CU policy PRO Newsletter

March 2013

Dear CU PolicyPro Clients,

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Content FAQ

Q: Based on the new amendment to Regulation Z (Truth in Lending), and the new ability of the credit union to charge fees over the 25% fee restriction before a credit card account is opened, if the credit union decides to implement new fees what should be considered?

A: The credit union should always consider how a new fee will impact the membership and the operations of the credit union. New fees should be reviewed in regards to the credit unions current policies and procedures and approved according to those policies. CU PolicyPro offers credit card policies (Policy 7210 and Policy 7211) that provide information on how a credit union will change the terms of their credit card programs, what fees are charged and how they are charged, and limitations on charges and fees. It is important to remember that the policies in CU PolicyPro were designed so that credit unions could customize them to meet the specific need of each credit union and their membership. Charging a new fee also needs to be reviewed according to changes that will have to be integrated on documents, agreements and disclosures and information technology programming requirements need to be considered before making this decision.

CU PolicyPro is reviewed on a semi-annual basis and this new regulatory change will be addressed in the next CU PolicyPro update.

Technical FAQ

Q: How many users are we allowed, and can we have more than one Admin?

A: Each credit union is allowed up to 50 users. These can be individually named users, or group users (several people sharing an ID/PW). There can be as many ADMIN users as you wish (up to the 50 user limit). Only an ADMIN user can create new users. For instructions on how to add users and manage user access, view Segment 9 of the new user training video series. http://www.cusolutionsgroup.com/CU_PolicyPro_New_User_Training_387.html

Upcoming Training

There is a new user training webinar scheduled for Tuesday, April 9. Click here for more information or to register. http://www.cusolutionsgroup.com/CU-PolicyPro-Training-400.html

Don't forget, all training is also available via on-demand video training. The same material will be covered in both the video and live training sessions.
http://www.cusolutionsgroup.com/CU_PolicyPro_New_User_Training_387.html

Monthly OPS Notes Release: New Regulation Z Credit Card Amendment from the CFPB

On May 22, 2009 the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was signed into law and significantly changed the way credit unions offer and service credit card accounts. The CARD Act amended the Truth in Lending Act (TILA) and instituted new regulatory, servicing and disclosure requirements in an attempt to establish fair and transparent practices for open-end consumer credit plans.

When initially introduced Section .127(n)(1) of the CARD Act stated that "*if the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened*," then "*no payment of any fees (other than any late, over-the-limit fee or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.*"

After several revisions a final amendment was instituted on April 8, 2011 that expanded the scope of when the 25% fee requirement would apply to include all fees the consumer is required to pay with respect to an account prior to account opening. This scope expansion, which includes application and processing fees charged prior to account opening, when combined with the other fees charged to the account after the account is opened often exceeds the 25% regulatory limit of the accounts initial credit limit, especially on accounts with lower credit limits.

Shortly after issuing the final expanded rule a credit card issuer filed a lawsuit in the United States District Court [First Premier Bank v. U.S. Consumer Finance Protection Bureau (http://op.bna.com/bar.nsf/id/jtin-8m35e6/$File/premiumcardcase.pdf), 819 F. Supp. 2d. 906 (D.S.D. Sept. 23, 2011)] alleging that the Board of Governors of the Federal Reserve System, who implemented the CARD Act amendment, exceeded its authority by expanding the act to apply to fees the consumer is required to pay prior to account opening. After the lawsuit was filed the court issued an injunction and this portion of Regulation Z was postponed until the court made a decision on pre-account opening fee restrictions.

Based on the court's rulings the Consumer Financial Protection Bureau (CFPB) has issued the final rule amending 12 CFR Part 1026 (http://files.consumerfinance.gov/f/201303_cfpb_final-rule_regulation-z-amendment.pdf) and provided official interpretations to amend Regulation Z in terms of fee limitations for credit card issuers. The final rule applies the 255 limitation on fees to apply only during the first year after account opening.

The specific language as it applies to the regulation states in §1026.52 Limitations on fees *"(1) General rule. Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions." The amendment also includes the following guidance: "(2)*

Fees not subject to limitations. Paragraph (a) of this section does not apply to: (i) Late payment fees, over-the-limit fees, and returned-payment fees; or (ii) Fees that the consumer is not required to pay with respect to the account. (3) Rule of construction. Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law."

In Supplement I, which provides Official Interpretations to the regulations, the CFPB has provided guidance on how the fee restriction applies. The CFPB states:

The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.
ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

Additional guidance was provided if the credit limit is increased or decreased during the first year the card account is open which states:

i. **Increases in credit limit**. If a card issuer increases the credit limit during the first year after the account is opened, § 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is $400 and the consumer is required to pay $100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to $600. Section 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.
ii. **Decreases in credit limit**. If a card issuer decreases the credit limit during the first year after the account is opened, § 1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to

credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example, assume that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $600. Section 1026.52(a)(1) requires the card issuer to waive or remove $100 in fees from the account or to credit the account for an amount equal to $100 within a reasonable amount of time but no later than August 31.

Questions?

If you have any questions regarding the CU PolicyPro content, or questions on how to use the system, please contact hrsupport@cusolutionsgroup.com.

Thanks and have a great week!