First PREMIER Bank
Member FDIC

August 4, 2008

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-1314 – Unfair or Deceptive Acts or Practices

Dear Secretary Johnson:

This correspondence is respectfully submitted by First Premier Bank ("Premier") as a comment to the proposed rules of the Board of Governors of the Federal Reserve System ("Board"), the Office of Thrift Supervision and the National Credit Union Administration (collectively, the "Agencies") dated May 2, 2008, to prohibit certain practices regarding credit cards and overdraft services. This comment letter solely addresses the amendment as proposed in Section ___.27(c) which restricts the amount of fees charged to consumer accounts when they are opened.

The proposed amendment represents a significant departure from rules previously promulgated by the Board. Unlike previous rules, this proposed rule seeks to limit consumer behavior by prohibiting consumers from choosing to finance some or all upfront fees. Moreover, this proposal would force providers such as Premier, which focuses on individuals with substandard credit histories, to limit the number of customers to whom it can distribute cards. Millions of consumers, as a result, will be deprived of the opportunity to build or rebuild their credit or participate fully in the national marketplace if this rule is adopted.

Premier is uniquely aware of the dangers posed by this proposal and the harmful effects it will have on consumers and hereby submits this comment for the Board's consideration.

Premier

Premier provides open end credit to over three million customers and is one of the nation's ten largest credit card issuers. Since 1989, Premier has focused its open end credit business on serving the needs of individuals with credit histories in the sub-660 FICO segment of the market. Due in part to Premier's transparent business model and commitment to serving its customers, Premier has received multiple national awards for its performance and customer service, and Premier customers are pleased with the product and services provided. In a recent survey, for example, when asked whether they were satisfied with their experiences as Premier customers, 93.8 percent of polled customers reported feeling "satisfied or very satisfied," , and only 6.2% reported having an experience which left them "dissatisfied."

Premier Customers

Premier has performed numerous market surveys and studies to understand the customers it serves. Premier customers overwhelmingly cite improving their credit scores as the primary reason for obtaining a Premier card. Indeed, Premier customers understand the importance of improving their credit ratings and the ability to improve their scores by responsibly using a credit card.

Premier's customers who pay their accounts as agreed gradually improve their credit scores, resulting in their receiving credit offers from more traditional issuers. This is evidenced by the fact that approximately 20% of Premier customers in the past year, over 600,000 in total, paid off their accounts in full and graduated to cards with lower interest rates and fees.

Full Disclosure Would Prevent Misunderstanding

The need for an outright ban, rather than improved disclosures, for the practices addressed under § __.27, is not warranted. The practices addressed by § __.27 can be simply and concisely disclosed to consumers in a way that consumers can understand and make informed financial decisions.

While it may be difficult or impossible for average consumers to understand the financial effects of two cycle billing, complicated payment allocation methods involving multiple interest rate plans, or arbitrary rate increases, simple disclosure of upfront fees billed to an account and their effect on initial available credit is so basic that it can be easily understood by the least sophisticated consumer. The disclosure, in its basic form is simple: (1) Fees = X, (2) Credit Limit = Y, (3) Initial Available Credit = Z.

Premier supports the enhanced disclosure requirements proposed by the Board in June 2007 and May 2008 under Regulation Z. If, in addition to current Regulation Z disclosures, the fees and credit limit and the effect on initial available credit after assessment of the fees is fully, clearly and conspicuously disclosed to consumers, and consumers are given the right to cancel and receive a refund (and this is conspicuously disclosed) at any time prior to using the card or making a payment, no consumer will be unwittingly misled into paying fees that he or she did not agree to. Clearly, injury to consumers is avoidable by consumers themselves with adoption of these enhanced disclosure and refund requirements.

If any issuer's disclosures are not sufficiently clear and conspicuous to allow consumers to make informed financial decisions, the agencies have authority to enforce Section 5 of the FTC Act to remedy that issuer's deceptive acts and practices.

Issuing Credit To Individuals With Substandard Credit Histories and the Marketplace

There is no dispute that individuals with substandard credit histories represent a larger risk to issuers of open end credit than individuals with higher credit scores and that entities issuing credit to such consumers need to charge higher fees to reflect that increased risk. One of these risks, unfortunately, is that a percentage of card owners, who are indistinguishable at the outset from other potential customers, will not make a single payment on their accounts. Approximately one third of all Premier customers open their accounts, use the card to make immediate purchases consuming the remainder of the credit limit, and fail to make a single payment on the balance. As a result, Premier suffers a significant financial loss because of this subset of its customers.[1]

Premier's 19 year experience in the subprime credit card market has taught it that it cannot profitably issue credit cards to consumers in the low credit line market if only 25% of the initial credit limit can be consumed by upfront fees.

Value of Low Line Credit Cards to Consumers

Some policy makers and consumer advocates may object to the business model of low line credit card issuers based on the amount of initial available credit at account opening. The Board seems to have made a judgment through its proposed rulemaking that the consumer cannot find value in such a credit product. This assumption is plainly false, however.

In fact, we do not believe consumers apply for and accept our cards for the purpose of obtaining a $75 loan, and we believe informed consumers see value in Premier credit cards that is well worth the initial fees.

First of all, consumers who need to borrow $75 do not apply for a Premier credit card to satisfy this need. Payday loans and other alternatives would be much less expensive and much more convenient for this purpose. Consumers desiring loans of $75 loans generally need those loans immediately – not in the approximately 30 days required to receive a credit card. Since a credit card application is not delivered to the issuer in person, consumers know that there will be some amount of time involved before they receive loan funds. Alternatively, with a payday loan, consumers have the ability to receive the loan immediately. For this reason and others, consumers do not apply for a low line credit card as a desperate means to obtain a small dollar loan.

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[1] Operational costs attendant to issuers offering credit to individuals with substandard credit histories are also significantly higher than those incurred by issuers to holders of higher credit scores. A prime customer, on average, contacts a card issuer once per year, but an issuer such as Premier must maintain staff and facilities sufficient to handle at least one call per month per customer. In addition, an issuer to individuals with substandard credit histories must also maintain a significantly higher amount in reserve, which can be as much as seven times as high as that required of prime credit card issuers.

Second, the real value consumers find in Premier credit cards are the opportunities they provide which are otherwise unavailable. Payday loans and similar alternative credit products do not offer these valuable features to consumers:

- *Opportunity to Rebuild Credit.* Premier's customers report that the number one reason they apply for a low line credit card is the opportunity to build their credit rating. Low line credit card issuers report payment history to credit bureaus, allowing consumers the opportunity to establish positive credit bureau trade lines and begin to build their credit ratings. Low line credit cards are almost the only way for many consumers to establish a positive credit rating because their other sources of credit typically do not report positive payment records. Other low line credit providers generally do not report to the credit bureau unless payments are not made as agreed.

- *Access to Online Savings Opportunities.* Consumers prefer to purchase certain products and services on the Internet for the savings and convenience associated with this type of merchandising, but it is very difficult to shop online without a credit card. Although debit cards and stored value cards can similarly be used for online purchases, a significant population of consumers does not have access to a debit card, and most stored value cards do not offer important legal protections consumers need to feel secure using their accounts for online purchases. For example, there is no protection on most stored value cards for unauthorized transactions, and consumers concerned about Internet security may therefore be unwilling to provide online merchants with stored value account numbers. Additionally, stored value cards do not offer credit. If a consumer needs to purchase a birthday present from Amazon.com in June but will not have the funds available to fully pay for it until August, a credit feature is needed.

- *Emergency Credit Needs.* After the initial fees are paid for the right to participate in the credit plan, low line credit cards offer a much less expensive alternative to payday loans and other alternative credit services for emergency credit needs. The initial cost of a low line credit card is high in comparison to other alternatives, but it is relatively inexpensive as an ongoing credit tool.

- *Ability to Reserve Hotel Rooms and Car Rentals.* After payment of the initial fees, Premier credit cards offer consumers the ability to participate in transactions that are often important for their jobs. Specifically, consumers who travel for their work often need to reserve hotel rooms and rental cars. Although these transactions can be accomplished without a credit card in some cases, these merchants prefer to accept credit cards and it is much less burdensome on the consumer to pay in this way.

We believe consumers find sufficient value in these features to warrant paying an initial fee for this access. In a survey, Premier customers were asked to rank their levels of satisfaction, from a scale of 1 to 5 with 5 being the highest, as to whether the fees were "worth it to obtain access to a credit card." Their responses were almost unanimously positive:

5 (Most Satisfied)	221 responses	43.5%
4	121 responses	23.8%
3	122 responses	24.0%
2	38 responses	7.5%
1 (Least Satisfied)	6 responses	1.2%

The Value of low line credit cards has been recognized by the United States Court of Appeals for the Seventh Circuit in Perry v. First National Bank, 459 F.3d 816 (7th Cir 2006). The Seventh Circuit's opinion concludes on the value of low line credit card: *"We recognize that First National's credit solicitation requires card holders to pay a significant amount of money in fees, which are quite high in relation to the credit line offered. We realize that this is not an attractive deal for the great majority of consumers. However, the card is not without value. If the credit card holder paid off the card each month, the card would allow him or her to make almost $3000 in purchases in one year. The credit card holder would also build up a credit rating, which is useful to individuals who are trying to establish credit for the first time or to reestablish good credit."* Perry at 325.

Thus, it is widely recognized that there is indeed value to consumers who accept low line credit cards, even if there is limited credit availability at issuance.

Financing Initial Fees

The proposed amendment to Regulation AA would prohibit financing of more than 25% of initial fees at account opening. Premier believes this is not in the best interests of consumers. Such a prohibition would significantly curtail access to credit to those who need a low line credit card.

We believe that many (most) consumers in the market for low line credit cards would not be willing to pay the necessary upfront fees if they cannot be financed on the card itself. There have been many scams targeting consumers who do not qualify for traditional credit, and many consumers in this market have been burned by these scams in the past.[2] Based on these negative past experiences, consumers are unwilling to pay fees until the card arrives in the mail and they know it's a "real deal."

In addition, many consumers in the low line credit market do not have the ability to pay the initial fees upfront without the benefit of financing them on the card. These consumers often

[2] *See, e.g.*, Press Release, TC, States Give 'No Credit' to Finance-Related Scams in Latest Joint Law Enforcement Sweep," Federal Trade Commission, September 5, 2002.

have limited financial means ($10,000 is Premier's minimum income requirement) and could not afford to pay the initial fees in cash. They can, however, afford to make the minimum monthly payment of $30 required to finance the initial fees on the card.[3]

The Adequacy Of Disclosures

Unlike other areas of proposed regulation, imposition of account opening fees and deposits are not complicated and can be adequately explained to consumers. Especially considering the effect of proposed regulation requiring issuers to notify consumers of their right to reject an agreement after receiving disclosures notifying them of the full amount of the fees and the effect on their remaining credit balance, there can be no dispute that consumers are made fully aware of the fees prior to actual imposition of harm.

Title 15 U.S.C. § 45(n) prohibits trade practices only where the result is to impose an injury that is not "reasonably avoidable." In this instance, any injury caused by imposition of the fees is avoidable in that consumers are made aware of the fees at the time they apply for the card and again when they receive their opening account disclosures. Indeed, consumers will not be obligated to pay the fees until and unless they either use the card or make a payment on it after receiving the initial account disclosures. As explained above, customers seeking these cards do not obtain them for immediate access to liquid funds but instead as a means of improving credit ratings and for convenience purposes. If a customer is dissatisfied with the amount of the fees, the customer has the opportunity to seek another provider and no fees will be charged to that consumer unless and until the card is used. There is, then, no possibility consumers will be subjected to unavoidable injuries by imposition of the fees sought to be constrained and the practice of imposing such fees cannot be considered unavoidable as that term has been interpreted by the Federal Trade Commission.[4]

The Impacts of the Proposed Regulation

Requiring card holders to pay all of the fees prior to being issued a card will have the inevitable effect of depriving qualified consumers from obtaining credit, improving their scores, and participating fully in the marketplace. These impacts are dramatic and substantial, and they will negatively affect the lives of consumers and the national economy.

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[3] Consumers are always permitted to pay the fees immediately upon receipt of their statement if they choose, thereby avoiding interest charges and increasing their "open-to-buy" for credit transactions.

[4] In a recent correspondence to the Office of Thrift Supervision, the FTC again emphasized that an injury is "reasonably avoidable" so long as "consumers could reasonably have made a different choice." Letter from Lydia P. Barnes, Bureau of Consumer Protection, et al. to John E. Bowman, Chief Counsel, Office of Thrift Supervision 6 (Dec. 12, 2007) (available at http://www.ftc.gov/os/2007/12/P084800anpr.pdf). Since consumers are repeatedly informed of all the fees at the time the account is issued and again when they receive access to the card, it cannot be said that the consumers are deprived from making a "different choice" and either not opening the account or pursuing business with a competitor. Moreover, there are proven enforcement mechanisms available if disclosures are not adequate and the consumers are not properly informed of the fees or their effect, thereby rendering an injury unavoidable and a trade practice subject to regulation.

Consumers with substandard credit scores will face an inequitable conundrum if forced to pay the full amount of account opening fees at the time the account is opened. Unlike individuals with higher credit scores, they are not likely to have the full amount of the fees readily available at the time they seek to open the card and are more likely to be wary of paying all the fees without having the credit card in their possession. As a result, consumers, including the nearly 600,000 Premier customers this last year alone who graduated to credit cards with more favorable terms, would be deprived of the ability to own a functioning credit card and to improve their credit scores if it weren't for issuers like Premier offering them the opportunity to finance the fees.

The Board is well aware of the benefits to consumers of achieving higher credit scores and having a functioning credit card, and this importance cannot be overstated. Along with the obvious benefit of obtaining a credit card from a different issuer with lower fees, citizens with higher credit scores can save thousands of dollars a year on mortgage payments, automobile payments and insurance, or student loan payments with higher credit scores. Indeed, even rental applications for apartments are frequently dependent on credit scores, and individuals with lower scores are often forced to enter into unfavorable rental arrangements in less desirable locations until they have the opportunity to increase their credit scores.

Adoption of this proposed regulation will result in a deprivation of opportunity and access to millions of consumers, thereby limiting their opportunity to regain prime credit scores and their ability to participate and contribute in the national marketplace. Given the adequacy of disclosures to inform customers of the risks posed by opening these accounts,[5] the myriad proposed benefits conferred upon consumers who use these cards responsibly, and the harmful effects of further limiting these individuals' access to credit, this proposed regulation is unwarranted.

Other Possible Measures to Avoid Consumer Injury

Premier is mindful of the purposes to be served by proposed regulation, and it also realizes the Board may determine some further action is necessary to decrease any injury suffered by consumers. While Premier opposes a limit on the amount of fees an issuer can impose and a customer can finance at the time an account is opened, there are other options available to serve the same purposes without limiting equal access to credit.

Premier, for example, would not at this time oppose a requirement that issuers not charge interest on financed account opening fees, as issuance of the full fee would still limit the amount a customer could charge on the card without ever making a payment on it. Premier would also encourage any regulations that would further ensure conspicuous notice of all terms relating to

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[5] In addition, the industry of providing credit to individuals with substandard credit is becoming increasingly competitive. Considering the proposed regulations requiring all issuers to provide numerous disclosures regarding the account opening fees, consumers will have the free choice to choose among the various providers and the various fee arrangements. Unless a provider imposes the lowest fees economically feasible, it will undoubtedly lose customers to issuers charging lower fees.

the card agreement, including those regarding the financing of account opening fees and the effect of such financing on the credit available to a consumer, as well as effective disclosure of refund policies. Moreover, Premier also reiterates its support for the June 2007 and May 2008 proposed revisions to Regulation Z in regard to account opening fees, as these regulations will ensure the industry is aligned in providing fair and honest credit arrangements to individuals with substandard credit scores.

Conclusion

Title 15 of the United States Code, Section 45(n), directs the Board that regulation of a trade practice is only permissible where that practice is (1) "likely to cause substantial injury," (2) "not reasonably avoidable by consumers themselves," and (3) "not outweighed by countervailing benefits to consumers."

Considering these mandates, adoption of proposed §__.27(c) is unwarranted and contrary to statutory guidance. Imposition of account opening fees and deposits should be made clear to consumers numerous times through disclosures, and the other proposed regulations further confirm that consumers will be fully notified of the amount of such fees prior to final imposition of them. Given the numerous benefits to consumers of opening up these accounts and the ability of consumers to choose among the various competitors, the proposed regulation is unwarranted, unparalleled, and unnecessary. It will only prove to deprive a large segment of the population of the ability to participate meaningfully in the national economy and to improve their own credit histories, and Premier encourages the Board decline to adopt the regulation on this basis.

We appreciate and fully support the Agencies' efforts to prevent unfair and deceptive acts and practices in the low line credit card market. Premier strives to be a leader in consumer disclosure and choices, and encourages regulation – such as the proposed revisions to Regulation Z – which furthers this cause.

Premier appreciates your consideration of this comment letter as part of the Board's review of the pending regulation.

Sincerely,

Dana J. Dykhouse
President and Chief Executive Officer