

January 3, 2011

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

Re: Docket No. R-1393 and RIN No. 7100-AD55 – Proposed Amendments to Regulation Z:

Dear Ms. Johnson:

I respectfully submit the following comments in reference to the proposed revisions by the Federal Reserve Board (the “Board”) to the proposal published in the Federal Register on November 2, 2010, 75 Fed. Reg. 67458.

**226.13 – Disputed Charges**

In reference to the changes for 226.13(c) which prohibits disputed charges from being re-billed to an account after 2 billing cycles and the addition of the exception for duplicate credits, I want to note that the Appendix G - G-3(A) Long Form Billing-Error Rights Model Form (Plans Other Than Home-equity Plans) states, under the “What Will Happen After We Receive Your Letter” section, “If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.” In section 226.13, it implies the liability for a creditor for not resolving the dispute entirely within 90 days is that the creditor must write-off the total amount of the charge; however, the customer notice in G(3)(A) specifically states the creditor’s liability is \$50.00. If the expectation is that a creditor must write-off unlimited amounts due to time limitations, I am unclear where in any Act that expectation is listed. Further, if this is the requirement, then the customer disclosure should align and provide accurate information.

**226.51 and 226.52 – Ability to Pay and Under-21 Protections**

Regarding Section 226.51(a) and 226.52(b), I have some serious concerns about both the context and implications of what is already implemented as well as what is proposed. Regulation B, the Equal Credit Opportunity Act prohibits discrimination based on sex, marital status and income derived from public assistance, as well as the other prohibited basis. Banks adopted a practice of asking for household income so that non-working spouses could claim their spouse’s income when applying for credit, which helps to ensure that they do not discriminate based on sex since the majority of non-working spouses are women. Without this practice, no non-working spouse can get their own credit. Furthermore, if the couple was not married, the non-working spouse would have independent income either through employment, child support, separate maintenance or public assistance income. Therefore, not permitting a married non-working spouse from claiming their spousal income as their own discriminates based on marital status.

When Congress passed the Credit CARD Act, they said that banks cannot issue credit cards to consumers under 21-years old unless the consumer has INDEPENDENT income. The intent of Congress was to ensure that banks weren’t lending to college students who weren’t employed and were living on either their student loans or money from parents. I think that virtually all bankers can agree with this methodology. However, there is a significant difference between a 20-year old college student without employment and a 20-year married woman who has decided with her spouse that she will stay home to raise the child/children while her spouse works outside the home. I firmly believe the Board’s interpretation has the potential for discrimination and urge the Board to reconsider its approach with regard to this provision.

With the most recent proposals, the Board indicates its intention that all income for any age consumer must be “INDEPENDENT” and that spousal income may only be considered if the customer resides in a community property state. Given the fact that there are only nine (9) states that have Community Property Laws (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin), the vast majority of states are not community property. That means that for any couple who choose to have one parent stay home to raise the children, the stay-at-home parent will be treated as a second class citizen who can’t get a credit card in their own

name – based on the fact that they are married but not employed. Yet, if the couple wasn't married, the parent staying home to raise their children would have their "own independent income" from child support, separate maintenance, public assistance income or employment. Maybe this is so bothersome to me because I really do understand that it is incredibly important to ensure that consumers have "an" income source and will be able to afford the payments on whatever credit is granted but struggle with the anti-family nature of this provision. For real life examples, please consider the following involving real situations with real people known to me:

- The husband manages a condominium and receives rent free but no salary. The wife works and earns a salary. Under these proposed regulations, he couldn't have a credit card in his name – he could be an "authorized user" on her account but he does not have independent income to qualify individually.
- Spouse and husband decide he will stay home with the children while she works outside the home. He cannot have a credit card in his own name under these rules because he has no independent income.
- Husband owns his own business and wife primarily stays home with the children but also does the company books without drawing a salary so she would not be allowed to be approved for a credit card in her name.
- A non-working spouse goes into a department store offering 10% to 20% off that days purchase if they apply for and are approved for the store credit card. The non-working spouse can't be approved if he/she was shopping without their wage-earning spouse and wouldn't therefore be able to get the discount.

In reviewing the commentary in the Proposal, the Board states that if the creditor asks for "income" and not "household income" and the non-working spouse provides their spouse's income, since the creditor isn't required to "verify" the information the applicant provided, the account could be approved. I disagree. In order to not discriminate based on "income source" under Regulation B, virtually all creditors ask for the income source and if the customer indicates the income source is "spouse", there is no explanation in the proposal on how a creditor should treat this information. Should it be accepted as their income, knowing full well that the income is not INDEPENDENT? Should it be negated knowing it is spousal income? The correct answer cannot be to not ask for the source of the income because if the source is public assistance, it needs to be grossed-up since it isn't taxable in order to avoid discrimination based on public assistance income. Therefore, the proposal has created another scenario where there is a heightened risk of discrimination. Fair Lending is incredibly important and I think that conflicts in regulations cannot be accepted where they create the risk of discrimination.

In all that I have read including Congressional committee debate and speeches, Congress intended to ensure that college students have independent income in order to be approved for an account but it is a huge mistake to assume that all under-21 year olds are college students. The ability-to-pay was to ensure that creditors didn't issue credit cards to consumers who had no viable income source to pay the debt. I respectfully request that the Board reconsider the proposal to maintain the intent of the Credit CARD Act and ensure that we do not create Fair Lending issues.

#### **226.52 – Limitation on Fees**

The Board states in the proposal that it is proposing to apply the 25% initial fee limitation to fees the consumer is required to pay prior to account opening. In the Credit CARD Act, Congress specifically said:

15 USC Sec. 1637. Open end consumer credit plans

(n) Standards Applicable to Initial Issuance of Subprime or 'Fee Harvester' Cards

(1) In general

If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

(2) Rule of construction

No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law. 15 USC 1637(n)(2)

Just as Judges are required under the Rule of Statutory Interpretation to presume the legislature said what it meant and meant what it said and, only if the statute is not clear on its face, to look behind the statute to interpret its

meaning, the Board needs to presume the legislature said what it meant and meant what it said. The words in the Credit CARD Act are not ambiguous and interpreting non-ambiguous words to mean something else frustrates legislative intent. The Act states that “IF the terms...require a payment of any fees...in excess of 25 percent of the total amount of credit...no payment of any fees...may be made from the credit...available under...the account”.

There are two applications of this very clear rule:

- The creditor may charge up to 25% in non-exempted fees to the credit card account
- The creditor may charge more than 25% in non-exempted fees but if they do, “no payment of any fees” may be charged to the credit card account.

Furthermore, if the Board intends to interpret and translate the meaning, then as in its interpretation of Reasonable Penalty Fees, the Board should consider the costs and expenses associated with underwriting an application to determine whether fees in advance of opening the account are acceptable. Creditors incur costs for Systems, Credit Bureau Reports, Labor, Letter expense, postage and Record Retention on every application regardless of whether the application is approved or not. Fees billed to accounts after account opening cover Credit Risk, Costs of Plastics, Customer Service, Systems, Billing Statements, Postage, Authorization, Network Access, Fraud Prevention, Payment Processing and numerous other incidental expenses to offering credit cards. Therefore, since Congress just as easily could have said “No customer can be required to pay any fees greater than 25% of the initial credit line on the account in the first year of the account” but chose not to make this statement, we must assume that Congress said what they meant and meant what they said.

**226.52: Reasonable Penalty Fees:**

The additional examples provided by the Board in the proposal provide some assistance on understanding the intent; however, there is one category that still has not been well explained. If an account has a minimum payment due, makes a payment that is equal to or more than the minimum due but that payment is returned, and no other payment is received before the due date, the customer actually has two (2) different violations. The Returned Payment is one violation that occurs on the date of the return and a Late Payment later because no payment was received by the Payment Due Date. It appears that the Board is considering this as one violation. If the methodology of the Board is to assume that, if the payment had been good, the account would not have been delinquent therefore this would be multiple penalty fees on one event, then additional examples should be provided as well as examples where this is not the situation. For example, if the Payment Due is \$30.00 by the 25<sup>th</sup> of the month, a payment of \$20.00 is received on the 7<sup>th</sup> and returned unpaid on the 15<sup>th</sup>, the account would have still had \$10.00 that would have been delinquent regardless of whether the \$20.00 payment was good or not so the account is Late on the 25<sup>th</sup> and the Late Fee can be billed. However, if the payment was \$30.00 and returned, the Late Fee cannot be billed because the account would not have been late if the payment had been good. The need for additional clarification is that major systems processors are confused by the examples provided and have indicated an unwillingness to pay additional programming labor to fix their systems to allow issuers to bill fees when permitted by the Regulation.

I truly appreciate your attention and consideration of the comments expressed in this response. These matters are incredibly important both from a consumer perspective ensuring they receive appropriate, fair and non-discriminatory treatment as well as from a bank perspective where the offering of credit cards is a business and a reasonable return on assets is required for banks to remain in this business. Should you have any questions on any aspects of this letter, please feel free to contact me at (605) 782-3336.

Sincerely,

Sherry Tunender, CRCM  
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