apply only to certain transactions or be immediately terminated upon a late payment, over limit charge, or other penalty
- Shortened grace periods for late credit payments
- Confusing, tiered systems of late fees
- A 'universal default' penalty that increases rates for all issued credit cards if the consumer incurs a penalty on a single card.

These practices have a deceptive effect on all but the most financially sophisticated borrowers. As borrowers attempt to 'price-shop' for the best deal to meet their credit needs, multiple rates, structures, and fees in the fine print prevent a fully-informed purchase choice. In addition, credit card users can often find themselves with large and unexpected increases in rates and fees due to a missed payment or service charge that was not already disclosed. In the case of universal default, one missed payment on a single credit card, regardless of how minor the infraction was, can trigger a rate increase among all of the user's credit cards and in turn an unexpected and substantial debt burden. These practices are one reason for the increase in consumer debt and in bankruptcies.

While B of A apparently does not employ universal default and MBNA officially does not use it, there is apparently a pattern of consumer complaints against MBNA which suggest that there are pricing increases triggered by a universal default type mechanism. It has recently come to our attention that Citigroup, a leading competitor of Bank of America and MBNA Corporation, has recently taken an important step to reduce the deceptive effects outlined in our report by dropping their universal default penalty on their credit cards. We urge the Board to determine whether or not MBNA employs universal default in any form and to require Bank of America to promise not to adopt the practice.

We also note that B of A, at the time of our study, advertised a range of APRs as the purchase APR for the standard card (Visa Gold) in its credit card solicitations. MBNA (NFL Extra Points) did not. In our view, the effect of the use of such ranges in solicitations is that customers do not know the cost of the product they are buying and that this strategy has, in consequence, a deceptive effect. We urge the Board to require that B of A offer a firm price to customers in solicitations. We find the range in possible late fees in both companies' standard card and the range in the balance transfer fee in the MBNA card similarly confusing and similarly likely to have a deceptive effect and therefore ask the Board to require B of A to also cease these practices.

As of Woodstock Institute's report, the B of A standard card had a payment grace period of 20 days and the MBNA standard card a grace period of 25 days. In our view any grace period short of a month has a deceptive effect for the simple reason that most other billing cycles for households are monthly. We, therefore, urge B of A to retain the MBNA cycle of 25 days as the closest approximation to a monthly cycle. If B of A insist on the more deceptive practice of a 20 day cycle, the Board should insist that MBNA customers get at least six months notice of this change to give them adequate time to change their cards if they so choose.

Our comments are set in the context that credit card lending is one of the most lucrative sectors of the banking industry with Returns on Assets of 4.5 percent compared to an average of just over 1 percent for the rest of the industry. Changes in the practices of credit-card issuing banks can reduce the deceptive and financially damaging effects inherent in many credit card structures and fees, while still permitting very healthy profits. This merger gives the Board a special opportunity to protect credit card customers from practices that have a deceptive effect.

Sincerely,

Malcolm Bush

Malcolm Bush
President

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