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July 18, 2008

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

**Re: Docket No. R-1286 Proposed Rule to Amend Regulation Z, and Docket
No. R-1314 Proposed Rule to Amend Regulation AA**

Dear Secretary Johnson:

Southeastern Ohio Legal Services hereby submits the following comments in response to the request by the Board of Governors of the Federal Reserve System for public comment on proposed amendments to Regulation Z and Regulation AA, which prohibit specific unfair acts or practices of credit card companies, as published in the Federal Register (May 19, 2008 at Vol. 73, No. 97, pages 28866 – 28964).

We fully support the proposed regulations to increase disclosures of credit card provisions, limit fees, and expand payment options. However, in order to fully combat the predatory and deceptive nature of many credit card fees and finance charges, additional regulations are required to protect consumers.

Southeastern Ohio Legal Services (SEOLS) provides free legal assistance to thirty counties in Southeastern Ohio. Our service area, roughly a third of the state, is largely rural and is historically the poorest area in the state. We see many low income clients who are struggling with credit card debt, much of which is due to excess membership fees, interest rates, and late fees charged by the credit card companies. Consumers desperately need regulations to control the unconscionably high fees and interest rates associated with credit cards. In addition, it is paramount that credit card companies be required to provide clear and extensive disclosures. Consumers need to be fully informed about the products and services they use in order to make educated decisions affecting their financial well-being.

The amount of consumer credit card debt in America has risen sharply in the last several decades. A recent study by the Center for Responsible Lending found that middle to low income American families each have an average of \$8,650 worth of credit card debt.¹ In 2007, the U.S. Senate held hearings about the abusive practices and predatory lending aspects of credit card companies.² The Senate was very concerned about the high interest rates and abusive fees being charged to credit card holders.³ Testimony revealed that over-the-limit fees are often charged repeatedly and it is not uncommon for penalties and fees on a credit card account to be double or triple the actual principal owed.⁴ The GAO submitted its own report finding that consumers could not understand, based on the credit card disclosures, when late fees would be applied to their account or the amount of the late fee.⁵ This may be because, as the GAO points out, the disclosures are often written far above what an average consumer is able to understand.⁶

Our clients have had many experiences with unfair and deceptive credit card tactics. One client recently came to our office because she was being sued to collect on a credit card debt. More than two-thirds of the debt was fees imposed by the creditor. The client had been consistently sending in her monthly minimum payments, only to find that she was falling further and further into debt. Even when the client did not make any purchases with the credit card, her minimum monthly payments were still not enough to cover the monthly finance charges and membership fees. This debt trap is another example of how credit card companies are charging outrageous fees, and failing to disclose how these fees and finance charges are being applied.

The Federal Reserve Board has addressed some of these deceptive acts and practices with its new proposed rules. However, additional regulations would provide even more help to even the playing field between consumers and credit card companies.

Fee Restrictions

The proposed rules are a good start to imposing limits on the type and amount of fees that credit card companies can charge consumers. However, additional restrictions need to be in place. Many credit cards marketed to low income people, like our clients, have extremely high fees and interest rates. These extensions of credit are commonly known as fee-harvester credit cards. The cards usually have a low credit limit, often \$300 or less, and the majority of the available credit is used up by multiple kinds of creditor

¹ *The Plastic Safety Net: The Reality Behind Debt in America*, Demos, and the Center for Responsible Lending, at <http://www.responsiblelending.org/pdfs/DEMOS-101205.pdf> (October 2005).

² **Error! Main Document Only.** Hearing before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate, *Credit Card Practices: Fees, Interest Charges, and Grace Periods*, S. Hrg. 110-76, March 7, 2007.

³ *Id.* At 2.

⁴ *Id.* at 4.

⁵ **Error! Main Document Only.** U.S. Government Accountability Office Report to the Ranking Minority Member, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, United States Senate, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, Sept. 2006, GAO-06-929.

⁶ *See Hearing*, at 9.

imposed fees. The proposed rules would prohibit fees that exceeded 50% of the available credit on the account, and require that fees over 25% of the credit limit be spread out over the year instead of charged in a lump sum. While these regulations do begin to help the problems, further guidelines are needed to adequately regulate out of control fees and interest rate charges.

- 1.) Interest rate increases should be limited and/or capped at a reasonable percentage rate. These increases should not be arbitrary, and the credit card companies should be able to give legitimate reasons for changes in interest rates.
- 2.) Credit card companies should be prohibited from charging excessive penalty fees, and such fees should be reasonably related to costs incurred by late payments.
- 3.) Credit card companies should be prohibited from charging fees for paying a bill by certain methods such as over the phone, or by mail.
- 4.) Consumers should not be charged over-the-limit fees when their credit limit is exceeded because of creditor imposed fees. For example, a consumer may have charged an amount under his credit limit, but when the credit card company adds a membership or annual fee, the account has now exceeded its credit limit. Currently, the consumer may be charged an extra fee of \$30 or more even though he was unaware that the credit card company would be adding an additional charge to his monthly account. Credit card companies should not be allowed to charge over-the-limit fees in these situations.

Disclosures

Consumers need clear and concise disclosures from the credit card companies about the terms of the credit card contract. Many consumers do not understand why their accounts are being charged multiple fees, increasing interest rates, or why any dispute they have with the credit card company must be arbitrated instead of heard before a judge. These terms generally are mentioned, but in tiny print, with convoluted language, and as part of a long and complicated contractual document. In addition to the disclosure guidelines specified in the proposed regulations, other problems regarding credit card disclosures need to be addressed.

1. Unilateral change in terms of credit card contracts should be prohibited. Currently, credit card companies include a clause in all of their contracts which allows them to change any part of the contract without the consumer's permission, and with little or no notice. Regardless of what disclosures credit card companies are required to provide under these new regulations, they will still be able to change any of these terms at will, rendering the disclosures meaningless. The credit card contract terms are usually changed to include

higher interest rates, fees, and minimum payments. Many consumers remain unaware of these changes, and as a result incur even higher balances due to the unilateral change in terms.

- 2.) Typical or average interest rates and fees should be included in the disclosure materials and in advertisements. Consumers need to be able to compare the terms of their credit card agreement with that of other credit card offers. Many consumers do not have a clear understanding of what a typical apr should be, or how their credit card compares with others.
- 3.) All potential fees and interest rates that could apply to a credit card account should be disclosed in an easy to read chart. If consumers are able to see all potential fees laid out in one location, instead of individually buried in fine print contracts, this would promote real understanding of the implications of using a credit card, and more responsible use of credit.

Payments

The proposed rules provide some guidance on payment allocation, as well as when a payment may be considered late. The rules set forth a “safe harbor” timeframe of at least 21 days between the mailing or delivery of periodic statements, and the due date before banks can consider a payment late. Specifically, banks will be considered to be compliance with this mandate so long as they adopt “reasonable” procedures to make sure said periodic statements are “mailed or delivered” to consumers at least 21 days before the due date. The proposed rules also address how credit card payments should be allocated to balances with different interest rates. These types of regulations are necessary because currently, most credit card companies distribute all payments in the way that will ensure the least benefit to the consumer and pays off the least amount of the debt. In order to make these regulations even more effective, we support the following additions.

- 1.) Consumers should be allowed to instruct the credit card companies on how they want their payments allocated to the accounts. Currently, the proposed rules only require the credit card companies to split payments between all accounts with differing interest rates. If consumers do not express a preference, then credit card companies should be required to apply payments to higher interest charges first, before crediting lower interest accounts.
- 2.) We recommend that the Board tighten its language and require that banks adopt procedures that establish delivery at least 21 days before the due date. In rural Appalachian Ohio, regular U.S. mail is often rerouted through urban centers, which can result in lengthy delays before delivery occurs. For example, all mail from the city of Athens, even those going to another Athens address, is first routed through the Columbus hub before delivery. While allowing 7 days for a consumer to review a statement and make payment accordingly may be sufficient for those in more populated areas, we believe that rural consumers will be unduly penalized unless this language is tightened.

3.) Alternatively, we recommend that the Board adopt a late payment deadline date that falls at some point after a statement's due date. Rural consumers will still face the 14-day timeframe with regards to finance charges being imposed under the current TILA provisions. Having two sets of due dates in addition to being subject to a slower mailing speed would not allow consumers here to make informed choices as to their credit card activity, both in terms of usage or payment (either when to send payment or how much to send in order to avoid finance charges and/or late fees.)

Conclusion

SEOLS supports all of the proposed rules regulating unfair and deceptive credit practices. Many consumers are being taken advantage of by the predatory practices of credit card companies, who are currently allowed to charge arbitrary fees and change their contractual agreements with consumers on a whim. We would favor even more stringent regulation of the credit card industry to make sure that consumers are well informed and treated fairly by the credit card companies.

Respectfully submitted,

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