RILA
RETAIL INDUSTRY LEADERS ASSOCIATION
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April 14, 2010

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

Re: Docket Number R-1384,
Truth In Lending Act, Regulation Z

Dear Ms. Johnson:

On behalf of the Retail Industry Leaders Association (RILA), I am writing with respect to the proposed changes to Regulation Z (Docket Number R-1384), which the Board of Governors of the Federal Reserve Board System (the Board) issued for public comment on March 3, 2010, and which are scheduled to take effect on August 22, 2010 (the Proposed Rule). As discussed fully below, RILA requests that the Board take into account concerns of the retail industry in finalizing the regulations governing the reasonableness and proportionality of penalty fees, particularly late-payment fees. RILA urges the Board to strike a balance between the need to provide clear and transparent late-payment fees and the importance of ensuring that they serve the purpose of promoting financial responsibility by the consumer.

Background

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA member companies, like many other retailers, have both "private label" and co-branded credit cards as part of their credit offerings available to retail customers through arrangements with banks across the country. These private label/co-brand credit programs, including the agreements with the various bank partners as well as the entire structure and pricing of these credit programs, are designed to enhance customer loyalty, provide customer benefits, and drive retail sales. These programs also reduce costs for RILA members because they are able to settle private label sales directly with their bank partner, thereby reducing transaction costs on those sales.

We appreciate the objectives of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) and the Proposed Rule of bringing greater transparency and reasonableness to credit card fees. We believe, however, that retail customers understand late-payment fees, which have been made all the more apparent by the new requirement for a late-payment warning and a disclosure of year-to-date fees on every billing statement. Late-payment fees also serve an important purpose as a deterrent against consumers mismanaging their credit. It is generally held that customers who are late in making their credit card payments tend to default at a higher rate than customers who pay on time. While the penalty annual percentage rates (APR) was a significant tool for managing accounts that displayed risky behavior, previous changes to Regulation Z required by the Credit CARD Act have already greatly reduced the effectiveness of that tool, making it all the more important that the late-payment fee provides an actual, meaningful deterrent.

Moreover, late fees are avoidable. They are clearly set out in the cost summary disclosures (i.e., in the so-called Schumer boxes) and under new regulations on every statement. In addition, customers now have every opportunity to pay on time, including fixed payment due dates and at least 21 days from the time the bill is mailed until the payment due date, which applies equally to the large and growing number of customers who pay online and do not need to factor in mailing time.

Safe Harbor Implications

RILA welcomes the inclusion in the Proposed Rule of a safe harbor to the changes regarding reasonable and proportional penalty fees. While balance is needed in setting the amount of the safe harbor, we are concerned that the current environment may lead to an amount that is too low to cover costs or provide deterrence. In addition, setting too low of a safe-harbor amount for late fees would have the following undesirable implications:

- Certain credit segments may no longer qualify for credit, and credit availability would shrink, thereby constraining customers' ability to obtain credit to purchase what they need and curtailing retail sales as the economy is struggling to recover from the recession.
- Interest rates that the banks charge retail customers holding private label and co-branded cards sponsored by RILA members would likely increase.
- Retailers would be constrained in their ability to offer benefits and discounts to their credit card customers at the level and cost provided today. Without adequate deterrence for late payments and defaults, the cost of credit will increase and/or customer benefits will be curtailed.
- If the late fee is not high enough to deter defaults, retailers and their bank partner may each suffer the adverse financial consequences of the higher losses. These higher losses, created by a lack of deterrence, would otherwise be avoidable. Having a safe harbor that is too low would result in costly litigation and create regulatory risk for banks forced to use the deterrence basis of setting reasonable late fees.

Flat Safe Harbor Dollar Amount

RILA believes that the optimal structure for the safe harbor would include both a flat dollar amount and a percentage of payment – the greater of a flat dollar amount or 5 percent of the required minimum payment, as the Board has proposed. Inclusion of the flat dollar amount is essential to ensure adequate deterrence and promote fairness.

We commend the Board's effort to identify a market-based "reasonableness" benchmark for determining the flat safe harbor amount. While the Board has suggested that credit unions may be a potential benchmark, we believe that retail credit programs may provide a more realistic market-based comparison. Credit unions are generally not-for-profit entities and often have fee schemes outside of late fees that subsidize their programs. In addition, they are membership based, which may limit their overall risk exposure. Comparatively, most retailer-based credit programs (in particular, private-label programs) typically are not fee intensive and purposely avoid the numerous fee schemes that many other card programs employ.

Retail-based credit programs provide a unique perspective on the marketplace since by their nature they have to balance the interests of consumers, issuers, and market competition. Retailers simply cannot afford to damage customer relationships unnecessarily. As a result, retailers must make sure their programs are cost competitive and do not impose unreasonable fees. Additionally, retail programs try to be as inclusive as possible to drive sales while still maintaining sound lending practices. This bias toward inclusive lending practices helps to ensure the availability of reasonable credit, which is critically important to consumers and our overall economy. Finally, since retail-based programs are often managed through joint relationships with issuers, they also recognize the importance of balancing sound lending against a desire to grow retail sales. While late fees vary considerably for retail-based programs, they can range into the upper $30s and tend to have few, if any, additional fees associated with them. Accordingly, they provide a viable benchmark for establishing a safe harbor that is based upon both cost and deterrence while also ensuring that there is responsible access to credit.

In short, RILA concurs with the Board that a safe harbor based on the greater of a flat fee or a percentage of payment seems to create a reasonable balance. We also believe that while the credit union benchmark of $20 may provide an absolute minimum threshold, moving that far will have unintended consequences in terms of substitute fees, increased interest rates, less availability of credit, continued constraints on the credit markets, and slower economic growth. Based on the input from RILA members, which have a broad spectrum of credit programs, we respectfully recommend that the Board set the flat safe harbor amount in the range of $30 to $35. We believe this range will promote the market-based reasonableness that Congress intended under the Credit CARD Act and provide a reasonable, but not excessive, penalty to achieve deterrence against late payments and defaults.

Transition Relief

RILA also urges the Board to consider transitional relief for the implementation of the Proposed Rule. Because many retailers offer credit at the point of sale, we are very concerned about the timeline involved in changing credit applications in time for the August 22, 2010, implementation deadline. Retailers are already working to reprint and redistribute all application materials for the July 1, 2010, effective date for the new disclosure requirements and other changes under the Credit CARD Act. Given the fact that the Proposed Rule was only recently issued, and that it may take several weeks, at best, to finalize the Proposed Rule, it will not be possible for retailers to replace all applications again to reflect the changes to penalty fees between the time the final rule is promulgated and August 22, 2010. For this reason, we urge the Board to provide a transition period of at least 180 days after the final regulations are promulgated in order for businesses to bring their credit applications into compliance. We expect that RILA members' bank partners would comply with the substance of these new rules as of the effective date, and the transition relief would only be necessary for retailers to design and produce applications conforming to the final regulations and distribute them to their stores.

RILA appreciates the opportunity to provide comments on this Proposed Rule. We would be pleased to discuss our views with you further or provide additional information at your convenience.

Respectfully submitted,

Mark E. Warren
Vice President, Tax & Finance