CUNA REGULATORY ADVOCACY
CUNA REGULATORY COMMENT CALL

April 19, 2012

CFPB Proposal to Amend Reg Z Regarding Credit Card Fee Limitations

EXECUTIVE SUMMARY

- The Consumer Financial Protection Bureau (CFPB) has issued a proposed rule to amend § 1026 of Regulation Z regarding credit card fee limitations.
- Currently, § 1026.52(a) limits the total amount of fees that can be charged on a credit card account *prior to account opening* and *during the first year after account opening*. However, this limitation has not yet become effective as a result of pending litigation on the issue.
- The proposed rule would amend § 1026.52(a) to provide that the limitation on credit card fees applies only *during the first year after account opening*.
- We believe the proposal is positive and will benefit some credit card issuers. However, we do not believe it will have a major impact on credit union issuers directly, based on the fees they typically charge on members' credit card accounts.
- The CFPB is accepting public comments on the proposal until June 11, 2012. **Please send your comments to CUNA by May 28.**

Please send comments to Senior Vice President and Deputy General Counsel Mary Dunn and Assistant General Counsel Luke Martone, or contact us at (800) 356-9655 ext. 6733. Click here for the *Federal Register* notice.

PROPOSED RULE

Background

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) amended the Truth in Lending Act (TILA) and established disclosure requirements for open-end consumer lending. Specifically, the CARD Act added TILA § 127(n)(1), which states that "[i]f 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 fee, 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."

In January 2010, the Federal Reserve Board (Fed) implemented new TILA § 127(n) in 12 CFR 226.52(a) of the Fed's regulations, which limits the total amount of fees that a credit card issuer may require a consumer to pay with respect to an account to 25% of the credit limit in effect when the account is opened. Under the 2010 rule, this limitation applied only during the first year after account opening.

In April 2011, the Fed issued a final rule expanding § 226.52(a) to apply to fees the consumer is required to pay with respect to an account prior to account opening. The change was based on the Fed's understanding that certain credit card issuers were "requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed 25% of the account's initial credit limit." The Fed viewed this practice as "inconsistent with the intent of [TILA] Section 127(n)(1) insofar as it alters the statutory relationship between the costs and benefits of opening a credit card account." The Fed's change to § 226.52(a) was scheduled to become effective on October 1, 2011.

In July 2011, a credit card issuer filed a federal lawsuit claiming that the Fed exceeded its authority by expanding § 226.52(a) to apply to fees the consumer is required to pay prior to account opening. On July 21, 2011, the Fed's rulemaking authority to implement the provisions of TILA transferred to the CFPB. Similarly, the CFPB replaced the Fed as the defendant in the litigation.

In September 2011, the court granted the card issuer's request to postpone the October 1, 2011 effective date with respect to the application of § 226.52 to fees paid prior to account opening. As a result of the court's order, the portion of the Fed's 2011 final rule applying § 226.52(a) to pre-account opening fees has not become effective.

<u>Description of Proposal</u>

Upon transfer of Regulation Z to the CFPB, the Fed's rule § 226.52 was designated as § 1026.52 of the CFPB's rules. The CFPB is proposing to amend § 1026.52(a) to resolve the uncertainty caused by the litigation discussed above. Specifically, the CFPB is proposing to amend § 1026.52(a) to provide that the limitation on credit card fees applies only during the first year after account opening. The CFPB is also proposing to make corresponding amendments to the official commentary of § 1026.52(a).

The proposal would amend § 1026.52(a)(1) by simply removing "prior to account opening and" from this section of the regulation, as indicated below:

> (a) *Limitations ~~prior to account opening and~~ during first year after account opening.*
> (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 ~~prior to account opening and~~ 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.

In addition, the proposal would make corresponding changes to the text and examples of § 1026.52(a)'s official commentary, as noted above.

We believe the proposal is positive and will benefit some credit card issuers. However, we do not believe it will have a major impact on credit union issuers directly, based on the fees they typically charge on members' credit card accounts.

QUESTIONS TO CONSIDER REGARDING THE PROPOSAL

1) Overall, do you support the CFPB's proposed changes to Regulation Z? Why or why not?

2) The CFPB asserts that the proposed changes are positive/beneficial to credit card issuers. Do you agree? Why or why not?

3) Will your credit union be impacted directly by the proposed changes with regard to the fees related to members' credit card accounts?

4) Do you anticipate any negative impacts to your credit union or credit card issuers generally from the proposed changes to Regulation Z?

5) Any other questions or comments.