Docket No. R-1314
Meeting at the Federal Reserve Board on May 12, 2008

On May 12, 2008, Board staff met with representatives from several consumer groups to discuss the Board's recent proposal under the Federal Trade Commission Act (Regulation AA) addressing certain unfair or deceptive acts or practices in connection with credit cards and overdraft services.

Consumer group representatives: Kyle Kempf (National Small Business Association), Darrin Brown & Maureen Thompson (AARP), Jeannine Kenney (Consumers Union), Travis Plunkett (Consumer Federation of America), Lauren Saunders (National Consumer Law Center), Eric Halperin (Center for Responsible Lending), Ruth Susswein (Consumer Action), Ed Mierzwinski (US PIRG), Janis Bowdler (La Raza), Caleb Gibson (Demos). The consumer group representatives made the following points:

<u>Credit Cards</u>

1) Time to make payments

- The proposal would allow the creditor to put two different due dates on periodic statements: one due date at least 14 days after the statement is sent for consumers to pay in full to avoid finance charges, and a second due date at least 21 days after the statement is sent for consumers to make at least the minimum payment to avoid late fees and other adverse consequences. Consumer groups were concerned this outcome could lead to consumer confusion.

- The agencies should not assume that electronic payments are received and processed more quickly than mailed payments.

- The agencies should consider prohibiting late charges for any payments received within 15 days after the stated due date, similar to the rule adopted by the Office of Thrift Supervision for home-secured loans.

- Anecdotally, consumer advocates have heard that some creditors may move due dates around for reasons beyond maintaining a consistent billing cycle.

2) Payment allocation

- Creditors should be prohibited from applying minimum payments solely to low rate balances, unless fees and interest for higher rate balances are paid off first.

- The equal share method is not necessarily fairer to consumers if they carry a larger cash advance balance.

- Small business owners are particularly impacted by current payment allocation practices as they are more likely to use their cards for cash advances.

- The agencies should consider allowing consumers to choose how payments above the minimum balance should be allocated (for example, providing a check box that would direct the institution to apply payments to the highest rate balance). Alternatively, the rule could require all excess payments to be allocated to the highest rate balance unless the consumer opts out.

3) Retroactive rate increases

- Allowing creditors to increase the rate on existing purchases has a significant adverse impact on consumers' ability to plan for the cost of a purchase, particularly for small businesses and the elderly.

- There could be a substantial impact on consumers if they are required to double the percentage of the outstanding balance they must pay each month (e.g., from 1% of principal to 2%).

- The agencies should consider additional protections for consumers if their rate is increased for an existing balance because they were 30 or more days delinquent. For example, after the consumer makes timely payments for a specified period, the rate on the existing balances should be decreased to the prior rate.

- The proposal to allow rate increases to apply to purchases made 14 days or more after the creditor sends a rate increase notice assumes that consumers will fully understand the impact of the higher rate on future purchases. The agencies should have empirical evidence demonstrating that consumers would otherwise make purchases at the lower rate up until the expiration of the 45-day notice period. Creditors can still cut off consumers' ability to make new purchases or require quicker amortization of the balance.

4) Subprime cards

- The rule's proposed 50% limitation on fees is too high. The agencies should consider addressing high fees under a deception theory since consumers may be misled into applying for a card with a low APR only to receive a high-cost card as a result of significant fees that are financed at account opening.

- In addition to addressing fees that are financed, the rule should also address high fees that are collected by other means (such as through a check or ACH debit).

- The agencies also should prohibit creditors from notifying credit reporting agencies that the account is open if the consumer opts to reject the card after being informed of the amount of available credit.

5) Firm offers of credit

- The proposal does not address concerns that some consumers who receive "pre-approved" offers receive different terms after they apply.

- It is not clear that the proposal will have much benefit for consumers because creditors would not be required to list all of the criteria they consider in determining whether the consumer will get the best terms.

6) Over-the-limit fees

- Creditors should be prohibited from assessing over-the-limit fees if the credit limit is exceeded due to creditor imposed fees or interest charges.

Overdrafts

1) Consumer opportunity to opt out

- The rule should require consumers to opt in to the payment of overdrafts. At a minimum, consumers should be given the ability to opt in for the payment of overdrafts for debit card purchases and ATM withdrawals. Check and ACH transactions should not drive the outcome of the rule because they are not the predominant method of overdrawing a consumer's account.

- It is appropriate that the proposed rule is not based on whether the overdraft service is promoted or not. The majority of consumers are overdrawing their accounts even though their institutions do not promote the service (primarily at large banks).

2) Transaction clearing

- The rule should adopt the approach described in the request for comment, which would require institutions to process transactions from low to high unless the consumer opts in to an alternative clearing method.

3) Debit holds

- The agencies should address banks' practice of assessing overdraft fees based on funds that have been deposited, but not yet cleared. For example, if a consumer has deposited a $200 check, the consumer's bank should be prohibited from assessing an overdraft fee if the consumer would have had sufficient funds had the bank made the funds available more promptly. Alternatively, the agencies should consider shortening the funds availability schedule for deposited items.