New York Bankers Association
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Clare M. Cusack
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December 8, 2021

Honorable Kathy C. Hochul
Governor
State of New York
Executive Chamber, State Capitol
Albany, NY 12207

Re: S.133B (Mayer)/A.5698B (Rozic) - An act to amend the general business law, in relation to establishing a set grace period for the use of credit card reward points

Dear Governor Hochul:

The New York Bankers Association (NYBA)[1] **opposes** this bill in its current form related to credit card rewards programs. Specifically, the bill would require credit card issuers to deliver a notice to holders within 45 days of the cancellation, closure, termination or modification of a credit card rewards program or any account participating in such a program. The bill would further make it unlawful for credit card rewards points to expire in New York State.

While NYBA appreciates the intention to protect consumers, this measure in its current form contains technical flaws due to an apparent oversimplification of the complex relationships between account holders, credit card issuers, and third-party rewards program administrators. We believe these flaws will have the unintended consequence of deterring the availability of rewards programs in New York State going forward.

NYBA continues to work with the bill's sponsors to craft amendments to ensure a workable solution for this multifaceted commercial activity, but we have not yet reached an agreement on several issues. Our hope is that later alterations to this legislation will address these areas of concern with the bill as presently drafted. The following concerns remain based on the current provisions in the legislation:

1. The legislation's central feature—the requirement that notice be provided to cardholders "if any credit card account or rewards program is modified, canceled, closed or terminated . . ."—is difficult, if not impossible, to implement because the statute fails to define what constitutes a "modification." This omission could theoretically transform thousands of routine changes to, for example, rewards program product catalogues, airline tickets, and hotel room blocks into disclosable events, notwithstanding that such

[1]NYBA is comprised of small, regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard $2 trillion in deposits, and extend nearly $70 billion in home and small business loans.

fluctuations can take place hundreds of times each day and, moreover, are a feature of rewards programs that are disclosed to participants at the time of their enrollment. Thus, without a defined threshold or other guidance clarifying the meaning of "modification" in this context, the bill will require issuers to deluge consumers with pages of disclosure containing information that is frequently stale or irrelevant given the speed with which fluctuations occur. Moreover, such disclosure may ultimately be meaningless given cardholders' existing knowledge that such fluctuations are routine.

2. The bill also fails to comprehend the nature of the transactional relationship between issuers and rewards program operators, and consequently imposes compliance burdens on issuers that are near impossible to discharge. Issuers are frequently separate entities from those that operate rewards programs. In these instances, the issuers offer "points," which can be redeemed to purchase goods or services (i.e. "rewards") offered by a third-party program operator. The issuers' role in the transaction is generally limited to the issuance of points and does not extend to the management of the rewards program in which those points are redeemed. Because the bill does not account for this distinction, it would impose upon issuers the expansive and commercially unreasonable responsibility for monitoring and disclosing to consumers "modifications" to marketplaces outside the issuers' direct control.

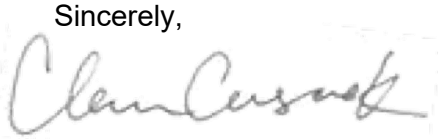
3. These flaws are further compounded by the drafters' broad definition of the parties to whom notice must be given. The bill requires notice to credit card "holders," defined in GBL § 511(4) within the same article to potentially encompass, for example, employees, association members, and children or other family members, in addition to the account owner. As a general rule, however, the account owner is the party eligible to participate in the relevant rewards program. Thus, the bill will essentially require issuers to make multiple, duplicate disclosures to "holders" who will not benefit from such disclosure and who likely will not welcome it.

4. Finally, Subdivision 4 sensibly excludes a holder who commits fraud or misuse of a credit card from the protections the bill affords, but the exclusion ought to extend to default as well. Presently, the bill enables a holder to utilize points regardless of whether they have paid for the underlying purchases that gave rise to those points.

While NYBA understands the consumer protection goals of the legislation, without the technical and necessary changes noted above, the requirements in the legislation as currently written are unworkable in ways that could severely limit the number and quality of rewards programs available to New Yorkers.

For each of the foregoing reasons, the New York Bankers Association opposes this legislation in its present form and urges that it be **disapproved**.

Sincerely,



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