First
PREMIER
Bank
Member FDIC

August 4, 2008

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**, Proposal to amend Regulation AA, Unfair and Deceptive Acts or Practices

Dear Ms Johnson and the Federal Reserve Board of Governors:

Thank you for providing First PREMIER® Bank with the opportunity to provide its comments to the proposed rules on Regulation AA. The Federal Reserve should be applauded for it efforts to improve consumer understanding of credit card products through effective disclosures.

This comment letter focuses on the proposals for open end credit (not Home-secured) plans and credit card practices.

By way of introduction, First PREMIER Bank is an $850 million community state chartered Federal Reserve member bank operating from 15 branches in eastern South Dakota. In addition, First PREMIER Bank is the 10th largest issuer of Visa© and MasterCard© credit cards with a portfolio consisting of $780 million in receivables and 3.5 million cardholders. First PREMIER Bank originates its credit cards through PREMIER Bankcard, LLC and primarily markets to the underserved population with poor or damaged credit histories.

For years, the regulatory agencies have enforced unfair or deceptive practices through the Federal Trade Commission's section 5(a), which provides for a multi-step analysis. The Federal Reserve's proposal to change the current approach in enforcing unfair or deceptive practices in favor of defining specific practices is unprecedented and may have unintended consequences. While defining specific practices as unfair or deceptive will undoubtedly curtail the practice, developing a list of such practices may impair competition and innovation and ultimately increase costs and reduce financial services to consumers.

Docket No. R-1314
Regulation AA

The proposals to Regulation AA will have a significant impact on the operations of credit card issuers and will require ample time to make system changes. It is recommended that if adopted, the Federal Reserve allows 12 to 18 months for implementation of the rules.

Unfair Acts or Practices Regarding Time to Make Payment

The proposal would prohibit banks from treating payments on a consumer credit card account as late for any purpose unless the bank has provided a reasonable amount of time for consumers to make payment. The proposed 21-day safe harbor period between mailing of the period statement and the payment due date is a reasonable standard. The cost to modify systems to handle the 21-day safe harbor will not be burdensome. The proposal would have a negative impact on interest income, but for issuers in the low line market like First PREMIER, balances are relatively small, thus the impact will not be significant.

Unfair Acts or Practices Regarding Allocation of Payments

The proposal would require banks to allocate payments in excess of the required minimum periodic payment to balances with different APR's in a manner that is most beneficial to consumer. The proposal, if accepted, will have a significant impact on card issuer revenue and potentially detrimental consequences to consumers. By mandating allocation of payments to balances with the highest APR, card issuers will be less likely to offer promotional rates and balance transfer promotions and will be more likely to increase purchase, cash advance and penalty APR's. In addition, issuers may be less likely to offer grace periods if they are required to apply payments in a manner that reduces their income. The June 2007 proposal to Regulation Z would require disclosure of card issuer's payment allocation methods and would serve as adequate disclosure for consumers. Disclosure allows for the marketplace to determine the practices that consumers prefer based upon their own circumstances and spending habits.

Unfair Acts or Practices Regarding Application of Increased Rates to Outstanding Balances

The proposal would prohibit the application of increased rates to pre-existing balances except in limited circumstances.

The June 2007 proposal to give a 45 day notice of a rate change, if amended, is a substantial increase from the current 15 day notice. The additional 30 days allows consumer to pay off or transfer balances before the rate increase becomes effective. The proposal to prohibit rate increases from balances on or before 14 days after the notice of rate increase will have a significant impact on card issuer revenue and will generally cause issuers to increase rates and or fees. The impact will not have a significant impact on First PREMIER Bank, however, because of the small outstanding balances of its cardholders. In addition, First PREMIER Bank does not engage in the rate increase practices such as non-default card behavior or universal default. First PREMIER does not oppose the proposal, but emphasizes that the rate increase exceptions in the proposal are very important and essential for issuers to manage the risk in their portfolios.

Unfair Acts or Practices Regarding Fees for Exceeding the Credit Limit Caused by Credit Holds

The proposal would prohibit banks from assessing over limit fees (OCL) if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit.

This proposal is consistent with the proposal that would prohibit banks from imposing a fee when an overdraft would occur solely because a hold is placed on a consumer's deposit account. The proposal has merit on the basis that consumers do not understand the process that merchants use to place transaction holds. However, for many issuers such as First PREMIER Bank, credit card transactions are not allowed to be authorized. Thus, credit holds will never cause an over limit condition. First PREMIER Bank believes that this is a best practice and supports the proposal to prohibit OCL fees caused solely by a credit hold.

Other requests for comment regarding OCL fees include:

a. **The extent to which more the one OCL fee per billing cycle.**

Response: While First PREMIER Bank believes that institutions should be able to set the amount and terms of pricing as long as it is fairly disclosed, it does not practice assessing more then one OCL fee per billing cycle and would not envision circumstances where it would be necessary.

b. **The extent to which banks tier or vary OCL fees based on factors such as number or dollar amount of transactions.**

Response: First PREMIER Bank believes that institutions should be allowed to set the amount and terms of pricing as long as it is fairly disclosed.

c. **The extent to which banks assess OCL fees when the transaction that exceeded the credit limit occurred in an earlier billing cycle and there are no subsequent transactions.**

Response: The comment would suggest that a consumer should not be penalized with multiple OCL fees due to a single transaction event. First PREMIER Bank believes that issuers largely have programs established to avoid pyramiding fees such as this to control negative amortization. Therefore, multiple OCL fees for subsequent transactions should be minimized.

Unfair Balance Computation Method

The proposal would prohibit institutions from imposing finance charges on balances on consumer credit card accounts based upon balances for days in billing cycles preceding the most recent billing cycle. This is also known as double-cycle billing.

The practice of double cycle billing has largely been curtailed by most institutions and should not be a burden to the industry to comply.

Unfair Acts or Practices Regarding Security Deposits and Fees for the Issuance or Availability of Credit

First PREMIER Bank will submit a separate response for this proposal.

Deceptive Acts or Practices Regarding Firm Offers of Credit

The proposal would require an institution that offers a range or multiple annual percentage rates or credit limits when making a solicitation for a firm offer of credit and the APR or credit limit depends on specific credit criteria bearing on creditworthiness, then the institution must disclose the types of criteria in the solicitation.

First PREMIER Bank supports the use of disclosures to inform consumers of conditions associated with the credit card offer.

<u>In Conclusion:</u>

First PREMIER Bank appreciates the opportunity to share its comments on the proposed amendments to Regulation AA. The Federal Reserve has done an admirable job in formulating proposals that are targeted to improve credit card disclosure requirements. Both the June 2007 and the May 2008 notice of proposed rulemaking to Regulation Z make significant strides make significant strides in improving consumer understanding of credit card products. These disclosure changes are the best defense to protect consumers and need to be given a chance to work.

As stated in the introduction, the Federal Reserve's proposal to define specific unfair or deceptive practices is unprecedented and may have unintended consequences. The current examination and enforcement process for unfair and deceptive practices effectively addresses the most abusive practices. By adopting the proposed Regulation AA rules, card issuers will be required to reassess beneficial card programs such as promotional rates, balance transfers and other innovative programs that a competitive environment provides. In addition, if adopted, issuers will likely reduce credit lines and increase fees to compensate for reduction in income. Finally, if the proposals to Regulation AA are adopted, the Federal Reserve must allow issuers sufficient time to make the system upgrades which could exceed twelve months.

Respectfully submitted,

First PREMIER Bank

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