

Third Credit CARD Act Regulation

BY KAREN THOMAS

ICBA VOICES CONCERNS AS FEDERAL RESERVE TACKLES PENALTY FEES IN PART III OF RULES TO IMPLEMENT THE CREDIT CARD ACT

For the third time in 12 months, the Federal Reserve Board proposed a set of new consumer credit card regulations to implement the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act). The Fed's latest proposed rules, to amend Regulation Z (Truth in Lending), would regulate late-payment and other penalty fees on credit cards and require credit card issuers to reconsider increases in interest rates.

Last July, the Federal Reserve Board issued a credit card rule implementing Regulation Z amendments that went into effect last Aug. 20. In January, the board issued a rule implementing other amendments that went into effect Feb. 22. The board was expected to approve its final penalty-fee rules in late May or in June.

These newest proposed rules, issued in March and scheduled to take effect Aug. 22, could considerably affect the pricing, competitiveness and profitability of community bank credit card pro-



Karen Thomas is ICBA senior executive vice president. Reach her at karen.thomas@icba.org.

grams. Among other things, the penalty-fee rules would ...

- prohibit credit card issuers from charging penalty fees (including late-payment fees and fees for exceeding the credit limit) that exceed the dollar amount associated with the consumer's violation of the account terms. For example, card issuers would no longer be permitted to charge a \$39 fee when a consumer is late making a \$20 minimum payment.
- ban inactivity fees, such as fees based on the consumer's failure to use the account to make new purchases.
- prevent issuers from charging multiple penalty fees based on a single late payment or other violation of the account terms.
- require card issuers to inform consumers of the reasons for increases in rates.
- require issuers that have increased rates since Jan. 1, 2009, to evaluate whether the reasons for the increase have changed and, if appropriate, to reduce the rate.

On April 14, ICBA submitted a comment letter voicing concerns about these latest proposed regulations. ICBA recommended several important changes to the proposed rule, and asked the Fed to remember that while greater regulatory protection is needed

from some the largest credit card issuers, community banks are common-sense lenders that offer credit cards on fair terms. The association also said penalty fees are legitimately used to deter consumers from becoming delinquent on their accounts, so the final rules should not undermine the overall beneficial purpose of those fees.

In particular, the Fed's proposed rule stated that a creditor may not impose a penalty fee unless the dollar amount of the fee is based on one of the following: (1) the total costs incurred by the creditor, (2) deterrence of violations by cardholders or (3) a safe harbor established by the Federal Reserve.

ICBA opposed the first option because it would be difficult for community banks to determine the exact amount of total costs for every type of penalty that may occur and because the rule would require creditors to make cost determinations using their own specific costs and not industry standards, making the option cost-prohibitive for community banks. Furthermore, ICBA opposed this option because cost of funds and collection costs and losses could not be counted.

ICBA also opposed the option that penalty fees can be based on an amount necessary to deter

ICBA urged the Fed to consider the compliance resources and staff of community banks when finalizing regulatory requirements.

payment violations, as there is no quantifiable way to determine what amount would deter consumers from committing payment violations and community banks don't have the resources to develop such a model that would comply with the proposed rule.

ICBA supported the safe-harbor option that would allow creditors to impose a dollar amount per violation, if the safe-harbor amount were not less than \$25 per penalty, as this option would be easier for community banks to comply with. However, ICBA stated it does not support any limitations on individual penalty fees that can be imposed on customers for violations of the account terms.

ICBA also provided extensive comments on provisions relat-

ing to the reevaluation of rate increases for consumers, requesting that the Fed limit the proposed six-month review of credit card accounts where the rate has been increased since Jan. 1, 2009, to only those accounts not affected by the Credit CARD Act provisions that became effective Feb. 22—thereby limiting this review to rate increases that occurred from Jan. 1, 2009, to Feb. 22, 2010.

More broadly, ICBA urged the Fed to consider the compliance resources and staff of community banks when finalizing regulatory requirements and cautioned the Fed that excessive regulatory burdens from the credit card regulations may cause community banks to exit the credit card business altogether, resulting in

fewer options for consumers and a greater concentration of the market share for larger issuers. That, of course, would defeat the very purpose of the Credit CARD Act.

The Fed was expected to issue final Credit CARD Act rules for credit card penalty fees in May or June. However, ICBA asked the agency to give community banks at least six months to implement the final rules, even if an extension is needed beyond the Aug. 22 deadline. [■](#)

For More

View ICBA's comment letter at icba.org, filed under Advocacy and Letters to Regulators.

reTHINK

YOUR APPROACH TO LOAN PORTFOLIO MANAGEMENT

THE SQUAREONE CREDIT SUITE is your complete lending solution. It's designed and developed by commercial bankers to deliver the intuitive tools you need to manage your commercial loan portfolio. SquareOne Credit Suite features superior credit risk management and document management that will quickly improve your bank's efficiency and ROI. In short, the ideal tools to meet customer needs and increasing expectations of bank examiners.

SQUARE 1
CREDIT SUITE



Contact Suntell today! www.suntell.com • 888-848-7349 • sales@suntell.com

SUNTELL