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

Docket No. R-1286

July 18, 2008

To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposed rule, Docket No. R-1286, amending Regulation Z and the staff commentary to the regulation, which implements the Truth in Lending Act. These comments are on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of proprietary retail credit cards for Macy's and Bloomingdale's.

This response letter will not include comments in support of any particular section of the proposed rule but is limited to those sections of the proposal where FDS Bank has concerns with the proposal and those sections where we request additional guidance from the Board on implementation of a revised Regulation Z.

The Board proposes, in connection with the UDAP proposal, that if a creditor intends to change the Annual Percentage Rate on an existing account, the change-in-terms notice provided to the consumer must identify the balances subject to the newly disclosed APR as well as the balances to which the current APR will continue to apply. We encourage the Board, as they work to sync up the various proposals, to provide guidance on how a penalty rate program interacts with this proposal. For example, a consumer has a $1000 balance on their account with an APR of 14.9%. The creditor sends a change-in-terms notice changing the APR on the account to 16.5%. After that terms change is in effect, the consumer charges an additional $500 to the account subject to the 16.5% APR. If the consumer then triggers the penalty rate of 21% on the account, we assume that the balances subject to each of the APRs could be adjusted to 21%. What happens if the consumer is then able to cure the penalty rate? Must the unpaid balances return to separate APRs? If payments were made on the balance while it was subject to the penalty APR, how should those payments be applied in order to determine what portion of the remaining balance goes to which APR? May the entire balance go to the new APR on the account (16.5%)? Our opinion is that if the consumer triggers a penalty APR, they should forfeit the benefit of having any of their balance return to the pre change-in-terms APR.

In addition, if a creditor intends to change the penalty rate on accounts from, for example, 21% to 23%; we request additional guidance on whether an existing balance subject to the 21% penalty rate must remain at 21% and then new purchases would be subject to the new penalty APR of 23%? With this example, guidance is also requested on what APR the balances are given should the customer cure whatever triggered their penalty rate.

Regarding the Board's proposal to place limitations on the substitution of a credit card, the Board indicates that, "Over the years, consumers have expressed their confusion, and in some cases frustration, when they receive on an unsolicited basis a new general-purpose card that is sent in substitution for a card originally honored by a single merchant." We are concerned that the Board is making this proposal based on the comments of a vocal minority. Has the Board evaluated the number of consumers who receive substituted cards and subsequently use and appreciate the new product? It is unlikely that these satisfied consumers would write the Board or other regulatory agency to share how much they appreciate their upgraded product. Restricting a lenders ability to substitute an inactive account with another account that may be beneficial to the consumer seems like an unnecessary constraint on the free market system.

We also suggest that claims of a heightened risk of "identity theft" due to a substituted credit card is an urban myth perpetrated by the media. What a consumer might be concerned about is an account takeover situation where a fraudster steals a credit card from a mailbox and uses the card to make purchases. That situation is significantly different from "identity theft" and the risk of loss associated with account takeover is borne by the creditor not the consumer. To our knowledge, the documentation sent with a credit card does not contain the information necessary to steal someone's identity. Typically, these mailing include the consumer's name and address. They do not include a social security number, date of birth, or other information necessary to steal someone's identity.

In the marketplace, creditors would not pursue these types of programs if they did not result in increased card usage from consumers. Similarly, creditors would not pursue these types of programs if they resulted in significant fraud losses. If the Board believes there are legitimate concerns with these types of programs, perhaps they should consider regulations to address those concerns through pre-notification programs rather than an outright prohibition on a process appreciated by many consumers.

Lastly, on this topic, the Board requested comment on whether 24-months inactive is a reasonable time period for any such regulation or whether a longer period might be more reasonable. We suggest that private label credit cards have a different pattern of usage than a general purpose credit card. General purpose cards can be used for a vast array of daily purchases while private label cards are typically limited to a single merchant. Thus, a private label card might have longer periods of time without new purchases when the consumer has not abandoned the card. Thus, a period of 36-months or longer might be a more reasonable benchmark for inactivity on a private label credit card.

The Board is also proposing a dramatic policy change regarding the liability of cardholders for unauthorized use of an open-end credit account. The Board intends to prohibit a creditor from requiring that the cardholder sign an affidavit of fraud or file a police report as part of a fraud investigation. However, in the proposal the Board continues to stress that if the, "[C]ard issuer otherwise has no knowledge of facts confirming the billing error, comment 12(b)-3 states that the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. While we are very concerned with this prohibition in general, as discussed below, this proposal is somewhat confusing. The proposal indicates that a card issuer may not automatically deny a claim based on a failure or refusal to submit a signed statement or affidavit or file a police report but it does not prohibit the card issuer from requesting a signed statement or affidavit or the filing of a police report. Further, it indicates that if an affidavit or police report are requested and not provided, the card issuer could terminate the fraud investigation. From this reading, it would appear that a card issuer can get to the same place regarding "requiring" a signed statement, affidavit or police report but must avoid seeming to "require" this documentation.

Credit card fraud is a significant problem, as are fraudulent claims of fraud. While the Board is concerned that requiring a signed affidavit or police report may have a chilling effect on a legitimate consumer's willingness to exercise their right to file a claim regarding unauthorized use of a credit account, this has not been our experience. Consumers with legitimately unauthorized transactions on their account are more than willing to sign an affidavit to that effect or file a police report, documentation that is often necessary for a creditor to prosecute or seek restitution should a perpetrator be apprehended. We believe that requiring such documentation may have a chilling effect on cardholders who are attempting to submit a specious fraud claim on their account. Such claims are often associated with domestic situations. For example, a cardholder gives their credit card to a relative to make a purchase. The relative spends more than anticipated or refuses to compensate the cardholder for the purchase and a dispute ensues between the parties. The cardholder then calls the creditor and claims the purchase was unauthorized. While the cardholder feels justified in claiming the transaction was unauthorized, they are unlikely to file a police report or assist with prosecution of the family member. Invalid claims of unauthorized use are numerous and this proposal could embolden consumers and expose financial institutions to excessive losses for legitimate purchases.

The Board is also proposing new disclosure requirements for deferred interest offers. In particular, the Board proposes requiring additional disclosures with the first (and most prominent) advertisement of "no interest" or similar term. Since these offers may be disclosed in large print in a banner type of advertisement, we request guidance from the Board regarding minimally acceptable font size for these disclosures, both on the internet and in print. It seem unnecessary for these disclosures be in the same font size as the banner advertisement because such a disclosure could take over an entire page of the advertisement. To avoid confusion, the Board should consider a minimum font size for these disclosures.

We thank you again for the opportunity to comment on this proposal and we hope that our comments will be useful as you finalize your revision of Regulation Z's rules for open-end credit.

Sincerely,

Steven L. Franks