Docket No. R-1314 (Regulation AA)
Meeting at the Federal Reserve Board on June 30, 2008

On June 30, 2008, representatives from Capital One met with Leonard Chanin, Associate Director, Division of Consumer and Community Affairs, Federal Reserve Board and April Breslaw, Director, Consumer Regulations, Office of Thrift Supervision to discuss the proposed rules under the Federal Trade Commission Act (Regulation AA).

The meeting was attended by Larry Stein, Andy Navarette, Robert Finnegan, Jack Forestall, and Ducie Le on behalf of Capital One. Also in attendance were members of Board and OTS staff.

Capital One's representatives stated that it supports regulatory action to resolve issues with repricing of existing balances. However, Capital One believes the proposal should be modified as follows.

Rate Increases on Existing Balances

- The exception for promotional rates should be reconsidered to determine whether it appropriately addresses issues that arise in connection with promotional rate balances.

- The proposed rule creates strong incentives for issuers to switch to variable rates. In order to preserve rates that remain fixed for a specific period of time, a new exception should be added allowing institutions to reprice fixed rate balances after a certain period of time (e.g., every three years). This would be disclosed upfront and would be subject to the proposed 45-day advance notice requirement.

- The proposed exception permitting repricing of existing balances when the account becomes 30 days' delinquent does not allow sufficient flexibility to reprice accounts that have a greater likelihood of being charged off. This exception should be modified to allow repricing when consumers exhibit other behavior that indicates the account may be charged off (e.g., when a consumer pays late twice in a twelve-month period).

Payment Allocation

- Because issuers must fund existing balances at prevailing market rates, the proposed rule should permit issuers to allocate payments first to older balances that remain at below-market rates (other than promotional rate balances).

Time to Pay

- The proposed safe harbor for the amount of time provided between the provision of a periodic statement and the payment due date should be 19 days rather than 21.

Liability Under State Law

- A declaration that established practices are unfair or deceptive under the FTC Act will result in litigation under similar state statutes. The agencies should explore using other authority to promulgate the proposed rules, such as the Board's authority under the Truth in Lending Act.