



Office of Thrift Supervision
Department of the Treasury

Montrice Godard Yakimov
Managing Director, Compliance and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6173

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MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

**FROM: Montrice Godard Yakimov, Managing Director
Compliance and Consumer Protection**

SUBJECT: Unfair or Deceptive Acts or Practices; Proposed Clarifications

The OTS, Federal Reserve Board (FRB), National Credit Union Administration (NCUA) (collectively, the Agencies) issued a final rule to prevent unfair credit card practices in January 2009 (the UDAP Rule).¹ The UDAP Rule provides consumers with a reasonable time to pay credit card bills, sets up a fair allocation of payments to balances with different interest rates, restricts increasing interest rates, bans double-cycle billing, and limits the fees charged for opening an account. At the same time that the UDAP Rule was published, the FRB amended Regulation Z to change many disclosure requirements for open end credit.² Together, these rules overhaul card issuer responsibilities and require many operational changes.³ Both are effective on July 1, 2010.

In response to many technical questions about implementing the UDAP Rule and the corresponding amendments to Regulation Z, the Agencies have proposed clarifications to both the UDAP Rule⁴ and the amendments to Regulation Z.⁵ *Comments on these clarifications are due 30 days after they have been published in the Federal Register.*

Key Issues to be Clarified

Treatment of Deferred Interest and Similar Promotional Programs. The UDAP Rule prohibited deferred interest plans as they were designed or marketed. Deferred interest plans typically do not require consumers to pay interest on purchases if they pay off the principal balance before the due date. However, if the consumer does not pay off the balance by then, these plans would charge consumers the interest that has accrued during the life of the plan. Although such programs provide substantial benefits to consumers who pay the balance in full by the due date, consumers who do not do so may be shocked by substantial interest charges since these programs are typically marketed as “interest free.” On the other hand, the UDAP Rule permits

¹ See 74 FR 5498 (January 29, 2009).

² See Truth in Lending; Final Rule, 74 FR 5244 (January 29, 2009).

³ Pursuant to the amendments to Regulation Z, issuers will have to revise all of their communications with consumers, including their advertising, account opening materials, cardholder agreements, and periodic statements.

⁴ <http://files.ots.treas.gov/482038.pdf>

⁵ <http://files.ots.treas.gov/482039.pdf>

similar programs in which interest is waived or refunded because they do not appear to raise the same concerns about unfair surprise.

The Agencies believe that consumers should have the same set of protections regardless of whether interest is deferred or waived or refunded, and if they receive sufficient protections, these plans should be allowed. The protections would include proposed changes to Regulation Z to require clearer advertising disclosures. The proposed clarifications to the UDAP Rule would include the following protections:

- Payment allocation. The proposal would require institutions to allocate all payments above the required minimum to pay off plan balances during the last two billing cycles of the promotional period. Many institutions already do this, thereby helping consumers to avoid interest charges by paying off the balance of the plan in a timely way.
- “Hair Trigger” Repricing. The proposed commentary to the UDAP Rule would clarify that an institution cannot deny the consumer the opportunity to avoid interest charges unless the consumer is more than 30 days delinquent.

Closed, upgraded or acquired accounts. The proposed commentary to the UDAP Rule would clarify that accounts that are closed, upgraded by an institution, or acquired by an institution continue to have the protections offered by the rule, and that consumers cannot be induced to waive or forfeit these protections.

Contingent rate increases. The existing commentary to the UDAP Rule explains that issuers may not disclose a rate at account opening that is contingent on a particular occurrence or that may be applied at the institution’s discretion. Because questions continue to be asked about this point, the proposal would move the commentary language into the text of the rule.

Workout arrangements. The UDAP Rule provides that a rate may be increased due to the consumer’s failure to comply with the terms of a workout arrangement, provided that such an increase does not exceed the rate in effect prior to the workout arrangement. To encourage institutions to make these arrangements, the Agencies propose to clarify that this exception also applies to temporary hardship arrangements, as well as longer term workouts, and also applies where the consumer successfully completes the workout or hardship arrangement.

Servicemembers Civil Relief Act (SCRA). Under the SCRA, a servicemember’s rate is reduced while he/she is on active duty, but may be raised once active duty ceases. The Agencies propose to reconcile the UDAP Rule with the SCRA, provided that an increased rate does not exceed the rate that applied prior to military service.

For additional information, please contact Suzanne McQueen, Consumer Regulations Analyst, (202) 906-6459 or April Breslaw, Director, Consumer Regulations, (202) 906-6989.