May 13, 2010

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS
FROM: Montrice G. Yakimov, Managing Director Compliance and Consumer Protection
SUBJECT: Amendment to Rule on Unfair Credit Card Account Practices

On January 29, 2009, OTS used its authority under the Federal Trade Commission (FTC) Act and the Home Owners’ Loan Act to adopt a rule on Unfair or Deceptive Acts or Practices (UDAP Rule).1 This rule was followed by a proposal issued May 5, 2009, to make clarifications.2 OTS issued the UDAP Rule jointly with the Federal Reserve Board (FRB) and the National Credit Union Administration (NCUA), to prevent five practices that the agencies found to be unfair. The agencies required that consumers receive a reasonable amount of time to make their credit card payments, prohibited payment allocation methods that unfairly maximize interest charges, double-cycle billing, and, in the subprime credit card market, limited fees that substantially reduce the credit available to consumers. In addition, the agencies prohibited issuers from raising the interest rate on an existing credit card balance when a consumer is paying credit card bills on time.

On May 22, 2009, President Obama signed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) into law. However, the consumer protections contained in the UDAP Rule as proposed to be revised by May 2009 clarifications are subsumed within the Credit CARD Act. In addition, the Credit CARD Act codified several amendments to the Truth in Lending rules issued by the FRB and restricted additional practices.3

The Credit CARD Act and amendments to Regulation Z provide the consumer protections envisioned by the agencies’ UDAP rulemakings, but they are not identical. To avoid confusion and duplication, OTS is amending its UDAP Rule to remove subpart C, which deals with unfair consumer credit card account practices, and the corresponding staff commentary in the Appendix, so that they will not go into effect.

---
3 CEO Letter #308 summarizes the Credit CARD Act.
Notably, OTS will continue to use its supervisory authority to enforce the FTC Act prohibitions against unfair or deceptive acts or practices that relate to any product or service offered by an institution. As explained in the attached Federal Register notice, the OTS will apply the standards for unfairness and deception previously announced in the agencies’ UDAP rulemakings and used by the other regulatory agencies. To assist OTS examiners in this analysis, OTS has issued a new Examination Handbook section that addresses unfair or deceptive acts or practices under the FTC Act.4

For additional information, please contact April Breslaw, Director, Consumer Regulations, (202) 906-6989 or Suzanne McQueen, Compliance Program Analyst, (202) 906-6459.

Attachment: Federal Register notice

---

4 CEO Letter #347
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE
Food and Nutrition Service
7 CFR Parts 272 and 273
RIN 0584–AD30
Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002; Approval of Information Collection Request

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule, notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule entitled, Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, was published on January 29, 2010. This final rule implemented 11 provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA), which established new eligibility and certification requirements for the receipt of food stamps. Those provisions simplified program administration, allowed States greater flexibility, and provided enhanced access to eligible populations. The Food, Conservation, and Energy Act of 2008 changed the program name from Food Stamp Program to Supplemental Nutrition Assistance Program (SNAP). The Office of Management and Budget (OMB) cleared the associated information collection requirements on March 26, 2010. This document announces approval of the ICR.

DATES: The ICR associated with the final rule was approved by OMB on March 26, 2010, under OMB Control Number 0584–0064.

FOR FURTHER INFORMATION CONTACT: Angela Kline, Chief, Certification Policy Branch, Program Development Division, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. E-mail: Angela.Kline@FNS.USDA.GOV.

SUPPLEMENTARY INFORMATION: This document announces approval by OMB of the information collection requirements contained in the final rule entitled, Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, which was published on January 29, 2010 (75 FR 4912). Dated: April 27, 2010.

Julia Paradis, Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–P

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Part 535
[DOCKET ID OTS–2010–0009]

Unfair or Deceptive Acts or Practices; Amendment

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Final rule.

SUMMARY: OTS is amending its regulations at 12 CFR part 535 titled “Prohibited Consumer Credit Practices” to avoid duplication and inconsistency with the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act). Public Law 111–24, 123 Stat. 1734 (2009). The Credit CARD Act primarily amended the Truth in Lending Act (15 U.S.C. 1601 et seq.) and established a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans, including credit card accounts. On July 22, 2009, the Board published an interim final rule amending Regulation Z (12 CFR pt. 226) and the staff commentary to implement those provisions of the Credit CARD Act that became effective on August 20, 2009. See 74 FR 36077. On February 22, 2010, the Board published a final rule amending Regulation Z and the staff commentary in order to implement the Credit CARD Act. See 75 FR 7658.

The Credit CARD Act and the Board’s implementing rule do not affect the provisions of subparts A and B and the corresponding portion of the Appendix in the January 2009 UDAP rule. Accordingly, today’s final rule repromulgates those provisions, subject only to necessary conforming amendments. These provisions will take effect on July 1, 2010 as previously scheduled.

Tuesday, May 4, 2010

Federal Register
Vol. 75, No. 85

23565
In contrast, the practices addressed in subpart C and the corresponding portion of the Appendix in the January 2009 UDAP rule, as proposed to be revised by the May 2009 proposed amendments are subsumed within, though not identical to, the practices addressed by Credit CARD Act and the Board’s implementing rule. In some respects, the Credit CARD Act and the Board’s implementing rule address the same practices addressed in the January 2009 UDAP rule, but in somewhat different ways that afford greater consumer protection. In order to avoid duplication and inconsistency, OTS is removing subpart C and the corresponding portion of the Appendix. For procedural reasons, OTS is making these changes effective July 1, 2010. Consequently, subpart C and the corresponding portion of the Appendix will not take effect. Likewise, OTS does not intend to finalize the May 2009 proposed amendments.

The Credit CARD Act and the Board’s implementing rule do not affect the standards for unfairness or deception under the FTC Act. Accordingly, in analyzing whether an act or practice is unfair, OTS will continue to apply the standards described in the Supplementary Information to the January 2009 UDAP rule. See 74 FR at 5502–04. Under these standards, an act or practice is unfair where: (1) It causes or is likely to cause substantial injury to consumers; (2) the injury cannot be reasonably avoided by consumers themselves; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition. Established public policy may also be considered in the analysis of whether a particular act or practice is unfair, but public policy may not serve as the primary basis for a determination that an act or practice is unfair. An act or practice is deceptive where: (1) there is a representation or omission of information that is likely to mislead consumers acting reasonably under the circumstances; and (2) that information is material to consumers.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS Director certifies that these amendments to 12 CFR part 535 will not have a significant economic impact on a substantial number of small entities. OTS previously certified that the January 2009 UDAP rule would not have a significant economic impact on a substantial number of small entities. See 74 FR at 5549–50. Since this final rule removes subpart C, any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

For the reasons discussed in the preamble, OTS revises 12 CFR part 535 to read as follows:

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations require OMB to review and approve information collection requirements imposed by agency rule. OTS is submitting notification to OMB of revisions to an approved paperwork section. In this final rule, OTS has removed the paperwork requirements for subpart C, which were contained in section 535.24(b).

Executive Order 12866

OTS previously provided a regulatory impact analysis under Executive Order 12866. 74 FR at 5551–5558. The analysis addressed the impact of the consumer credit card practices in subpart C to part 535. Since this final rule removes subpart C, its impact will be eliminated.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. OTS previously certified that the January 2009 UDAP rule would not result in expenditures by State, local, and tribal governments, of $100 million or more in any one year, but may result in expenditures by the private sector in excess of that threshold. See 74 FR at 5558. Since this final rule removes subpart C, any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

Executive Order 13132 Determination

OTS previously certified that the January 2009 UDAP rule does not have any federalism implications for purposes of Executive Order 13132. See 74 FR at 5558. That determination continues to apply.

List of Subjects in 12 CFR Part 535

Consumer credit, Consumer protection, Credit, Credit cards, Deception, Intergovernmental relations, Savings associations, Trade practices, Unfairness.

Authority and Issuance

For the reasons discussed in the preamble, OTS revises 12 CFR part 535 to read as follows:
PART 535—UNFAIR OR DECEPTIVE ACTS OR PRACTICES

Subpart A—General Provisions
Sec. 535.1 Authority, purpose, and scope.

Subpart B—Consumer Credit Practices
§ 535.11 Definitions.

Appendix to Part 535—Official Staff Commentary

Subpart A—General Provisions
§ 535.1 Authority, purpose and scope.

Subpart B—Consumer Credit Practices
§ 535.11 Definitions.
For purposes of this subpart, the following definitions apply:
(a) Consumer means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, other than for the purchase of real property, and who applies for or is extended consumer credit.
(b) Consumer credit means credit extended to a natural person for personal, family, or household purposes. It includes consumer loans; education loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; overdraft loans; and credit cards. It also includes loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security but only if you rely substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan.
(c) Earnings means compensation paid or payable to an individual or for the individual’s account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.
(d) Obligation means an agreement between you and a consumer.
(e) Person means an individual, corporation, or other business organization.

§ 535.12 Unfair credit contract provisions.
It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:
(a) Confession of judgment. A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

§ 535.13 Unfair or deceptive cosigner practices.
(a) Prohibited deception. It is a deceptive act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to misrepresent the nature or extent of cosigner liability to any person.

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn’t pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.
You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.
The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) Prohibited unfairness. It is an unfair act or practice for you, directly or indirectly in connection with the extension of credit to consumers, to obligate a cosigner unless the cosigner is informed, before becoming obligated, of the nature of the cosigner’s liability.

§ 535.14 Unfair late charges.
It is an unfair act or practice for you, directly or indirectly, to enter into a consumer credit obligation to consumers that constitutes or contains, or to enforce in a consumer credit obligation you purchased, any of the following provisions:
(a) Assignment of wages. An assignment of wages or other earnings unless:
(1) The assignment by its terms is revocable at the will of the debtor;
(2) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment; or
(3) The assignment applies only to wages or other earnings already earned at the time of the assignment.
(b) Security interest in household goods. A nonpossessory security interest in household goods other than a purchase-money security interest. For purposes of this paragraph, household goods:
(1) Means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and the consumer’s dependents.
(2) Does not include:
(i) Works of art;
(ii) Electronic entertainment equipment (except one television and one radio);
(iii) Antiques (any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character); or
(iv) Jewelry (other than wedding rings).

§ 535.15 Notice of Cosigner.
You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn’t pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.
You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.
The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn’t pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.
You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.
The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) Compliance. Compliance with paragraph (d)(1) of this section...
constitutes compliance with the consumer disclosure requirement in paragraph (b) of this section.

(3) Additional content limitations. If the notice is a separate document, nothing other than the following items may appear with the notice:

(i) Your name and address;
(ii) An identification of the debt to be cosigned (e.g., a loan identification number);
(iii) The date (of the transaction); and
(iv) The statement, “This notice is not the contract that makes you liable for the debt.”

(d) Cosigner defined. (1) Cosigner means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account.

(2) Cosigner includes any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer’s obligation that is in default. The term does not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law.

(3) A person who meets the definition in this paragraph is a cosigner, whether or not the person is designated as such on a credit obligation.

§ 353.14 Unfair late charges.

(a) Prohibition. In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for you, directly or indirectly, to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or ydelinquency charges assessed on earlier installments and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(b) Collecting a debt defined—Collecting a debt means, for the purposes of this section, any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of money due (or alleged to be due) from a consumer.

Appendix to Part 353—Official Staff Commentary

Subpart A—General Provisions

Section 353.1 Authority, Purpose, and Scope.

1(c) Scope

1. Penalties for noncompliance. Administrative enforcement of the rule for savings associations may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease-and-desist orders requiring that actions be taken to remedy violations and civil money penalties.

2. Application to subsidiaries. The term “savings association” as used in this Appendix also includes subsidiaries owned in whole or in part by a savings association.


By the Office of Thrift Supervision.

John E. Bowman.
Acting Director.

[FR Doc. 2010–10196 Filed 5–3–10; 8:45 am]