



Nonprofit Publisher
of Consumer Reports

June 24, 2007

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th St., & Constitution Ave., NW.
Washington, DC 20551

Re: Docket No. R-1286

Via U.S. Mail and Electronic Mail

Dear Members of the Federal Reserve Board of Governors;

Consumers Union, the non-profit publisher of *Consumer Reports*, is pleased to provide comments regarding the proposed amendments to the Truth in Lending Act's Regulation Z which, if adopted, will offer some important improvements to credit card disclosures for consumers.

Summary

As detailed below, Consumers Union supports a comprehensive approach to protect consumers from credit card abuses. In addition to the Board's disclosure proposals, stronger laws and more regulatory action are still necessary. The proposed changes set forth by the Board are limited to some disclosure improvements and enhanced advertising requirements. Though these improvements do not curtail credit card issuer abuses, they do provide consumers with greater access to critical and accurate information.

We urge the Board to adopt the proposed improvements that standardize the format of disclosures throughout all phases of the credit card account, provide enhanced notice for changes in terms, add a new requirement that issuers notify consumers 45 days in advance of imposing a penalty rate, include a *comprehensive* all-inclusive APR that encompasses all costs to the consumer in cost disclosures, add enhanced protections for subprime credit card customers, and add improvements in advertising requirements.

Additionally, Consumers Union recommends that the Board prohibit the practice of applying penalty rates retroactively, and require credit card issuers to include on every periodic statement a table of fees paid during the statement period and during the year to date. Finally, Consumers Union recommends that the Board use its broad powers to adopt rules prohibiting egregious penalty fees, unwarranted rate hikes and unilateral contract term changes, among other practices.

Consumers Union Favors a Comprehensive Approach

We believe a comprehensive approach extending beyond improved disclosure is required to fully protect consumers from the many abusive credit card industry practices. Consumers need laws to prohibit common credit card company practices such as changing contract terms, such as the applicable interest rate; penalizing consumers with higher interest rates for actions

unrelated to their credit card account; charging fees for late payments mailed on time or for exceeding the credit limit when the transaction was authorized by the card issuer; and charging consumers fees for paying their bills by phone, to name just a few.

While Stronger Laws are Still Necessary, Improvements to the Format and Content of Credit Card Disclosures Benefit Consumers

While improved disclosure is no substitute for tougher action to curb practices that trap consumers in expensive and overwhelming debt, we believe that the Federal Reserve Board's proposal offers much needed improvements to the content and format of the disclosures provided to consumers.

Consumers Union supports these disclosure improvements because they make it easier for consumers to receive essential information at a point when the information is most useful, and in a manner that facilitates comparison shopping and enhances consumer understanding of the terms and conditions affecting credit card pricing. It is important to note, however, that disclosure of abusive or unreasonable practices does not make those practices any less egregious. A consumer who understands that an issuer will engage in a practice but cannot avoid that practice because it is widespread has gained little from the disclosure. Credit card companies should be prohibited from engaging in practices that trigger unwarranted and excessive penalty fees and inexplicable rate hikes.

- **Disclosure Format Improvements**

The proposed amendments offer several consumer-friendly changes to the format of mandatory disclosures by credit card issuers. Consumers Union supports the proposed changes to formatting that require disclosures to be presented using a standardized table with headings, contents and format substantially similar to the format used for applications for credit cards. Extending those formatting requirements to information disclosed at account opening, for periodic statements and for change in terms notices will significantly improve how this information is to be disclosed to consumers. These proposed enhancements will help reduce consumer confusion and make the disclosed information more accessible.

- **Enhanced Notice Requirement for Changes in Terms**

Consumers Union also supports requiring credit card companies to provide 45 days advance notice for changes in terms to the credit card contract, up from the current 15 day requirement. This allows consumers more time to make other arrangements to find alternative credit, or to transfer or attempt to pay off balances should they decide that the changes are not in their best interest. This protection is absolutely critical, especially since credit card issuers generally reserve the right to unilaterally change credit card contract terms at any time and for any reason. Consumers Union believes it is patently unfair for credit card issuers to unilaterally change the terms of the credit card agreement without an explicit "opt-in" to the changes by the consumer. Therefore, in order to reduce the unfairness of unilateral contract changes during the term of an agreement, the Board should prohibit any change in terms without the express acceptance by the card holder and restrict the application of the change of terms to prospective activity on the credit card account.

- **New Advance Notice Requirements Before the Imposition of Penalty Rates**

Providing consumers with 45 days of advance notice before imposing penalty rates is an improvement over the current practice of allowing issuers to impose penalty rates without any notice whatsoever. Credit card issuers typically invoke penalty rates for a wide range of reasons including non-payment, late payment, paying less than the minimum payment; or exceeding one's credit limit, for example. Once a penalty rate is applied, the interest rate that the consumer is suddenly obligated to pay is inflated, in many cases nearly tripling the interest rate that applied before the penalty rate was imposed. Forty-five days is the *minimum* amount of time consumers should be given to become aware of the imposition of a penalty rate and take whatever measures are necessary to mitigate the impact of the penalty rate. Providing consumers with advance notice is the very least that should be done to address this problem until the Board adopts regulations and Congress passes laws to outlaw the practice.

In addition to notice, the Board should prohibit the practice of applying penalty rates retroactively. When credit card issuers apply penalty rates, the issuer obligates the consumer to pay the penalty interest rate going forward, and also applies the higher interest rate to any outstanding balance that exists before the penalty rate is applied. This practice allows credit card issuers to change the rules of the game, with particularly onerous results for individuals who carry a balance. The result is that at the sole discretion of the card issuer, consumers who have agreed to and accepted one set of terms for the cost of credit may suddenly find themselves subject to a different set of terms applying to the debt incurred under the previous agreement.

- **All-inclusive APR Disclosure**

The proposed amendments also contemplate changes to the content of the required disclosures for consumers in the periodic statement. One alternative proposed by the Board would be to **improve cost disclosures by requiring that the Annual Percentage Rate (APR) reflect all rate-based costs and fees borne by the consumer**. Consumers Union supports requiring an all-inclusive APR disclosure because it is one of the most important disclosures for a competitive market. It gives consumers critical information to assess the true cost of credit.

From the consumer's perspective, the true cost of credit is best reflected in an all inclusive APR which is *truly* comprehensive. To meet this standard, we urge the Board to require that the APR include all of the transaction fees in the finance charge, penalty fees such as late and over the limit charges, and ATM fees and foreign transaction fees which are already included in the Board's proposal. An APR which encompasses all fees makes it easier for consumers to comparison shop among credit card providers.

The other alternative proposed by the Board is the elimination of the APR disclosure. Consumers Union does not support this approach. There are so many different pricing structures in the credit card marketplace that an APR is absolutely essential for consumers to begin to compare products and costs.

Consumers Union supports the Board's proposal to protect consumers by requiring credit card issuers to include on every periodic statement a table of fees paid during the statement period and during the year to date. This information will help consumers easily assess the cost of the fees they pay to the card issuers and may influence consumers' choice of how

much to use the card in the future. It will also give consumers cost related information that will allow consumers to compare the relative cost of using different cards in their wallets.

- **Enhanced Protections for Subprime Credit Card Customers**

We also support the added requirements for subprime cards, which are marketed most frequently to those with less access to competitively priced credit and which carry higher fees and interest rates than other credit cards.

Since subprime cards often have substantial fees associated with opening the account, we support the concept that such card issuers must tell potential customers at critical stages of the application process when the card issuer requires fees or a security deposit equal to a significant amount of the total credit limit offered. The Board proposed that a subprime card issuer should not have to disclose this information unless at least 25% of the credit limit will be occupied by fees. Consumers Union believes this threshold is too high and urges the Board to adopt a stronger standard that requires subprime credit card issuers to tell potential customers when the fees or a security deposit associated with a line of credit equals or exceeds 5% of the credit limit offered.

We support the proposed regulations which require card issuers to give consumers this information at three critical stages of the application process: when subprime issuers solicit applications; when applications are made; and at account opening. This information is particularly critical when the credit line offered is very small. While we believe there ought to be a ban on account opening fees or security deposits that exceed 5% on all subprime cards, at a minimum, the Board should go further and restrict account opening fees on credit cards to no more than 5% of the credit limit in all cases.

Advertising Requirements

Consumers Union is opposed to the proposed rule expressly authorizing card issuers to disclose to consumers outdated rate information, which can be up to 30 days old, when it is done in reference to a website or in an electronic format such as an e-mail. We believe that new electronic technologies facilitate the timely publishing and dissemination of up to date pricing information and this should compel the Board to require that card issuers give consumers current APR information, especially when the disclosure is provided in an electronic format.

Consumers Union supports the proposed regulations which include important improvements in advertising requirements. These improvements are helpful for consumers since consumer interest in credit card products is frequently the result of aggressive advertising efforts by card issuers.

- **Truth in Fixed Rate Advertising**

When the advertising is deceptive or confusing, consumers are understandably astonished when they don't get what they were offered, especially if the duration of the fixed interest rate is much shorter than represented during the marketing phases. Marketing attractive fixed interest rates that quickly disappear by adjusting upward soon after issuance is a common practice among credit card issuers. Consumers Union supports prohibitions on

advertising fixed rates that can, in reality, be changed or that do not specify the time period during which the interest rate will not be changed.

- **Minimum Payment Advertising Triggers Additional Information**

Consumers Union urges the Board to adopt requirements that obligate issuers advertising minimum payment terms to also disclose in the advertisement the total payments required and the time period necessary to repay. This would help consumers better understand the negative consequences of consistently paying only the minimum due. Consumers may not understand that regularly making minimum payments extends the period of the repayment obligation as payments may cover little more than interest obligation without significant reduction in the principal owed. The Board's proposed amendments only encourage this practice and do not make it mandatory. Consumers Union urges the Board to make this requirement mandatory.

Conclusion

Consumers Union urges the Board to adopt the key enhancements to disclosure contained in this rule as a minimum first step to protect consumers from credit card abuses. The proposals we comment on today establish a minimum but still insufficient level of protection for consumers. When abusive practices are so widespread, disclosure does little to help consumers escape them. Moreover, unfair practices are not made more fair by disclosure. Congress has given the Board sufficient power to go beyond disclosure to prohibit credit practices that are unfair or abusive. Therefore, **we also urge the Board to adopt the enhanced disclosure requirements identified above and to adopt rules prohibiting egregious penalty fees, unwarranted rate hikes and unilateral contract term changes, among other practices.**

Please don't hesitate to contact Consumers Union if we can provide any additional information regarding our position.

Very truly yours,

Norma P. Garcia
Senior Attorney
Consumers Union