



July 7, 2010

By Fax (202-898-0230) and First Class Mail
The Honorable John E. Bowman
Acting Director
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Dear Mr. Bowman:

The undersigned groups are contacting you to request that the Office of Thrift Supervision examine the banks under its supervision for potential violations of the Credit Card Accountability Responsibility and Disclosure Act (Credit CARD Act). Recently, we have observed potential violations of the Credit CARD Act, or at least misstatements of law, from some of the largest credit card issuers in the country. These potential violations or misstatements all occurred after the effective date of the relevant Credit CARD Act provision.

We urge the OTS to take prompt enforcement action against any bank under its supervision that has engaged in conduct that violates the Credit CARD Act or has made statements or disclosures that contradict the law. In addition, the OTS should examine all credit card issuing banks under its supervision within the near future to review their compliance with the Credit CARD Act.

Some of the potential violations of the Credit CARD Act or misstatements of law that we have observed include:

1. Failure to provide 21 days between mailing of a statement and the due date.

We have at least one example of CitiBank mailing a periodic statement less than 21 days before its due date. A copy of this statement is attached as Exhibit A. In fact,

this particular statement was for a billing cycle that ended on April 21. The due date for the payment for this statement was May 11 – which is only 20 days after the end of the billing cycle. This does not even include the day or two that is required for the statement to be generated and placed in the mail. Clearly, this conduct does not comply with the Credit CARD Act’s requirement that periodic statements be mailed or delivered 21 days prior to the payment due date.

The consumer who sent this example to us also reports that when he called customer service to remind them of their obligations under the Credit CARD Act, he was informed that CitiBank would extended due date as an accommodation. In other words, CitiBank declined to even acknowledge the legal requirements of the Credit CARD Act to this consumer. We request that the OTS examine the credit card issuing banks under its supervision to ensure that they are complying with the Credit CARD Act’s requirement that periodic statements be mailed or delivered 21 days prior to the payment due date.

2. Failure to disclose the penalty rate.

As of July 7, 2010, Bank of America has posted several credit card solicitation/application on its website that do not include a disclosure of a penalty rate. One of these solicitations is attached as Exhibit B. The solicitation does state “If this account becomes sixty days or more past due, we may amend the terms of the Agreement to increase all interest rates.” However, this disclosure is made outside of the mandatory table required for credit card solicitations, and does not disclose the amount of the increased rate.

An increased rate triggered by a payment that is 60 days late is clearly a penalty rate within the meaning of Regulation Z, which requires that:

if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to paragraph (b)(1) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

12 C.F.R. § 226.5a(b)(1)(iv)(A).

Bank of America cannot avoid disclosure of the amount of the penalty rate, or place it outside of the required table, simply by declining to name the rate as a ‘penalty rate’. We request that the OTS examine the credit card issuing banks under its supervision to ensure that they are properly disclosing penalty rates.

3. Use of variable rate ‘floors’.

At least one issuer is using a variable rate that has a ‘floor’, *i.e.*, the rate varies with an index but never decreases below a certain amount. *See* Exhibit C (Solicitation for GE Money Bank/Walmart Card stating that the “APR for Purchases may vary and will equal the prime rate plus 16.90%, *but not less than 22.90%*” [emphasis added]) However, the Official Staff Comments to Regulation Z provide that a variable rate cannot have such a floor if an increase in that rate is applied retroactively to an existing balance. *See* Official Staff Interpretations to Regulation Z, Comment 55(b)(2)-2.ii (the index to a variable rate is not considered “outside the card issuer’s control” – and thus not eligible for the variable rate exception to the retroactive rate increase prohibition – if the rate is subject to a fixed minimum rate.)

We request that the OTS determine whether GE Money Bank is applying variable rates that have a “floor” to existing balances, and take enforcement action against that bank if it is. In general, we request that the OTS examine the credit card issuing banks under its supervision to ensure that they are not using variable rate “floors” if the bank applies increases in the variable rate to existing balances.

4. “Pick-a-rate pricing.”

This practice also involves variable rates, and was disallowed by the Official Staff Comments to Regulation Z implementing the Credit CARD Act. Traditionally, issuers have specified the prime rate on a certain date (*e.g.* the end of a billing cycle) as the index used for calculating that billing cycle’s interest rate. With “pick-a-rate” pricing, the issuer specifies a protracted period of time from which the issuer can select the highest value for the designated index during that period. For example, rather than stating that the index prime rate “will be the maximum prime rate reported on the last day of the billing cycle,” the issuer states that the prime rate “will be the maximum prime rate reported in the 90 days preceding the last day of the billing cycle.” The ability to pick the highest value for the index can generate significantly more revenues.

The Official Staff Comments to Regulation Z disallow “pick-a-rate” pricing for variable rates if the rates apply retroactively to an existing balance. *See* Official Staff Interpretations to Regulation Z, Comment 55(b)(2)-2.ii (the index to a variable rate is not considered “outside the card issuer’s control” – and thus not eligible for the variable rate exception to the retroactive rate increase prohibition – if the rate can be calculated based on any index value during a period of time.) Despite this prohibition, a recent credit card solicitation from RBS Citizens Bank appears to allow “pick-a-rate” pricing. *See* Exhibit D (picking the highest LIBOR over a three-month period as the index value.)

We request that the OTS examine the credit card issuing banks under its supervision to ensure that they are not using “pick-a-rate” pricing if the issuer applies increases in the variable rate to existing balances.

5. Misstatement of payment allocation rule.

Citibank's card agreements and Internet offers are stating the incorrect payment allocation rule. For example, a balance transfer offer made to a consumer at the end of April 2010 states: "Payments are allocated to pay off lower APR balances before higher balances." *See* Exhibit E. For payments above the minimum payment, this statement contradicts the Section 104 of the Credit CARD Act, codified at 15 U.S.C. § 1666c(b) (requiring payments above the minimum to be applied to the highest APR balance first). And while issuers are free to apply minimum payments in whatever manner they wish, it is confusing and deceptive to simply say "payments" if CitiBank is only referring to the minimum payment.

We request that the OTS examine the credit card issuing banks under its supervision to ensure that they are not disclosing or using a payment allocation method that violates the Credit CARD Act.

We thank you for your attention and look forward to your response.

Sincerely,

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National Consumer Law Center
(on behalf of its low-income clients)

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