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August 4, 2008

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

RE: Regulation AA – Unfair or Deceptive or Acts or Practices, Board Docket R-1314
Office of Thrift Supervision, Docket ID: OTS-2008-0004
National Credit Union Administration: RIN 3133-AD47

Dear Secretary Johnson:

AARP[1] appreciates the opportunity to comment on the important proposed Regulation AA to curb deceptive or unfair credit card practices. The proposed rule appropriately recognizes that unfair or deceptive practices in the financial services marketplace cannot be mitigated simply by requiring more or better disclosure. Rather, certain practices must be prohibited. The growing body of evidence in favor of action to curb unfair or deceptive practices may be found in the analysis provided by the agencies proposing the rule, the Federal Reserve Board's consumer testing, the U.S. Government Accountability Office's 2006 report on credit cards, the many published studies cited in the agencies' materials, and from consumers themselves, who have filed complaints about credit card billing practices in what may be record numbers. AARP supports the proposed rules as an important first step in restoring fairness to the credit card marketplace. We urge the agencies to resist calls from credit card issuers and others to weaken the protections in the rules through exceptions or other loopholes.

INTRODUCTION AND EXECUTIVE SUMMARY

The growing debt level of this nation's consumers, including older consumers, is a very real and serious concern. Facing rising costs for basic necessities, older consumers often are forced to make a choice to go without or borrow to pay. Of course, many older people go without, often at serious expense to their own well being. But, for those who

[1] With nearly 40 million members, AARP is the largest, nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families. A full 45 percent of our members are employed full- or part-time. AARP helps people 50+ achieve independence, choice and control in ways that are beneficial and affordable to them and society as a whole. A major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets. As such, AARP has a strong interest in unfair or deceptive financial acts or practices.

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Jennie Chin Hansen, President
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have chosen to rely on the "plastic" safety net, borrowing increasingly means sky-high fees and the very real prospect of endless service debt.

AARP believes that legislative and/or regulatory intervention is often necessary to ensure the balanced treatment of consumers and businesses in the marketplace. The market does not always prevent practices that are not in the consumers' best interest, and this is especially true of entrenched practices in the current market for credit products, where even substantial market players have had difficulty achieving a change in market conduct. AARP has had first hand experience with the difficulty of modifying credit products, as AARP has attempted to use its own market power to obtain consumer protections for the benefit of our own membership that the proposed regulations would implement. Absent a regulatory or legislative mandate, no single credit card issuer is likely to unilaterally make significant changes, including the systems modifications that accompany billing practice improvements. It is clear that federal regulators and/or Congress should step in to effectuate meaningful consumer protections.

AARP therefore urges federal banking regulators to adopt the protections proposed in these rules, thereby taking the first steps in ending the abusive practices that contribute to and exacerbate the financial concerns of this nation's seniors. We also recommend additional measures that should be part of any reform package and urges their consideration, as well.

AARP's INTEREST IN A FAIR CREDIT CARD MARKETPLACE

Credit cards have become a fixture of U.S. economic life. They provide a tremendous convenience for many consumers, including older consumers, who increasingly use credit cards to pay for a range of products and services. For consumers who use a credit card simply for convenience and pay off the balance in full each month, the cards generally work well. The main problems occur when a consumer cannot pay off the full amount due, carries forward a balance, and gets caught in a downward spiral of exorbitant interest rates, fees and penalties, and other billing practices that simply wring more fees out of consumers, driving them further into debt.

Today, a growing number of older Americans find themselves deep in credit card debt – or even filing for bankruptcy. Although older households long have been considered among the most frugal and resistant to consumer debt, changing economic conditions -- particularly declining pension and investment income and rising costs for basic expenses such as prescription drugs, health care, and utilities -- have made credit card debt a more serious financial issue for older Americans.

According to the Employee Benefit Research Institute (EBRI), a growing number of older families in America are incurring debt, and debt levels are growing most significantly among the oldest families. In 2004, 61 percent of American families headed by people age 55 or older had debt, almost five percentage points higher than in 2001 (56%) and up nearly seven percentage points from the 1992 level of 53.8

percent. More troubling is the fact that it is the oldest seniors who incurred sharply higher debt; families headed up by someone age 75 years or older with debt increased substantially in 2004, to 40.3 percent from 29 percent in 2001.[2]

Much of this increased debt of older Americans is attributable to credit cards. A 2004 study by Demos[3] found that between 1992 and 2001, Americans over age 65 saw their credit card debt nearly double, on average, from $2,143 to more than $4,000. Seniors between the ages of 65 and 69, presumably the newly-retired, saw the most staggering rise in credit card debt – 217 percent – to an average balance of $5,844.[4]

Other warning signs also are evident. The proportion of income spent to pay off debts by households headed by individuals age 65 to 74 years of age has risen steadily over the past decade.[5] Among seniors with incomes under $50,000 (which is about 70 percent of all seniors), an estimated one in five families with credit card debt is in what is considered "debt hardship," spending more than 40 percent of their income on debt payments, including mortgage debt.[6]

Of great concern to AARP is not just that older consumers carry more credit card debt than before, but that more seniors are being buried in what may be considered ***unaffordable*** debt. In a May 2008 survey, AARP found that of those members who have been stressed by their financial situations in the last six months, a full 44 percent consider credit card debt to be a "major concern." The survey also found that twenty-seven percent of AARP members reported having difficulty paying off credit card debt.[7]

It is clear that unmanageable debt is forcing some older people to delay retirement. It is nudging those already out of the workforce back in. And it is causing a record number of seniors to seek bankruptcy-court protection. A recent study conducted for AARP found that in 2007 more than one in five debtors were over the age of 55, compared with one in 10 back in 1991. The study also found that the rate of personal bankruptcy filings among those ages 45 to 54 had jumped by more than 48 percent from 1991 to 2007. For those ages 55 to 64, the rate rose by 150 percent—and for those ages 75 to 84, by 433 percent.[8] It is reported that credit card debt is one of the top reasons seniors file for bankruptcy.

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[2] Employee Benefit Research Institute, Debt of the Elderly and Near Elderly 1992-2004, September 2006.

[3] Demos is a New York-based research and advocacy group.

[4] Tamara Draut and Heather McGhee, Demos, "Retiring in the Red: The Growth of Debt Among Older Americans," February 2004, available at http://www.demos.org/pubs/Retiring_2ed.pdf.

[5] According to the Federal Reserve Survey of Consumer Finances, the median debt services ratio for households aged 65-74 grew by 54 percent from 9.8 percent in 1992 to 15.1 percent in 2001 and debt services ratio for households 75 and older grew 169 percent, from 2.6 percent to 7 percent during the same period.

[6] Demos, "Retiring in the Red."

[7] AARP Member Insights from GfK Roper, May 2008.

[8] Deborah Thorne, Ohio University, Elizabeth Warren, Harvard Law School, and Teresa A Sullivan, University of Michigan, "Generations of Struggle," published by AARP's Public Policy Institute, June 2008, http://www.aarp.org/research/credit-debt/debt/2008_11_debt.html.

These are very disturbing numbers by any measure. But they represent the harsh realities of today's financial environment for many older Americans. And they represent a challenge for policy makers and regulators.

CREDIT CARD PRACTICES TRAP CONSUMERS IN DEBT

Deregulation of the credit card marketplace, in which state laws limiting interest rates and fees were nullified by two Supreme Court decisions in 1978 and 1996,[9] has drastically changed the way issuers market and price credit cards to consumers of all ages. It is clear that in recent years credit card companies have become far more aggressive in their fees and interest rate practices. The result is that penalty interest rates, high and accumulating fees and interest on fees can push consumers over the financial edge. In fact, consumers in debt trouble sometimes owe as much or more in fees and penalty interest charges as in principal. For the growing numbers of seniors who are unable to make more than the required minimum monthly payments on their cards, industry practices often push them into unmanageable credit card debt.

One West Virginia Senior Legal Aid reports that the biggest complaint she hears is "I pay and pay and pay every month and my debt doesn't go down much," because of high interest rates and a slew of penalty fees.[10] Consider the case of June Black, age 71, whose financial problems began when she put charges for a doctor visit, medical tests and prescription drugs on her credit card because she couldn't pay the full balance of about $300. Three years later, after a series of fees and finance charges were imposed, Black was more than $6,000 in debt. The Riverside, CA, woman sold her car, moved to a smaller and cheaper apartment and writes a $127 check each month to pay off a credit card she long ago cut up. With the 32.24 percent interest rate she is being charged, Ms. Black has little hope of ever climbing out of the debt. "It just keeps spiraling," Black said of her debt. "I figure I'm going to die before this gets taken care of."[11]

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[9] Credit card deregulation began in 1978, with the Supreme Court's decision in *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.* (Marquette Nat'l Bank of Minn. v. First of Omaha Serv. Corp., 439 U.S. 299, 99 S. Ct. 540, 58 L. Ed. 2d 534 1978). This case gave national banks the green light to take the most favored lender status from their home state across state lines, and preempt the law of the borrower's home state. As a result, national banks and other depositories established their headquarters in states that eliminated or raised their usury limits. In 1996, the U.S. Supreme Court paved the way for banks that issue credit cards to increase their income stream even more dramatically. In *Smiley v. Citibank (South Dakota), N.A.*, the court approved a definition of interest that included a number of credit card charges, such as late payment, over limit, cash advance, returned check, annual, and membership fees. As a result, national banks and other depositories can charge fees in any amount to their customers as long as their home state laws permit the fees.

[10] USA Today, "Retirees up against debt," Kathy Chu, January 23, 2007, http://www.usatoday.com/money/perfi/retirement/2007-01-22-senior-debt-usat_x.htm.

[11] As reported by David Olson, The Press-Enterprise, "More Seniors Struggle with Debt," June 4, 2007.

It is the customer who sometimes misses a payment, or sends a payment late, or simply pays the minimum due each month who generates the real profits for credit card companies. In 2005, interest and penalty fee revenues alone added up to a staggering $79 billion. By some estimates, nearly eight out of every 10 dollars of revenue for the credit card companies comes from customers who cannot pay off their bills in full every month.[12]

In a more rational market, lenders would limit their risk by restricting the credit available to consumers with riskier credit records or histories, rather than increasing the risk by imposing higher charges on consumers who may be in significant financial distress. But that is what credit card companies appear to be doing; consumers who get in trouble are allowed to continue borrowing, but at higher and higher interest rates and with more and more fees imposed on the account.

While the industry is certainly entitled to earn a profit, AARP is concerned that consumers in the marketplace be treated fairly and that credit card companies not reap huge financial rewards from the very practices that sink consumers into deeper and deeper debt. Indeed, there appears to be little relationship between interest rates and fees and the actual financial risk incurred by creditors. Rather than risk, it appears that many of the abusive fees and interest rates are being applied because these practices are not prohibited, and the credit card companies increasingly have financial incentive to do so.

COMMENTS ON SPECIFIC PROPOSALS

The proposed rules offered by the Federal Reserve Board, Office of Thrift Supervision and the National Credit Union Administration, use authority under the Federal Trade Commission Act for the banking regulators to prescribe regulations specifically defining unfair or deceptive acts and practices and mandating requirements to prevent them. The Federal Trade Commission (FTC) has adopted standards for determining whether an act or practice is deceptive under the FTC Act. As such, an act or practice is deceptive where: (1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.

AARP applauds the Federal Reserve, and fellow regulators at the Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA), for recognizing that additional disclosure is not enough to help the consumer whose credit card is governed by contract language that plainly states: "We reserve the right to change the terms at any time for any reason." There is both statutory authority and an urgent need for the Federal Reserve, OTS and NCUA to move to curb the most abusive credit card practices.

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[12] Elizabeth Warren, testimony before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, "Examining the Billing, Marketing, and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers," January 25, 2007.

AARP urges federal financial regulators to move quickly to adopt the rules as proposed and to resist amendments that will undermine the impact and value of the rules for consumers who desperately need fairness restored in the credit card marketplace. Specifically, AARP supports:

1. ***Prohibitions on treating a payment as late for any purpose unless the consumer has been given a reasonable period of time to make the payment.*** The rule establishes a 21 day safe harbor so that institutions that adopt reasonable procedures designed to ensure that statements are mailed or delivered at least 21 days before the payment due date are considered to be in compliance. The rule further prohibits creditors from setting a cut-off time for mailed payments that is earlier than 5 p.m. at the location where the payments are received; and accounts for next business day due dates that fall on a day that the U.S. postal service is not operating.

   Virginia Kory, 82, explained why this rule is needed and of particular interest to older cardholders who are more likely to make payments by mail (rather than electronically). She reports that she receives her credit card statement at least 10 days after it is dated, with little more than a week before the bill is due. She believes the short turnaround time is designed to wring late payments out of consumers who use the mail to pay their bills. "At one time, I seem to remember that one had adequate time to pay one's bill, put it in the mail and have the company receive it in time to avoid late charges," she said. "I get hot under the collar every time I think about these credit card practices."[13]

   Indeed, AARP recommends further improving this protection by providing a longer timeframe for a compliance safe harbor, and we therefore encourage consideration of a 30-day timeframe. Further, we believe that there may be considerable confusion among cardholders as to the interaction between due dates and grace periods, which now typically are 14 days. While our hope would be that issuers would simply adopt the 21-day grace period, we recognize that may not be true and therefore encourage regulators and issuers to determine how to properly educate consumers about this potential pitfall.

2. ***Payment allocation rules that would require creditors to more fairly apply payments to balances with different interest rates*** (e.g., teaser rates, cash advances, and purchases). Creditors would be allowed to choose among three specified methods of allocation or a method that is no less beneficial to consumers.

   Consider the example of Nelson Brentlinger of Pueblo West, Colorado, who borrowed $5,400 from his Capital One card to pay mortgage bills because he was told he'd pay no interest for 18 months. But when Mr. Brentlinger made new purchases on the card and tried to pay them off at the end of the month, the issuer applied his payment to his 0% balance and charged him 17.99% on his new purchases. Mr. Brentlinger felt misled because no one told him that payments would

[13] Washington Post, "Shining a Light on Card Fees," Carrie Johnson, December 2, 2007.

be applied to the lower rate balance first.[14] This is a common complaint from cardholders and the practice should be curbed.

3. ***Prohibitions on increasing the annual percentage rate on an outstanding balance.*** This provision is the core of the rule proposal and will help curb the widespread practice of charging higher interest rates on balances incurred before a rate increase went into effect, unless the cardholder is more than 30 days late in paying the credit card bill. There is perhaps no practice more unfair, or more harmful to the consumer, than having an unreasonable spike in the interest rate on money already borrowed. There simply is no justification for permitting the assessment of a higher penalty interest rate to an existing balance. No other industry is allowed to increase the price of a product once it is purchased.

   According to Consumer Reports, credit card contracts from major issuers commonly include clauses allowing the interest rate to rise to nearly 30 percent after just the slightest mistake, including one or two late payments of even one day or one dollar. [15] The rule will stop credit card issuers from increasing the interest rate on outstanding balances unless it is due to a variable rate formula, a 30-day late payment, or an escalation of a promotional rate to a standard rate.

4. ***Prohibitions on assessing a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available credit.*** Cardholders should not have to pay fees because of the processing methods chosen or permitted by the credit card issuer.

5. ***Prohibitions on "double-cycle billing,"*** which results in cardholders paying interest on debts paid off the previous month during the grace period. Under current practices, a consumer who begins with a zero balance on his or her credit card and pays off most but not all of the purchases made in the first month would be charged interest for the entire amount of the balance in the second month.

6. ***Prohibitions on excessive fees for low-limit credit cards.*** The proposal would forbid credit card companies that target consumers with poor credit histories from charging fees that amount to more than half of the credit being offered. If the fees charged to use the card amount to more than one-quarter of the credit line, cardholders would be allowed to pay these fees off over a one-year period.

7. ***Disclosure requirements*** mandating that institutions advertising multiple annual percentage rates or credit limits disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest annual percentage rate and highest credit limit advertised.

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[14] USA Today, "Facing losses on bad loans, banks boost credit card rates," Kathy Chu, February 7, 2008

[15] Consumer Reports, "With Credit Cards, a Deal is Not a Deal," May 2008, available at hptt://www.consumerreports.org/cro/aboutus/mission/viewpoint/credit-card-pitfalls-5-08/overview/creid-card-rates-ov.htm.

While AARP supports the rule proposals as far as they go, we urge banking regulators to do more to protect consumers from abusive credit card billing practices. Specifically, AARP supports the following reforms, which we believe will strengthen the proposed rules and provide necessary consumer protections:

Prohibit universal default. Federal banking regulators should expressly prohibit punitive "universal default" interest rates based on alleged missteps with another credit issuer or other company. This practice penalizes responsible debtors and should be prohibited. Although some of the credit card issuers have indicated that they no longer practice universal default, we believe that absent a specific prohibition, these practices are likely to arise again when the glare of the spotlight dims or when the pressure for additional credit card revenues becomes too great.

Limit penalty fees and interest rate hikes. Credit card companies should be prohibited from charging interest on debt that is paid on time, charging fees for consumers to pay their bill by phone, computer or other means, and doubling or tripling interest rates to penalize late payments or over-the-limit charges. Penalty fees and interest rates should be reasonable in relation to the cost of the default.

Prohibit mandatory binding arbitration. AARP believes that appropriate and adequate redress must be available to aggrieved consumers. Mandatory binding arbitration infringes on a consumer's ability to seek redress and should be prohibited.

Again, AARP appreciates the opportunity to comment on the proposed credit card rules. Questions concerning these comments should be directed to Evelyn Morton in AARP's Government Relation office at 202-434-3760.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy