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September 22, 2008

The Honorable Terryl Brown Clemons
Acting Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: S. 7339 (Fuschillo)/A. 10448-A (P. Rivera) AN ACT to amend the general business law, in relation to prohibiting issuers of credit cards from increasing the rate of interest imposed upon outstanding balance based upon a holder's indebtedness or late payments to other creditors

Dear Ms. Brown Clemons:

The New York Bankers Association is submitting these comments on this legislation – which it does not oppose - that would prohibit credit card issuers from increasing the rate of interest or imposing a fee upon a card holder when the increased rate of interest or fee results solely from the cardholder's indebtedness to or failure to make timely payments on accounts owed to any other creditors. The bill was amended in a number of significant respects from the bill vetoed by Governor Spitzer last year, which our Association opposed. That bill would have restricted risk-based pricing systems, although applicable only to the handful of credit card issuers remaining in New York. Our Association is comprised of the community, regional and money center banks and thrifts doing business in New York State. Our members have assets in excess of \$9 trillion and more than 300,000 New York State employees.

This legislation is carefully crafted to prohibit a practice that has been rejected by virtually the entire regulated banking industry – namely increasing a consumer's interest rate or charging additional fees solely because the consumer falls behind in payments to other creditors. This practice has been called "universal default." At the same time, the bill preserves the opportunity for in-State credit card issuers – the only ones that will be affected by its provisions – to maintain risk-based pricing systems that rely on analysis of consumer credit activity and review of consumer credit scores to price credit appropriately to the risk created by the

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consumer. If a consumer misses a single payment on his or her telephone bill, that typically does not affect the consumer's credit score and increasing the consumer's interest rate as a result would be prohibited by this legislation. If a consumer engages in the wholesale practice of taking on numerous additional credit accounts, drawing them down to the maximum limit and missing payments on them regularly, that behavior is typical of a consumer having severe credit difficulties and will ordinarily reduce the consumer's credit score. This legislation would not preclude credit card issuers from taking the change in the consumer's credit score into account in determining whether to increase the consumer's interest rate or charge a contracted-for fee.

Legislation addressing "universal default" was vetoed by Governor Spitzer last year. In addition to precluding raising interest rates or fees solely because a consumer failed to make payment to a third party, that bill, S. 2969-B (Fuschillo)/A. 5325 (P. Rivera), would also have allowed the subsequent use by a credit card issuer of an established account holder's credit score only for the purpose of increasing that account holder's line of credit. The legislation not only would have denied creditors the opportunity to protect themselves from individual cardholders whose credit records seriously deteriorate after a card is issued, but was also inconsistent with, and would have adversely affected, the practice of risk-based pricing in general. These objectionable provisions are no longer included in this legislation.

Our Association has taken note of the changes in this legislation and is not opposed to this revised bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is fluid and cursive, with the first name "Michael" and last name "Smith" clearly legible.

Michael P. Smith