Congress of the United States
Washington, DC 20510
August 22, 2008

Ben Bernanke
Chairman, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

John Reich
Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Michael Fryzel
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Dear Chairman Bernanke, Director Reich and Chairman Fryzel:

We are writing to comment on proposed changes to the Unfair and Deceptive Acts and Practices rules with respect to credit card issuers that have been issued by the Board of the Federal Reserve, the Office of Thrift Supervision, and the National Credit Union Administration. While we agree that some of these changes will ensure fairness and transparency for consumers engaged in credit card transactions, we have specific concerns regarding the proposed regulation to alter the fees or deposits charged to subprime credit cards for the issuance of credit.

In the wake of the subprime mortgage crisis, we have seen increased scrutiny by regulators of non-prime financial products. To ensure the safety and soundness of our nation's banking system, it is important to examine how these products are underwritten. We certainly agree that any unfair and deceptive practices by an issuer of credit cards should be prevented. However, while addressing abuses, we urge you to consider the full implications of potential new regulation for consumers.

As you know, there are over 70 million consumers who are considered non-prime. We recognize that many of these consumers either have no credit history or a less-than-optimal credit history. Not all of these consumers should be homeowners and not all should use credit cards. But we also believe that many of these consumers deserve a chance to build, or in many instances, rebuild their credit histories. Many of these non-prime consumers have faced emergencies or financial setbacks, including unemployment, medical emergencies, or divorce, which have had a noticeable impact on their credit scores. Consumers in this position often have few options to rebuild their credit. In an economy where a credit score can be used as a part of a job or apartment application process, to set insurance rates, or as a gateway to other financial products, options for credit rehabilitation are vitally important.

We have heard from South Dakotans who have concerns about how some of the proposed regulations could affect non-prime consumers and the South Dakota economy. For example, Premier Bankcard, a South Dakota-based credit card issuer, is the leading provider of low-limit credit cards and the tenth largest issuer of Visa and MasterCard credit cards to individuals with a FICO score below 660. These cards often have upfront fees to offset the risk and expense associated with offering low limit credit cards to this group of consumers.

We understand that each year Premier receives approximately five million applications for this type of credit card, two million of which are Internet-based applications, and half of which are from consumers who are affirmatively seeking this type of product. In addition, Premier has informed our offices that, of these five million applicants, ultimately only 35% are approved for a line of credit. We further understand that in a 2008 study of 508 Premier customers, 91% of respondents believed that the disclosure is adequate and that they are willing to pay fees for a product that they would not be able to get otherwise.

On the subject of credit rehabilitation, we found the attached survey to be a useful illustration of the positive impact these products can have on the lives of non-prime consumers. The survey found that out of a sample of 365,000 cardholders from four different subprime card issuers, 37% of these cardholders increased their credit scores over a 24-month period and 20% to 25% were able to obtain credit from non-subprime issuers, and nearly twice as many of these cardholders received offers for prime cards. The study was conducted by TransUnion and then independently validated by the Political and Economic Research Council (PERC), an economic consulting firm that works with many federal agencies.

We are concerned that the proposed Federal Reserve regulation to change how subprime credit cards are priced could have unintended consequences. Pricing according to risk is an important tool for financial institutions. The ability to price risk for credit is no different than an insurer pricing an insurance policy according to the risk of the insured. These card issuers use fees and deposits to price the risk of the non-prime borrowers. Availing credit to this group can be risky, and credit should be priced accordingly.

In addition, without access to these forms of credit to rehabilitate credit scores, millions of people could lose access to mainstream financial products. At a time when consumer protection and good regulation of consumer credit products is increasingly important, we would not want to see consumers pushed into unregulated products in order to meet their credit needs. In addition, in an economic environment where access to credit is being tightened for millions of consumers, eliminating additional credit may only further harm those who are impacted most by the struggling economy.

We have concerns not only about consumers across the nation not having access to credit and the potential negative effect on the national economy, but in particular about the potential economic impact on South Dakota. While the nation has experienced high unemployment rates over the past year, the state of South Dakota so far has enjoyed one of the lowest rates in the United States. However, the effects of the proposed regulations could heavily impact many jobs in

South Dakota. For example, Premier Bankcard, which is one of many issuers in South Dakota that could be affected by these regulations, employs almost 3,000 people in our state and at least 26% of these individuals have some post-secondary education. If a company like Premier Bankcard is no longer able to offer their current services, many individuals and communities in South Dakota could suffer. We are not asking you to put the needs of the state of South Dakota ahead of any opportunity to provide additional consumer protections for credit card users. However, we are offering this insight to demonstrate how the overall effects of the proposed regulations extend beyond the credit card market.

We do not believe that the posting to a credit card account of a security deposit and/ or fees for the issuance or availability of credit is an unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act (FTC Act). Sound practices would include: the card issuer is fully disclosing on or through applications or solicitations the total of the account-opening fees, the total credit limit for the account, and the remaining available credit after posting the account-opening fees; the consumer is given the clear right to either pay the account opening fees up front or post those fees to the account; the disclosure of such fees and the remaining credit limit is given to the consumer in a written statement separate from the TILA disclosure and/or cardholder agreement; the consumer has the right to a full and immediate refund if the consumer changes his or her mind within 30 days of receiving the card; the account is reported to all three major credit reporting agencies, and if there is no reporting if the consumer changes his or her mind and opts for a refund.

If the best practices above can be codified into existing regulation, like Regulation Z, as industry benchmarks instead of changing how this type of credit is priced through Regulation AA, we believe consumer protection will be strengthened and access to credit maintained.

In summary, we urge the Federal Reserve, the Office of Thrift Supervision and the National Credit Union Administration to fully and fairly examine the potential impact of their proposed regulation before a formal regulation is issued. In a time of decreasing credit availability and economic instability, it is essential to consider the potential impact of further limiting access to credit for consumers and potentially jeopardizing thousands of jobs in South Dakota.

Thank you in advance for your consideration. We look forward to your prompt response.

Sincerely,

Tim Johnson
U.S. Senator

John Thune
U.S. Senator

Stephanie Herseth Sandlin
Member of Congress

High level summary of results

TransUnion.

All Input consumers

- 10% of all consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $1,000-$2,499
- 9% of all consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $2,500+
- 16% of all consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $1,000+
- 50% of all consumers received a promotional offer of credit from a non-subprime lender in the last 12 months
- 11,258 consumers unscoreable in December 2005 received a valid VantageScore as of January 2008

Input Consumers with a VantageScore Increase

- 37% of input consumers experienced an increase in their VantageScore
- 17% of input consumers experienced an increase in their VantageScore of 40 points or greater
- **Of those with score increases:**
  - 19.9% of consumers with a sub-prime VantageScore in December 2005, increased their score to either near-prime, prime, or super-prime in January 2008
  - 14% of consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $1,000-$2,499
  - 14% of consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $2,500+
  - 24% of consumers opened a new bankcard in the last 12 months with a high credit/credit limit of $1,000+
  - 58% of consumers received a promotional offer of credit from a non-subprime lender in the last 12 months