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August 4, 2008

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

Ms. Mary Rupp, Secretary
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: **Unfair or Deceptive Acts or Practices – Credit Cards**
Board Docket No. R-1314 (Regulation AA)
NCUA RIN 3133-AD47

Dear Ms. Johnson and Ms. Rupp:

This letter is submitted in response to the joint proposal regarding Unfair & Deceptive Credit Card Practices under Regulation AA and NCUA Regulation Part 706. Securian Financial Group is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements to our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms and deposit forms to credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

The following will provide specific comments to each of the proposed revisions.

SUMMARY

The Agencies' proposed rule would prohibit institutions from engaging in certain acts or practices in connection with consumer credit card accounts. The following will provide specific comments to each of the proposed new sections.

SECTION –.22 – UNFAIR TIME TO MAKE PAYMENTS

The Agencies are proposing a rule stating that a credit card issuer may not treat a payment on a credit card account as late unless the cardholder has been provided a reasonable amount of time to make the payment. The general prohibition does not apply in the context of payment deadlines associated with grace periods. The Agencies provide that an issuer would not violate the prohibition if the issuer has adopted reasonable procedures designed to ensure that periodic statements specifying the payment due date are mailed or delivered to consumers at least 21 days before the payment due date.

Proposed Section --.28 states that, when making a solicitation for a firm offer of credit for a credit card, if the rate or credit limit that the consumer may receive depends on specific criteria bearing on creditworthiness, the offer must state the types of criteria. The rule provides the following model language that may satisfy this disclosure:

> If you are approved for credit, your annual percentage rate and/or credit limit will depend on your credit history, income, and debts.

This disclosure must be "presented in a manner that calls attention to the nature and significance of the information". The proposed rule explain that whether or not the disclosure satisfies this requirement will depend on where the disclosure is placed, whether the typeface and type size used are easy to read, and whether boldface or italics are used; placing this disclosure in a footnote would not satisfy this requirement.

We provide responses to the following specific requests for comment:

- *The Agencies request comment on whether proposed § __.28 should contain a proximity requirement. If a proximity requirement were to be adopted, the Agencies request comment on whether the disclosure should be proximate to the first statement of the annual percentage rate or credit limit or the most prominent statement of the annual percentage rate or credit limit.*

We do not believe a proximity requirement is necessary. The rule as proposed provides enough criteria with which to require creditors to make the disclosures clear. Additionally, marketing pieces that advertise firm offers of credit vary widely; the most effective place to put the disclosures may be different from one piece to another. Too rigid of a standard would be operationally burdensome, and could even make the information harder to read for the consumer. In other words, creditors should be allowed to place the disclosure where it makes the most sense in a particular piece, as long as the disclosures are easy to see and understand.

We do wonder, however, why the Agencies do not use a "clear and conspicuous" standard, which is the Reg Z standard and one with which creditors are extremely familiar.

- *Whether consumers who receive firm offers of credit offering a range of or multiple annual percentage rates or credit limits understand that there may be no possibility that they will be eligible for the lowest annual percentage rate and the highest credit limit stated in the offer.*
- *Whether the proposed disclosure would be effective in informing consumers that they may not receive the best terms advertised.*

We are not certain whether consumers understand that there may be "no possibility" that they will be eligible for the lowest APR or the highest credit limit (consumers tend to be optimistic about their prospects). However, we do not believe that this is a required aspect of the offer. We believe that consumers understand, especially in this day and age, that rates depend on creditworthiness. This is especially so since this disclosure is routinely provided to consumers already on many types of credit. Consumers also have some understanding of what their credit rating is – they generally know if they have "good credit" or "bad credit", or somewhere in between. Those with bad credit know they will not get the best terms. If the Agencies are concerned that their proposed Model Language is not sufficient, we would suggest the following:

- *Whether the proposed 21-day safe harbor period between mailing or delivery of the periodic statement and the due date would give consumers sufficient time to review their statements and make payment and is otherwise a reasonable amount of time to make payment.*

No, this timeframe is not appropriate – it is too long. Congress and the Board already stated years ago in TILA and Reg Z section 226.5 that statements must be mailed 14 days prior to any free-ride period. In this day and age of electronic payments and a reliable U.S. Postal Service, we fail to understand why the Agencies are now proposing an even longer timeframe for cards without grace periods. We fail to understand how a common practice for cards with a grace period will now suddenly be an Unfair and Deceptive Practice for cards without grace periods. This proposed rule, and its timeframe, will also require many creditors to mail statements at different times to different consumers (or in some cases to the same consumer), as many creditors offer several different cards, some of which may have a grace period, and some which will not. It simply makes no logical sense to have different timeframes for cards with grace periods and cards without. Additionally, the 21 days would appear to apply no matter how a consumer chooses to make a payment. The Agencies seems to assume that all consumers use the U.S. Postal Service to mail their payments, even though many consumers pay electronically or in person. Regardless of the way in which payment is made, 14 days is a sufficient timeframe. A consumer does not need a week to review her statement, and the U.S. mail does not typically take 7 days to arrive anywhere in the United States. Responsible consumers currently have no problems with meeting their due dates. The proposed rule is harsh to institutions, and only rewards irresponsible consumers. Institutions would be forced to revise their technology systems and statement-delivery procedures, which will be a huge and expensive undertaking, for very little, if any, consumer value.

- *The cost to institutions of altering their systems to comply with the proposed rule and to mail or deliver periodic statements 21 days in advance of the payment due date.*

Altering data processing systems is very expensive. Some of our clients estimate this cost to be $30,000 for this portion of the rule alone.

- *Whether the Agencies should adopt a rule that prohibits institutions from treating a payment as late if received within a certain number of days after the due date and, if so, the number of days that would be appropriate.*

No, the Agencies should not adopt a rule that prohibits institutions from treating a payment as late if the payment is late. This would defeat the purpose of a due date. The due date is dictated by the periodic statement and by agreement between the consumer and the institution. The due date is clearly disclosed on each statement and the consumer is well aware of the deadline. Responsible consumers will meet the due date. Irresponsible consumers should not be rewarded. Adopting such a rule will teach consumers to pay habitually late. This is unfair to the institutions and to the responsible consumers. It could also lead to confusion when a due date is disclosed but not enforced. Finally, if the Agencies are trying to curb unscrupulous lenders who hold payments until after the due date in order to charge late fees, there is already a rule in place to combat that – the Prompt Crediting of Payments rule in Reg Z. Alternatively, we suggest that if holding the payment is what the Agencies wish to combat, then pass a rule stating simply that a card issuer cannot hold the payment after the due date solely to assess late fees.

The proposed section --.26 also seems to prohibit interest from accruing as of the date the transaction is posted:

> (a) *General rule.* Except as provided in paragraph (b) of this section, a bank must not impose finance charges on balances on a consumer credit card account based on balances for days in billing cycles that precede the most recent billing cycle.

The only exceptions are for deferred interest and adjustments when a billing error is resolved.

The proposed rule as currently drafted essentially provides every consumer a free-interest period until the beginning of the next billing cycle. This would increase the cost of credit for all consumers, and limit the credit made available to the general public. We do not believe this is the Agencies' intent, and would be very costly for card issuers. Moreover, the rule as proposed does not accurately reflect double-cycle billing. Double-cycle billing is where the average balance for 2 cycles is used to compute finance charges – this is not what is described in the proposed rule. For example: say the consumer charges $5,000 on his card in June. During the first billing cycle, $5,000 is the average daily balance and the consumer makes a $500 payment, causing $4,500 to be outstanding. In the second billing cycle, however, the card issuer takes the average of the two balances, or $4,750, to compute finance charges, even though the outstanding balance at the end of the cycle is only $4,500. This is double-cycle billing and we assume that it is this inequity that the Agencies seek to correct. We request that the Agencies revise the proposed rule in order to limit its scope, and clarify that accruing interest as of the date the transaction is posted is still permitted.

SECTION --.27 – UNFAIR FINANCING OF SECURITY DEPOSITS AND FEES FOR ISSUANCE OR AVAILABILITY

Proposed section --.27 sets forth limitations on the amount of fees and security deposits that can be charged, and how and when they may be charged. We have no objection to this rule. We respond to the following specific requests for comment:

- *Whether the final rule should impose additional, specific restrictions on charges on credit card accounts that a creditor can impose without the consumer's advance authorization.*

No, no additional restrictions should be imposed. Further restrictions would only increase the cost of credit and restrict credit available to consumers. The proposed new Reg Z rules provide enhanced disclosures for secured cards, and with Reg AA's restriction on fees, ample protection is provided to consumers.

- *Whether disclosure of security deposits and fees enables consumers to understand the impact of those charges on the availability of credit.*

Yes. Applications and advertisements for secured credit typically tell the consumer the maximum credit limit available (e.g., "up to $500"). This, coupled with the disclosures regarding fees will inform the consumer that only a portion of the credit limit is available.

SECTION --.28 – DECEPTIVE FIRM OFFERS OF CREDIT – RISK BASED PRICING

- *The extent to which institutions tier or otherwise vary the fee for exceeding the credit limit based on the number or dollar amount of transactions while the account is over the credit limit.*

Credit unions generally do not tier the fee; it is usually a flat fee regardless of the amount by which the account is over the limit or the number of transactions that occur to put the account over the limit.

- *The extent to which institutions assess fees for exceeding the credit limit when the transaction that exceeded the credit limit occurred in an earlier billing cycle and the consumer has not engaged in subsequent transactions.*

Credit unions generally do not assess fees in the following billing cycle. However, some credit unions must do it this way due to system constraints, but they only assess one fee. So, it is not an additional or double fee, but rather just a delay in posting.

SECTION --.26 – UNFAIR BALANCE COMPUTATION METHOD

Under new section --.26, an institution cannot impose finance charges on outstanding balances based on balances for days in billing cycles that precede the most recent billing cycle (i.e., the so-called "double-billing cycle" method). There are 2 exceptions to the general rule: it does not apply to (1) the assessment of deferred interest; or (2) adjustments to finance charges following the resolution of a billing error.

We have no objection to prohibiting double-cycle billing. However, we are concerned that the Agencies' proposal as currently drafted does not in fact prohibit double-cycle billing and actually goes far beyond double-cycle billing. We explain, as follows:

Comment 1 appears to describe double-cycle billing accurately:

> A bank is prohibited from computing the finance charge using the so-called two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles.

The Commentary, however, goes on to use the following example:

> *Example.* Assume that the billing cycle on a consumer credit card account starts on the first day of the month and ends on the last day of the month. A consumer has a zero balance on March 1. The consumer uses the credit card to make a $500 purchase on March 15. The consumer makes no other purchases and pays $400 on the due date (April 25), leaving a $100 balance. The bank may charge interest on the $500 purchase from the start of the billing cycle (April 1) through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 30). The bank is prohibited, however, from reaching back and charging interest on the $500 purchase from the date of purchase (March 15) to the end of the March billing cycle (March 31).

This appears to prohibit creditors from having interest accrue from the date the transaction is posted. This is standard practice in the industry, is understood and expected by consumers, and is no different than any other type of loan. It also appears to make grace periods obsolete, since it would seem to prohibit interest from accruing as of the date the transaction is posted, even if the consumer forfeits the grace period.

We also provide responses to the following specific requests for comment:

- *Whether restrictions similar to those in proposed § __.24(c) should apply when, rather than increasing the rate on future transactions, an institution declines to extend additional credit to the consumer. For example, the Agencies seek comment on whether, if an institution responds to an increased risk of default by declining to extend additional credit to a consumer, the consumer should receive the protections in proposed § __.24(c) with respect to any balance on the account.*

No. For the same reasons as noted above, the Agencies should not impose the protections in --.24(c) if an institution suspends the credit line. Again, the consumer will have already demonstrated a decreased ability to make payments. Raising the monthly required payment will only increase the chance of default, which will create a loss to the institution and further ruin the consumer's credit rating. This cannot be the Agencies' intent, and we urge the Agencies to refrain from imposing such a rule.

- *Whether the 14-day period in proposed § __.24(a)(2) is an appropriate amount of time to enable consumers to receive and review notice of a rate increase.*

Providing a 14-day timeframe is confusing, unnecessary, inconsistent with the proposed Reg Z changes, and should be withdrawn from the proposal. The Agencies are suggesting a rule in which the institution would mail a rate-change notice on December 31st, with such rate change effective February 15th. Yet the rate cannot increase on purchases made between January 15th and February 15th. So, even though the consumer will have received notice of increased rates, she continues to use her card rather than shopping around for a different card with lower rates. Yet the institution cannot charge her the increased rate even though she is benefitting from the use of the card.

- *Whether other means of protecting consumers from application of increased rates to existing balances (e.g., an opt-out) are more appropriate.*

Consumers already have ample ways of avoiding increased rates on existing balances, including an "opt-out": if a consumer no longer likes the rates or terms of a particular card, he is free to cancel the card and/or transfer balances to another card. Consumers do this all the time. Additional regulation is simply unnecessary. As noted above, it will only limit the institutions' ability to manage risk and complicate their compliance burden with no additional benefit to the consumer. This will increase the cost of credit to all borrowers, and restrict the amount of credit granted.

SECTION --.25 – UNFAIR FEES FOR EXCEEDING THE CREDIT LIMIT CAUSED BY CREDIT HOLDS

We have no objections to the proposed rule regarding credit holds. We respond to the following requests for comment:

- *The extent to which institutions assess more than one fee per billing cycle for exceeding the credit limit and, if so, what factors determine whether a fee is assessed (e.g., one fee for each transaction while the account is over the credit limit).*

Credit unions generally do not assess more than one fee per billing cycle for exceeding the credit limit.

2. A required minimum periodic payment on the outstanding balance that includes a percentage of that balance that is no more than twice the percentage that was in effect prior to the rate increase.

We cannot overstate our concerns with this proposed rule. While we agree with the exceptions listed above, this section seems to completely ignore fundamental concepts of risk management and safety & soundness. Moreover, the Agencies seem to agree that repricing existing balances is appropriate when a consumer demonstrates an increased risk to the institution; yet the Agencies propose to prohibit such a practice. For example, if a consumer's Beacon Score increases because of demonstrated late payments, a bankruptcy filing, or other negative circumstance, the institution cannot increase the APR on the *already-existing balance on which the consumer has demonstrated an increased inability to repay*. This is a staggering result and flies in the face of proper risk management and safety & soundness. It also contradicts all the guidance and other rulemaking that has permeated the industry over the last several years, in which the Agencies are constantly preaching proper risk management and safety & soundness with regards to mortgages and other credit products.

The Agencies then compound the problem by requiring that, if the institution increases the APR on new balances, it must also provide an opportunity to the consumer to pay off the existing balance either using an amortization schedule, or by significantly increasing the percentage of balance paid. The problems with this proposal are myriad. First, the Agencies are mandating in many cases a *higher* payment for a consumer who has already demonstrated a decreased ability to make his current payment. Secondly, an amortization schedule on a credit card is unheard of. Even if a system can be programmed to do it, it would be cost prohibitive and administratively very burdensome. As such, institutions will not use this method, and the proposed option becomes instantly obsolete. Finally, this proposal puts extreme limitations on what an institution can do in such a situation to limit risk, and could essentially result in only one practical reality for the institution (and the consumer): to terminate the credit line and cut off credit to the consumer completely. This cannot possibly be the Agencies' intent. In this day and age when strapped consumers are relying on credit cards to purchase gas and groceries, cutting off their only life-line would be a cruel and harsh result, and would serve only to add insult to injury while going through tough financial times. If a consumer if cut off from his line of credit, it could also force him into less desireable loan types such as payday loans or title loans. This cannot possibly be the Agencies' intent, and they should not impose such a result on the consumers. We request that the Agencies withdraw this proposal.

Alternatively, we suggest a different approach under this proposed rule. Rather than unilaterally banning increased APRs on existing balances, we suggest limiting how or when an institution can increase the APR on a *particular consumer*. Whether these limitations are drafted as additional "exceptions" under the rule we will leave up to the Agencies. Our suggested new rule would be this: institutions can increase the APR on existing balances as long as there is a corresponding deterioration of the individual consumer's creditworthiness, or if the increase is due to a universal increase in the entire portfolio (rather than the increase being specific to an individual consumer) – i.e., the institution changes its overall pricing on a particular card that it offers due to market conditions. Institutions could be required to maintain documented evidence of when a particular consumer's credit history changes (e.g., a copy of the credit report or credit score) or when pricing of the portfolio changes (e.g., rate sheets, pricing committee meeting minutes, etc.). This would help institutions manage their risk and maintain safe & sound practices, while protecting consumers against unilateral or arbitrary increases to consumers' existing balances for no justifiable reason.

- *Whether proposed §__.23(a) should permit institutions to apply amounts in excess of the minimum payment first to balances on which the institution is prohibited from increasing the rate (pursuant to proposed § __.24).*

We are confused by this request. This request seems to imply that the Agencies would be changing the rule that they are proposing. As currently proposed, excess payments must be allocated to the highest APR balances. This request for comment implies that, instead, the institutions may allocate it to the "frozen APR" balances, which will not be the highest-rate APR balances.

With that said, however, we do believe that institutions should be permitted to apply excess payments to balances on which the institution is prohibited from increasing the rate under proposed section --.24.

We again note that the Agencies are complicating the payment allocation process, a process which they already admit is confusing to consumers. They are only succeeding in now confusing the institutions. And it will be nearly impossible for customer service representatives to explain the allocation methods to the consumers, and extremely difficult to explain the methods in the credit contracts. Again we reiterate that a better approach is improved disclosures. With proper disclosures, consumers will understand how payments are allocated and can shop for, and use, their cards as they see fit.

Finally, we must once again state that mandating payment allocation methods will require massive systems enhancements which will cost institutions tens of thousands of dollars. Such expense will necessarily be passed on to the consumers, which will increase the cost of credit and limit the credit available to consumers.

SECTION --.24 – UNFAIR APPLICATION OF INCREASED APRs TO OUTSTANDING BALANCES

Under proposed new section --.24, an institution cannot increase the APR on any outstanding balance. There are 3 exceptions:

1. If the increase is due to the increase of the Index in a variable rate plan;
2. If the increase is due to the expiration of a promotional period, and the increase is not more than what the APR would normally increase to at the end of the promotional period (e.g., if at the time the card was applied for, the promotional rate was 3.99%, to increase to 9.99%; but in the meantime the institution increased its normal rates to 10.99%, at the end of the promotional rate, the APR could only increase to 9.99%); and
3. If the member's payment is late 30 days or more.

Opportunity to Pay Off Balance. Additionally, if the institution increases the rate for reasons other than the 3 exceptions stated above, (i.e., a unilateral rate increase on new balances) the institution must provide the consumer with a method of paying off the outstanding balance that is no less beneficial than one of the following methods:

1. An amortization period for the outstanding balance of no less than 5 years beginning on the date in which the increased APR went into effect; or

The rule that the Agencies suggest is problematic and wholly unnecessary. We urge the Agencies to refrain from proposing such a rule.

- *Whether the Agencies should adopt a rule that requires institutions, upon the request of a consumer, to reverse a decision to treat a payment mailed before the due date as late and, if so, what evidence the institution could require the consumer to provide (e.g., a receipt from the U.S. Postal Service or other common carrier) and what time frame would be appropriate (e.g., payment mailed at least five days before the due date, payment received no more than two business days late).*

This would be an appropriate and reasonable rule. It is also more fair than the above-suggested rule to prohibit institutions from treating a payment as late if received within a certain number of days after the due date. A sufficient time frame may be that the payment is mailed or sent at least 7 days prior to the due date, and received no more than 2 days after the institution considers the payment to be late. The evidence required must be documented proof. This could be a receipt from the post office or a private common carrier, or a bill pay confirmation from an on-line bill pay service. We believe, however, that such a rule would be more appropriately placed in Reg Z's Prompt Crediting of Payments section, rather than Regulation AA or NCUA Part706.

SECTION --.23 – UNFAIR ALLOCATION OF PAYMENTS

The Agencies propose new rules regarding the allocation of payments among different balances with different rates. If a consumer makes more than the required minimum payment, the excess must be allocated among the different balances "in a manner that is no less beneficial to the consumer than one of the following methods":

1. The excess amount is first allocated to the balance with the highest APR, with any remaining excess payment allocated proportionately in descending order, i.e., highest-to-lowest APR; or
2. Equal portions of the excess amount are allocated to each balance; or
3. The excess amount is allocated among the balances in the same proportion as each balance bears to the total outstanding balance.

The Agencies in proposing the rule state that consumers have no control over payment allocation and do not understand payment allocation disclosures, and that they have not been able to draft a sufficient disclosure regarding payment allocation. We believe that this new rule would be tantamount to pricing restrictions. This is a harsh result for institutions, and will significantly alter their procedures as well as their data processing systems. The Agencies should re-visit the disclosure possibilities under Reg Z before they finalize this payment allocation rule. It could be something so simple as:

Payments will be applied to lower-APR balances first.

We also note that, even if the Agencies finalize this rule as proposed, consumers will probably be even more confused over payment allocation practices. That is because creditors will have their choice of how to allocate excess payments, which means that some consumers will be treated differently than others, and some cards owned by the same consumer may be treated differently. Consumers will have difficulty understanding that, and it will be very difficult for most to track which rules apply to which cards. This will make it nearly impossible for a consumer to manage his payments.

The rate disclosed is approximate. If you are approved for credit, ~~your~~ the annual percentage rate and/or credit limit that you actually receive will depend on your credit history, income, and debts.

We note, however, that these disclosures would be more appropriately contained in Reg Z rather than Reg AA. Reg Z is the disclosure law that is charged with educating consumers regarding the cost of credit. It also applies to all financial institutions, unlike Reg AA. Finally, by placing the disclosures in Reg Z, compliance officers will be able to find all advertising disclosure rules under one reg, reducing the possibility of inadvertent compliance error.

EFFECTIVE DATE

The proposed mandatory compliance date of 12 months is not enough time for institutions to make the changes proposed. Virtually every rule proposed will require significant re-programming of their credit processing systems. It is not unusual for data processors to take up to 12 months for changes under the best circumstances. Data processors will be stretched thin as the Agencies continue to propose and finalize the various rules under Reg Z, Reg AA, and the other regulations. As such, we would ask for 18 months instead.

CONCLUSION

The Agencies' proposals will serve to increase the cost of credit and limit the amount of credit available to the consuming public. Much of the proposal is problematic from both the consumers' and institutions' viewpoints. This is the second rulemaking with massive repercussions on institutions' credit card data processing systems (in addition to the proposed Reg Z changes to periodic statements). We cannot emphasize enough the cost and burden to the institutions, which will necessarily be passed on to the consumer. We urge the Agencies to reconsider and re-evaluate the impact of this rulemaking on institutions and consumers alike. The rulemaking seems to be an overly harsh reaction to practices or circumstances that can be corrected with less compliance burden to the institutions while still preserving available, affordable credit to consumers. We respectfully ask the Agencies to make sure that unintended consequences of the rulemaking will not "backfire" and create a dire situation for the industry and consumers.

Thank you for your consideration.

Sincerely,

/s/
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