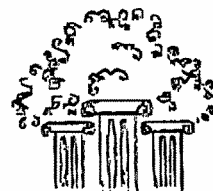


# Appleseed

Network of Public Interest Justice Centers



June 04, 2009

Ms Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
**Attention: Docket No. R-1286**

cc:  
Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
**Attention: OTS-2009-0006**

Ms. Mary Rupp  
Secretary of the Board  
Nation Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

Dear Federal Financial Institution Regulators:

This comment letter is submitted on behalf of Appleseed, the national office of a nonprofit network of 16 independent public interest justice Centers in the U.S. and Mexico, in response to the proposed rules issued by the Federal Reserve Board ("Board") and other federal financial regulators ("Agencies") relating to the final amendments to Regulation Z (Truth in Lending Act) and Regulation AA (Unfair or Deceptive Acts or Practices).

Appleseed appreciates the opportunity to comment on this important matter. We fully understand that the primary purpose of the proposed rulemaking is to clarify issues concerning certain provisions of the final rules and to facilitate compliance with the rules, rather than to reconsider substantive protections of the rules. However, given the passage of the Credit CARD Act of 2009, which codifies and in some places significantly modifies the final rules, we believe it is critically important that the Board

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continue to promote the informed use of consumer credit by requiring clear and conspicuous disclosures about the costs and key terms of credit.

Appleseed and its Centers are dedicated to building a society where opportunities are genuine, access to the law is universal and equal and government advances the public interest. In this regard, together Appleseed and Appleseed Centers have formed a network for positive change and have convened a committee of twenty industry, regulatory, and community stakeholders in 2006 to assess strategies for improving transparency in connection with complex financial transactions. After focus-group testing of a consumer disclosure template, Appleseed has identified a set of mechanisms to promote transparency and disclosure, "Fair Exchange," which we believe produce optimal consumer understanding of complicated financial products and promotes a comparative analysis of products. Further information on Appleseed's Fair Exchange pilot can be found at <http://www.appleseednetwork.org/Portals/0/Documents/Publications/FE%20Final.pdf>

*Transparency in pricing should continue to be a guiding principle*

Appleseed strongly encourages the Agencies to require transparency in pricing. One of the hallmarks of Appleseed's work in the financial access area has been to promote transparency in pricing. That is, Appleseed believes that all fees and charges, including those fees embedded in interest rates or exchange rates, should be clearly disclosed to consumers in an understandable matter. We believe that this principle is consistent with the fundamental purposes of the final rules. For example, in connection with the final UDAP and Regulation Z Rules, the Agencies stated that the rules are designed to enhance transparency and enable consumers to better assess the costs associated with using their credit card accounts at the time they engage in transactions.

The Agencies further noted that, to the extent that upfront costs have been artificially reduced because many consumers cannot reasonably avoid paying higher interest charges later, the reduction does not represent a true benefit to consumers as a whole.

Finally, the Agencies stated their belief that the final rules will enhance, rather than harm, competition because institutions offering rates that reflect the true cost of credit (including the cost to the institution of borrowing funds and operational expenses) would no longer be forced to compete with institutions offering rates that are artificially reduced based on the expectation that interest will accrue on higher rate balances until the promotional rate balance is paid in full, for example.

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Thus, we recommend that the Agencies continue to ensure that transparency is a guiding principle as the Agencies adopt the proposed clarifications and implement the Credit CARD Act of 2009. In this regard, under the proposed rules, the Agencies would clarify that while issuers with the right to impose an increased rate pursuant to the account opening exception have some flexibility in the timing of the rate imposition, issuers may not retain the right to increase a rate indefinitely and at their discretion. Appleaseed supports this clarification.

As a general matter, because the underlying purpose of the rate increase limitations prescribed by Regulation AA is to increase predictability and transparency for consumers, we believe that the account opening exception should not permit institutions to retain the right to increase a rate indefinitely and at the issuer's discretion.

More specifically, if at account opening an institution discloses a stepped rate of 15% on purchases for one year and 20% thereafter, the institution can apply a lower rate of 17% at the end of the year but, if it wants to retain its right under the account opening exception to increase the rate to 20% to purchases made during the first year, it must disclose to the consumer specifically how long the 17% rate will apply and that the 20% rate will apply thereafter so that the consumer can make informed decisions when using the card.

In addition, under the proposed rules, the Agencies propose to clarify that issuers may continue to provide promotional programs (*i.e.* deferred or waived interest programs) under which the consumer will not be obligated to pay interest that accrues if a specified balance is paid in full within a specified period of time so long as those programs comply with certain required protections under the UDAP Rule and certain disclosures required under Regulation Z. In connection with clarifying that deferred or waived interest programs continue to be permissible under the UDAP Rule, the Agencies have revised several provisions under the UDAP Rule and Regulation Z.

In particular, the Agencies are proposing to amend the payment allocation provisions under the UDAP Rule to require issuers to allocate excess payments first to deferred or waived interest balances during the last two billing cycles of the promotional period, notwithstanding the general requirement to allocate payments either on a high-to-low or pro-rata-basis. This clarification is intended to allow issuers to continue to offer deferred or waived interest programs to consumers without requiring consumers to pay off all balances on the account in order to avoid the imposition of accrued interest on the account.

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In addition, the Board is proposing to amend the periodic statement disclosures and advertising provisions mandated by Regulation Z to require issuers to provide additional information about deferred or waived interest programs. For instance, periodic statements would have to provide the balance subject to the deferred or waived interest program and the amount of interest that has accrued on that specific balance. The Board also would require new disclosures on the front of the periodic statement for the two cycles immediately preceding expiration of the promotional period.

Appleseed supports the additional disclosures proposed by the Board. More specifically, we believe that the sample language in the proposed rule that tells consumers that "You must pay your promotional balance in full by [date] to avoid paying accrued interest charges" should sufficiently make consumers aware of the accrual of deferred interest charges, the expiration of promotional periods and how to avoid the imposition of accrued interest. We remain concerned, however, that consumers will not fully understand that their payments will not necessarily be allocated to their promotional balances. Thus, from a transparency standpoint, we recommend that the Board conduct consumer testing to determine whether additional disclosure of the fact that cardholder payments may not be applied first to the promotional balance would facilitate this understanding. While we believe this information could be helpful to consumers, it is possible that consumers may not understand such disclosures and such disclosures could thereby distract from the other key information.

*Continue to Ensure that Disclosures are Simplistic and Understandable*

Appleseed fully understands that the one of the core purposes of the proposed rulemaking is to clarify and facilitate compliance with the final rule, rather than to reconsider the substantive protections of the rules. However, as noted above, given the passage of the Credit CARD Act of 2009, which codifies and modifies the substantive provisions of the final rules, we believe it is critically important that the Board continue to promote the informed use of consumer credit by providing simplistic and understandable disclosures about key credit terms and the cost of credit.

In this regard, we believe it is essential for the Board continue to strive to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of the account. We understand that in developing the disclosures that will be provided at the time of solicitation, account opening and periodically, the Board has conducted extensive consumer testing in an effort to improve disclosures.

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Appleseed applauds the Board's efforts to provide consumers disclosures that are understandable and that highlight key cost and terms. We strongly encourage the Board to continue to consumer testing of disclosures as the Board implements the Credit CARD Act of 2009 and as the Board adopts the proposed clarifications.

Deferred interest disclosures. We recommend that the Board test all proposed disclosures to ensure that the disclosures are understandable and will facilitate the understanding of deferred interest programs, which are intrinsically complex. Appleseed partnered with five remittance providers to promote improved market transparency and developed and piloted remittance cost and service disclosures. Through this pilot, Appleseed found that improved disclosures benefit both consumers and the businesses that serve them. In particular, the survey findings provide compelling evidence that disclosures make good business sense. Though bank customers showed the strongest preference for the disclosure, key Money Service Business (MSB) customer groups including men, young remitters and those sending money frequently also had either disclosure preferences or a distinct sensitivity to pricing. **Offering improved pre-transaction disclosures meet a consumer need, support competition and benefit positive market players.**

As noted above, the Board is proposing to amend the periodic statement disclosures and advertising provisions mandated by Regulation Z to require issuers to provide additional information about deferred or waived interest programs. In addition, the proposed rule also would add new advertising provisions intended to complement the proposed periodic statement disclosures for deferred or waived interest programs. These provisions would require clear and conspicuous disclosure of the promotional period.

Furthermore, in advertisements using the terms "no interest," "no payments," "same as cash" or similar terms, the term "if paid in full" must also be clearly and conspicuously disclosed. In addition, the advertisement must include: (1) a statement that interest will be charged from the date the consumer becomes obligated if the balance is not paid in full and (2) if applicable, a statement that interest will be charged from the date the consumer incurs the balance if the account is in default before the promotional period expires. The proposed rule also would add a comment that would prohibit an issuer offering a deferred or waived interest plan from disclosing a rate of 0% if there are any circumstances under which the consumer will be obligated for interest on such transactions for the waived or deferred interest period. Thus, we recommend that all of these disclosures be thoroughly tested using focus-group testing, before they are adopted in final form.

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Disclosures at the Point of Sale. The Board proposes to amend section 226.6 of Regulation Z, the account-opening disclosure provisions, to state that issuers providing the disclosures in person along with financing the purchase of goods or services may, at the issuer's option, disclose in the account-opening table either the specific applicable annual percentage rate or the range of applicable annual percentage rates provided that the disclosures include: (1) a disclosure statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness, as applicable, and (2) a reference to the account agreement or other disclosures provided with the account opening table where the annual percentage rate applicable to the consumer's account is disclosed.

While Appleseed does not object to permitting disclosures to be provided to consumers at the point-of-sale, Appleseed believes that it is essential that consumers understand their specific rates and terms that will apply to their accounts. As the Board points out in the supplemental information, permitting creditors to provide the specific APR information outside of the table and in a separate document at the point of sale should be permissible so long as the consumer receives disclosure of the actual APR that applies to the account at the point of sale. Again, we believe that the Board should ensure that the disclosures are provided in a manner that is understandable to consumers and that calls attention to the actual terms and conditions that will apply.

For example, if the actual rate that will apply is not in the account-opening table, the separate document containing the rate should be presented to the consumer in a manner that is equally conspicuous as the one providing the rate in the account-opening table, such as by affixing a smaller sheet of paper to the front of the account-opening disclosures or using colored paper. Appleseed believes that such extra precautions are important to meet the stated goals of the Board in adopting the final rules, including the goal to allow consumers to identify and understand the key terms of the account. Thus, the terms of the account must be presented to the consumer when the information would be most useful to them, and the content and format should be clear and conspicuous.

**Amend Rules to Ensure Consumers Reap Benefit of Protections in Final Rule**

As part of the final rules, the Agencies and the Board adopted requirements addressing: (1) reasonable timing to make payments; (2) payment allocation; (3) limitations on interest rate increases; (4) double-cycle billing and (5) fee-based accounts.

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While Appleseed generally supports the adoption of these requirements, we strongly encourage the Board to revisit the final rules, especially as the Board implements the Credit CARD Act of 2009 and the proposed clarifications, to ensure that consumers are the primary beneficiaries of the revised rules. Importantly, while we recognize that the final rules may result in higher costs and thereby reduced availability of credit in general, the Agencies should not directly impose rules that result in unavoidable harm to consumers. We believe the certain provisions of the revised rules or clarifications may inadvertently result in consumer harm in the form of higher interest charges for consumers.

For example, The Agencies are proposing to amend the payment allocation provisions under the UDAP Rule to require issuers to allocate excess payments first to deferred or waived interest balances during the last two billing cycles of the promotional period, notwithstanding the general requirement to allocate payments either on a high-to-low or pro-rata-basis. While this clarification is intended to allow issuers to continue to offer deferred or waived interest programs to consumers without requiring consumers to pay off all balances on the account in order to avoid the imposition of accrued interest on the account, it is possible that some cardholders may request issuers to allocate payments to deferred or waived interest balances for more than the last two billing cycles of the promotional period so that the consumer can avoid accrued interest.

In addition, the Agencies also clarified that issuers using the high-to-low payment allocation method should treat a deferred or waived interest balance as a balance with an annual percentage rate of zero, rather than a balance with the rate at which interest accrues during the promotional period. Thus, this clarification would result in higher rate balances being paid prior to promotional rate balances, which should prove beneficial to most consumers, provided they pay off the promotional rate balances within the specified time frame. Again, it is possible, however, that consumers might expect payments to be applied to promotional balances all along and that the application of payments in the last two billing cycles may not fully cover the entire promotional balance. The Agencies also solicit comment on this issue.

In response, Appleseed strongly encourages the Board to modify the proposed rules to allow issuers to honor a consumer's request to allocate payments to promotional balances provided the allocation is based on a consumer's explicit request and the request would benefit the consumer by reducing the amount of interest charges the consumer would be required to pay in connection with the deferred interest program.

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Thank you for your consideration of our views. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact Betsy Cavendish, Executive Director, Appleseed at 202.237.1403, or Appleseed Field Director Annette LoVoi at 512.542.0082.

Sincerely,



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