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By Electronic Delivery

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

RE: Regulation E; Docket No. R-1377

Dear Ms. Johnson:

In the following comments we respond to the Board's Proposed Rule under Regulation E, published at 12 CFR Part 205 (November 20, 2009) at p. 60986 et. seq., according to new requirements of the Electronic Funds Transfer Act implemented by the Credit CARD Act of 2009.

In Title IV of the Credit CARD Act, Gift Cards Section 915 (d) (1) (a), the Board is called on to prescribe regulations "including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed." Therefore, it is within the scope of the Board's express authority to regulate fees under the Act. The underlying law also states that "not more than one fee may be charged in any given month."

In one year of inactivity, a gift card may lose up to 87 percent of its value with such fees. According to Bankrate's 2007 Gift Card Survey, the average amount per gift card was \$53. Monthly service fees for dormancy or inactivity ranged from \$2 to \$3 with additional one-time inactivity fees of up to \$10.¹ We believe the intent of the gift card protections of the Credit CARD Act is to prevent such value stripping.

However, in the proposed rule the Board has not acted to regulate dormancy, inactivity or services fees. As such we would like to bring to the attention of the Board numerous state laws that address the issue by limiting the amount of any monthly fee that may be assessed from an inactive gift card. Congress acknowledged the appropriateness of such state fee limits by preventing preemption of state regulation of these fees in the CARD Act.²

Cal Civ Code § 1749.5 prohibits a service fee, including a dormancy fee, in excess of one dollar per month. A nearly identical provision exists in Nevada while New Jersey prohibits fees in excess of \$2 per month.³ In 2007, Florida lawmakers went one step further and prohibited any type of post-sale charge including service fees, dormancy fees, or account maintenance fees on most types of gift cards.⁴ Illinois followed suit by implementing at the beginning of 2008, a provision that prohibits most gift cardholders from being penalized in any way for "non use or untimely redemption." Multiple other states have similar provisions to prevent penalizing gift card holders for inactivity.

¹ http://www.bankrate.com/brm/news/cc/20071112_gift_card_study_analysis_a1.asp

² See Section 920 of the Electronic Fund Transfer Act, as modified by Section 402 of the Credit CARD Act (Pub. Law No. 111-24).

³ 2007 Nev. ALS 107; 2007 Nev. Stat. 107; 2007. See also N.J. Stat. § 56:8-110.

⁴ Fla. Stat. § 501.95. Consumer Protection Part V. Miscellaneous Provisions.

These include Kentucky,⁵ Minnesota,⁶ and New Mexico.⁷ Louisiana permits a one-time “handling fee” of one dollar,⁸ but prohibits any service, dormancy or inactivity fees on top of this fee.

We ask the Board to follow the states’ model and adopt similar federal fee limits. Congress explicitly gave the Board authority to address the actual amount of service, dormancy or inactivity fees appropriate for consumer gift cards. Without limits on such fees, issuers can too easily strip consumers of the monetary value of gift cards. We urge the Board to bar dormancy or inactivity fees, or at least limit such fees to one dollar per month for all service, dormancy or inactivity fees after the underlying law’s required twelve months of inactivity.

Additionally, by preventing preemption of any state law that addresses dormancy, inactivity or service fees on most gift cards in Section 402 of the Credit CARD Act, Congress took an important step to allow states to develop new or expanded consumer protections above and beyond those of federal law. Accordingly, we encourage the Board to consider the viewpoints of the states, which are often on the front lines of consumer protection, when establishing federal consumer protection rules.

Sincerely,



Nick Bourke
Manager, Pew Safe Credit Cards Project
www.pewtrusts.org/creditcards

⁵ KRS § 367.890 (2009). Kentucky Title XXIX Commerce and Trade Chapter 367 Consumer Protection.

⁶ Minn. Stat. § 325G.53

⁷ N.M. Stat. Ann. § 57-12-26. Chapter 57 Trade Practices and Regulations.

⁸ La. R.S. 51:1423 (2009). Louisiana Title 51 Trade and Commerce Chapter 13 Unfair Trade Practices and Consumer Protection Law.