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August 3, 2009

The Honorable David A. Paterson  
Governor  
State of New York  
State Capitol  
Albany, NY 12224

**RE: A. 3409 (Perry)/S. 2460 (Sampson) AN ACT to amend the personal property law and the banking law, in relation to excluding finance, service or interest charges and other authorized fees from the amount used to determine whether the specified credit limit has been exceeded for the purpose of imposing an overlimit charge in retail installment credit agreements and other installment obligations**

Dear Governor Paterson:

The New York Bankers Association **opposes** this legislation that would prohibit the use of fees, service charges, interest, commissions and any costs other than purchases made or cash advances obtained in determining whether an installment credit customer has exceeded his or her credit limit. This legislation would deny creditors the right to price their products appropriately, limit consumer choice and be applicable only to State-chartered lenders. In light of recently passed federal legislation, it is also unnecessary. We urge that the bill be **disapproved**. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, our members employ approximately 250,000 New Yorkers and hold more than \$9 trillion in assets.

This legislation would explicitly limit the imposition of overlimit charges to circumstances in which an overlimit charge was imposed as a result of a consumer making a purchase or obtaining a cash advance. It would exclude overlimit charges that result from the imposition of interest, fees or other charges. New Yorkers currently have thousands of credit products from which to choose.

One of the reasons credit products have proliferated in recent years is the flexibility that lenders have in pricing their products. By varying the types and amounts of charges, and the timing and conditions for the imposition of charges, lenders are able to design credit products to fit almost any consumer need.

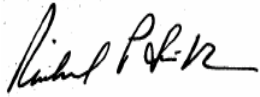
Excluding one or a category of allowable charges from the menu of variables in risk-based pricing plans may leave creditors no choice but to increase the cost of using other variables. Thus, consumers may be charged alternative fees, even when they have not gone over their credit limits for any reason – a result that would discourage consumers from adhering to their credit contracts. The greater flexibility allowed in risk-based pricing, the more likely a consumer will be to find a credit plan that best meets the consumer's needs.

In addition, this legislation will apply only to State-chartered lenders, of whom there are fewer and fewer. National banks and federally chartered thrift institutions will be free to vary their pricing on the basis of the needs and choices of their customers. The United States Supreme Court, in the case of Cuomo vs. Clearing House (Docket No. 08-453), recently upheld the right of State law enforcement authorities to enforce valid consumer protection laws against national banks and federal thrifts. However, the Court did not change the preemption doctrine that limits the range of State laws that can be enforced against federally chartered financial institutions. See, for example, Watters vs. Wachovia Bank, N.A., 550 U.S. 1 (2007), in which the Court held that “when State prescriptions significantly impair the exercise of authority, enumerated or incidental, under the National Bank Act, the State’s regulations must give way.” And, in the case of Smiley vs. Citibank (South Dakota), N.A., 517 U.S. 735 (1996), the Court explicitly held that the charging of fees was within the definition of interest committed to the interpretive jurisdiction of the Comptroller of the Currency for national banks. Therefore, it seems clear that only State-chartered banks and thrifts will be subject to the restrictions of this legislation, providing an additional incentive for these institutions to switch to federal charters.

This legislation also directly conflicts with the recently enacted Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit CARD Act), Public Law 111-88. Section 102 of that Act prohibits the charge of an over-the-limit fee unless the consumer expressly permits the creditor to complete the relevant transaction (opt-in); allows imposition of an over-the-limit fee only once during a billing cycle; and prohibits its imposition more than once in two subsequent billing cycles with respect to such excess credit, unless the consumer: (1) has obtained an additional extension of credit in excess of the credit limit during any such subsequent cycle; or (2) reduces the outstanding balance below the credit limit as of the end of such billing cycle. The Credit CARD Act is both more protective of consumers than this legislation and more comprehensive, applying to all types of creditors. This legislation is therefore unnecessary.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be **disapproved**.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael P. Smith