

U. S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

October 9, 2009

VIA FACSIMILE

The Honorable Ben Bernanke
Chairman
Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20429

Dear Chairman Bernanke:

Because the House Financial Services Committee is scheduled to consider legislation (H.R. 3639) next week to accelerate the effective dates to December 1, 2009, for all of the outstanding provisions of the recently-enacted CARD Act (PL 111-24), and because the measure would seem to upend the Federal Reserve's ongoing rule writing process, it is critical that the Committee have the benefit of the Federal Reserve's views on the legislation prior to next week's markup. The Minority had requested that Chairman Frank invite a Federal Reserve representative to the October 8 hearing on this bill and the Chairman declined. Republican staff then invited the Federal Reserve to participate, but that invitation was declined. With the markup of H.R. 3639 scheduled for October 14th, I would request that you respond to the following questions by Tuesday, October 13, 2009:

1. Will the Federal Reserve be able to revise its implementation timeline and publish rules with appropriate public comment periods in order to comply with the provisions of this legislation?
2. Do you believe that large and small credit card issuers will be able to adapt their systems and business models by December 1, 2009, several months earlier than their original timelines?
3. How will this change affect consumers? What is the likelihood that card issuers will respond to this legislation by rapidly escalating interest rates and reducing available credit?
4. During a March 2009 hearing on similar legislation, Sandra Braunstein testified:

"[T]his is one very large, sweeping, comprehensive package that is going to fundamentally change the way the industry does its business. And when we looked at, in terms of talking to the industry, but also looking ourselves at everything that would be required...to put everything in place to make this work well, we felt that 18 months was a reasonable time.

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"The danger is if you don't give sufficient time to the industry to get everything in place in a way that has been tested, that staff is trained, that it is running smoothly, if there is not sufficient confidence in the new risk models—which they are going to have to [redesign]—it could severely hamper the markets in terms of credit availability."

Is this still the view of the Federal Reserve?

Thank you for your attention to this important matter. Please contact Michael Borden of the Republican Committee staff at 202/225-7502 with any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer Bachus". The signature is fluid and cursive, with the first name "Spencer" written in a larger, more prominent script than the last name "Bachus".

SPENCER BACHUS
Ranking Member



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

BEN S. BERNANKE
CHAIRMAN

October 20, 2009

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Congressman:

Thank you for your letter dated October 9, 2009, regarding the proposed legislation accelerating the effective dates in the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Pub. L. No. 111-24) (Credit CARD Act or Act) to December 1, 2009. Please see our responses below.

- 1. Will the Federal Reserve be able to revise its implementation timeline and publish rules with appropriate public comment periods in order to comply with the provisions of this legislation?**

The Credit CARD Act was enacted on May 22, 2009. The Act established three effective dates with respect to the provisions for which the Board has rulemaking authority: August 20, 2009; February 22, 2010; and August 22, 2010. As discussed below, the Board is currently in the process of implementing the Act consistent with this statutory timeline. Moving the Act's effective date to December 1, 2009, could benefit consumers by providing important protections earlier than scheduled (including protections against applying increased rates to existing credit card balances). However, it would also require the Board to implement the remainder of the Act without providing the public with advance notice and the opportunity to comment, which could lead to unintended consequences.

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires that the public receive notice and an opportunity to comment before the promulgation of final regulations. 5 U.S.C. 553(b). This process requires adequate time to: prepare proposed regulations and publish them in the Federal Register; provide a reasonable period for interested parties to review the proposal and prepare well-researched comments; analyze the comments submitted; and prepare final regulations sufficiently in advance of the effective date so that affected parties can come into compliance. The Board has found this process to be helpful, particularly in complex rulemakings where comments often raise unanticipated operational issues that need to be addressed in the final regulations.

However, the APA does provide a "good cause" exception when the notice-and-comment process would be "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The Board found it necessary to rely on this exception when implementing the provisions of the Credit CARD Act that went into effect on August 20, 2009.¹ Although compliance is mandatory, the Board requested comments on these regulations and is currently considering whether any changes are necessary to address unanticipated issues.

The Board is currently planning to implement the remainder of the Credit CARD Act through notice-and-comment rulemaking. On September 29, 2009, the Board proposed implementing regulations for the provisions of the Credit CARD Act that go into effect on February 22, 2010.² The Board expects the comment period for this proposal to end on November 20. However, if the effective date for these provisions were moved to December 1, the Board would have to issue final regulations without waiting for comments.

The Board is also in the process of developing proposed regulations implementing the provisions of the Credit CARD Act that are scheduled to go into effect on August 22, 2010.³ Because these provisions require the Board to make a number of difficult determinations (such as when a credit card penalty fee is reasonable and proportional to the violation of the account terms), public comment would be particularly helpful. However, if the effective date for these provisions were moved to December 1, the Board would also have to implement these provisions without advance public comment.

2. Do you believe that large and small credit card issuers will be able to adapt their systems and business models by December 1, 2009, several months earlier than their original timelines?

Creditors must make extensive changes to their systems and business models in order to comply with the Credit CARD Act. For example, because the Credit CARD Act limits the circumstances in which a creditor can increase interest rates based on an increased risk of loss, creditors must develop new methods of accounting for risk. Creditors must also revise underwriting systems for all new and existing credit card accounts, develop new systems for calculating interest charges when balances are partially paid during a grace period, create

¹ Among other things, these provisions require creditors to provide 45 days' advance written notice of interest rate increases and to provide periodic statements at least 21 days before the due date.

² This rulemaking addresses the majority of the provisions in the Act for which the Board has rulemaking authority, including the limitations on rate increases for existing balances, the requirement that creditors consider a consumer's ability to make the required payments before opening a credit card account or increasing a credit limit, the provisions addressing extensions of credit to consumers who are under age 21, the limitations on the assessment of fees for exceeding the credit limit, the requirement that payments above the minimum generally be allocated first to that balance with the highest interest rate, and the prohibitions on double-cycle billing and on charging interest on amounts paid prior to expiration of the grace period.

³ These provisions address fees and disclosures for gift cards and certain prepaid cards, the amount of credit card penalty fees, and the requirement that creditors' re-evaluate past credit card rate increases at least every six months.

procedures for submitting credit card agreements for publication on the Board's website, and design new disclosures regarding the consequences of making minimum payments.

The amount of time necessary to comply with the Credit CARD Act may vary by creditor and by provision. Board staff understands that many small institutions (such as community banks and credit unions) rely heavily on third-party vendors to adjust their systems and that these vendors are currently overwhelmed by the demand from all of the institutions they service.

Board staff also notes that creditors are not the only entities that must comply with the Credit CARD Act. In particular, the Act requires institutions of higher education to disclose agreements with credit card issuers regarding the marketing of credit cards to students. Many of these institutions may be unaware of the new requirement and will require some time to put procedures in place to make these agreements available.

3. How will this change affect consumers? What is the likelihood that card issuers will respond to this legislation by rapidly escalating interest rates and reducing available credit?

The Board cannot predict how an effective date of December 1, 2009, would affect credit card interest rates and credit availability. However, moving the Credit CARD Act's effective date to December 1, 2009, would mean that consumers would receive important benefits and protections earlier. For example, like the regulations adopted by the Board in December 2008, the Act will create greater transparency in credit card pricing by eliminating pricing practices that are deceptive or unfair (such as applying increased rates to existing balances when a consumer pays a few days' late or maximizing interest charges by allocating payments above the minimum first to the balance with the lowest rate). Greater transparency will enhance competition in the marketplace and improve consumers' ability to find products that meet their needs.

4. During a March 2009 hearing on similar legislation, Sandra Braunstein testified:

"[T]his is one very large, sweeping, comprehensive package that is going to fundamentally change the way the industry does its business. And when we looked at, in terms of talking to the industry, but also looking ourselves at everything that would be required . . . to put everything in place to make this work well, we felt that 18 months was a reasonable time.

"The danger is if you don't give sufficient time to the industry to get everything in place in a way that has been tested, that staff is trained, that it is running smoothly, if there is not sufficient confidence in the new risk models--which they are going to have to [redesign]--it could severely hamper the markets in terms of credit availability."

Is this still the view of the Federal Reserve?

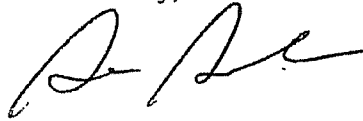
The testimony quoted above related to the credit card regulations adopted by the Board in December 2008, which are scheduled to go into effect in July 2010. Many of the provisions in

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the Board's regulations are also contained in the Credit CARD Act (such as limitations on double-cycle billing and applying increased rates to existing balances). However, the Board's regulations also contain several provisions that were not included in the Act (such as the revised disclosure requirements for credit card solicitations and periodic statements). Although a December 1 effective date could provide benefits for consumers, the Board continues to believe that, given the breadth of the changes required by the Credit CARD Act and its regulations, card issuers must be afforded sufficient time for implementation to allow for an orderly transition and to avoid unintended consequences, compliance difficulties, and potential liabilities.

We appreciate the opportunity to provide our views and hope that you find them helpful.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Bachus', written in a cursive style.