

Proposal to Enforce Unfair and Deceptive Practices Making Headway

Lately, there has been a buzz going on in the regulatory realm about proposing rules to curb unfair and deceptive practices with respect to credit cards. It appears that the OTS is one of the first to blaze the trail. On May 1, 2008, the OTS announced that it had approved just such a proposal and outlined a number of proposed requirements governing credit card practices. In addition, the proposal also addressed prohibited practices in connection with overdraft programs. According to the OTS, the proposal is aimed at addressing concerns about fairness and transparency.

With respect to credit card practices, among other things the proposed rule would:

- Prohibit payments from being treated as late unless consumers are given a reasonable amount of time to make the payment. The proposed rule would create a safe harbor for institutions that adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days before the payment due date.
- Where different annual percentage rates apply to different balances, prohibit allocating amounts paid in excess of the minimum payment in a manner that is less beneficial to consumers than one of three methods. For example, institutions could apply the entire amount first to the balance with the highest annual percentage rate or split the amount equally among the balances.
- Prohibit increasing the annual percentage rate on an outstanding balance unless certain exceptions apply. For example, an institution could increase the variable rate if a promotional rate has expired or if the cardholder's payment is delinquent.
- Prohibit the assessment of a fee if a consumer exceeds the credit limit on an account solely due to a hold placed on the available funds.
- Prohibit computing the finance charge based on balances in billing cycles preceding the most recent billing cycle. In other words, institutions could not reach 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.

For overdraft programs, the proposal would:

- Prohibit the assessment of a fee for paying an overdraft unless the consumer is given the right to opt out of payment of overdrafts, a reasonable opportunity to exercise the opt-out and the consumer does not opt out.
- Prohibit the assessment of an overdraft fee if the overdraft is caused solely by a hold on funds that exceed the actual purchase amount of the transaction, unless this purchase amount would have also caused the overdraft.

The FRB and the NCUA have joined the OTS and each is expected to issue an identical proposed rule shortly. The OTS also consulted with the OCC, the FDIC and the Federal Trade Commission. Once all of the agencies have approved a proposal, each are expected to post the proposal at their respective websites. The comment period is expected to be open for 75 days with a final rule issued sometime near the end of the year.