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RE: Regulation AA - Unfair or Deceptive Acts or Practices [R-1314]
Regulation Z - Truth in Lending [R-1286]
Office of Thrift Supervision [OTS-2008-0004]
National Credit Union Administration [RIN 3133-AD47]

Dear Federal Banking Regulators:

Consumer Action[1] is pleased to submit these comments on your excellent proposals to protect consumers from unfair and deceptive practices by the credit card industry. We support your work on this issue but we wish also to highlight some areas in which we believe the agencies could improve on their proposed consumer protections.

We strongly support your proposed rule to protect cardholders from increases on existing balances unless a payment is 30 days late. We implore you not to allow any more exceptions to your prohibition on retroactive rate increases.

We urge the agencies to ban outright "universal default" and similar practices under which a creditor increases a cardholder's interest rate substantially when the cardholder makes a late payment on an account with a different creditor. Under no circumstances is it fair to amend the terms of an account with an excellent payment record—*even on a forward-going basis*—because of outside circumstances.

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[1] Consumer Action (www.consumer-action.org) is a non-profit organization founded in San Francisco in 1971. During its more than three decades, Consumer Action has continued to serve consumers nationwide by advancing consumer rights, referring consumers to complaint-handling agencies through our free hotline, publishing educational materials in Chinese, English, Korean, Spanish, Vietnamese and other languages, advocating for consumers in the media and before lawmakers, and comparing prices on credit cards, bank accounts, telephone plans and other consumer goods and services.

Require fair contracts

In addition, we urge the agencies to look beyond default rates, to clauses in the fine print of solicitations and cardholder agreements commonly labeled change of terms provisions. This is the legal boilerplate that gives issuers the right to change APRs and other key terms at will—at any time, for any reason. Consumers deserve protection from typical "take it or leave it" credit card contracts that favor the issuer's interests and leave the cardholder in a constant state of insecurity—even with a 45-day notice for changes in terms. Cardholders must be able to rely on the contract provided to them at account opening. Many family budgets and money management practices are built on these provisions. If they cannot be relied on, then U.S. families truly are living in a "house of cards" that could collapse at any time.

As a case in point, Citi, the third largest card issuer, promised in 2007 to remove unilateral change of terms provisions from its cardholder agreements. Citi's pledge received widespread acclaim from advocates, lawmakers and regulators at Congressional hearings and regulatory roundtables on credit card practices, and was widely reported in the media.

On June 25, 2008, the New York Times[2] reported that Citi was "quietly reconsidering its pledge as it confronts a host of financial troubles." The "deal is a deal" promise—printed as a "pledge" on cardholder's billing statements earlier this year is apparently not worth the paper it was printed on.

In addition, cardholder contracts overwhelmingly contain binding arbitration provisions that prevent cardholders from taking disputes to court. In its 2007 survey, Consumer Action found that 75% of all surveyed cards required that cardholders settle disputes in these private forums. (The percentage is probably higher, as we were unable to get an answer to this question in all instances.)

Provide meaningful opt out rights

Consumer Action urges the agencies to create a rule giving consumers the right to reject an increased rate to an existing balance by closing the account and paying it off at the old balance, under existing terms.

We suggest that cardholders who become 30 days late and find themselves facing an increased rate on a large existing balance would benefit from this standardized ability to "opt out" of an increase, convert the accounts to closed-end status and pay off their balances at the old rate. Because cardholders who took this route would lose future use of the revolving credit card account, we believe they would not choose the option lightly and would accept it only when they really needed to escape the burden of paying off a large balance at substantially more expensive terms. This approach would be a safety valve for those in substantial debt with income problems who can live without the card.

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[2] *Citigroup Considers Repealing a Pledge, and the Slogan With It,* by Eric Dash, New York Times, June 25, 2008

Limits on default rates

Your proposal would protect consumers more rigorously if it contained limits on default rates (also called penalty rates). While your proposed rule restricting the application of default rates unless payments are 30 days late removes much of the jeopardy to consumers, cardholders could face a much higher *prospective* cost of credit if they paid late, bounced a payment check or exceeded their credit limits. Consumer Action has found in its annual credit card surveys that these are default rate triggers with the majority of card issuers.

The situation is even worse when you consider that the vast majority of credit card issuers don't provide a "map to a lower rate" for cardholders who are in default status following one of these perceived infractions. Consumer Action's credit card surveys show that in virtually all cases, there is no "automatic" reduction in the default rate after the cardholder has not broken the rules again for a reasonable time, such as six months or a year. Credit card issuers have "unwritten rules" to review the rate only if a cardholder takes the initiative to call and ask—but this is certainly not a guarantee of a return to the original rate, or even to a rate lower than the default APR.

Consumer Action believes it would benefit credit card users if the agencies would combine a cap, or limit, on default rates in relation to the original rate,[3] along with a strict timeline on how long a card issuer can keep its cardholders at these often extremely high APRs before the rate is automatically lowered. This is a fair approach because it rewards consumers who become more financially responsible following such a situation.

Proposed Regulation AA

Time to make a payment. Under the proposal, credit card companies would be prohibited from treating a payment as late unless consumers have been provided a reasonable amount of time to make the payment. If a bill is mailed or delivered at least 21 days before the due date, it would be considered reasonable.

Consumer Action suggests that to provide the highest level of protection for consumers, the agencies must recommend to Congress that the 14-day requirement in section 163(a) of the Truth in Lending Act be increased to 21 days. Merely providing a "safe harbor" for issuers who do not provide the 21 days seems only a halfway solution. It may create confusion if no clarifying amendments are made to the current requirement in TILA for credit card companies offering a grace period to mail bills at least 14 days before the due date.

We agree with the agencies that it is not reasonable to set a time before 5 p.m. as the cut off for on-time payments received by mail. However we suggest several ways this section could be improved:

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[3] See Senate Bill 1395, *Stop Unfair Practices in Credit Cards Act of 2007*, Senator Carl Levin. Provision to limit penalty interest rate hikes to no more than a 7% increase.

- The 5 p.m. rule should be dependent on the local time of the consumer's billing address—not the local time of the issuer's payment facility.
- The provision should be extended to phone and online payments. Consumers use these methods to pay when they have missed their opportunity to submit an on-time payment by mail.
- There should not be a separate rule for payments sent to the wrong payment address. Five days to credit such a payment is excessive in the days of electronic billing systems.

Consumer Action's credit card surveys have determined that cardholders often are charged hefty fees for "expedited" or "rush" payments made by phone or online. We've heard consumers say that they paid the rush fee but missed the due date—resulting in a late fee on top of the rush fee. Every effort must be made to prevent this from happening to cardholders. We believe that the 5 p.m. rule could be clarified to ensure that expedited, fee-based phone payments are credited the day the payment is made. Otherwise the expedited fee should be prohibited.

Payment allocation. The agencies have proposed that payments made in excess of the minimum payment will have to be allocated in a manner that is no less beneficial to the consumer than one of the following methods: 1) apply the entire amount to the balance with the highest APR, 2) split the payment equally among the balances, or 3) split the payment proportionally among the balances.

Consumer Action also suggests that the rule apply to the entire payment, not just to amounts in excess of the minimum payment. We suggest that the decision of how to allocate this payment be left up to the cardholder, instead of the issuer. We like the option to apply the payment to the balance with the highest APR. Of the remaining two options, we would prefer the proportional split. It is more protective to cardholders.

Over-limit fees. We support your proposed rule to prohibit over-limit fees in situations caused by a hold (or block) on the credit limit. We wish to bring to your attention another unfair industry practice in which cardholders are charged "intra-cycle" over limit fees. We believe it is imperative to protect consumers from intra-cycle fees and allow over-limit fees only when the account is over its limit at the end of the billing cycle. Otherwise we fear that consumers who manage their accounts by making additional payments during the billing cycle in order to prevent going over limit will be unfairly penalized.

Two-cycle billing. We support your proposed rule to ban the practice of two or double cycle billing. However, we urge you to protect consumers from the practice known as residual, trailing or back-end interest by prohibiting it as well. This practice is a deceptive method of calculating credit card interest up until the day full payment is received. Residual interest is difficult to understand and disclosures about the practice in cardholder agreements are not standardized.

Cardholders who carry a balance for more than two months do not realize that the payoff amount is different from the "new balance" shown on the billing statement. Cardholders who check online to make sure a full payment has been received would see a zero balance, because residual interest isn't added until the close of the next billing cycle. Some people might not open the next credit card bill, because they expect a zero balance. This could set off late fees and other penalties on the account.

Subprime credit cards. The proposal restricts credit card companies from financing fees and charges for opening a credit card where the fees and charges total more than half the credit limit. Your proposal unfortunately does nothing to prohibit fees that are not charged to the line of credit. We suggest you go further and prohibit outright account opening "junk" fees on all subprime credit cards.

We strongly urge you not to allow any part of any fees required at account opening to be financed or spread out so that they will be made more palatable to cardholders. By lessening the pain of these high upfront fees you are defeating the purpose of consumer protection by making it easier to accept the card.

We fear that in creating the 25% cut off to allow financing the fees, you are legitimizing advance fee credit, which is obviously prohibited by other federal laws. To us, even fees of up to 24% of the line of credit that are required as a condition of getting the card are unconscionable because they exist primarily on cards that target people with no credit or who have had credit management problems in the past and who therefore have very limited credit options. Any upfront fees that are added to the balance increase the likelihood that the account holders will go over the credit limit and trigger more fees, and should be considered predatory.

We urge you not to use the term "security deposit" as we believe that an upfront security deposit, which is fairly deposited in a deposit account and held for the benefit of the consumer, does not warrant such treatment. Legitimate secured cards, which are useful for consumers who wish to build or rebuild credit, often require deposits in advance of 100% of the potential credit line. These are deposits—not fees—and the distinction should be made clear so that the rules would not result in a less robust marketplace for legitimate secured credit cards, which are already difficult for many consumers to find.

Right to reject. We strongly support your proposal to ensure that consumers may reject a card account without obligation if the only activity on an account includes creditor's fees. We suggest that this disclosure be placed on the first billing statement, where consumers would be most likely to notice upfront fees.

However, we are concerned that the term "membership fees" is rather vague and may result in more, not fewer, account opening "junk" fees as a condition for issuing credit.

In addition, we strongly urge you to give all consumers—not just the ones who did not receive disclosure materials in advance—the right to a full refund of any fees they paid before the activation and use of the card. Under no circumstances should paying a fee on

the first billing statement constitute obligation on the account, if the consumer made no purchase or other transaction.

We also suggest that you consider a requirement to ensure that cards are not reported on the cardholder's credit report until the cardholder uses the card to make a transaction. Because it is entirely possible that a cardholder may receive a card with substantially different and more adverse terms than the card they applied for, we believe it is imperative to give cardholders the right to reject that card up until they pro-actively make a transaction on it, without having their credit adversely impacted.

Firm offers of credit. Your proposal creates a new disclosure on advertisements of credit with multiple APRs or credit limits. Consumer Action first noted the deceptive practice of providing ranges of APRs (instead of a firm offer of credit) in its 1999-2000 Credit Card Survey,[4] when we reported that consumers were being asked to apply before finding out what rate their rate would be. We noted that with such tiered pricing, you don't know the rate and terms of the credit card you've applied for until an account in your name has already been established. As mentioned, this has the potential to negatively affect your credit rating since many lenders consider the total number of credit accounts as a key decision-making factor.

Your proposal requires that a solicitation which carries a range of purchase APRs, or multiple purchase APRs, must also disclose the "factors that determine whether a consumer will qualify for the lowest annual percentage rate and highest credit line offered."

We believe that your proposal appears to limit the disclosure of these factors only to prescreened solicitations. We urge you to extend the disclosure to all offers that carry a range of purchase APRs or multiple purchase APRs—including prescreened, Internet, take one brochures, etc.

In addition, it is imperative to make sure that the "factors" you require be specific and include a firm, actual credit score needed to get the lowest rate. We suggest also that you require the range of credit scores needed to be eligible for various APRs (mentioned in the disclosure). It would be helpful if you require disclosures to specify the brand of credit score used as a factor, such as a FICO 08, Beacon, Emperica, NextGen, VantageScore, etc. and where consumers can go to purchase a comparable score.

If this disclosure is given to consumers, it will give them an independent way to check that they are getting the best rate, and the most appropriate credit limit, for their credit standing. This should help prevent bait-and-switch offers in which consumers receive advertisements for low interest rates and high credit limits for which they are unlikely to qualify.

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[4] Consumer Action 1999 - 2000 Credit Card Survey, *Apply—then get your APR*, Available online at http://www.consumer-action.org/news/articles/2000_credit_card_survey#Topic_05

Regulation Z

Advertising provisions. We support your proposal to ensure that deferred interest plans that advertise "no interest" must clearly state the circumstances under which interest is charged from the date of purchase and, if applicable, that the minimum payments required will not pay off the balance in full by the end of the deferral period. However, we urge you not to exclude Internet ad banners or "pop up" ads from full disclosure. If the agencies determine that there is not enough room on Internet ad banners or "pop up" ads to include the entire required disclosure, then we suggest you ban deceptive and incomplete disclosures, such as "no interest," from these ads.

Applications and solicitations.

- ***Grace periods.*** We support your proposal to amend the term "grace period" in the summary table provided at application (and elsewhere such as at account opening or with checks that access credit card accounts) to "how to avoid interest." We are not sure we understand your distinction for instances in which "no grace period exists," and hope that you are careful not to imply that revolving credit cards with no grace periods are acceptable products.

- ***Foreign transaction fees.*** We support your proposal to require issuers to expand the disclosure of fees for purchase transactions in a foreign currency or those conducted outside the U.S.

  We suggest that you settle on a disclosure method that differentiates between the common fee of 1% imposed by MasterCard and Visa on member banks when currency is converted, and the additional percentage fee added and retained by the issuers. Consumer Action's annual credit card surveys reveal quite a bit of confusion on this point among consumers and customer service representatives alike. In addition, you may wish to add to your rules a requirement that the entire fee amount be separately broken out from purchases on the billing statements. This generally occurs today as the result of a court settlement, but is not specifically required by law.

- ***Oral disclosures.*** You require that card issuers generally must provide cost disclosures in oral applications or solicitations *initiated by the issuer*. We strongly urge you to extend this requirement to situations in which the consumer calls the issuer in order to learn more about any credit card product being offered or advertised. Consumer Action finds—year after year—that certain national credit card issuers will not provide even basic information required under credit card disclosure laws, unless the potential applicant provides a Social Security Number or date of birth or submits a card application. We believe it is unacceptable enough when cards with no details are advertised or offered, but it is unconscionable to refuse to answer specific questions from consumers about the terms.

- ***Convenience checks.*** Again, we strongly urge the agencies to require that all financial disclosures regarding convenience checks that access credit card accounts be printed on the face of the checks, preferably under the signature lines. At minimum, the applicable rate and deadline for receiving that rate should be printed on the face of the check.

  We strongly urge the agencies to extend the $50 credit card liability limit to convenience checks, so that consumers will be protected from unauthorized use of these checks. We also suggest these checks should never be sent to a consumer except upon the consumer's affirmative request or opt-in.

In conclusion, we want to thank the agencies for exercising your authority over unfair and deceptive credit practices and for the work you have done to ensure that consumers are protected.

We look forward to working with the Board of Governors of the Federal Reserve, the Office of Thrift Supervision and the National Credit Union Administration to bring adequate consumer protections to the credit card marketplace.

Yours truly,

Linda Sherry
Director of National Priorities