



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
**STATE CONSUMER PROTECTION BOARD**

Eliot Spitzer  
Governor

Mindy A. Bockstein  
Chairperson and Executive Director

October 10, 2007

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20551

*Submitted via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)*

Re: Docket No. R-1286, Amendment of Rules of Regulation Z of the Truth in Lending Act

Dear Ms. Johnson:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on proposed amendments to the rules of Regulation Z of the Truth in Lending Act. The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to formulating informational and educational outreach programs and initiating policy development. Currently, the CPB is developing comprehensive outreach programs on issues such as identify theft, Internet safety, financial literacy, and credit card management. Our Consumer Assistance Unit (CAU) which takes complaints five days a week, 8:30 a.m. to 4:30 p.m., via our toll-free helpline at 1-800-697-1220 and twenty-four hours a day, seven days a week via the web at [www.nysconsumer.gov](http://www.nysconsumer.gov), responds to and resolves over 20,000 complaints and inquiries a year on a variety of topics including credit card disputes, identity theft, and product refunds and returns.

From 2006 to June 2007, the Agency received over 2,100 credit-card related complaints and inquiries. The nature of these complaints included billing disputes and erroneous charges, exorbitant fees, changes in interest rates, and late payment fees. We have successfully mediated, resolved, and satisfied over 800 of these inquiries.

The CPB, in response to credit issuer practices, has implemented a "Campaign for Change." This initiative is designed to allow consumers to voice their concerns, as well as provide the CPB with concrete data about consumer credit problems. One component of the program is a credit card survey, to which the Agency has received over 900 responses to date. Thus far, the results illustrate that 74% of respondents read the disclosure

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information provided by creditors and roughly the same amount ( 78%) found the disclosures difficult to understand. The CPB is actively working with consumers and various industry groups to better educate the public about the terms of credit card agreements and responsible credit card use. In addition, the CPB continues to encourage legislative and/or administrative solutions.

The consumer survey highlights how the industry perpetuates the cycle of debt for many credit card users. Respondents to the CPB survey illustrated how a single misstep can snowball into increased interest rates and numerous penalty fees. For example, consumers in the survey reported being charged more in interest and fees than the principal owed on the card. Others reported that the changing due dates seemed designed to confuse the customer, often triggering late charges. Still others recounted mailing timely payments that were mysteriously posted to the account after the due date, thereby generating more fees and interest for the creditors. As a result of being assessed a late fee, some consumers then exceeded their credit limit, triggering an additional over-the-limit fee, as well as an increased interest rate. These stories exemplify just some of the abusive tactics employed by credit card companies.

We appreciate the opportunity to submit our views regarding the proposed rules of the Board of Governors of the Federal Reserve System (“the Board”) to be contained in the Truth in Lending Act’s (TILA) Regulation Z.

The proposed amendments to Regulation Z are an admirable first step. Their principal flaw is that they are limited to changes in notification. Notification alone is not enough. The disclosure of a fee in a table does not necessarily make it less deceptive or unfair. The Board has the authority to issue rules to define unfair or deceptive practices under 15 U.S.C. § 57a. Credit card issuer practices such as charging interest on debt that has been paid in full, imposing a universal default rate, and assessing late fees where the credit card issuer delays crediting a payment are just a few of the egregious and unfair practices that should be prohibited. The proposed amendments should go beyond just notice; they should prohibit the practices currently employed which drown consumers in debt.

In addition, the CPB respectfully submits the following specific comments on the proposed rules:

I. *Disclosure of Fees*

The Board proposes that the credit issuer must provide the interest rate, minimum finance charges, transaction fees, annual fees, and penalty fees in a “Schumer” table at account opening as well as when the credit issuer provides a change-in-terms notice. For other fees, there is no mandatory written notification and change-in-terms notice. These fees can be disclosed orally or in writing prior to the consumer becoming obligated to pay them.

The CPB commends the Board’s proposal to implement the “Schumer” box, not just in applications and solicitations, but also during the life of the account, including when there is a change-in-terms. However, the CPB is concerned that, by limiting the disclosures in the table to certain categories of fees, other important fees may be omitted. Additionally, this will give creditors the broad flexibility to implement additional and creatively-named fees to avoid the limited, mandatory disclosure.

Further, the CPB is opposed to the portion of the Board's proposal which would allow oral disclosures of fees. While we agree that some charges may not be relevant at the time of account opening, all fees must be disclosed in a manner that enables the consumer to understand the true cost of credit. Oral disclosures may be vague, confusing, or even deceptive. In order to be as clear as possible, all fees should be disclosed in writing. Moreover, the Board should implement a uniform glossary of fees as part of the proposed amendments so that terms would not vary from one credit card agreement to another, thereby enabling consumers to compare provisions. Our recent survey revealed that 39% of respondents choose their credit card by looking at the card's interest rate, annual fee (if any), special services, and cash back bonus. The same survey revealed that 87% of consumers have more than two credit cards. By displaying the important terms in a uniform format, consumers will be better able to shop for the card that best meets their lifestyle.

## II. *Penalty Rates*

The CPB supports the Board's proposal to change the penalty disclosures and include them in a tabular format. According to the CPB's survey, 46% of respondents have been assessed penalty fees that they do not understand. It is important that consumers be able to understand the events that will trigger a penalty, what the penalty will be, and the duration of the penalty rate. Although this information could be disclosed elsewhere, consumers are much more likely to see it if placed inside a table.

The Board has an opportunity to enact substantive change and prohibit the practice of applying penalty rates retroactively. Currently, credit card issuers apply the penalty rate to the outstanding balance as well as to new charges. This is unfair to the consumer, and perpetuates consumer debt.

## III. *Notification Period for Change in APR or Other Terms of Credit Cards*

The Board proposes to increase the notification periods for a change in terms and/or the imposition of a penalty rate to 45 days. The CPB agrees that 45-day notice is adequate for consumers to find alternate credit arrangements or pay off the outstanding balance if they do not agree with the term changes. The proposed disclosure requires issuers to advertise about any right to opt-out of changes but the Board is not providing consumers with this important mechanism.

## IV. *Subprime Cards Notification*

The Board proposes certain notification requirements for credit card borrowers with little or no credit. Under the Board's proposal, all fees relating to the opening of the account, whether periodic or one-time fees, must be disclosed upon account opening. In addition, the Board proposes that credit card issuers must inform consumers in a table when required fees or security deposits will meet or exceed 25% of the credit limit.

While we commend the Board for proposing a notification requirement, we believe that that 25% threshold is too high considering the initial account limits are quite low, often only a few hundred dollars. Rather, the threshold should be reduced to 10%. Further, *all* fees, whether "optional" or required, should be considered in order to calculate whether the threshold is met.

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#### V. *The Effective APR*

The Board forwarded two alternatives for the effective APR term. The first alternative would provide greater disclosure about the rate; the second would eliminate the effective APR altogether. The CPB urges the Board to enhance the effective APR rate rather than eliminate it. The Truth in Lending Act (TILA) was enacted so that consumers could better understand the true cost of credit. By labeling the effective APR a “fee inclusive APR” and providing a definition of what that means, much of the confusion surrounding the effective APR could be eliminated. It is critical to include *all* fees into the effective APR, rather than only a few types of fees, so that a credit issuer cannot charge a hidden interest rate by terming it a fee. The effective APR is the only means by which a consumer can appreciate the cost of fees and interest on an annualized basis. Significantly, in order for an effective APR to be meaningful, all fees must be calculated together to determine the effective rate, rather than each separately, as the Board proposes.

#### VI. *Minimum Payment Disclosure*

The Board proposed to amend Regulation Z to require that credit card issuers provide: 1) a warning statement informing the consumer that making the minimum payment will increase the interest the consumer pays and the amount of time it takes to pay off the balance; 2) a hypothetical example of how long it would take to repay the balance in full by making only the minimum payment; and, 3) the establishment of a toll-free number that consumers may call to obtain an estimate of the time it would take to repay their actual account balance. The CPB supports this proposal as it aids the consumer in understanding the consequences of only paying the minimum balance.

#### VII. *Convenience Checks*

The CPB commends the Board for proposing a tabular disclosure of the fees and interest of the typically unsolicited and ubiquitous “convenience” checks sent by credit card issuers. The Board should do more, however, and require disclosure regarding how payments will be applied to outstanding balances, and whether using a check will impact any grace period for new charges.

#### VIII. *Fixed rate disclosures*

The CPB supports the Board’s prohibition against the use of the term “fixed” unless the duration of the fixed interest rate is specified. Often consumers sign up for a credit card believing they have obtained a certain interest rate, but do not realize that the interest rate is introductory or subject to a change in terms at any time. Clear disclosure will eliminate that confusion.

### CONCLUSION

While the CPB commends several of the Board’s proposals, the Board must do more to curb abusive practices that negatively affect consumers. Simply placing a fee inside a table cannot provide blanket absolution of deceptive and unfair fees. The CPB specifically urges the Board exercise its authority to adopt rules addressing abuses including the following: using universal defaults to raise interest rates, applying over-limit charges based on high fees, retroactively assessing higher interest rates, and charging interest on a debt that has been paid

Ms. Jennifer Johnson, Secretary  
From the NYS Consumer Protection Board  
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Page 5

in full. Consumers need real, substantive reform of industry practices. Thank you for your consideration of our comments.

Sincerely,



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