NEIGHBORHOOD ECONOMIC DEVELOPMENT ADVOCACY PROJECT (NEDAP)
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August 4, 2008

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

Re: **Federal Reserve Board: Docket Nos. R-1314, R-1315, and R-1286**
Office of Thrift Supervision: Docket ID OTS-2008-0004
National Credit Union Administration: RIN 3133-AD47

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Federal Reserve Board, the Office of Thrift Supervision and the National Credit Union Administration's ("the Agencies") proposed regulatory changes to protect consumers from unfair and deceptive practices with respect to credit cards and overdraft protection. We applaud the Agencies' efforts to curb these abusive practices, and urge the Agencies to further strengthen the proposed regulations.

The Neighborhood Economic Development Advocacy Project (NEDAP) is a resource and advocacy organization, based in New York City. NEDAP's mission is to promote community economic justice, and to eliminate discriminatory economic practices that harm communities and perpetuate inequality and poverty. NEDAP employs multiple strategies – including community outreach and education, advocacy, coalition organizing, policy research and analysis, media outreach, technical support for community groups, and direct legal services – to ensure that communities have access to fair and affordable credit and financial services, and to address inequities in the financial services system. NEDAP's founder and co-director, Sarah Ludwig, serves on the Federal Reserve Board's Consumer Advisory Council.

NEDAP runs the NYC Financial Justice Hotline, which provides legal representation, advice and referrals to lower income New York City residents who have faced unfair or discriminatory banking and credit practices. Since opening its doors in 2006, the Hotline has responded to more than 5,000 calls from low-income New Yorkers. Case studies from Hotline callers illustrate unfair credit card and overdraft practices throughout this comment. The majority of these callers reported problems with credit cards and debt collection. Ms. H, an 84-year old caller who retired only recently from her job as a home health aide, provides a typical example:

> Ms. H. opened a Newport News credit card years ago, and charged less than $1,000 in purchases. Over the years, Newport News enrolled her without her knowledge in dubious add-on services such as "Newport News Encore Travel Club" and "Newport News Budgetsavers," which added numerous fees and charges to her balance. She was

> also the victim of identity theft during this time, which adversely affected her credit, and caused her interest rate on the Newport News balance to skyrocket. To date, Ms. H. has made payments toward interest and fees totaling more than $4,200, and still owes $1,200. Ms. H. grossly overpaid for credit, when she could have used the money to pay for her basic necessities—she had to work until the age of 84 to make ends meet.

Lower income consumers like Ms. H. all over the country are paying a disproportionate amount of their limited income in fees and interest to credit card companies engage in a range of misleading practices.

We outline below the provisions of the proposed regulations that we support, along with recommendation for how the regulations should be strengthened to better protect consumers.

Consumer Credit Card Accounts

Consumers should be protected from unwarranted late payment fees

Credit card companies have generated enormous income by unfairly gouging consumers with late fees. We support the proposed rule that would ensure that statements are mailed or delivered at least 21 days before the payment due date, to allow card holders sufficient time to check their statements for errors before making payment, and to pay by mail without risking the accrual of late fees. We urge the Agencies, however, to extend the safe harbor period to at least 28 days, to ensure that delays in the mail in either direction do not cause late payments.

We would support a rule which prohibits credit card companies from charging a late fee if the payment is received within a set number of days after the due date. We would recommend that this period be at least 10 days. However, this rule should be in addition to, and not supersede, the proposed regulation that statements must be mailed at least 21 days before the payment due date.

We support the proposal under Regulation Z that would prohibit institutions from assessing late fees on payments received by mail before 5pm on the payment due date, or on the first business day after a due date on which mail is not delivered. This rule will protect consumers from unexpected and unfairly assessed late fees.

Credit card companies should be prohibited from increasing the APR on outstanding balances

We applaud the proposal prohibiting universal default, which will protect consumers from unexpected and undeserved changes in the APR on their outstanding balances. Limiting increases in APR on outstanding balances as the Agencies have proposed will prevent situations like Mr. L.'s, another caller to NEDAP's Consumer Law Hotline:

> Mr. L. is an elderly man who is unable to work. When he disputed a charge with Citibank that he had not incurred, Citibank refused to cancel the charge, and turned it over to collections. After his dispute with Citibank, Bank of America raised his interest

> rate and lowered his credit limit several times despite the fact that he was making on-time payments to his Bank of America credit card.

While the proposed regulation will be a great benefit to consumers, the exception allowing changes in APRs on outstanding balances in the event that the minimum payment is 30 days late still leaves consumers vulnerable to the unfair application of penalty rates. The proposed 30 day period is far too short, and should be extended to at least 60 days.

It is patently unfair for credit card companies to apply a penalty rate to an already existing balance that accrued under a contractually lower rate. At the very least, the regulations should provide clear guidance on how long institutions may charge the consumer a penalty rate after the consumer has resumed making on-time payments, and should clearly limit the fees and rates associated with late payment.

Credit card companies should not be permitted to unilaterally allocate payments to lower interest rate balances, making it difficult for consumers to pay off higher rate balances

We support the proposed rule requiring institutions to allocate a portion of payments in excess of the minimum to higher interest rate balances. This will help ensure that consumers benefit from promotional or deferred interest rates. However, the proposed rule should be amended to mandate that institutions honor a consumer's choice of one of the three proposed allocation options, should a consumer explicitly express a preference.

Some credit card companies mislead consumers by agreeing to allow them to split their payments between balances, and then failing to honor those agreements, instead allocating payments to the lowest rate balance. NEDAP received a call from Ms. R., whose case provides a clear example of this type of misleading and abusive practice:

> Ms. R. is a disabled woman who lives in the Bronx. In early 2008, she received a balance transfer offer at 3.99% from Citibank. Ms. R. already carried a balance at 9.99% on that card, but wanted to take advantage of the 3.99% rate offered. She called Citibank and spoke to a customer service representative who assured her that she could communicate how she would like her payments allocated between the two balances by making a note of her preferred allocation on the checks she sent. Ms. R. then went through with the balance transfer. On each check she sent, Ms. R. wrote what percentage of each check—all well above the minimum payment—she wanted to apply to each balance. After three months of payments, she noticed that her balance at 9.99% APR was growing rather than shrinking. She called Citibank and asked why her allocation request was not honored.
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> Citibank told Ms. R. that they had never agreed to honor her choice of allocation, and that the company had her on tape agreeing to the terms of the balance transfer offer. Thanks to her thorough notes, Ms. R. knew that she had only agreed to the offer because the customer service representative assured her that she could choose how her payments would be applied to her outstanding balances. She then requested that Citibank send her a transcript of that conversation and all terms of her credit card and

> balance transfer agreements in writing. After waiting a month for the transcript and terms, Ms. R. contacted Citibank to request them again. After another month, Citibank sent her a letter about her card, changing the APR on both her 3.99% and 9.99% balances to 12.99%. She also found out that Citibank had allocated only 1% of her monthly payments to her higher interest rate balance.

The proposed rule permitting credit card companies to dedicate all payments made in the two billing cycles before a deferred interest plan ends to the deferred interest account is beneficial to consumers, as it will protect them from surprise interest charges or increases in APR. This rule is only helpful, however, if consumers know the specific date on which their deferred rate expires. When consumers carry a balance with deferred interest, institutions should also be required to prominently display the date by which that balance needs to be repaid to avoid the retroactive application of deferred interest on billing statements.

We also support the provision of the proposed rule which would prevent institutions from denying consumers a grace period only because they carry a balance at a promotional rate, This practice can serve to eviscerate any benefit of the promotional rate, and is misleading.

Over-limit fees caused by a hold on the account should be prohibited

Many consumers do not know that holds can be placed on their credit from routine purchases like buying gas or eating out. When consumers are close to their credit limit, they are usually careful to keep new purchases under the limit. Credit holds negate consumers' efforts to manage their credit responsibly; we therefore support the provision of the proposed regulations that would prevent institutions from assessing fees if customers exceed their credit limits because of account holds. This rule would protect consumers from unwarranted and unfair fees. We would also urge the Agencies to mandate that credit card companies should only be permitted to charge over-limit fees one time per billing cycle.

Double-cycle billing should be prohibited

We support the proposed regulation that would prohibit double-cycle billing. There is no rational reason why companies should be allowed to calculate the finance charges on a bill based on balances that were owed in the previous billing cycle. This practice unfairly penalizes consumers.

"Fee-harvester" credit cards should be banned

Fee-harvesting credit cards do not benefit consumers and should be banned. These cards charge exorbitant fees and are targeted toward the most vulnerable consumers. The cards barely function as a source of credit, since the available credit on most fee-harvesting cards, after consumers have been charged hundreds of dollars in fees, is less than $100. This sets consumers up to exceed their credit limits, thereby triggering even more fees. The companies that market and issue these cards also prey on communities of color with targeted marketing campaigns that promote cards with even lower credit limits.[1]

The current FDIC and FTC investigation into CompuCredit Corporation and other issuers for their use of unfair and deceptive marketing tactics will likely provide $200 million in restitution to consumers victimized by these cards. In July, 2006 an agreement between the New York State Attorney General's Office and Columbus Bank and Trust Company and CompuCredit led the Aspire card issuers to repay eleven million dollars in deceptive fees and charges for services the cardholders did not request. Another issuer, Cross Country Bank, was required to pay ten million dollars in penalties and restitution in early 2006 as well. Since these cards have been acknowledged as deceptive and likely to trap vulnerable consumers in quickly escalating debt, and since the Board has decided that analogous mortgage products are deceptive, we urge that the Agencies ban fee-harvesting cards as well.

If the Agencies are unwilling to propose regulations to ban fee-harvesting cards entirely, we urge that the proposed fee thresholds be reduced. The rule that would limit financing of security deposits and fees to less than 50% of the credit limit and to require that any financing that exceeds 25% of the credit limit be spread across the year, leaves too much room for consumers to be gouged. Financing of security deposits and fees should be limited to 25% of available credit, and any financing in excess of 10% of the credit limit should be spread across the year.

Firm offers of credit should disclose the factors used to determine rates and limits, and should only disclose the rate and limit for which the recipient is likely to qualify

The Agencies' proposal to require disclosure of the factors that determine the credit limit and annual percentage rate for which a consumer will qualify is a step in the right direction. However, disclosure alone is not enough to prevent misleading offers. The disclosure must be displayed at least as prominently as the advertised rate and limit, and the advertised rate and limit should be those for which the recipient is likely to qualify.

Regulations should ban unilateral changes in credit card terms

While all of the proposed regulatory changes that will apply to consumer credit card accounts provide essential protection to consumers, the Agencies should also flatly prohibit institutions from making unilateral changes to credit card terms. This practice is an issue of fundamental fairness: consumers cannot avoid it by shopping around because almost all card contracts allow the institution to change the terms of a credit card for future purchases "at any time for any reason." There exists no legitimate rationale for the card companies' ability to arbitrarily and unilaterally change the terms of an already existing agreement. Sudden changes in credit limits and fees can be costly to consumers, and are likely to take the place of retroactive changes in interest rates in gouging card-holders after this rule goes into effect.

Overdraft Protection Services

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[1] Jurgens, R. and Wu, C. *Fee Harvesters: Low-Credit, High-Cost Cards Bleed Consumers.* November, 2007. Available: www.consumerlaw.org/issues/credit_cards/content/FEE-HarvesterFinal.pdf

Overdraft protection is actually an expensive loan product that costs consumers $17.5 billion in annual fees on $15.8 billion in loans.[2] Stronger regulation is needed to correct this imbalance and protect consumers from abusive loan terms. Overdraft protection loans should be regulated under the Truth in Lending Act, and should not be included as a standard feature of checking accounts.

NEDAP's Financial Justice Hotline receives calls from bank account-holders reporting serious problems with overdraft protection. The case of Mr. F. provides an example:

> Mr. F., an immigrant from Uruguay, earns $26,000 annually working for Con Edison, a New York public utility. He called the hotline upset about the $2,970 he was charged for overdraft fees by Bank of America in a period of 14 months. A review of his statements confirmed that Bank of America, like many other national banks, clears checks that arrive on the same day in the order of largest to smallest, instead of in the order in which the checks arrived, or in the order of smallest to largest, which would minimize the amount of overdraft fees that a customer would be charged. Bank of America charges a $35 fee whenever an amount deducted exceeds the account balance, whether or not the payment is covered. Bank of America intentionally clears checks from largest to smallest so that it can charge multiple fees for amounts that would otherwise have not exceeded the balance. This practice added hundreds of dollars in fees unnecessarily to Mr. F.'s account—in one example, this practice siphoned $210 in overdraft fees from Mr. F.'s checking account on a day when his balance was able to cover 5 of the 6 transactions cleared.
> Bank of America automatically enrolled Mr. F into its courtesy overdraft program without giving him the choice of opting in or out.

Mr. F.'s case illustrates the abusive nature of overdraft protection, which financial institutions offer not as a customer service, but as a highly profitable vehicle that generates billions of dollars in fees and interest by deceptively gouging unsuspecting customers. Overdraft protection loans are harmful to lower income individuals and communities, and should be heavily regulated.

Overdraft protection has blurred the line between mainstream and fringe banking, and can be a financial landmine for people living on limited means. Seeing the hardship that abusive overdraft protection has caused so many of our Financial Justice Hotline clients, we are now hard-pressed to recommend categorically that people open bank accounts. Like Mr. F.'s story above, Mr. A's story clearly illustrates the deceptive and harmful nature of overdraft protection. He first contacted NEDAP's Consumer Law Hotline in September 2006:

> Mr. A. is deaf and functionally illiterate. His only income is $666 he receives in monthly Supplemental Security Income (SSI). Before his troubles with overdraft protection began, he followed a regular pattern of withdrawing his money from his account. On the first day of the month, when his SSI benefits were directly deposited, Mr. A. would typically withdraw several hundred dollars to pay his rent and bills. Over

[2] Halperin, E. and Smith, P. *Out of Balance*, Center for Responsible Lending. July 11, 2007. Available: http://www.responsiblelending.org/pdfs/out-of-balance-report-7-10-final.pdf

the next week he would make additional ATM withdrawals and pay a monthly bill for Internet service.

Mr. A. opened his account with a federal savings bank in the early 1990s and had no problems until around May 2005, when he unknowingly overdrew his account by $3.44 and triggered bounce protection fees that led him into a spiral of continued overdrafts. Mr. A. did not understand what was going on. Following his regular pattern of withdrawing cash and paying bills, he unknowingly continued to overdraw on the account as mounting overdraft protection fees dug him deeper into debt. The bank paid each overdraft, charging $30 for each one, including several electronic debits that amounted to less than $8 each.

At the beginning of each month, Mr. A. continued to think he had $666 to pay his rent and cover his basic expenses. In fact, he had far less in his account, because the bank repeatedly set off the previous month's overdrafts and fees. By November 2005, after his monthly SSI check was deposited and the bank had taken its set-off, Mr. A. had only $1.83 remaining in his account, which the bank closed for failure to maintain a positive balance. Mr. A.'s account contained only his SSI benefits, which are statutorily protected and should not have been debited from his account to set off the overdraft loan charges.

The regulations should mandate that consumers must opt-in to overdraft protection, as the opt-out provision in the proposed regulations will not adequately protect consumers

Rather than requiring the disclosure and opportunity to opt-out of overdraft protection before fees can be assessed, the regulations should require that consumers request overdraft protection before the service can be added to their account. As the case studies above illustrate, unsuspecting, often lower income consumers pay exorbitant and unnecessary fees in overdraft protection traps, costing them vital funds needed for subsistence. Further, accounts closed because a customer cannot afford to pay abusive overdraft fees that exceed the amount borrowed can bar consumers from opening a new bank account, relegating these consumers to costly fringe services. Since the consequences of using overdraft protection can adversely impact consumers in serious ways, financial institutions should be prohibited from providing the overdraft protection without an explicit opt-in from the account-holder.

Overdraft fees caused by a hold on the account should be prohibited

Many consumers do not know that holds can be placed on their checking accounts when they make routine purchases. Most consumers are careful not to spend money that is not available in their accounts, but debit holds negate consumers' efforts to manage their accounts responsibly. We therefore support the provision of the proposed regulations that would prevent institutions from assessing fees if customers overdraw their accounts because of debit holds.

Conclusion

Abusive credit card and overdraft protection practices have taken a huge toll on borrowers in New York City and State, and around the country. The Agencies have an unprecedented opportunity to issue strong and effective regulations that will curb these abuses, and protect American consumers. We commend the Agencies for proposing strong regulations, and urge the Agencies not to weaken the proposed rules. We thank the Agencies for their consideration of our comments and suggestions for further strengthening the regulations.

Sincerely,

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