



July 18, 2008

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

Re: Docket No. R-1286

Dear Ms. Johnson:

PSCU Financial Services, Inc. provides credit and debit processing services to over 550 credit union members (“CUs”) and we are an active participant in many credit union-dedicated councils (“PSCU-FS”). We believe credit unions that offer credit and debit card programs continue to provide their members with very consumer-friendly policies. We are pleased to provide the Board of Governors with comments in response to the Board’s May 2008 release of TILA proposed regulations Request for Comment.

Section 226.7 Periodic Statements

7(b) Rules affecting Open-end (not Home-secured) Plans

7(b)(11) Due Date; Late Payment Costs

The Board has asked whether there continues to be a need for creditors to disclose cut-off hours before 5 p.m. for payments made by telephone or electronically. PSCU-FS wants to thank the Board for further inquiring how disclosure of the 5 p.m. cut-off time to make a payment can either aid or confuse a consumer and for its efforts to assist consumers in making conforming payments. Cut-off times can vary because cardholders have many choices for making payments and the cardholder chooses the payment channel to make his/her payment. PSCU-FS believes that providing a disclosure of cut-off hours before 5 p.m. for payments does not, in itself, clarify how the consumer can avoid a late payment for two reasons.

First, payments made to a lockbox on the west coast must actually post by 3 pm PST in order to be credited for the day if the billing system is on an earlier time zone, for

example, CST. If our CUs disclosed a 3 p.m. PST cut-off, it would not be the true cut-off time for any payments being processed either in person, online or by phone for CUs in mountain, central and eastern time-zones. Second, although payments processed after the cut-off hours are technically late, many CUs do not assess a late payment on accounts until at least 5 days after the payment due date as a courtesy to their members. Our CUs can opt a “grace period” setting to avoid assessing late payment fees on its members, usually 5 days after the payment due date. We understand some large issuers also have a similar “grace period” whereby payments received a few days after the due date are not always considered late and no late payment fee is charged to the cardholder. Further, some CUs do not assess a late payment fee at all, only a fee for a missed payment. Thus, a consumer who understands there is a 3 p.m. cut-off time would need to know the cut-off time is a piece of the credit card payment program and that their issuer also has a policy for accepting “late” payments as being on time. The cardholder has the responsibility for making the payment by the due date to conform to the payment terms of the card agreement, but it is the issuers’ choice to have or not have flexibility in accepting “late” payments as timely.

For these reasons, the elimination of the cut-off hours before 5 p.m. disclosure requirement is recommended. In the alternate, instead of disclosed cut-off times, we suggest that issuers be required to have, and to disclose in their account agreements, at least a 1-day grace period for accepting late payments.

Section 226.9 Subsequent Disclosure Requirements

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

The Board’s new additional disclosure requirement provides that the creditor disclose any date by which the consumer must use the convenience checks in order to receive the discounted initial rate. PSCU-FS believes this requirement is an alteration in how convenience checks are ordered and/or used by consumers in ways that may not, in balance, benefit the consumer.

Our CUs offer convenience checks in two ways. The first way is upon request by the consumer. Consumer-requested checks would provide the greatest challenge for meeting compliance requirements because they would require individual printing in order to offer the consumer the full benefit period of the offer (usually 90 days) and disclose the other proposed requirements. Currently, consumer-requested checks can be printed and held on file for future use. Consumer-requested checks do not necessarily include a promotional rate offer, they could offer a variable rate. Delivering a consumer-requested check under the proposed regulations, with multiple individualized program usage features and disclosures, significantly raises the cost of the checks and those costs would be passed along to consumers in the form of higher transaction processing fees. Issuers who have kept the transaction fees relatively modest would need to raise fees to off-set these costs. The need for individual printing also slows down the delivery of checks. The slowed timing and increased cost would cause many consumers to seek an alternate source of credit that is ultimately more expensive. Consumer-requested checks have

great value to consumers because they offer ease of access and timing more specific to the consumer's individual needs.

The second way CUs offer convenience checks is through a "seasonal" program. These checks are pre-printed in large batches with certain program features and already include a "good for only 90 days" disclosure (such as checks mailed on October 15 would read "Good until January 15"). Seasonal checks are not already printed or printed on an individual or even a monthly basis; they are printed in large batches and mailed out at the beginning of the season (summer vacation or holiday, for example). Any changes to the seasonal check printing would increase cost because if the checks read "good until January 15" but are not requested until December 1st, those checks would not provide the consumer the full 90-day benefit period to enjoy the initial discounted rate. Again, any additional printing costs for convenience checks would require some fee increase to offset those greater costs.

Some CUs do not offer an initial discount rate, they simply offer the convenience checks with the standard rate, which is a variable rate tied to a published index, and they charge a nominal transaction fee. This is a low-cost way to offer consumers the benefit of a cash advance or balance transfer. The variable rate can move more quickly than fixed rate and we do not believe that subsequent disclosure of a variable rate should be required or that convenience checks issued with a variable rate should be required to include the rate disclosure. Whatever the Board ultimately decides on its proposed disclosures in this section, any convenience check printing to meet the use-by-date and subsequent rate would still need to be printed in smaller batches, ratcheting up the costs for this credit access product.

10(b) Specific Requirements for Payments

Reasonable requirements for cut-off times. PSCU-FS agrees with the Board's proposal that consumers be given a reasonable opportunity to make conforming payments. As we stated in section 7(b) above, we do not believe adding the cut-off time to the periodic statement would sufficiently aid the consumer to make a conforming payment. We support the Board's adopted revision to § 226.7 to not require disclosure of any cut-off hour closely proximate to the due date on the periodic statement since we do not believe the cut-off hour is sufficient to explain the payment process.

As the Board has duly recognized and has seen validated by industry commenters, cut-hours in a "one-size-fits-all approach" may not be feasible due to the obvious nature of creditors' internal processes, disparate systems, vendors and service providers; therefore, imposing cut-off hours for various channels of payments would be misleading, counter productive and cost prohibitive to the issuer. Nevertheless, the present creditors' practice of providing published payment due dates falling on a business day coupled with an additional grace period extended over and above the "payment due date" provide a real benefit to the consumer. As such we concur with the Board, to adopt revisions to 226.7(b)(11) with a cross reference to 226.10(b), and not to require disclosure of any "cut-off hours" on periodic statements.

PSCU-FS believes the operational burden imposed on creditors to make this change does not sufficiently meet the intent of the regulation which is to clarify the relationship of payment due dates, cut-off times, and “grace periods” for acceptance of payments past the due date to consumers.

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

Holiday and weekend due dates. The Board requests comment on the extent of the burden associated with any system modification that would be required to comply with the proposed rule. For reasons described in section 7(b) above, creditors do have the discretion to accept non-conforming payments as conforming if the payment due date is missed with respect to not assessing a late payment fee on the consumer’s account. The ability to accept a late payment and not assess a late fee includes the creditor’s ability to backdate interest. When the payment date is re-set, the interest is “refunded” as a part of that process. Most CUs’ cycle date is five days after the payment due date. This allows the CUs to accept late payments up to 5 days after they are due and still not assess a late fee or a finance charge prior to the cycle date.

Even with the system capability of “refunding” backdated interest, there is a high administrative burden to manage backdating the interest because manual processes are also involved and it requires coordination between the payment processors, billing systems and the CUs. Moreover, allowing some consumers a longer cycle date in the interest of “forgiveness” for late payment interest calculation is not fair to other consumers who do conform with payment requirements. Ultimately the lost interest would be built into the rates offered to all consumers using that creditor’s credit card. While PSCU-FS believes in the fairness of offering a window of avoiding late payment fees, we do not believe it should extend to backdating interest. Five days’ interest on an account balance of \$3,000 with a 9.99% interest rate is only \$4.11, so the benefit to consumers would be minimal compared to the \$15 or \$25 late payment fee.

PSCU-FS believes there is a burden associated with system modification to change cycle dates and due dates to not include holiday and weekend due dates. And we believe there is no benefit to consumers for cycle dates to change to a mail date for purposes of holiday and weekend payment due dates. As we discussed in 7(b) above, payment due dates, which sometimes include holidays and weekend due dates, can be made flexible to accept payments past the payment due date without assessing a late payment fee.

12(b) Liability of Cardholder for Unauthorized Use

The Board is proposing to end the practice of creditor’s requirement of an affidavit from consumers with unauthorized use claims on their accounts. PSCU-FS does not support the removal of this requirement for the following reasons:

1. Cardholders already have zero liability for unauthorized claims.
2. The Chargeback Process – The initial step in an unauthorized use claim is to provide a chargeback notice to the merchant. It is the merchant who requires an affidavit from the consumer to accept the chargeback as unauthorized use and the merchant absorbs the loss. The requirement of an affidavit is not an “abuse” by an issuer, it is merchants’ efforts to reduce their losses. If the merchant does not have an affidavit from the cardholder, but is still required to accept the loss, the merchants will need to re-price in order to off-set increased losses due to the number of “unauthorized use” claims they receive. We do not believe adding costs to merchants’ goods is an intended result of the removal of the affidavit requirement. Currently, unless the issuer provides an affidavit from the consumer, the merchant rejects the chargeback and the issuer is left with the liability.
3. Visa (or one of the other associations) ruling committee procedures - The service provider/issuer’s next step in the chargeback process is to provide its signed letter to Visa with the facts of the unauthorized use claim, the transaction information and the chargeback process findings. For a fee, the Visa ruling committee will review the transaction and Visa requires the service provider/issuer’s letter that documents the chargeback rights pursued and the outcome. Thus, the service provider/issuer needs to get the consumer’s affidavit in order to pursue chargeback rights with the merchant and based on that outcome will seek verification of the unauthorized transaction from Visa. We believe in these efforts, Visa is trying to protect the credibility of the process by balancing the interests of issuers, merchants and consumers. No financial institution “abuse” is driving the affidavit effort, instead, it is the objective administrative processes of the payment system associations.
4. Bond Claim Requirements - Credit unions, unlike banks, are able to purchase insurance against fraud losses but in order to obtain that coverage, certain information is required by the insurer to pay on the loss claim. When the CU asserts a bond claim, it must have exercised all of its chargeback rights prior to receiving insurance coverage. If the CU has not performed the chargeback process, the claim is not accepted by bond providers. Consumers benefit by the sharing of risk through a CUs’ bond claims because it helps the CUs to keep their credit card program costs lower and the consumer’s credit cost is kept lower.

We also provide our comments on the Board’s proposed guidelines to be used in place of the affidavit as follows:

B. Reviewing where the purchases were delivered in relation to the consumer’s residence or place of business. This is done during the merchant chargeback process. If the merchant supplies the representment with different information, that is, that the merchandise was delivered to an address that does not agree with the one on the consumer’s account, the transaction is considered unauthorized.

E. Requesting documentation to assist in the verification of the claim. PSCU-FS does not ask cardholders to provide supporting documentation. Its experience from using an insurer's affidavit that required supporting documentation was that consumers do not often have supporting documentation handy and do not have the details of the transaction.

F. Requesting a written, signed statement from the consumer (or authorized user, in the case of a credit card account). However, a creditor may not require an affidavit as a part of a reasonable investigation. It is not the issuer who requires the affidavit, it is the merchant processing the chargeback who requires it to verify that the transaction is not valid. Only then will the merchant accept the chargeback as a loss.

Investigations that utilize guidelines already in place but which are not strong enough as stand-alone tools at preventing dishonestly (like an affidavit can) do not improve the consumer's rights and encourage the consumer to not cooperate with the issuer's investigation of the unauthorized use claim. The affidavit is an excellent tool for avoidance of doubt on the part of the creditor. If the consumer cannot produce an affidavit, it does create doubt in the mind of the merchant and the creditor as to the nature of the transaction being truly "unauthorized". PSCU-FS anticipates the dollar value of losses to creditors due to this type of "unauthorized transaction" would significantly raise credit card program costs and those costs would be passed onto all consumers.

The majority of consumers, those consumers who do not engage in this sort of "unauthorized transaction" avoidance, would be made to pay indirectly for its abuse by others. PSCU-FS does not believe this is fair to either most consumers or creditors. The affidavit also weeds out the "friendly fraud". Friendly fraud is the cardholder's attempt to disclaim liability for the charges when a family member or friend used the card with or without the cardholder's permission. It is the friendly fraud that can cause an issuer avoidable losses. The issuer would be hurting all of its consumers if it did not take steps to lessen the costs to the credit program from a known and manageable threat.

In sum, the minimal affidavit burden on consumers is fair since it allows a consumer to avoid all liability. If the Board determines that the burden on the consumer providing an affidavit is too great, PSCU-FS proposes, in the alternative, that issuers may **require** a signed statement from the consumer. The notary requirement of the affidavit can be burdensome to consumers because the consumer must know where to obtain notary services and travel to the notary during a time when notary services are available (usually regular business hours). Travelling to the notary might be burdensome to a consumer who relies on public transportation, who must bring young children along and/or miss time at work. The notary burden slows down the consumer's response time for the verification of unauthorized use when the consumer can likely complete a verification statement in 10 – 15 minutes but may take hours to obtain a notary's signature. For these reasons, the issuer's requirement of a signed statement from the consumer may ease that notary burden, but preserves the integrity of unauthorized use claims.

VII. Initial Regulatory Flexibility Act Analysis

PSCU-FS is a cooperative composed of 550 credit unions, of which a large number are considered small entities with under \$165 million in assets. PSCU-FS believes the proposed regulations do impose a significant economic impact that substantially impairs small financial institutions from being able to compete effectively in the credit card marketplace. It is these same small entities that retain viability by providing consumer-friendly and flexible credit card programs to its members. Thus, we believe small entities (i.e. entities under \$165 million in assets) should be given a safe harbor in implementing Reg Z changes.

4. Other federal rules. PSCU-FS does not believe there is conflict between Regulation Z and Regulation E with respect to error resolution procedures when a transaction involves both an extension of credit and an electronic fund transfer. Instead, PSCU-FS believes that it is common for the error resolution procedures to be confused by financial institutions, especially those that outsource Reg Z error resolution (which is common because of the specialized nature of chargebacks). These CUs are required to perform their own Regulation E error resolution but sometimes do not entirely understand the overlap that occurs when a debit card is used like a charge card, and they do not understand that the Reg Z timeframe is satisfied once the consumer is given notification by the service provider/issuer that the investigation has been performed. Clarification on this perceived overlap of Regulation Z and Regulation E is only found in the Examiners Commentary, and it is not referenced in Reg Z or Reg E regulation itself. PSCU-FS respectfully suggests that the Board revise Reg Z and Reg E to each reference the Examiners Commentary and that Reg Z and Reg E each include a link to the Examiners Commentary.

Confusion, if not conflict, can also exist on the part of financial institutions as it relates to error resolution procedures required by regulators and the error resolution procedures/regulations of network operators. We think the proposed regulations need to specifically inform issuers that the network operating regulations can run simultaneous with and are compliant with federal regulations, but that network operating regulations also continue to function after federal regulations are satisfied. Issuers can sometimes confuse the network operating regulations that require months to resolve a credit/debit card chargeback with (1) the required reversal of provisional credit within 90 days, as required under Reg E or (2) the notification timeframes to advise consumers of billing error investigation under Reg Z. This confusion can cause issuers tremendous concern that they are not complying with Reg E and/or Reg Z because the timeframes of the network operators are out of their control.

SUMMARY

PSCU-FS appreciates this opportunity to submit comments on the Board's proposed changes to Reg Z. If you have any questions or would like additional information on these comments, please contact Steve Salzer, General Counsel and Ethics and Compliance Officer, at (727) 561-2227.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Serlo". The signature is fluid and cursive, with a long horizontal stroke at the end.

David J. Serlo
President/CEO