David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

July 30, 2008

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

Submitted via email to regs.comments@federalreserve.gov

Re: Docket No. R-1314 Amendment of Regulation AA, which implements the FTC Act

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on proposed amendments to the rules of Regulation AA. The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to formulating informational and educational outreach programs and initiating policy development. Currently, the CPB is presenting comprehensive outreach programs on issues such as identify theft, Internet safety, financial literacy, and credit card management. Our Consumer Assistance Unit (CAU), which takes complaints five days a week, 8:30 a.m. to 4:30 p.m., via our toll-free helpline at 1-800-697-1220 and twenty-four hours a day, seven days a week via the web at www.nysconsumer.gov, responds to and resolves over 20,000 complaints and inquiries a year on a variety of topics including banking fees, credit card disputes, identity theft, and product refunds and returns.

In the past year, the Agency received over 1,660 credit-card related complaints and inquiries. The nature of these complaints included billing disputes and erroneous charges, exorbitant fees, changes in interest rates, and late payment fees. We have successfully mediated, resolved, and satisfied over 1,327 of these complaints.

We commend the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, “federal regulators”) for issuing this proposal to curb unfair and deceptive credit card and overdraft practices. We set forth our specific comments, some of which have been detailed in our previous comments to the Federal Reserve Board, below.

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Reasonable Time to Make a Payment

In this proposal, institutions would be prohibited from treating a payment as late unless the consumer was given a "reasonable" time to make a payment. Institutions would be granted a safe harbor where bill statements are mailed or delivered at least 21 days prior to the due date.

The CPB commends this proposal for proscribing minimum periods in which bills must be mailed to consumers. A period of twenty-one days provides consumers enough time to make sure their payments are timely.[1] However, the government should go further and prohibit institutions from treating a payment as late if it arrives within two (2) business days of the due date. Consumers should not have to pay late fees when the mail is not timely delivered. To that end, consumers should be allowed to show via adequate proof that their payment was mailed timely, i.e. five (5) days prior to the due date in order to reverse credit card issuer's late payment determination.

Application of Payments

The federal regulators also propose to change the method in which credit card companies apply payments to credit card balances with differing interest rates. Under the proposal, payments made in excess of the minimum payment would have to be allocated in a manner no less beneficial to the consumer than one of the following methods: 1) applying the entire amount to the balance with the higher APR; 2) splitting the payment equally among the balances; or, 3) applying the payment pro-rata among the balances. (73 Federal Register 28909). In addition, where a consumer makes more than the minimum payment and where a portion of the balance has a promotional balance or deferred balance, credit card issuers will first have to credit those balances which are not discounted or do not have deferred interest.

The CPB supports this provision of the proposed rule. Typically, credit card companies will apply payments in excess of the minimum to the lowest APR balance, rather than the highest, thereby depriving consumers of the true benefit of the advertised low APR.

Restricting Increases in APR

The proposed rule prohibits credit card companies from applying an increased APR to existing balances except in limited circumstances: when the card has a variable rate; when a promotional rate is lost or expires; or where the minimum payment is not received within 30 days of the due date. If a consumer loses a promotional rate, the

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[1] This is particularly the case if the proposed rule amendment to Regulation Z is promulgated. The amendment prohibits creditors from counting a payment that arrives the next business day as late, if the due date falls on a holiday or day in which the creditor does not receive mail.

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credit card issuer would be able to charge the regular rate, not a penalty rate. Consumers who choose to carry the balance at the old interest rate would be allowed to pay off the balance in five years.

It was aptly noted that "disclosures alone may not enable consumers to avoid the injury caused by an increase in rate on an existing balance." (73 Federal Register 28918.) The CPB supports this proposal, which will provide consumers the opportunity to pay off balances at rates in effect when they made their purchase, rather than be subject to capricious rate increases imposed by credit card companies.

Over-the-Limit Fees on Holds

Under this proposal, institutions would no longer be able to assess an over-the-limit fee where the limit was only exceeded by a credit card hold. The CPB supports this proposal. Individuals should not have to pay a fee because of the particular processing methods of the credit card issuer. The federal regulators should go farther, however, and bar over-the-limit fees where the credit limit was exceeded by *any* assessment of fees or interest levied by the credit card issuer.

Double-Cycle Billing

This proposed rule prohibits two-cycle, or double-cycle billing practices. The CPB has long advocated for the elimination of this unfair practice where the institution reaches back to the prior billing cycle to charge more interest.

Security Deposits and Issuance Fees

This proposal restricts credit card companies from financing fees and charges for opening a credit card where the assessments total more than one half of the credit limit. The proposal would also require security deposits and fees exceeding 25 percent of the credit to spread over the first year, rather than to be paid in a lump sum.

While the CPB supports the provision to spread payments over a year, the threshold for such a requirement should be reduced to 10 percent. The rule should also prohibit as unfair any credit cards assessing fees in excess of 25 percent of the credit limit, whether or not those fees are financed.

Advertisement of Rates

This proposal would require institutions advertising multiple annual percentage rates or credit limits to disclose in their solicitations the factors which determine the rate that the consumer will receive, whether it is the highest or lowest.

It is clearly unfair and deceptive for a credit card issuer to advertise low interest rate cards for which very few qualify. This proposal, however, does not improve the quality of disclosure. Credit card companies who use a consumer's credit score for a prescreened offer should be required to describe to consumers the terms of credit for which they are likely to qualify.

Overdrafts

The Regulation AA rule proposal also contains two provisions relating to overdraft programs. First, the proposal creates an opt-out right for customers. Customers must be provided with notices to opt-out, once before an overdraft fee is assessed, and again during any statement period in which an overdraft is assessed. Second, the proposal prohibits banks from assessing an overdraft fee where the overdraft would not have occurred but for the debit hold placed on funds in the account that exceeds the actual purchase amount.

We believe that the federal regulators have not gone far enough. The overdraft loan programs, with their high costs, are unfair to consumers, and thus the consumers should be given an opt-in option prior to being enrolled in such a program. As discussed in our comment to the proposed Regulation DD rule revisions, a customer can easily accumulate hundreds of dollars in overdraft fees before he or she receives the opt-out notice in his or her statement. By then, the damage is done. A notice sent before overdrafts are charged is not sufficient to alert a consumer that he or she could be charged hundreds of dollars for a single day's worth of ATM charges. The only solution is to provide for consumers an opt-in option prior to enrolling in an overdraft "service".

In conclusion, most of these proposals, in connection with the proposals to further regulate credit card practices under Regulation Z of TILA, will prove beneficial to consumers. However, the Board *can* and *should* do more to protect consumers from the abusive, predatory, and unfair practices of credit card issuers, especially in these difficult economic times. In particular, companies should be prohibited from offering credit cards where fees are more than 10% of the credit card limit. Moreover, prescreened offers should only contain advertisements for interest rates and credit limits for which the consumer is likely to qualify. Finally, the consumer should be provided the opportunity to opt-in, rather than the opt-out option for overdraft programs.

Thank you for your consideration of our comments.

Sincerely,

Mindy A. Bockstein
Chairperson and Executive Director

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