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Governor

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
CONSUMER PROTECTION BOARD

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Chairperson and Executive Director

April 14, 2010

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

Submitted via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket No. R-1384, Regulation Z: Truth in Lending

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on the proposal to amend the rules of Regulation Z and implement certain provisions of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (the "CARD Act").

The CPB, established in 1970 by the New York State Legislature, is marking its 40th anniversary as the State's top consumer watchdog and think tank. The CPB's core mission is to protect New Yorkers by publicizing unscrupulous and questionable business practices and product recalls; conducting investigations and hearings; enforcing the Do Not Call law; researching issues; developing legislation; creating consumer education programs and materials; responding to individual marketplace complaints by securing voluntary agreements; and, representing the interests of consumers before the Public Service Commission and other State and federal agencies. Our Consumer Assistance Unit responds to and resolves nearly 16,000 complaints and inquiries a year on a variety of topics, including credit card disputes, banking problems, identity theft, and product refunds and returns.

The CPB continues to receive a substantial number of credit card-related complaints and inquiries, totaling more than 500 in 2009. In fact, given the continuing fiscal hardship, more than one-fifth of the complaints and inquiries to the CPB in the first quarter of 2010 were those related to credit and credit cards. The nature of these complaints include billing disputes and erroneous charges, exorbitant fees, changes in interest rates, and late payment fees.

We commend the Federal Reserve Board (FRB) for its issuance of proposed rules amending Regulation Z. These long-awaited rules are intended to address large penalty fees and high interest rates assessed by credit card issuers. We submit these comments to help strengthen the proposal so that it will better serve consumers. We set forth our specific comments below.

Penalty interest rates should be reasonable and proportional to the omission or violation

The CARD Act authorized the FRB to "issue standards for assessing whether the amount of any penalty fee or charge...is reasonable and proportional to the omission or violation..."<sup>1</sup> It is the CPB's position that, this language authorizes the FRB to regulate penalty interest rates, and not

<sup>1</sup> CARD Act, 111 Pub. L. No. 24, § 102(b), 123 Stat. 1734, 1740 (2009) (to be codified at 15 U.S.C. § 1665d).



just fee-based penalties such as over-the-limit and late payment fees. Accordingly, the CPB asserts that the exclusion of penalty interest rates from proposed Section 226.52(b) is an overly narrow application of the FRB's authority under the CARD Act.

To help ensure that consumers are not hit with burdensome and exorbitant interest rate hikes, we urge the FRB to utilize its authority to issue regulations that would apply the reasonable and proportional standard to penalty interest rates.

Specifically, the CPB urges the FRB to limit penalty interest rates to a reasonable maximum percentage amount above the applicable non-penalty rate. Absent adequate regulation, penalty interest rate increases will keep consumers in a vicious cycle of debt. As of October 2009, research shows that the median penalty rate was a whopping 28.99%, or 11-16.75 percentage points higher than the median non-penalty rate.<sup>2</sup> Such a drastic increase in the rate applied to an existing balance creates a nearly insurmountable barrier for consumers who are trying to work their way out of credit card debt on the road to financial stability.

#### The safe harbor provision should be strengthened

Similarly, the CPB advocates for the FRB to strengthen the proposed safe harbor provision to ensure that it results in a fee or charge that is reasonable and proportional to the omission or violation. The proposed safe harbor in Section 226.52(b)(3) will not achieve the goal of reasonableness or proportionality unless the formula is simplified and the "specified dollar amount" is capped at a level much lower than the burdensome amounts currently being charged by issuers.

The safe harbor provision can be strengthened by eliminating the choice for credit card issuers that is currently contained in the proposal. Providing issuers with a choice between the higher of the two safe harbor formulas will likely result in consumers being charged fees that are disproportionate to the violations that occurred. This is unfair to consumers who make very slight mistakes that actually cost an issuer little or nothing. For example, if the specified dollar amount in Section 226.52(b)(3)(i) is set at \$20, then a consumer who goes over the limit by \$20 or pays a \$20 minimum payment one day late could be charged \$20 for the minor violation. There is no assurance that this fee is an accurate reflection of the cost to the issuer or the amount necessary to deter future violations by the consumer. Instead, small infractions by consumers would become large windfalls for issuers.

The CPB urges the FRB to set the safe harbor at 5% of the violation, not to exceed \$10. To charge more than \$10 for a violation, regardless of size, a bank should be required to use and disclose its cost or deterrence analysis to demonstrate that the fee is reasonable and proportional.

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<sup>2</sup> NICK BOURKE & ARDIE HOLLIFIELD, PEW CHARITABLE TRUSTS, STILL WAITING: "UNFAIR OR DECEPTIVE" CREDIT CARD PRACTICES CONTINUE AS AMERICANS WAIT FOR NEW REFORMS TO TAKE EFFECT 19 (2009), *available at* [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit\\_Cards/Pew\\_Credit\\_Cards\\_Oct09\\_Final.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/Pew_Credit_Cards_Oct09_Final.pdf)



### Full Disclosure of Rate Review Requirement

The FRB is charged, under new Section 148(d), to issue final rules that evaluate whether banks comply with the rate review requirements contained in Section 148. Although Section 148 requires that issuers maintain rate review methodologies that are "reasonable," the FRB's proposed Section 226.59(b) provides no means to ensure that issuers comply with this section - beyond requiring that methodologies be written.

Therefore, the CPB respectfully requests the FRB to require that the written methodologies be a part of the public record, thereby enabling consumers to understand the process that credit card issuers are using to review rates. This type of transparency and disclosure will allow consumers to better understand the review process. It will also ensure that issuers are adhering to the required factors for determining whether a rate reduction is required on a consumer's account.

The CPB also asks the FRB to require issuers, for each semi-annual review they conduct, to report on the number of accounts they evaluated and the number that result in a rate reduction. This reporting would provide perspective on whether the review methodologies are actually reasonable and beneficial. In order to keep the process streamlined, this information could be reported once every twelve months, rather than immediately after each review.

Further, in the interest of greater communication with customers, we urge the FRB to require issuers to notify consumers when a review of their credit card account takes place.

### Strengthening rate review and reduction to stem abusive rate increases by creditors in advance of the February 22, 2010 CARD Act implementation date

Effective February 22, 2010, many unfair credit card industry practices were outlawed. However, between January 1, 2009 and February 22, 2010, prior to implementation of most of the key provisions of the CARD Act, many consumers had their rates increased for reasons that would not be permissible after the CARD Act took effect. During that time period, approximately 90% of people who responded to a CPB survey stated that their card issuer changed the terms of their agreement, and nearly 60% said their card issuer had raised interest rates despite the fact that their balance had been completely paid off at the end of each billing period.

To realize the full intent of the CARD Act, the CPB urges the FRB to enhance the reach of its proposed rule regarding review of accounts that were subject to rate increases on existing balances before the law went into effect.

The FRB's current proposal allows issuers to choose between factors for justifying and maintaining rate increases, using either market conditions or the consumer's creditworthiness. Further, the proposal delays the start of required rate reviews until February 22, 2011, leaving some consumers without the benefit of a review for up to 26 months. These loopholes undermine important protection for consumers who were hit with unjust rate increases made prior to the February 22, 2010 effective date. Moreover, for consumers who had their rate increased for a reason that would not be permitted under Section 171, the issuer should be



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required to reinstate the prior rate as applied to their existing balance.

By strengthening the rate review for accounts on which rates were increased in advance of February 22, 2010, the FRB will prevent unfair credit card practices from being grandfathered into the marketplace and will provide an important measure of relief for consumers struggling in this economy.

### Conclusion

The CPB commends the FRB's efforts to strengthen consumer protections against abusive credit card practices and appreciates the opportunity to offer input on these issues. By taking the actions recommended above, the FRB can better implement the goals and intent of the CARD Act.

Thank you for your consideration of our comments.

Sincerely,



Mindy A. Bockstein  
Chairperson and Executive Director

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