



**RESCINDED**

Office of Thrift Supervision  
 Department of the Treasury  
 Deputy Director, Examinations, Supervision, and Consumer Protection  
 Thomas A. Barnes  
 1700 G Street, N.W., Washington, DC 20552 • (202) 906-5650

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

October 4, 2010

**MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS**

**FROM:** Thomas A. Barnes, Deputy Director *Thomas A. Barnes*  
 Examinations, Supervision, and Consumer Protection

**SUBJECT:** Revised Truth in Lending Act (TILA) Open-End Credit Examination Procedures

OTS has updated its examination procedures to incorporate the amendments to Regulation Z that implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) that went into effect on August 22, 2010.<sup>1</sup> These examination procedures for open-end credit are issued on an interagency basis.

The Credit CARD Act provisions and the amendments to Regulation Z were issued with a series of effective dates. Consequently, the OTS TILA examination procedures have been revised in phases to ensure that institutions and examiners have current tools as the rules have become effective.<sup>2</sup> This revision addresses rules on reasonable and proportional penalty fees. Key aspects of the attached procedures are set forth below.

**Reasonable and Proportional Penalty Fees**

Regulation Z now requires that penalty fees imposed by card issuers be reasonable and proportional to the violation of the account terms. An issuer can charge a penalty fee if it determines that the fee is a reasonable proportion of the issuer’s costs from the consumer’s violation. Issuers must reevaluate their costs at least annually.

**Safe Harbor**

The rule permits issuers to charge a penalty fee of \$25 for the first violation and \$35 for any additional violations of the same type during the next six billing cycles. This “safe harbor” allows issuers to avoid the cost analysis for setting reasonable penalty fees.

**Fee Limits**

The regulation allows only one fee for a single transaction and does not allow fees that exceed the dollar amount associated with the violation. For example, a consumer who exceeds a credit

<sup>1</sup> See Truth in Lending Final Rule, 75 Fed. Reg. 37526 (June 29, 2010).

<sup>2</sup> Previous updates reflected regulatory changes that went into effect in August 2009, February 2010, and July 2010.

limit by \$5.00 may not be charged more than \$5.00. Similarly, card issuers may no longer charge a \$39 fee when a consumer is late making a \$20 minimum payment. In this example, the fee cannot exceed \$20. If there is no dollar amount associated with the violation (for example where the issuer declines to authorize a transaction or the account is inactive), the card issuer may not charge a penalty fee.

### **Reevaluations of Interest Rates**

If a card issuer has increased interest rates on or after January 1, 2009, the rule requires that the issuer reevaluate those rates at least every six months. If the increase was based on the consumer's credit risk, market conditions or other factors, the issuer must evaluate those factors and reduce the rate, if appropriate, within 45 days of completing the reevaluation. Issuers must have policies and procedures in place to conduct these reviews.

### **Disclosing Reasons for Rate Increases**

When issuers send notices of penalty rate increases for credit card accounts, the notices must include the principal reasons for the increase, in order of their importance. These notices must be sent 45 days before the increase is effective and indicate the balance to which it will apply. The notice must also describe the circumstances necessary for the rate to cease or make it clear that the rate can remain in effect indefinitely.

For more information, please contact Suzanne McQueen, Consumer Regulations Analyst, at (202) 906-6459 or [Suzanne.McQueen@ots.treas.gov](mailto:Suzanne.McQueen@ots.treas.gov). The revised Examination Handbook Section 1305 is available through the link provided below.

*Link: [Examination Handbook Section 1305](#)*