

Late last week, the [Federal Reserve Board](#) issued its proposed regulations (to be codified as Regulation Z) governing the final sections of the CARD Act, which will go into effect August 22, 2010. Though the proposed regulations would significantly limit lenders' imposition of penalty fees and would require periodic evaluation of rate increases, many consumer advocates maintain that the proposed regulations do not go far enough in protecting consumers.

The Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009 was recently passed by Congress and will take effect August 22, 2010. Key provisions of the CARD Act include the following: (i) it bans credit card rate increases on existing balances due to "any time, any reason" or "universal default" and severely restricts retroactive rate increases due to a late payment; (ii) contract terms must be clearly spelled out and stable for the entirety of the first year; (iii) it ends "late fee traps" by requiring financial institutions to give cardholders at least 21 calendar days from the time of mailing in which to pay the monthly bill and prohibits weekend deadlines and due dates that change each month; (iv) it requires financial institutions to obtain customer permission to process transactions that would place the account over the limit and thereby incur an overdraft fee; and (v) it severely restricts fees on subprime, low-limit credit cards.

The Federal Reserve Board's Regulation Z would address the size of penalty fees which could be assessed by card issuers and would also address the process for re-evaluating rate increases. The proposed regulations would provide that a penalty fee could not exceed the dollar amount associated with the conduct (e.g., a late fee could not exceed the amount of a minimum payment which was paid late), would preclude multiple penalty fees for the same event, and would prohibit fees for declined transactions, account inactivity, or account closure. The regulations would also require a credit card issuer to base a penalty fee on the actual costs incurred by the issuer for the particular violation or an amount reasonably necessary to deter that type of violation. Alternatively, a card issuer could use a "safe harbor" fee method which would cap the penalty fee at the greater of a specified sum or 5% of the dollar amount of the violation. The proposed regulations would also govern a credit card issuer's re-evaluation of rate increases. Card issuers which increased an interest rate based on factors such as credit risk or market conditions would be required to review such increases every six months and reduce the rate where appropriate. Card issuers would be required to review all future rate increases as well as any rate increases effected since January 1, 2009. The proposed regulations

would also require that a credit card issuer provide 45 days' notice to the consumer when the issuer raises an interest rate and requires the issuer to provide notice of the reason for the increase.

Consumers Union commented on the proposed Regulation Z and suggested that the proposed restrictions and requirements do not go far enough in protecting consumers. Consumers Union advocates that the safe harbor fee method for determining the amount of a penalty fee should equal the lesser of, not the greater of, specified dollar caps. Consumers Union argues that the safe harbor cap amounts should be low, since a card issuer would always be allowed to charge that penalty fee, even where there is no justification for such. With respect to re-evaluation of rate increases, Consumers Union believes card issuers should be required to review rate hikes as soon as the regulations go into effect in August of this year, rather than allowing issuers to wait until February 2011 to conduct those reviews. Consumers Union also suggests that banks should be required to report the number of rate increases that were reduced following the six-month review and maintains that these results should be public record.

Consumers Union is a non-profit organization. Its comments on the proposed Regulation Z can be obtained via its website, www.consumersunion.org.