From: Nebraska Furniture Mart, Inc., Val Anderson

Subject: Regulation Z - Truth in Lending

Comments:

To: Federal Reserve Board of Governors

Regarding: Proposed rules to set maximum penalties for "Late Payment" and "Returned Payment," Regulation Z: Docket No. R-1384.

Nebraska Furniture Mart is a large retailer and credit card issuer based in Omaha, Nebraska, with stores in Omaha, NE, Kansas City, KS and Des Moines, IA. Nebraska Furniture Mart is a Berkshire Hathaway company with a customer base of approximately 2.5 million, and 650,000 with open Revolving Charge accounts. Our comment supports setting maximum penalties but objects to the specific scenarios given in the proposed rules, intended to illustrate how the creditor must determine which minimum required payment is used for comparison. Our comment, which includes alternative scenarios to consider, is included in the body of this email, and also attached as a separate Word document.

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Regulation Z; Docket No. R-1384

Under the Proposed Rules, the allowed penalty fees for late payment and returned payment are restricted by references to the required minimum periodic payment on the account. However, in the case of a penalty associated with a returned payment, the required minimum periodic payment is not the required minimum periodic payment for the billing on which the payment was made (as in the case of a late payment penalty fee), but rather the required minimum periodic payment for the billing cycle in which the payment is returned to the issuer. This is not what a customer would expect and could result in illogical calculations and potential unfairness to the customer. The issue arises under the following text appearing at pages 12343 and 12344 of the Proposed Rules:

"1. Dollar Amount Associated With Late Payments. Proposed comment 52(b)(2)(i)-1 would clarify that the dollar amount associated with a late payment is the amount of the required minimum periodic payment that was not received on or before the payment due date. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of the required minimum periodic payment on which that fee is based. For example, a card issuer would be prohibited from charging a late payment fee of $39 based on a consumer's failure to make a $20 required minimum periodic payment by the payment due date."

"2. Dollar Amount Associated With Returned Payments. Proposed comment 52(b)(2)(i)-2 would clarify that, for purposes of § 226.52(b)(2)(i)(A), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due during the billing cycle in which the payment is returned to the card issuer. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment."

"For example, assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $20 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. Section 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing a returned payment fee that exceeds $20. However, assume instead that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. Section 226.52(b)(2)(i)(A) would prohibit the card issuer from imposing a returned-payment fee that exceeds $30."

As opposed to the calculation (and use of the required minimum periodic payment for the cycle of the returned payment) as described in the Proposed Rules, suggestion is made that:

1. The consumer's payment is made in response to a statement that has been generated, not some future statement/future required minimum periodic payment. Any penalty fee should relate to the required minimum periodic payment due at the time the payment is made.

2. The issuer should use the required minimum periodic payment amount the consumer was attempting to pay. To do this, the issuer should use the date of the original payment and use the required minimum periodic payment amount from that statement as the "cap" for any returned payment fee.

If the calculation is made as described in the Proposed Rules, note the outcome under the following scenarios:

1. Scenario 1 - would yield a returned payment fee lower than it should be:

· Issuer cycles the account and produces a statement on 03/28, with a balance of $600 and a required minimum periodic payment due of $24 by 04/24.

· Consumer pays $400 on 04/27.

· Issuer cycles the account and produces a new statement on 04/28, with a new balance of about $200 and a required minimum periodic payment due of $8.

· Payment is returned by the bank on 04/29.

· Issuer reverses the payment, increasing the balance back up to about $600 and adds a returned payment fee not to exceed $8.

2. Scenario 2 - would yield a returned payment fee higher than it should be:

· Issuer cycles the account and produces a statement on 03/28, with a balance of about $600 and a required minimum periodic payment due of $24 by 04/24.

· Consumer pays $400 on 04/27.

· Consumer also makes new charges of $1300 on 04/27.

· Issuer cycles the account and produces a new statement on 04/28, with a new balance of about $1500 and a required minimum periodic payment due of $60.

· Payment is returned by the bank on 04/29.

· Issuer reverses the payment, increasing the balance back up to about $1900 and adds a returned payment fee not to exceed $60 (or the new "safe harbor" federal maximum amount).

3. Scenario 3 - would yield NO returned payment fee:

· Issuer cycles the account and produces a statement on 03/28, with a balance of $600 and a required minimum periodic payment due of $24 by 04/24.

· Consumer pays $600 on 04/27.

· Issuer cycles the account and produces a new statement on 04/28, with a new balance of $0 and a required minimum periodic payment due of $0.

· Payment is returned by the bank on 04/29.

· Issuer reverses the payment, increasing the balance back up to $600 and cannot add a Returned Payment Fee because the amount cannot exceed $0

If, instead of using the required minimum periodic payment for the cycle in which the payment is returned (per the Proposed Rules), the issuer uses the required minimum periodic payment amount from the statement immediately before the original payment date, all three scenarios would yield the same returned payment fee, not to exceed $24. Consumers will understand the issuer's use of a cap amount based on the required minimum periodic payment amount from the statement the consumer attempted to pay. Consumers will not understand use of the next requested payment, which could go up or down based on account activity.

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Thank you for your consideration.

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