The New York City Department of Consumer Affairs'
Comments to Docket No. R-1384, Regulation Z
Submitted to the Board of Governors of the Federal Reserve

April 14, 2010

INTRODUCTION

On behalf of the City of New York and Mayor Michael R. Bloomberg, the Department of Consumer Affairs (DCA) and its Office of Financial Empowerment (OFE) appreciate the opportunity to offer the following comments on the rules the Board of Governors (the Board) has proposed in its Docket No. R-1384 to implement provisions of the Credit CARD Act of 2009 (the Act).

The Act, signed by President Obama in May, 2009, and associated regulations already promulgated by the Board, have made the credit card marketplace substantially more fair and transparent. The Board's current rulemaking relates to some of the most important provisions of the Act and represents an opportunity to fully capture the legislative intent of eliminating unfair credit practices and ensuring issuers provide full, comprehensible consumer disclosures.

DCA offers several recommendations to improve the proposed rules and make them more consistent with the intent of the Act in the following areas: (1) Effectively regulating the reasonableness and proportionality of penalty fees and charges; (2) Setting clear and sufficiently stringent rules to guide credit card issuers regarding the requirement to reevaluate interest rate increases, especially for consumers with rates increased before rules regarding unfair retroactive rate increases were in effect; and (3) Empowering consumers through additional meaningful disclosures.

BACKGROUND ON DCA AND OFE

As an agency charged with enforcing municipal consumer protection and licensing laws[1] with an office expressly charged with educating, empowering and protecting those with low incomes in the financial services marketplace, DCA considers consumer information and choice as fundamental to a fair transaction.

To ensure a fair and vibrant marketplace for consumers and businesses, DCA licenses 71,000 businesses in 57 different industries; mediates thousands of individual consumer complaints annually; educates consumers and businesses through press releases, press conferences, educational materials, community outreach and public hearings; and works with other city, state and federal law enforcement agencies to protect consumers from deceptive practices. The Department enforces the City's consumer protection law and other laws that prohibit deceptive acts and misleading marketing practices.

DCA's Office of Financial Empowerment is the first local government initiative in the nation aimed expressly at educating, empowering, and protecting those with low incomes so they can

[1] New York City Charter, Chapter 64, Section 2203(a)

build assets and make the most of their financial resources. Launched in December 2006, OFE was the first initiative to be implemented under Mayor Michael R. Bloomberg's Center for Economic Opportunity (CEO), a comprehensive, research-driven effort to design and implement innovative poverty-reduction strategies.

OFE works with financial institutions to negotiate safe, starter bank accounts and implements innovative asset building programs to encourage savings among consumers with low incomes. OFE also provides free financial counseling and coaching through Financial Empowerment Centers throughout New York and coordinates a Citywide network of quality financial education providers. DCA's OFE also spearheads the Mayor's Earned Income Tax Credit public awareness campaign, including a network of free tax preparers.

OFE's efforts have also spawned a new field of municipal financial empowerment. To share lessons learned and advocate jointly for national policy reforms, New York City founded and co-chairs the Cities for Financial Empowerment (CFE) coalition, a group of ten city governments working to improve financial services for households with low incomes. It is this broad and varied experience that informs these comments.

RECOMMENDATIONS

I. Reasonable and Proportional Penalty Fees and Charges

Penalty fees have become a significant source of profits for credit card issuers. In 2009, issuers collected $22.9 billion in penalty fees, up from $19 billion in 2008.[2] Congress determined that this area of profits too often came at the expense of consumers, so the Act required the Board to develop meaningful standards for reasonableness and proportionality of penalty fees and charges.

The Board's proposal includes some important provisions toward this end that should be maintained in the final rule. DCA supports the Board's general prohibitions in proposed § 226.52(b)(2), which would eliminate the most egregious fees. This section of the Board's proposed rule correctly bans card issuers from imposing multiple fees based on a single event, fees for violations with no associated cost to the issuer and fees of more than the amount associated with violations. Eliminating this subset of unreasonable penalty fees is an important step.

However, overall, the Board's proposed § 226.52(b) does not set adequately strict requirements for reasonableness and proportionality of fees beyond these general prohibitions to ensure penalty fees are actually reasonable and proportional, as required by Section 102(b) of the Act. The Board's proposed rule would allow card issuers to set penalty fees either based on costs, based on deterrence or within safe harbor limits.[3] DCA supports the Board's decision to include

[2] Sidel, Robin, "Banks Roll Out New Check, Card Fees," The Wall Street Journal, January 2, 2010.
[3] Proposed § 226.52(b)(1)(i): "Fees based on costs. A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation."; Proposed § 226.52(b)(1)(ii): "Fees based on deterrence. A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee is reasonably necessary to deter that type of violation using an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations."; and § 226.52(b)(3): "Safe harbor. Except as provided in paragraph (b)(2) of this section, a card issuer complies with paragraph (b)(1) of this section if the dollar amount of a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan does not exceed the greater of: (i) $[XX.XX], adjusted annually by the Board to reflect changes in the Consumer Price Index; or (ii) Five percent of the dollar amount associated with the violation, provided that the dollar amount of the fee does not exceed $[XX.XX], adjusted annually by the Board to reflect changes in the Consumer Price Index.".

a safe harbor. Nonetheless, the proposed rule is overly broad in its allowance for credit card issuers to choose between three frameworks by which to establish that penalty fees are reasonable and proportional and does not sufficiently establish the safe harbor as the primary standard.

The Act requires the Board to consider in its rulemaking the costs incurred by the creditor, deterrence effects, the cardholder's conduct and other factors deemed necessary. The legislation does not, however, intend for the Board to offer card issuers a menu of options from which they are allowed to choose which one of these considerations to use as the basis to justify penalty fees. As the Senate Banking Committee's Report on the Act notes, "The Committee understands that the Federal Reserve Board, in determining reasonable relation to cost, will take into account a number of factors, including; costs associated with individual transactions; costs of managing the portfolio; credit risk associated with both the portfolio and the individual; the conduct of the cardholder; and circumstances leading to such omission or violation; and such other factors as the Board may deem appropriate."[4]

By giving credit card issuers the option to choose which factors it will consider, the Board would inappropriately delegate to the credit card companies the responsibility for determining standards that Congress expressly delegated to the Board. In doing so, the Board invites card issuers to use creative accounting techniques and newly-produced research on deterrence effects to justify fees beyond what should be considered to be reasonable.[5] This proposed "choose your justification" standard would undermine the effectiveness of the Act, failing to meaningfully reform the penalty fees charged. Moreover, it could bifurcate the market by enabling larger institutions – with greater capacity for sophisticated statistical modeling – to charge higher fees than small community banks and credit unions, which would be more likely to abide by the safe harbor standards given limited resources to devote to justifying higher fees. As is clearly the intent of the Act, penalty fees should be equally reasonable at all financial institutions.

DCA offers the following recommendations for the Board to effectively curb excessive penalty fees and charges by setting clear standards for reasonable penalty fees, prohibiting fees that are *per se* unreasonable and broadly applying the rules to all penalty fees and charges, including penalty interest rates.

A. Establish default safe harbor fee limits for issuers to meet reasonableness and proportionality requirement.

The Board correctly included a safe harbor penalty fee in § 226.52(b)(3) of the proposed rulemaking. However, rather than allowing card issuers to make the case for high fees, the Board should establish safe harbor limits as the default basis by which issuers set penalty fees, requiring issuers seeking to charge fees in excess of the safe harbor to affirmatively prove that such charges are reasonable.

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[4] Report 111-16, Calendar No. 54, To Accompany S.414, 111th Congress, 1st Sess. (2009), Senate Committee on Banking, Housing and Urban Affairs, May 4, 2009.

[5] *Given the variability of existing research on deterrence, it is likely issuers will be able to justify unreasonable fees. For example numerous studies have been written on deterrence effects of capital punishment and often reach contradictory conclusions. See, e.g.* Cohen-Cole, Ethan, Steven Durlauf, Jeffrey Fagan, and Daniel Nagin, "Reevaluating the Deterrence Effect of Capital Punishment: Model and Data Uncertainty," December 2006. Accessed online on April 5, 2010 at http://www.ncjrs.gov/pdffiles1/nij/grants/216548.pdf. *The study concludes that there is little empirical evidence in favor of the deterrence hypothesis.;* Dezhbakhsh, Hashem, Paul H. Rubin, and Joanna M. Shephed, "Does Capital Punishment Have a Deterrent Effect? New Evidence from Post-moratorium Panel Data," 2003. Accessed online on April 5, 2010 at http://www.cjlf.org/deathpenalty/DezRubShepDeterFinal.pdf. *The study results suggest that capital punishment has a strong deterrent effect and that each execution results, on average, in 18 fewer murders.*

In determining an appropriate safe harbor, the Board should take into account the cost to the issuer of the violation, and all other factors the Act intends. The Board should also give appropriate consideration to longstanding contract law that limits any charges creditors seek to recover from consumers who fail to comply with a contract term or condition to reasonable liquidated damages, deeming any charges in excess as void as a penalty which contracting parties are not entitled to recover.[6] The Board should consider the fees creditors were allowed to collect under state liquidated damages laws when consumer non-compliance with the terms and conditions of a credit contract resulted in damage to creditors.

The Board should also look to pricing models prior to the widespread deregulation of credit card fees after the Supreme Court's *Smiley v. Citibank* decision in 1996.[7] A GAO analysis found that late payment fees increased by more than 150 percent between 1995 and 2005, from $13 to $34, and over-the-limit fees increased by about 140 percent, from $13 to $31.[8] The current, grossly inflated fees should not be a baseline for an appropriate safe harbor.

In addition, the Board should consider the fees currently charged by credit unions, which are, in general, substantially lower than those charged by bank issuers.[9] These fees may more accurately reflect cost and deterrence considerations and could serve as the center of an acceptable range of reasonable and proportional fees. Until the Board determines its safe harbor, an appropriate limit for fees for non-compliance by consumers should be set at no more than five percent of the amount of the violation or $15.[10]

B. Develop a weighted, multifactor reasonableness metric and require card issuers seeking to deviate from the safe harbor to actively demonstrate compliance.

Instead of allowing issuers to choose between several means of justification, the Board should establish a single mathematical model that ascribes a particular weighting to each factor considered, including cost and deterrence factors, and produces a result of an appropriate dollar amount for the penalty fee. Any issuer seeking to charge a penalty fee in excess of the safe harbor should be required to submit to their regulator proof that such fee complies with the metric. Further, regulators should be required to disclose the data submitted by all issuers seeking an exception from the safe harbor and the determination based on the prescribed mathematical model.

To inform the development of such a metric, the Board should use its regulatory authority and research capacity to conduct its own comprehensive review of penalty fees, analyzing the costs and benefits to issuers of late payments[11], any deterrence effects on consumer behavior and

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[6] See, e.g., NY CLS UCC § 2-718 (2010); Fla. Stat. § 672.718 (2010); O.C.G.A. § 11-2-718 (2010); ALM GL ch. 106, § 2-718 (2010); "Liquidated Damages and Penalty Clauses: A Civil Law versus Common Law Comparison ," The Critical Path, ReedSmith, Spring 2008, Available at http://www.reedsmith.com/_db/_documents/0804crit.pdf.
[7] Smiley v. Citibank (S.D.), N. A. (95-860), 517 U.S. 735 (1996).
[8] Government Accountability Office. "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers." Report GAO-06-929, September 2006.
[9] See, e.g., Bourke, Nick and Ardie Hollifield, "Still Waiting: 'Unfair or Deceptive' Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect," The Pew Health Group, October 2009.
[10] See, e.g., Cal Fin Code § 4001, which limits the maximum late payment charge to $15.
[11] In reviewing the costs associated with late payments and appropriate reasonableness standards, the Board should consider the timing of fees and late payments, the effect on revenues and the need for predictable cash flows. For example, payments made between the due date and default date (30 days past due) may provide additional revenue for credit card companies. Unlike closed-ended loans, revolving credit issuers charge consumers for payments made after the stated due date through finance charges. Late charges in closed-ended loans are designed to encourage

other factors, including analysis of data on current penalty fees; fees allowed under pre-1996 state laws that were overturned under *Smiley*; the contract-law principles regarding liquidated damages; and other available research. In reviewing the market, the Board should examine data from issuers throughout the financial services marketplace, not just from the largest issuers. As the Board proposes in the rule, the array of costs to the issuer that is used to determine reasonable penalty fees should not include costs associated with losses from defaults or holding loss reserves, which, as the Board notes, should be taken into account and transparently disclosed upfront rather than through penalty pricing. Further, the current excessive penalty fees charged by large issuers that dominate the market should not be the primary baseline. The Board should invite public comment on the proposed mathematical model from interested parties. Further, the Board should annually reassess the appropriate determinants of reasonableness and revise the weighted metric, subject to public comment.

As the economic downturn has shown, financial institutions can and will devise new ways to boost their fee income. The proposed rule would perpetuate this practice, incentivizing issuers to focus on developing new accounting methods or statistical analyses on deterrence to justify high fees. Setting clear and universally-applicable boundaries for penalty fees in excess of the safe harbor will help curb this type of negative innovation that both harms consumers and undermines the long-term viability of lenders.

C. Do not allow card issuers to charge tiered or incremental fees.

The Board should prohibit card issuers from charging tiered penalty fees based on the number of times a consumer engages in particular conduct or fees in increments. As the Act recognizes, transparency of fees and charges is essential to empowering consumers to make informed financial choices in their best interest and to enabling card issuers to realize deterrence effects of fees. Fees that are not consistently applied, either as a percentage of the violation of the cardholder agreement or as an absolute dollar value, are less likely to be understood by the majority of consumers. The Board recently recognized that consumers may have difficulty understanding tiered fees in its final Regulation E rules regarding overdraft protection, requiring in § 205.17(d)(2) that financial institutions disclose the maximum fee imposed rather than a range of fees.[12] Further, recent research from the Center for Responsible Lending found that issuers have altered late fee tiers, with nine out of 10 consumers falling into the top tier, suggesting issuers are "…creating a system that suggests a low fee exists, while in reality charging almost everybody the highest fee."[13] Allowing such a tiered or incremental fee structure would, therefore, undermine the intent of the Act and the Board's rules to ensure that penalty fees are reasonable and are disclosed in a clear and accurate manner.

D. Prohibit over-the-limit fees.

Fees associated with exceeding the credit limit are *per se* unreasonable and should not be permitted. There is inherently no reason card issuers should be allowed to charge a fee for

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the customer to remain current on their loan; for open-ended credit, the finance charge is added immediately following the due date and provide revenues that are not available if the customer enjoys the full benefit of the interest rate grace period. The Board should consider at what point late charges result in an appropriate cost to issuers, in addition to deterrence effects, to determine an appropriate point past the due date at which any late fee could be considered reasonable and proportional.

[12] 12 CFR Part 205, Regulation E, Docket No. R–1343, Federal Register, Vol. 74, No. 220, P59048, November 17, 2009.

[13] Frank, Joshua M., "Dodging Reform: As Some Credit Card Abuses Are Outlawed, New Ones Proliferate," The Center for Responsible Lending, December 10, 2009.

extending additional credit. Given issuers' ability to collect interest on the additional balances and discretion whether to extend additional credit, allowing consumers to exceed their limits does not result in any significant marginal cost to issuers. As of October, 2009, the median credit card over-the-limit fee was $39 for bank issuers.[14] Any fee, let alone a $39 fee, for a purchase covered solely at the discretion of the card issuer and subject to the same interest rate as other outstanding balances is unreasonable and should be prohibited in § 226.52(b)(2).

E. Apply reasonableness and proportionality standards to penalty interest rates.

The Board should apply the same reasonableness and proportionality requirements regarding penalty fees or charges to penalty interest rates. Penalty interest rates, late fees and over-the-limit fees are the primary penalties charged by issuers. The median penalty rate for bank issued cards is about 29 percent, or between 11 and 16.75 percentage points higher than median advertised non-penalty purchase rates.[15] This rate would add costs of between $110 and $167.50 annually for every $1,000 borrowed.[16] For accounts with moderate balances of $3,000, this could mean costs of more than $450 per year and a 65 percent increase in the monthly minimum payment due.[17] Given these costs, which can be applied for years, penalty interest rates are often much more expensive to consumers than a one-time penalty charge of $39.

The Board must ensure penalty interest rates are reasonable by applying the same default safe harbor and active justification requirements to penalty interest rates.[18] To sufficiently ensure penalty charges are reasonable and to prevent issuers from further increasing penalty rates to make up for lost fee income, the Board must apply a strong reasonableness and proportionality standard to penalty rates.

II. Reevaluation of Interest Rate Increases

The Act took definitive measures to ensure rate increases were not unfairly applied to existing balances and to set boundaries for increases going forward. Another essential element of the Act, § 101(c), directs the Board to release final rules for creditors to reevaluate interest rate increases. As the Act requires, accounts must be honestly reviewed and re-priced. However, the Board's proposed rules are insufficient to make sure consumers, especially the millions whose rates were retroactively increased in the run-up to the effective date of the Act, get a fair shot at restoring their rates to their previous levels. DCA offers the following recommendations to better accomplish the Congressional intent of requiring issuers to fairly review and appropriately re-price accounts by setting actual guidelines.

A. Develop comprehensive requirements for reasonableness of reevaluation of rate increases.

The Board should develop comprehensive requirements regarding the reasonableness of issuers' policies and procedures to reevaluate interest rate increases required by proposed § 226.59(b). Specific requirements governing these procedures are essential to ensuring card

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[14] Bourke, Nick and Ardie Hollifield, "Still Waiting: 'Unfair or Deceptive' Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect," The Pew Health Group, October 2009.
[15] Ibid., Bourke
[16] Ibid., Bourke
[17] Ibid., Bourke
[18] *In determining a safe harbor penalty interest rate increase, the Board should consider previous proposals to limit penalty increases to 7 percentage points.* See, e.g., Credit Card Reform Act of 2008, S. 2753, 110th Congress, 2nd Sess. (2008); Stop Unfair Practices in Credit Cards Act of 2007, S. 1395, 110th Congress, 1st Session (2007).

issuers adequately reevaluate increases and interest rates. Absent such requirements, issuers are likely to stretch the limits of the rules, as has been the case in other contexts.[19]

The Board's requirements should distinguish between increases as a result of market conditions and those as a result of a change in a consumer's creditworthiness. The Board should ensure issuers are not allowed to justify prolonging increased rates by selectively choosing market conditions not directly affecting a given account. For example, banks should not be able to subsidize lost overdraft fee income by maintaining interest rate increases on credit card accounts. The market condition rationale must not be a catch-all justification. The Board should set clear guidance of how market considerations can apply.

Requirements for changes based on creditworthiness should entail meaningful re-evaluation of a consumer's credit score, recent payment history and other factors that indicate a consumer is a lower credit risk. Given its access to underwriting information, the Board should issue rules that require issuers to take into account all appropriate factors, rather than allowing them to select indicators favorable only to themselves.

The Board must also provide robust enforcement guidance for regulators, require comprehensive recordkeeping of reviews by issuers and ensure examiners appropriately audit issuers' reviews. In addition, the Board should publicly disclose up-to-date data on the number of accounts reviewed and the number re-priced for each issuer, as a further means to hold creditors accountable.

B. Create an alternative safe harbor interest rate increase standard to ease compliance burden of the rule.

In order to ease any potential administrative burden to financial institutions, DCA proposes the Board create a safe harbor penalty rate increase. If the credit card issuer imposes a penalty rate increase of no more than five percentage points, the Board should exempt issuers from more stringent standards and allow them to rely on their current underwriting standards to reevaluate rate increases. This is in line with the penalty rates currently charged by many credit unions. The median credit union penalty rate is about 18 percent, about four to eight percentage points above the median advertised interest rate.[20] A five percentage point penalty rate would be significantly more affordable to consumers than the current industry norm. The Pew Safe Cards Project estimates that an account with a balance of $3,000 that was subject to a 14 percent APR and had the rate increased to 28 percent would result in a 65 percent increase in the monthly minimum payment, from $65 to $100.[21] By comparison, a five percentage point penalty APR increase, from 14 percent to 19 percent, would increase the monthly minimum payment by 20 percent, from $65 to $77.50[22], significantly more affordable to a financially strapped consumer trying to get back on track making on-time payments**.**

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[19] In the context of fee-based overdraft, for example, financial institutions are exploiting gaps in the rules to aggressively market overdraft services in a manner that pushes the boundaries of the Board's regulations. On March 15, 2010, DCA sent a letter to Chairman Bernanke regarding these concerns and calling for guidance to curb abuses. Available at http://www.nyc.gov/html/dca/downloads/pdf/letter_to_frs.pdf.

[20] Bourke, Nick and Ardie Hollifield, "Still Waiting: 'Unfair or Deceptive' Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect," The Pew Health Group, October 2009.

[21] Bourke, Nick, Letter to Ms. Sandra Braunstein, Board of Governors of the Federal Reserve System, Regarding "Reasonable and Proportional" Rules Under Credit CARD Act of 2009 (Pub. L. 111-24), Pew Safe Cards Project, June 25, 2009.

[22] DCA calculations based on Pew Safe Cards Project methodology: Balance * (APR/12) + Balance * .01 = Minimum Payment Due

Similar safe harbors have been proposed in other contexts. For example, Professor Elizabeth Warren recently described the potential benefits of safe-harbor contracts for mortgages, credit cards and car loans in reducing overall regulatory compliance burdens for financial institutions while making products more transparent to consumers.[23] Representative Barney Frank has also recognized the benefits of safe harbors. The Mortgage Reform and Anti-Predatory Lending Act, which was introduced by Representative Brad Miller and cosponsored by Representative Frank, would exempt mortgages that meet specific standards from more vigorous requirements regarding verification of ability to repay and net tangible benefit.[24] Any issuer seeking a safe harbor from reevaluating rate increases should be able to meet this standard.

C. Require immediate review of accounts with interest rate increases on or after January 1, 2009 that occurred more than six months before the effective date of the regulation and set requirements for issuers to cure certain accounts with existing balances re-priced under circumstances currently prohibited.

Proposed comment 59(c)-3 would allow issuers that raised interest rates on consumer accounts between January 1, 2009 and prior to August 22, 2010 to wait until February 22, 2011 to review the accounts, more than a year after some of the initial rate increases occurred. DCA urges the Board to require issuers to immediately review all accounts subject to the reevaluation of interest rate requirements with rates that were increased six months or longer prior to August 22, 2010. Further, the Board should require accounts with existing balances re-priced due to a single late payment or over-the-limit occurrence, as is currently prohibited, to be returned to their original rate if payments have been on time for at least six months.

In the wake of the Board's December, 2008 rules and the passage of the Act in May, 2009, card issuers overwhelming raised consumer rates. As Representative Carolyn Maloney stated about card issuers in November, 2009, "…Rather than use the time-- time they asked for-- since the bill's signing in May to prepare for the changes, they've raised rates and fees with absolutely no regard for the dire position of millions of their customers."[25] As of July, 2009, credit card interest rates spiked an average of 20 percent across the board from December, 2008.[26] In June, 2009, the Center for Responsible Lending estimated that at least 10 million cardholders had their interest rates increased.[27] In response to these increases in the run-up to the new law's effective dates, the House of Representatives overwhelmingly passed legislation in November, 2009 to speed up the implementation of the Act, including immediate application of the reevaluation of interest rate requirements, with a vote of 331-92.[28] The millions of consumers facing increased interest rates should not have to wait an additional six months beyond the effective date deemed reasonable by Congress in the Act, which already took into account industry concerns. Further, the passage of legislation to speed up the effective date of many provisions of the Act in the House of Representatives is a clear demonstration of the legislative sentiment regarding any additional delay tactics. The Board must require issuers to immediately

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[23] *See, e.g.,* Warren, Elizabeth, Testimony Before the House Financial Services Committee's Hearing on "Regulatory Restructuring: Enhancing Consumer Financial Products Regulation," June 24, 2009.
[24] *Passed the House of Representatives in May 7, 2009.* Mortgage Reform and Anti-Predatory Lending Act, HR. 1728, 111th Congress, 1st Sess. (2009).
[25] Press Release, House Financial Services Committee, "House Votes to Speed Up Credit Card Reforms," November 4, 2009. Available at http://www.house.gov/apps/list/press/financialsvcs_dem/presscredit_110409.shtml.
[26] Bourke, Nick and Ardie Hollifield, "Still Waiting: 'Unfair or Deceptive' Credit Card Practices Continue as Americans Wait for New Reforms to Take Effect," The Pew Health Group, October 2009.
[27] Frank, Joshua M., "Selective Interpretation: Top Credit Card Issuers Appear to Follow Own Rules," The Center for Responsible Lending, June 5, 2009.
[28] Press Release, House Financial Services Committee, "House Votes to Speed Up Credit Card Reforms," November 4, 2009. Available at http://www.house.gov/apps/list/press/financialsvcs_dem/presscredit_110409.shtml.

reevaluate all accounts due for biannual reviews of rate increases and to set clear guidelines to return accounts inappropriately re-priced before the new law became effective to their previous terms.

III. Consumer Disclosures

A. Require notices of significant changes in terms to include the reason(s) for rate increases and, where applicable, to disclose the change in a consumer's credit score warranting the change.

DCA generally supports the Board's proposed § 226.9 (c)(2) and (g), as authorized by § 101 (c) of the Act, to require notices of changes in interest rates to include no more than four principal reasons for the increase, listed in order of importance. The proposal would permit issuers to offer general reasons for changes, such as "a change in market conditions" or "a decline in credit worthiness." As the Board notes, in this context, overly detailed information may be confusing to consumers, especially regarding changes in market conditions.

However, more robust information about changes as a result of a decline in a consumer's credit score should be included. In this circumstance, the Board should require issuers to disclose both the consumer's current credit score and the previous credit score on record with the issuer, to allow a consumer to easily ascertain the effects of recent actions. The Board and the Federal Trade Commission recently finalized similar regulations regarding risk-based pricing disclosures, enacting credit score disclosure standards permissible in place of the full risk-based pricing disclosures under the Regulation V rules going into effect January 1, 2011.[29] The Board should help to empower consumers to improve their creditworthiness by requiring a new standard of transparency by creditors.[30] Robust credit score disclosure requirements are an important step toward this end and expand on the Board's risk-based pricing disclosure rules.

B. Require issuers to provide consumer disclosures following each six-month account review.

The Board should require credit card issuers to provide a consumer with disclosures each time his/her account is reviewed, noting the result of the review, the original reasons for the rate increase, and the current information considered by the issuer. If creditworthiness was a factor, the credit card issuer should provide disclosure of the consumer's current credit score, the credit score at the time of the change and tips on improving creditworthiness, including information on free financial counseling and coaching, such as the services provided by New York City's Financial Empowerment Centers.[31]

As the Board considers consumer deterrence in its rules regarding penalty fees, a similar tact should be taken throughout the rules to influence behavior by encouraging consumers to act in their own best interest. Ensuring consumers are given full disclosure of the information considered and the result of every biannual review expands on the new transparency

[29] Regulation V § 640.5(e). Federal Register, Vol. 75, No. 10, P2774, January 15, 2010.

[30] OFE offers consumers help with improving their credit scores, through citywide financial education efforts and consumer information made available online at http://www.nyc.gov/html/ofe/html/help/credit_basics.shtml.

[31] Launched by Mayor Bloomberg in May 2009 as part of his Five Borough Economic Opportunity Plan to help New Yorkers through the economic downturn, OFE's Financial Empowerment Centers provide the "gold standard" of financial education: one-on-one financial counseling and coaching. Counseling services are provided at no-cost in English and Spanish and are available throughout the City in multiple locations in Manhattan, Queens, Brooklyn and the Bronx. For more information, see http://www.nyc.gov/html/ofe/html/poverty/fec.shtml.

requirements at the core of the Act and empowers consumers. For example, notifying consumers that increased rates are being maintained due to market conditions may encourage consumers to evaluate the full range of available credit in a given market environment, rather than to remain with an issuer continuing to offer unfavorable terms. Further, when creditworthiness is a decision driver in the review, the Board should make sure this teachable moment is harnessed by requiring issuers to provide consumers with their credit scores and information on the actionable steps that can be taken to improve their scores. The new protection under the Act to require reevaluation of rate increases should be fully leveraged through the addition of transparent consumer disclosures following each and every account review.

CONCLUSION

The Board's recent rules, from requirements for fee-based overdraft protection to risk-based pricing disclosures, have made major strides in shaping a more fair financial services marketplace. While the proposed changes to Regulation Z offer a considerable improvement from the status quo, the Board fails to set sufficiently strong standards to create real rules for fairness, transparency and accountability regarding penalty fees and reevaluation of interest rate increases.

Outrageous penalty fees must be reigned in. However, the Board's proposed rule is overly open-ended and fails to curtail issuers' use of "gotcha fees" to boost income. DCA urges the Board to set a single, clear standard for penalty fees, based on comprehensive research and input from diverse stakeholders. The Board must also ensure penalty interest rates are held to the same standard of reasonableness and proportionality. Further, the Board must substantially strengthen its proposed rule regarding reevaluation of interest rate increases across the board. In particular, the rules must ensure cardholders who had their interest rates raised under circumstances deemed unfair and deceptive by the Board and by Congress have their accounts reviewed and, where appropriate, re-priced promptly and fairly. Lastly, the Board should enhance disclosure requirements regarding consumer creditworthiness and require cardholders to provide consumers with disclosure of the results of every biannual account review.

The era of hidden and oligopolistic pricing to boost credit card issuer profits, to the detriment of consumers and the health of our economy, must end. DCA's recommendations should be adopted to meet the legislative intent of ensuring clear, market-based credit card pricing that empowers consumers to make informed choices and supports the long-term health of our economy.

Respectfully submitted,

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