



## THE DELAWARE BANKERS ASSOCIATION

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August 4, 2008

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### VIA FAX (202-452-3819) AND ELECTRONIC MAIL

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

Re: Docket No. R-1314

Dear Ms. Johnson:

The Delaware Bankers Association represents 49 financial institutions with over 400 billion dollars in assets and approximately 28,000 employees in the State of Delaware. We are very concerned that the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the "Agencies") have proposed rules that will have considerable adverse, and, presumably, unintended, consequences on the banking industry and the consumers we serve.

Although it should go without saying, it probably should be restated— consumer credit is good for consumers individually, and it is good for the economy. Granted, if used irresponsibly, it is neither good for the individual consumer nor the financial institution making the loan; in that manner the interests of the consumer and the financial institution align. In recognition of this, a complex regulatory structure at both the state and federal level has evolved around consumer credit that provides fulsome disclosure to assure that consumers can make informed choices, and that mandates that financial institutions operate in a safe and sound manner. The current proposal by the Agencies, particularly through the use of a UDAP structure in its implementation, will harm consumers— and the economy— as a whole.

The Agencies propose to determine that long-standing practices that are wholly consistent with the current regulatory and statutory structure are unfair. Indeed, the Agencies are specifically determining that state statutes, in place for over twenty years, are unfair— notwithstanding that these statutes and the actions taken in reliance on them have been the subject of the oversight of multiple state and federal legislatures and regulators, not the least including the Agencies themselves.



*Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
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Specifically, for example, Section 952 of Title 5 of the Delaware Code provides that an agreement may be amended to increase the interest rate on an existing open-end consumer credit account. However, it requires that consumers be given the opportunity to reject the proposed amendment. In so doing, Delaware law has expressly provided greater protection than the Federal Truth in Lending Act and Regulation Z, both of which look to state law for these questions.

The Agencies propose to leapfrog past the balanced approach of Delaware's law by virtually banning the practice altogether, which, as many have already pointed out, is likely to lead to an undesirable combination of reduction in credit available and an increase in the cost of that credit. In so doing, the Agencies have provided little in the record that speaks to why they think these state statutes are unfair.

Open-end credit by definition is different from closed-end credit. It is intended to allow both borrower and lender to react to future needs and risks on a month-to-month basis. This very fluidity contributes to its economic value and its viability. Delaware's structure balances the interests and rights of both the consumers and the banks—through notice and opt-out, the consumer retains control over their economic situation. We encourage the Agencies to revise the proposed rules to align with this structure.

We thank you for the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in black ink that reads 'David G. Bakerian'.

David G. Bakerian  
President and CEO  
Delaware Bankers Association