

**Subject:** Regulation AA

**Date:** Jul 25, 2008

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**Proposal:** Regulation AA - Unfair or Deceptive Acts or Practices

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**Comments:**

Bryant State Bank Donegal Centre – Suite 120 4301 West 57th Street  
Sioux Falls, SD 57108 July 25, 2008 Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System 20th Street and  
Constitution Avenue NW Washington, DC 20551 Re: Unfair or  
Deceptive Acts or Practices Proposal - Docket Number R-1314 Dear  
Board of Governors: The price controls proposed in Amendment AA  
will limit credit access to millions of consumers and will create an  
economic barrier for consumers trying to rebuild their credit.  
Regardless of the product type, free market conditions result in  
optimal benefits to consumers. Free market conditions have proven to  
be the most efficient and fair approach to consumers in providing the  
lowest cost and highest quality products. Price controls proposed will  
result in unwelcomed negative consequences to consumers.  
Americans Need Credit Cards Virtually all Americans and society  
demand the access to credit cards to complete everyday transactions.  
However, not all Americans qualify for the lowest price/risk products.  
In order to make credit cards available to all Americans, lenders must  
be able to price according to risk. Intent of Regulation AA Amendment

The proposed amendment to Regulation AA, Unfair Acts or Practices, implies that its intent is to protect consumers from actions and practices deemed unfair. We disagree that pricing according to risk is unfair when consumers are fully informed, have easily understood disclosures, and have the right to a full refund within a detailed refund policy. Health insurance, life insurance, car insurance, home mortgages, auto financing, trucking firms, cargo shipping, and most other businesses require the ability to set prices according to the risk undertaken. Firms that cannot price according to the risk will simply not service those markets when the risk (cost) is greater than the potential return. The pricing for consumers in "high risk" subprime categories is commensurate to the risk undertaken by the lender.

**True Value of Subprime Credit Cards**

Credit cards provide on-going access to what most Americans view as normal daily purchases. The cost and benefit of the subprime card has to be viewed beyond the initial cost of the product.

- Initial Cost versus Benefits Provided
- Access to Daily Transactions. Consumers who do not have access to credit cards will be "shut out" of many transactions that most Americans need. Credit cards provide on-going access to participate in everyday transactions such as; renting a movie, buying a cell phone, purchasing gas at the pump, reserving a hotel room, or making a purchase on the internet or by telephone.
- Opportunity to Improve Subprime cards provide credit strapped consumers the opportunity to rehabilitate and improve their credit rating.
- Credit Reporting. Alternative credit sources for consumers in the subprime profile (pawn shops, payday loans, check cashing services) typically do not report to the credit reporting agencies giving no chance for consumers to improve their credit opportunities.
- Value. The opportunity to improve a credit rating is worth the one time fee. For example, the initial total fees of \$175 may provide for future consumer savings of thousands of dollars in a home mortgage rate that was made possible by the payment history created from a subprime credit card. A \$250 credit card product provides access to over \$2,500 in available credit annually. This loan amount can be interest free if the consumer pays in full each month. The value of a subprime credit card is not just the initial available credit but rather the long term access to complete routine transactions within our society and the substantial value in the opportunity to improve future credit offers.

**Negative Impact to Consumers**

Millions of less than prime credit risk consumers want credit cards. If lenders are unable to price according to risk, credit card offers to millions of consumers will not be available. The resulting economic hardships to consumers will be as follows:

- Hardship. Consumers will not be able to complete everyday transactions which would result in both personal and economic hardships. Consumers will be "shut out" of modern day transactions and economic improvement opportunities.
- Consumers Stuck in the

Middle. Consumers will be “stuck” in an economic quagmire with limited or no alternatives to improve their standing. Consumers will not be able to obtain credit due to their credit score and lenders will not lend funds when they cannot price according to the risk. Consumers’ opportunity to improve their economic status will be greatly diminished. □ Financial Cost. The resulting financial impact will be higher cost of credit to consumers who are trying to improve their credit availability and offer terms. Rather than improving credit status in a relatively short period of time (12-24 months), a consumer may languish in poor credit opportunities for many years and have no foreseeable way to improve. □ Consumer Protection. When regulated credit is unavailable, unregulated alternatives are the consumers only choice. Economically credit strapped consumers will turn to sources of credit that are unregulated which will have higher costs and negative consequences for consumers. The unintended impact of the current amendment would be to create an economic “cast” system in this country. Credit strapped consumers will be locked into certain economic classes with no credit offers to provide a channel to improve. Consumer costs for borrowing will grow larger and negative ramifications of lower credit scores will last longer and be more severe than in today’s environment. The economic opportunity benefit to consumers of subprime lending greatly outweighs the initial upfront cost. Consumer Right to Choose Don’t eliminate a consumer’s right to choose. Do provide consumer protection in ensuring information is provided that will allow informed decisions, provide protection in how this information is provided, and allow a time period for consumers to “back out” of the agreement if the product or pricing is not what they wished to obtain. Win/Win Solution The May 19th, 2008 Proposed Changes to Regulation Z (Docket Number R-1286) advocates adding a separate notice that outlines the consumers’ “Right to Reject Credit Card” if the consumer is charged more than 25% of the minimum credit line. We believe this is the right approach and would agree to further consumer protection by adding a mandated consumers’ right to a 75 day rescission period from the account opening date. The rescission period would ensure consumers have every opportunity to evaluate the product’s benefits versus costs and receive a full refund if they decide it is not the right product for them. If the consumer chose to close the account in the first 75 days, the consumer would be entitled to a full fee refund and only be responsible for charges incurred and related finance charges. This solution, coupled with the right to reject notice, will protect consumers from any misunderstanding of the product costs and allow for pricing that is aligned with the associated risks. Conclusion The ability for consumers to rebuild credit and improve their condition is fundamental to the goals of government and society. Price controls will essentially shut the door to millions of consumers and create an

economic “cast” system. Consumers will not have an opportunity to move up economically and begin the path to “prime” credit offers. Furthermore, price controls are counter to democratic ideals and sound economic principles. Enhancing current disclosures and requiring a refund period/policy would remedy any perceived unfairness in the product pricing without instituting price controls. The appropriate solution to improving Regulation Z would include the following: a) fixed fee disclosures that are easily understandable; b) disclosures that clearly show the effect of initial fees on available credit; and c) requiring credit card lenders to refund, at consumer’s request, all fees if requested within the first 75 days of account opening. The consumer would only be responsible for the charges and related expense for the items they incurred on the card. The above change to the proposed amendment will provide enhanced consumer protection, allow freedom of choice for consumers, and will not create the unwanted consequences of price controls. Thank you for your consideration of this alternative to modify the amendment which will protect the consumer and allow for the availability of a product valued by millions of consumers. Sincerely, Michael S. Williams Vice-President Credit Card Programs Bryant State Bank