



Office of Thrift Supervision

Department of the Treasury

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Managing Director

Compliance and Consumer Protection

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May 2, 2008

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM:

Montrice Godard Yakimov *Montrice Godard Yakimov*
Managing Director
Compliance and Consumer Protection

SUBJECT:

Proposed Rule on Unfair and Deceptive Acts or Practices

The Office of Thrift Supervision, together with the Federal Reserve Board and the National Credit Union Administration, issued a Notice of Proposed Rulemaking on Unfair or Deceptive Acts or Practices (UDAPs) on May 2, 2008.¹ The proposed UDAP rule addresses practices that have raised concern about fairness and transparency. Comments on the proposed rule are due within 75 days after it is published in the Federal Register.

Consumer Credit Card Practices

For consumer credit card accounts, the UDAP rule makes the following seven proposals:

First, institutions would be prohibited from treating a payment as late for any purpose unless consumers have been provided a reasonable amount of time to make payment. The proposed rule would create a safe harbor for institutions that adopt reasonable procedures to ensure that periodic statements which provide payment information are mailed or delivered at least 21 days before the payment due date.

Second, when different annual percentage rates apply to different balances, institutions would be required to allocate amounts paid in excess of the minimum payment using one of three specified methods or an alternate method that is no less beneficial to consumers. The specified methods are applying the entire amount first to the balance with the highest annual percentage rate, splitting the amount equally among the balances, or splitting the amount pro rata among the balances. Furthermore, when an account has a discounted promotional rate balance or a balance on which interest is deferred, institutions would be required to give consumers the full benefit of that discounted rate or deferred interest plan by allocating amounts in excess of the minimum payment first to balances on which the rate is not discounted or interest is not deferred.

¹ [Link to Notice of Proposed Rulemaking on Unfair or Deceptive Acts or Practices](#)

Institutions would also be prohibited from denying consumers a grace period on purchases solely because they have not paid off a balance at a promotional rate or a balance on which interest is deferred.

Third, institutions would be prohibited from increasing the annual percentage rate on an outstanding balance. This prohibition would not apply, however, where a variable rate increases due to the operation of an index or formula, where a promotional rate has expired, or where the minimum payment has not been received within 30 days of the due date.

Fourth, institutions would be prohibited from assessing a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available credit. If, however, the actual amount of the transaction would have exceeded the credit limit, then a fee may be assessed.

Fifth, institutions would be prohibited from imposing finance charges on outstanding balances based on balances for days in billing cycles that preceded the most recent billing cycle. The proposed rule would prohibit institutions from reaching back to prior billing cycles when calculating the amount of interest charged in the current cycle, a practice that is sometimes referred to as two- or double-cycle billing.

Sixth, institutions would be prohibited from financing security deposits or fees for the issuance or availability of credit (such as account-opening fees or membership fees) if those deposits or fees utilize the majority of the available credit on the account. The proposed rule would also require security deposits and fees exceeding 25% of the credit limit to be spread over the first year, rather than charged as a lump sum at account opening. However, these requirements would not apply to security deposits and fees for the issuance or availability of credit that are not charged to the account. An institution would not be prohibited from providing a credit card account that requires a consumer to pay a security deposit if that deposit is not charged to the account.

Seventh, institutions making firm offers of credit advertising multiple annual percentage rates or credit limits would be required to disclose in the solicitation the factors that determine whether a consumer will qualify for the lowest annual percentage rate and highest credit limit advertised.

Overdraft Services

The proposed UDAP rule will also include two provisions prohibiting unfair acts or practices related to overdraft services in connection with consumer deposit accounts. The proposed provisions are intended to ensure that consumers understand overdraft services and have the choice to avoid the associated costs where such services do not meet their needs.

The first would provide that it is an unfair act or practice for an institution to assess a fee or charge on a consumer's account for paying an overdraft unless the institution provides the consumer with the right to opt out of the institution's payment of overdrafts and a reasonable opportunity to exercise the opt out, and the consumer does not opt out. The proposed opt-out

right would apply to all transactions that overdraw an account regardless of whether the transaction is, for example, a check, an automated clearinghouse (ACH) transaction, an ATM withdrawal, a recurring payment, or a debit card purchase at a point of sale.

The second proposal would prohibit certain acts or practices associated with assessing overdraft fees in connection with debit holds. Specifically, the proposal would prohibit an institution from assessing an overdraft fee if the overdraft is caused solely by a hold placed on funds that exceeds the actual purchase amount of the transaction, unless this purchase amount would have caused the overdraft.

For additional information, please contact Glenn Gible, Senior Project Manager, at (202) 906-7158, Suzanne McQueen, Consumer Regulations Analyst, (202) 906-6459 or April Breslaw, Director, Consumer Regulations, (202) 906-6900.