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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510-6075

August 13, 2008

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

**Re: Comments on the Proposed Rule to amend Regulation AA
Unfair and Deceptive Acts and Practices
Docket No. R-1314**

Dear Ms. Rupp:

We are writing to comment on proposals set forth in Docket No. R-1314, regarding Unfair and Deceptive Acts and Practices rules with respect to credit card issuers.

The Board of the Federal Reserve, the Office of Thrift Supervision, and the National Credit Union Administration (the "Agencies") have made a number of proposals that will significantly reform credit card practices, helping to ensure fairness and transparency for consumers engaged in credit card transactions and enhancing safe and sound lending practices. In particular, the Agencies' proposal to eliminate retroactive interest rate increases is a significant step towards promoting fair, responsible, safe and sound lending practices. The proposed prohibition on the double-cycle billing method of calculating interest, and the rules on payment allocation, are also welcome additions. We commend the Agencies for taking these positive steps to reform issuers' credit card practices.

While the proposal of the Agencies is laudable, we believe that there is more to be done to ensure meaningful financial services reform. Accordingly, we are submitting comments on the proposals set forth in Docket No. R-1314. Following is an analysis of the proposed rule as well as a review of additional areas that we believe merit the Agencies' consideration.

ANALYSIS OF THE PROPOSED RULE

1. Time to Make Payments. Under the Agencies' proposed rule, institutions would be prohibited from treating a payment as late unless consumers have been provided a reasonable time to make

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that payment. The rule would create a "safe harbor" for credit card issuers who mail billing statements to consumers at least 21 days before the payment due date to ensure that issuers provide a reasonable time for consumers to make payment.

This rule will help ensure that consumers have sufficient time after receiving their periodic credit card statement to make their payments on time. Currently, credit card issuers are required to send their statements 14 days in advance of the due date. Some credit card issuers advise their customers to mail their payments 7 to 10 days ahead of the due date to avoid the imposition of late fees. This time frame provides consumers with very little time to review their statements and mail their payments to avoid having those payments treated as late. Consumers cannot control when a mailed payment reaches their financial institution, and the institution's failure to provide a reasonable amount of time to make payment can cause the consumer significant financial harm as a result of late payment fees and penalty interest rates. This proposal is an important step in helping ensure that issuers provide a reasonable time for consumers to make payments.

2. Payment Allocation. The Agencies' proposal requires that when different annual rates apply to different balances, issuers will be required to allocate payments in excess of the minimum using one of three specified methods, or a method that is no less beneficial to consumers. The issuer may: 1) apply the entire payment amount first to the balance with the highest annual percentage rate; 2) split the amount equally among the balances; or 3) split the amount pro rata among the balances. Alternatively, the issuer may choose an allocation method that is no less beneficial to the consumer than the enumerated methods. This is an important provision that will prevent issuers from applying customers' payments to their lowest rate charges first. While we applaud the proposal, we note that if a disproportionate amount of a consumer's balance is charged at the higher rate, then splitting that consumer's payment equally may not generate a fair result. We urge the Agencies to require issuers to allocate payments according to the first method. We further urge the Agencies to require payments to be applied in a way that minimizes the amount of finance charges to the account.

3. Retroactive Interest Rate Increases. Currently, when a credit card issuer increases a consumer's interest rate, the issuer is permitted to apply this increased rate not only to prospective purchases, but also to existing balances that the consumer already incurred at a lower rate. The result is that an existing credit card debt which the consumer may have been paying on time costs significantly more to repay. The proposal would prohibit institutions from increasing the annual percentage rate on outstanding balances unless the increase is due to a variable rate formula, a 30-day late payment, or the expiration of a promotional rate.

While this important provision will ensure that interest rate increases apply only to future debt, and not to debt that the consumer has already incurred, it could be strengthened. For example, this prohibition does not apply if the minimum payment is received more than 30 days after the due date. The Agencies should strengthen this proposal by ensuring that the prohibition on retroactive interest rate increases applies *in all circumstances*. Regardless of the consumer's payment history, debt that is incurred at a specific rate should continue to bear that rate, and interest rate increases should not be permitted on funds that have already been borrowed.

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4. Overlimit Fees. Under the proposal, institutions would be prohibited from assessing a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available credit. While this is a positive proposal, it does not go far enough in addressing excessive overlimit fees by issuers. Credit card issuers should be permitted to impose an overlimit fee only when a cardholder's action causes the credit limit to be exceeded, and not when a customer is pushed over the limit by a fee or charge imposed by the issuer. The Agencies should prohibit issuers' practice of imposing multiple overlimit fees during a single billing cycle. Further, the proposal should ban the imposition of multiple overlimit fees for a single violation of a credit limit, thereby preventing issuers from imposing overlimit fees on a balance in successive cycles when the consumer has only gone over the limit in a single instance. Lastly, the proposed rule would be strengthened by a requirement that issuers offer cardholders the option of obtaining a fixed credit limit that could not be exceeded.

5. Unfair Balance Computation Methods. The proposal would prohibit the practice known as "double-cycle billing," a practice whereby a credit card issuer calculates finance charges by including balances taken from the month preceding the billing cycle, thereby assessing higher than expected finance charges on cardholders who carry a balance. For example, if a consumer charges $1000 in one month and pays $900 when the bill comes, under double-cycle billing, that consumer would be charged interest not only on the $100 that is unpaid, but also on the $900 that the consumer paid on time, resulting in a significantly higher finance charge, as well as the elimination of any grace period for new purchases. Most of the major issuers have eliminated double-cycle billing, but this important proposal will ensure that no issuer will engage in this unfair practice.

6. Fees for the Issuance or Availability of Credit. Under the Agencies' proposal, institutions would be prohibited from charging to the credit card account fees or security deposits for the issuance or availability of credit – such as account-opening fees or membership fees – if those fees or deposits utilize the majority of the available credit on the account. This proposal addresses subprime credit card offers that can result in the imposition of hundreds of dollars in fees while offering a minimal amount of credit. Financial institutions that offer these products often tout them as an opportunity for consumers with tarnished credit histories to obtain credit. These products, however, can charge consumers with low credit scores extremely high fees that account for most of the available credit. While the intent of this proposal to limit charges for the availability of credit is admirable, allowing a credit card company to charge fees amounting to half of the consumer's credit limit is still excessive, and we would urge the Agencies to consider lowering the threshold.

7. Disclosure of Factors to Qualify for Lowest APR. Institutions making firm offers of credit that advertise multiple annual percentage rates or credit limits would be required, by the proposed rule, to disclose in the solicitation the types of criteria that determine whether a consumer will qualify for the lowest annual percentage rate and the highest credit limit advertised. We share the Agencies' concern that soliciting credit card applicants using "firm offers" that advertise low interest rates and high credit limits are deceptive when offered to consumers who are not likely to qualify for such terms. These consumers are often unaware that they may not be eligible for the best terms advertised in the offer. We are concerned, however,

that the proposed boilerplate disclosure language may not be particularly effective in addressing the issues raised by these solicitations.

ADDITIONAL AREAS FOR CONSIDERATION

There are a number of additional areas which we would encourage the Agencies to address in their efforts to enhance consumer protection with respect to credit cards. To the extent that these issues are within the scope of the current rulemaking, we would urge the Agencies to include the following recommendations. To the extent that they are outside of this rulemaking, we would urge the Agencies to issue additional proposed rules in these areas.

Universal Default. This practice involves credit card companies raising interest rates on customers who consistently pay their credit card bills on time. Under universal default, consumers can make their credit card payment on time every month, but see their interest rate skyrocket due to a late payment on another account such as a utility. Universal default can also be applied when a consumer pays all bills on time, but the consumer's credit score decreases because the consumer has taken out a new loan or utilized more of his or her available credit. Further, it can be applied without any action by the consumer at all, but simply because the issuer has determined that there has been a change in the consumer's risk profile. Some credit card issuers, to their credit, have moved to ban or limit this practice, but we believe that this ought to be an industry-wide standard. The Agencies should work to assure consumers that their rates will be more closely related to their payment record with their card issuer by prohibiting universal default.

"Any Time Any Reason" Repricing. Many credit card issuers include clauses in their contracts allowing the issuer to raise rates and change terms on their credit card customers at any time and for any reason. Customers should be assured that if they pay their bills on time, their rates will not be arbitrarily increased for the life of the credit card agreement. The Agencies should prohibit unilateral changes in the interest rates and other terms of a credit card for future purchases "at any time for any reason."

Penalty Interest Rates. A consumer who makes a late payment and as a result receives a penalty interest rate should not be penalized indefinitely. The Agencies should limit the length of time an issuer is permitted to keep a customer at a penalty interest rate after six months of on-time payments.

Fees for Method of Payment. The Agencies should prohibit issuers from charging their customers fees to pay a credit card by telephone or online. Credit card issuers should not be allowed to create disincentives to paying on time.

CONCLUSION

Unfortunately, far too many American families, who are already being squeezed by the rising costs of food, energy, health care and education, now find themselves forced to rely on short-term, high-interest credit card debt to finance life's daily necessities – including their mortgage payments – because of the ongoing credit crisis and the weak economy. Credit cards

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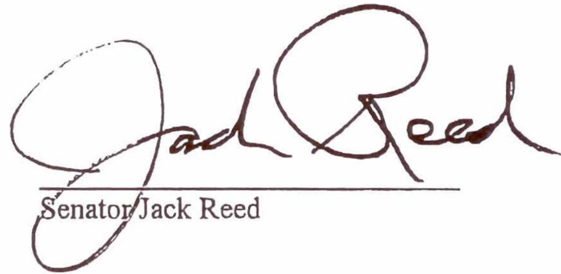
can be important tools for consumers in the financial service marketplace to build more financially secure lives, and the Agencies' proposal, in addition to the proposals set forth in this letter, will enhance this positive aspect of credit cards while minimizing their drawbacks.

These proposals will also strengthen the safety and soundness of lending practices. As the subprime crisis has shown, reckless lending practices in even a discrete area can tarnish an entire balance sheet. Reforming credit card practices as proposed in this letter will benefit not only consumers, but also the long-term health of issuers, as well. We applaud the Agencies for these proposals to protect consumers from unfair and deceptive credit card practices, and we encourage the Agencies to adopt additional measures to protect consumers in the financial services marketplace.

Thank you for considering these views.

Sincerely,

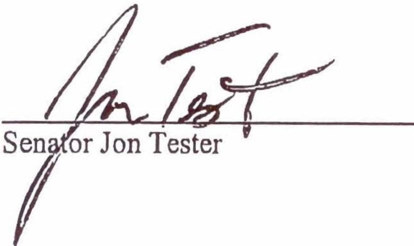
Senator Christopher J. Dodd



Senator Jack Reed

Senator Robert Menendez

Senator Sherrod Brown



Senator Jon Tester