April 14, 2010

Ms. 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-1384

Dear Ms. Johnson:

USAA Federal Savings Bank ("USAA") is submitting this comment letter in response to the proposed rule amending Regulation Z and the Official Staff Commentary ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board") to implement the penalty fee and account review provisions of the Credit CARD Act.

Reasonable and Proportional Penalty Fees

1. *Fees Based on Costs.*

Under the Proposed Rule, the dollar amount of a fee for violating the terms of a credit card account may be based on the determination that the amount represents a reasonable proportion of the total costs incurred by the card issuer as a result of the violation. The relevant factors in the Proposed Rule for this fees-based-on-costs approach are:

- The *number of violations* experienced by the card issuer during a prior period; and
- The *costs incurred by the card issuer* during that period as a result of those violations.[1]

The Proposed Rule includes an example in which a card issuer with one million delinquencies and $23 million dollars in delinquency-related costs could charge no more than a $23 late fee. USAA supports a fees-based-on-costs approach provided that it reasonably allows a card issuer

[1] Instead of using the actual number of violations and the resulting costs during a prior period, a card issuer may use the number of violations and costs reasonably estimated for the upcoming period.

to fairly recoup all and not just some of its costs. However, the Proposed Rule fails to accomplish this objective in the following two respects:

A. *Fees are based on the Number of Violations rather than on the Amount of Fees Paid.*

Setting a maximum fee at the issuer's costs divided by the number of violations will not result in an issuer recovering its costs. Even if we assume that a fee is charged for every violation, a significant portion of fees charged by issuers will never be paid by cardholders. In fact, USAA collects approximately 83% of the late fees it bills its cardholders. In the late fee example above, if an issuer billed a $23 late fee on all one million delinquencies, it might expect to recover about 830,000 late fees or about $19 million dollars—substantially less than the $23 million dollars in delinquency-related costs on which the fee in the example is based.

USAA strongly urges the Board to modify the Proposed Rule to allow card issuers to calculate a late fee based on its costs divided by the number of fees paid. Alternatively, the Board should permit issuers to reduce the number of violations by the percentage of fees that are not paid by cardholders who are charged the fee.

B. *Fees cannot exceed the dollar amount associated with the violation.*

Under the Proposed Rule, a fee cannot exceed the dollar amount associated with the violation. For example, if a minimum payment is $15, a card issuer cannot charge a late or returned payment fee in excess of $15. However, the cost to a card issuer for each violation does not vary by the amount of the minimum payment. Such a limitation is inconsistent with a fee-based-on-cost approach and we urge the Board to eliminate this provision in the final rule. Alternatively, we urge the Board to allow a fee that permits an issuer to recover its costs taking into consideration the fees that do not exceed the dollar amount associated with the violation. For example, let's assume that a card issuer has $23 million dollars in costs and will be paid 830,000 late fees. If 180,000 of those late fees equal the minimum payment due, those 130,000 late fees would result in the issuer collecting approximately $3 million in late fees. The final rule should permit the card issuer to collect the remaining $20 million of its costs from the other 650,000 late fees.

2. *Fees Based on Safe-Harbor.*

USAA urges the Board to implement a safe harbor that allows most issuer's to recover costs and deter cardholder's from violating the terms of the account. The amount of the safe harbor should result in a high majority of card issuers simply using the safe harbor rather than making annual determinations of the permissible fee amounts. Otherwise, the safe harbor will serve no useful purpose.

With respect to the first alternative safe harbor, USAA believes a safe harbor ranging between $30 and $40 for late and returned payment fees would reasonably recover most card issuers' costs while providing a sufficient deterrent to paying late and writing bad checks. We believe a separate safe harbor is required for over-the-limit fees.

With respect to the second alternative safe harbor that would allow a fee of 5% of the *minimum payment due*, USAA urges the Board to reconsider the formula so that it is based on a percentage of the *balance* (e.g. 3%). Since the minimum payment is already based on a percentage of the balance, a fee based on a percentage of a percentage of the balance minimizes the fee too much. For example, 5% of a $20 minimum payment is only $1. This does not come close to allowing issuers to recover costs and might in fact encourage cardholders to make late payments.

3. *Disclosure of Fees in Schumer Boxes and Account-Opening Tables.*

Under the Proposed Rule, card issuers would be required to disclose penalty fees as "up to $XX" in the Application/Solicitation and Account Opening tables. Additional information about how the fee is calculated would have to be located outside of the table. USAA urges the Board to adopt a method of calculating penalty fees which results in no changes to the required disclosures. However, assuming the final rule provides for different fee amounts based on variables (such as the amount of a minimum payment), we urge the Board to permit disclosure of all required fee disclosures in the table and not just the maximum amount. For example, a clear and concise disclosure stating that the fee amount is "the lesser amount of $XX or the minimum payment" would be less confusing to consumers and be much less expensive for issuers to implement and manage for the reasons discussed below.

Many card issuers including USAA incorporate the Account-Opening Table into their credit card agreements. At USAA, the table is included with all our pricing terms in a "Pricing Schedule" that is laser printed on one side of a card carrier and sent to cardholders with the credit card and the account agreement. Under section 226.6(b)(3)(i) of the current regulation, an issuer must disclose the circumstances under which a fee may be imposed, the amount of the fee and an explanation of how that fee is determined. If an issuer can only disclose the maximum amount of a fee in the table, then it will have to provide all of the fee disclosures elsewhere (including re-disclosure of the maximum fee).

The Proposed Rule will not only lead to longer disclosures and consumer confusion, but also it will require issuers to re-design the same disclosures that they just completed less than two months ago. Such a re-design requires issuers like USAA to develop new system file layouts sent from its credit card processor to its card fulfillment vendor. This effort will result in extensive programming and testing to ensure that fee and other information is printed correctly and in the proper location on the card carrier. This is not an inexpensive or easy process. Of even greater concern to USAA is that the new disclosures may not fit on our card carriers. If this were to occur, USAA might not be able to comply with the new requirements by August 22, 2010 because a new method for delivery of Pricing Schedules would need to be developed.

Reevaluation of Rate Increases

USAA generally supports the provisions in section 226.59 of the Proposed Rule. We provide the following comments:

- We strongly concur with the Board that an issuer should not be required to base its 6-month reviews on the same factors that caused the rate to be increased, but instead should be permitted to review the factors that it currently uses when determining the rates applicable to its consumers' credit card accounts. We ask that the Board clarify that this means card issuers may, among other things, use the same factors that apply to its determination of rates on new accounts.

- The Board solicited comments on whether the obligation to review the rates should terminate after some specific time. We encourage the Board to set forth a limit of no more than 3 years after the initial rate increase. Most balances are repaid in three years and the cost to issuers of performing 6-month reviews simply outweighs the minimal benefit to consumers who take longer to repay.

- We agree that the duty to review rate increases should not apply to increases resulting from reinstatement of a prior rate that was temporarily reduced to comply with the Servicemembers Civil Relief Act (SCRA). However, the exceptions to rate increase reviews should also include rate increases permitted by sections 226.55(b)(1) (temporary rates); 226.5(b)(2) (variable rates); 226.55(b)(5)(workout or temporary hardship arrangements); and 226.55(b)(6) (SCRA).

If you have any questions regarding our comments, please do not hesitate to call me at (210) 498-1098.

Sincerely,

Ronald K. Renaud
AVP Executive Attorney
Banking Counsel