

Unfair or Deceptive Acts or Practices (UDAP) Meeting with Members of Public

June 30, 2008

OTS staff met with representatives of American Express (AMEX) to discuss the May 19, 2008 proposed UDAP rule.

In attendance for OTS: John Reich, Scott Polakoff, Robert Russell, Montrice Yakimov, Timothy Ward, and April Breslaw.

In attendance for American Express: Robert Thomson III, Lawrence Sharnak, and Thomas Ryan.

AMEX believes that the proposed provisions should be modified as follows:

Rate Increases on Existing Balances

- The proposed exception permitting repricing of existing balances when the account becomes 30 days' delinquent does not allow sufficient flexibility to reprice accounts that have a greater likelihood of being charged off. This exception should be eliminated or modified to allow repricing when consumers exhibit other behavior that indicates the account may be charged off ,e.g., when a consumer pays late twice in a twelve-month period. If the "two late payment" approach is used, AMEX recognizes that it may be appropriate to give consumers a warning notice when they have made one late payment.

Payment Allocation

- To ensure that balance transfer offers continue to be made, the proposal should be modified to allow issuers to apply payments to customers' lowest interest rate balances before applying such payments to higher interest balances.

Liability Under State Law

- A declaration that established practices are unfair or deceptive under the FTC Act may result in litigation.

AMEX also explained that it would support stricter controls on "any time/any reason" rate increases on existing balances, restrictions on fees for payment by telephone, and restrictions on overlimit fees assessed within a billing cycle.

Due to the complexity of the operational changes necessary to carry out this type of proposal, AMEX recommends that the industry be given 15-18 months to implement final rules.