



Nonprofit Publisher  
of Consumer Reports

November 20, 2009

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Ave, NW  
Washington DC 20551

Re: Regulation Z: Truth in Lending, Federal Reserve Board Docket No. R-1370,

Dear Chairman Bernanke, Members of the Board, and Board Secretary Johnson:

Consumers Union, the nonprofit publisher of *Consumer Reports*<sup>1</sup>, appreciates the opportunity to comment on this proposal to amend Regulation Z and implement certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act.) We will also be signing onto extensive joint consumer group comments which address additional issues not discussed here.

Unfortunately these rules have not come soon enough for millions of consumers. Creditors have abused the long implementation time that they sought from Congress to test the limits of this new law before it goes into effect. We provide these comments to ensure that the law is sufficiently strong to protect consumers who have been subject recently to significant changes in their credit card accounts.

#### I. Summary

In most circumstances the proposed regulations are adequate, but we recommend that the rule go further in certain ways to adequately respond to the creditors' trial run in recent months at new practices that would circumvent the law. We will highlight these creative new practices and make suggestions that will ensure consumers are not subject to tricks and traps that defeat the purposes of the CARD Act.

We ask the Board to implement the following changes to the proposed rule:

- Adopt anti-evasion language to ensure that the purposes of the Act are not circumvented through new creative practices.

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<sup>1</sup> Consumers Union of United States, Inc., publisher of Consumer Reports, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 7.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

- Adopt anti-waiver language which would prohibit using otherwise permissible changes in terms to force voluntary rate increases when a rate increase is prohibited by law.
  - Allow consumers to reject increased minimum payments if the increase exceeds the repayment limitations found in other sections of the law.
  - Clarify that an interest back promotion can be lost only for one of the same reasons that an increased APR can be applied to existing balances.
  - Require that the initial notice of a consumer's right to opt in to overlimit coverage be provided in writing and contain no information not specified by the Board.
  - Clarify that variable rates which fluctuate upwards but do not go below a fixed minimum do not meet the requirements of the variable rate exception.
  - Require 45 days notice for account termination unless there is a documented credit risk specific to that consumer.
  - Require creditors to freeze rather than close accounts, when consumers assert their right to reject a rate increase or change in terms.
  - Ensure that consumers retain the right to earn their way out of a penalty interest rate after six consecutive on time payments.
  - Strengthen the prohibition on credit card inducements at institutions of higher education.
  - Restore the alternative procedure permitting imposition and refund of an annual fee.
- II. **Adopt anti-evasion language to ensure that the purposes of the Act are not circumvented through new creative practices.**

Issuers have been raising rates consistently for more than a year. But during the last six months since the CARD Act was signed into law, these card companies have been testing increasingly creative ways to circumvent the new law so they can continue offering tricky products when it goes into effect.

Consumers have reported to Consumers Union the following practices by credit card issuers in recent months.

- Providing interest rate rebates that can be lost with a hair trigger default.
- Engaging in misleading solicitations to persuade consumers to opt-in to overlimit fees.
- Adding fees or raising the minimum payment to force voluntary rate increases.
- Establishing partially variable rates that fluctuate upwards but do not go below a fixed minimum rate.

Our comments will discuss each of these new tactics and point out the ways in which they will violate both the letter and spirit of certain provisions of the new law. We suggest specific ways that the Board can strengthen existing provisions and we strongly urge the Board to adopt a general anti-evasion provision to ensure that the purpose of the Act is not defeated by creative practices that skirt the edge of any new regulations.

III. **Adopt anti-waiver language which would prohibit using otherwise permissible changes in terms to force consumers to agree to voluntary rate increases when a rate increase is prohibited by law.**

The Board must step in to prevent creditors from using coercive tactics to obtain consumers' so-called voluntary consent to illegal and costly rate increases. More than 100 consumers shared with Consumers Union their recent experience with Chase bank, which drastically raised minimum payments twice in the last 12 months, on a many of its customers

Earl from Maryland told Consumers Union that he took advantage of a promotional balance transfer offered by Chase bank to help pay for his daughter's college tuition. With a lower interest rate and 2% minimum payment requirement, it seemed to him to be a valid financial decision. Then Chase upped Earl's minimum payment to 5% of the balance. When he contacted Chase, he was told that the change in minimum monthly payments had nothing to do with his account or payment history. The representative offered to reduce the minimum monthly payment to 2% and increase the promotional interest rate to 7.99% (about double what he was paying) through August 1, 2011, at which point all rates default to the standard rate for the card. Carrying a \$50,000 balance from tuition costs, Earl says he won't be able to pay off the balance at that rate and will most likely default.

All customers who were notified about Chase's minimum payment increase held balances subject to "fixed interest rate for the life of the loan" promotions offered by Chase through balance transfer and convenience check solicitations. Like Earl, many of these customers used the promotional offer for large loans in reliance upon the terms of the promotion. The minimum payment increases were not made because of any default by the consumers, but rather because these individuals were not paying off the balances fast enough. When contacted about the increase, Chase told the consumers that the minimum payment could be brought back down to the prior 2% level only if they agreed to forgo the promised promotional interest rate and instead accept a doubled interest rate.

The supplementary material in the proposed rule contains the Board's statement that "the protections in revised TILA Section 171 and new TILA Section 172 cannot be waived or forfeited."<sup>2</sup> We urge the Board to include an anti-waiver provision in the regulatory language to ensure that consumers like Earl are not persuaded to forfeit their legal rights to avoid default.

- a. *Consumers should be permitted to reject changes to their repayment schedules if the changes exceed the limits of Section 226.55(c)(2).*

Chase's change in repayment terms, described above, raised credit card minimum payments to 250% of the old payment. While over the long term higher minimum payments can reduce debt faster, a sharp rise in minimum payments can throw a family budget into disarray, especially during a recession. In its interim final rule the Board explicitly interprets the right to reject minimum payment increases to be inconsistent with other provisions of the Act.<sup>3</sup> We emphatically disagree and ask the Board to reconsider this issue in the final rule.

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<sup>2</sup> Truth in Lending, 74 Fed. Reg. 54124, 54176 (proposed Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

<sup>3</sup> Truth in Lending, 74 Fed. Reg. 36077, 36085 (July 22, 2009) (interim final rule) (to be codified at 12 C.F.R. pt.226).

Congress included TILA 171(c)(2) so that consumers could take full advantage of their rights to reject changes and against rate increases, without creditors retaliating with unmanageable repayment terms. As Chase's actions make clear, a change in repayment terms alone can be used to undermine consumers' rights under TILA. The real effect of these sharp increases in minimum payments was to force customers who could not face a more than doubled minimum payment to give up their favorable fixed promotional rate.

For this reason is essential that the Board permit consumers to reject minimum payment increases which exceed the limits of Section 226.55(b)(2).

**IV. Clarify that an interest-back promotion can be lost only when specifically permitted by one of the exceptions in Section 226.55(b).**

Mike from New Hampshire recently told Consumers Union about the Citibank promotion that he was sent in the mail. This promotion detailed in his change-in-terms notice is specifically aimed at circumventing the rate increase restrictions in the CARD Act and according to Citibank was sent to all Citibank credit card account holders.<sup>4</sup> The change-in-terms notice is attached as Attachment A and is summarized as follows:

Mike has been a decade-long account holder with Citibank and holds a credit card, student loan and mortgage with the bank. In March of 2009 his rate was 15.99%. In October he received a change-in-terms notice increasing him to a variable APR equal to US Prime Rate + 26.74% (29.99% as of 9/15/09). The notice explained that the same rate will apply to purchases, cash advances and defaults. Also detailed in his change-in-terms notice was the following promotion; each month that Mike pays on time, the bank will credit back 10% of the interest charged on his purchase balance. Citibank reserves the right to end this promotion with 30 days notice or in any month that Mike does not pay on time.

Citibank's interest-back promotion disguises a rate increase which will be impermissible under the CARD Act, as an interest rate rebate. Such rate increases do not qualify for the voluntary rate or delinquency exceptions; therefore the Board should clearly state that interest back promotions can be lost only when specifically permitted by one of the exceptions in Section 226.55(b).

The CARD Act prohibits rate increases on existing balances except for certain limited situations including serious default by a consumer who does not make a payment for 60 days. The delinquency exception, detailed in Section 226.55(b)(4), protects consumers from surprise increases on debt incurred after relying upon a lower rate, because of minor often unavoidable infractions. As the Board explained in its January 29, 2009 rulemaking, "[a]bsent a serious default, a consumer should be able to rely on a rate for the period specified in advance by the institution."<sup>5</sup>

Promotional and temporary interest rates are governed by the temporary rate exception in 226.55(b)(1), which requires creditors to disclose a specified period of time, no less than 6 months, during which a lower rate will apply. The purpose of this provision is to improve transparency and "ensure that a consumer will receive disclosure of the terms of the promotional rate before engaging in transactions in reliance on that rate..."<sup>6</sup>

<sup>4</sup> Telephone Interview with Vikas, Citibank Customer Service Representative (Nov. 5, 2009).

<sup>5</sup> Unfair or Deceptive Acts or Practices, 74 Fed. Reg. 5498, 5525 (Jan. 29, 2009) (to be codified at 12 C.F.R. pt. 227).

<sup>6</sup> Truth in Lending, 74 Fed. Reg. 54124, 54170 (proposed Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

Though Citibank's interest-back program is set up to sound different from a traditional promotional rate scenario, it will result in the same hair trigger repricing Congress intended to eliminate by prohibiting rate increases on existing balances except in clearly defined exceptions for temporary rates and serious delinquencies.

Citibank's interest back program does not meet the disclosure requirements which will be imposed by Section 226.55(b)(1) because it provides no specified period of time that the bank will continue the program. By reserving the right to change or end this program at any time, with 30 day notice, Citibank does not meet the requirements of the temporary rate exception and expressly violates the Act's 45 day notice requirement for significant changes to account terms. Proposed comment 55(b)(1)-4 explicitly prohibits a card issuer from applying an increased rate that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion.<sup>7</sup>

Lastly, if Citibank customers make a payment even one day late, they can lose the benefit of the program. A hair trigger infraction can increase the cost of the existing debt by 10% and result in what is considered a penalty interest rate for a normal user. In addition, because Citibank has set up this penalty interest rate to sound like a regular rate, the consumer will not have the right to earn back the 10% discount after paying on time for 6 months pursuant to Section 226.55(4)(ii). The CARD Act was meant to prevent hair trigger defaults for which a minor infraction leads to a disproportionate expense for the consumer. Allowing this creative refund scenario will permit issuers to apply an increased rate to an existing balance for a slight mistake.

The Board clearly states that, "it is appropriate to apply the other exceptions in...proposed 226.55(b) to promotional rate offers."<sup>8</sup> We therefore ask that the Board clarify that interest back promotions are really interest rate increases that can be lost only when specifically permitted by one of the exceptions in Section 226.55(b). This will bind these creative terms by the same restrictions placed on other types of promotional rates and temporary rates.

**V. Require that the initial notice required by 226.56(b)(1)(i), of a consumer's right to opt in to overlimit coverage, be provided to the consumer in writing and contain no information not specified by the Board.**

The Board should strengthen proposed Section 226.56 in light of recent accounts that creditors may be using misleading solicitation tactics to obtain affirmative consent prior to charging a fee for completing transactions which exceed the credit limit.

The Consumerist website<sup>9</sup> reported in early November that Capital One called a consumer to solicit his consent to opt-in to overlimit fees.<sup>10</sup>

"The person on the other end of the phone informed me, "due to the changes made by [the CARD Act], Capital One would have to deny any charges that goes over your credit limit starting in February of 2010. However if you want to maintain the ability to go over

<sup>7</sup> Truth in Lending, 74 Fed. Reg. at 54321 (proposed rule).

<sup>8</sup> Truth in Lending, 74 Fed. Reg. at 54170 (proposed rule).

<sup>9</sup> The Consumerist blog is owned by Consumer Media LLC, a non-profit Delaware limited liability company. Consumer Media LLC is an affiliate of Consumers Union of United States, Inc.

<sup>10</sup> The Consumerist, Update: Capital One: Waive Your Rights, Get \$10 Off Your Next Overlimit Fee!, <http://consumerist.com/5396760/update-capital-one-waive-your-rights-get-10-off-your-next-overlimit-fee>.

your credit limit you could opt to have your account stay the same as it is now. Your fee for going over your credit limit would be dropped to \$29 (from \$39) if you chose to do this."

A number of other consumers commented on the website and had varying reports about their conversation with Capital One, such as:

"The Capital One guy said to me that if I don't agree to this new policy I might not have enough money in case of a medical or car-related emergency etc because I won't be able to charge more than my credit limit."

"The Capital One representative made sure to let me know if I don't agree to their overlimit fees RIGHT NOW, then I would LOSE THE OPPORTUNITY FOREVER."

"They asked me if when I charge something and I go over my limit... do I want them to deny it, or leave my account the way it is... and process the transaction. She didn't say anything about the fees or try to sway my decision."

"They told me...by accepting their offer of maintaining my account the way it is, I forgo any of the ramifications of changes made by the new law... I asked, "So your saying that none of this new law would effect me?" The answer was, "Yes, none of the new law would affect you."

In Section 226.56(b)(1)(i) the Board allows creditors to provide oral, written or electronic notice to consumers about their right to opt in to overlimit fees. It then details in Section 225.56(e) the required information to be conveyed in the initial notice including, the amount of the fee, the increased APR that may apply, and an explanation of the consumer's right to affirmatively consent. The Board provides Model Form G-25(A) as a safe harbor notice.

We urge the Board to strengthen Section 226.56(b)(1)(i) and require creditors to provide written notification, similar to Model Form G-25(A), before obtaining a consumer's affirmative consent to overlimit fees. Capital One's solicitation tactics provides an example of how easily oral notification can be misunderstood by consumers. Oral notifications are more difficult to oversee, leave room for variations depending upon the person delivering the notice, and allow creditors to more easily circumvent legal requirements.

In its Regulation E rulemaking,<sup>11</sup> to regulate checking account debit overdraft programs, the Board clearly explains why institutions should provide consumers with opt-in notification in writing, separate from all other account disclosures.

"This separate notice requirement is designed to ensure that this information is not buried within other account documents and overlooked by the consumers. Otherwise, institutions could include information about the overdraft service in preprinted language in an account-opening disclosure, and a consumer might inadvertently consent to the institution's overdraft service..."<sup>12</sup>

In the same proposal the Board prohibited institutions from including any information in the initial notice that is not specified by the regulations. As the Board notes in the current Regulation Z proposal, additional content could overwhelm the necessary information in the notice.<sup>13</sup>

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<sup>11</sup> Electronic Fund Transfers, 74 Fed. Reg. 5212 (proposed Jan. 29, 2009) (to be codified at 12 C.F.R. pt. 205).

<sup>12</sup> 74 Fed. Reg. at 5226.

<sup>13</sup> Truth in Lending, 74 Fed. Reg. at 54181 (proposed rule).

For these reasons, we ask the Board to require written notice in Section 226.56(b)(1)(i). The language provided by the Board in Model Form G-25(A) is adequate and the Board should require it to be delivered to consumers prior to obtaining their consent. This should not prevent creditors from allowing consumers to opt in via written, electronic or oral communication.

- a. *Prohibit creditors from obtaining affirmative consent to assess a fee for overlimit coverage prior to the effective date of the rule.*

The Board should not allow creditors to obtain consent prior to the effective date of the rule, or it should plainly state that any consent must be re-acquired after the effective date. Because the Agency has not yet settled on the requirements and form of the opt-in notice, it cannot be confident that consumers are granting consent based on fair and accurate notice. The reports from consumers about Capital One's recent solicitation tactics provide evidence that current opt in notifications do not contain the requirements proposed by the Board in this rulemaking.

- b. *Drastically restrict the size of overlimit fees to ensure they are reasonable and proportional to the cost to the creditor.*

In preparation for the upcoming rulemaking which will implement the reasonable and proportional penalty fees provision, the Agency should look closely at the size of overlimit fees charged by creditors such as Capital One, who insist on continuing to charge a fee for this automated "service." As of July 2009, the median overlimit fee for bank issued credit card accounts was \$39.<sup>14</sup> Penalty fees should directly relate to the marginal cost of the default to the creditor. Because card companies use automated systems for allowing transactions to go over-the-limit, the cost to the creditor is minimal.

VI. **Clarify that partially variable rates, that fluctuate upwards but do not go below a fixed minimum rate, do not meet the requirements of the variable rate exception in 226.55(b)(2).**

The variable rate exception allows rates to increase when they vary "according to an index that is not under the creditor's control and is available to the general public."<sup>15</sup> As the effective date of the CARD Act approaches a tidal wave of issuers have switched consumers from fixed to variable rates. A study by the Pew Charitable Trusts found that in July 2009 less than 1 percent of bank cards included fixed rates, down from 31 percent in December 2008.<sup>16</sup>

A number of these banks have adopted a system that deprives consumers of the full benefit of a low rate when the index falls. These terms set a minimum rate that will be charged regardless of how low the index goes. This form of partially variable rate does not meet the express statutory requirements for the variable rate exception.

In fact the author of this comment, a customer of Wells Fargo for 10 years, received notice from her bank that the terms on her credit card were changing dramatically. A copy of this notice is included as Attachment B.

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<sup>14</sup> PEW HEALTH GROUP, STILL WAITING: "UNFAIR OR DECEPTIVE" CREDIT CARD PRACTICES CONTINUE AS AMERICANS WAIT FOR NEW REFORMS TO TAKE EFFECT 13 (2009), *available at* [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit\\_Cards/Pew\\_Credit\\_Cards\\_Oct09\\_Final.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/Pew_Credit_Cards_Oct09_Final.pdf)

<sup>15</sup> Truth in Lending, 74 Fed. Reg. at 54321 (proposed rule).

<sup>16</sup> PEW HEALTH GROUP, *supra* note 13, at 9.

The author paid her balance in full nearly every month for the three years prior to receiving this notice and her interest rate had been a fixed 5.90% for more than two years. The notice explained that her interest rate would now be variable with a margin of 13.35%. The notice did not specify the index which would apply. In addition, the notice explained that a minimum APR of 19.10% would apply regardless of changes to the index rate.

These types of minimum APRs do not meet the explicit requirements of the variable rate exception. By setting a minimum rate, creditors are exerting control which disqualifies it from the variable rate exception, as detailed in Section 226.55(b)(2)(1).

In addition, Section 226.55(b)(2)(ii) clearly states that a variable rate increase is only permissible if it is due to an increase in the index itself. Currently the author's variable rate is Index + 13.35% which should be 16.60% assuming Wells Fargo is using the US Prime Rate.<sup>17</sup> But the new terms of the author's account allows the bank to increase the rate to 19.10%, not for any reason allowable under the exceptions to Section 226.55, but rather because the index it is using is not as high as it would like. This is not an increase in the index itself and therefore will be a direct violation of the rate increase prohibition, when the CARD Act becomes effective.

We ask that the Board clarify that variable rates that include fixed minimum APRs do not meet the requirements of the variable rate exception.

**VII. Strengthen the law to ensure that credit scores are not affected by a creditors decision to change the terms of the account.**

- a. *Require 45 days notice for account termination unless there is a documented credit risk specific to that consumer.*

In the July 2009 Interim Final Rule,<sup>18</sup> the Board determined that because terminating a consumer's account does not result in a costly surprise to a consumer, creditors would not have to provide the 45 days notice for significant changes required by TILA 127(i)(2). Also exempt from the notice requirement are reductions in credit limits (unless they result in an overlimit penalty.)<sup>19</sup>

A creditor's action to close an account or reduce a credit limit has a different financial impact than when an interest rate is raised, but these changes can nonetheless have significant impact on a consumer's credit score. A consumer should have the right to be notified about such a change if it was not due to any credit risk factors specific to that consumer.

The recent FICO study, which found that a reduced credit limit has little impact on credit score, unfortunately used a study population that was not representative of all credit consumers. The median FICO score for the study population was 760 and most of these consumers had credit reports with, "very low account balances, low limit-to-balance or "credit utilization" ratios, very few if any reports of missed payments, and a long credit history."<sup>20</sup> For those with less than

<sup>17</sup> The current Wall Street Journal Prime Rate is 3.25%. See FedPrimeRate.com, <http://www.wsjprimerate.us/index.html> (last visited Nov. 18, 2009).

<sup>18</sup> Truth in Lending, 74 Fed. Reg. at 36085 (interim final rule).

<sup>19</sup> Truth in Lending, 74 Fed. Reg. at 54150 (proposed rule).

<sup>20</sup> Press Release, FICO, Study Finds Little Impact to Most Consumers' FICO Credit Scores When Lenders Lower Spending Limits on Credit Cards, <http://www.fico.com/en/Company/News/Pages/08-20-2009.aspx>.



stellar credit history there were different results. The study did find that a significant minority of the study population saw their credit scores go down as their credit lines were reduced.

Maripat in Washington told Consumers Union how surprised she was when her credit limit was reduced:

“I use my credit card quite liberally and I have had my credit card with WaMu [now Chase] for years. I have had my credit limit continually raised because I've been such a good customer. I used to pay my credit card off completely every month, but this last year I have needed to have more cash on hand for a remodeling project, so have been making a payment (well above the minimum payment due) every month. I was making my payment online in July and noticed that my credit limit was about \$1200 lower than what it used to be... I received a letter detailing the lowering of my limit two weeks AFTER the decision had been made without any input from me whatsoever. They claim that due to various credit factors, they unilaterally lowered my credit limit without discussion. I have no idea what they're talking about with regards to credit factors as I own my own house, two cars and have a very good credit score, but by lowering my available credit, they are actually DAMAGING my overall credit rating.”

Unless the bank can detail with specificity the credit risk reasons that it decides to terminate an account or reduce a credit limit, consumers should receive adequate notice of such a significant change to their accounts. This will allow consumers time to consider what other methods of payment they can use going forward and take necessary actions, such as to immediately stop using their card, to prevent their credit score from being negatively affected.

We ask that the Board require 45 day notice when a creditor reduces a credit limit or terminate an account, unless the creditor can provide with specificity a documented credit risk specific to that consumer.

*b. Require creditors to freeze accounts, rather than terminate, when consumers assert their right to reject a rate increase or change in terms.*

In its Interim Final Rule, the Board interprets the requirement that creditors inform consumers of their right to cancel, pursuant to TILA Section 127(i)(3), as a substantive right for consumers to reject a rate increase or change in terms.<sup>21</sup> Consumers have reported to Consumers Union that they've felt inhibited from exercising their right to reject, even in the face of drastic changes which have made their debt unaffordable. Because of the negative effect that a closed account can have on a credit score, the Board should require creditors to freeze accounts when consumers assert the right to reject changes.

Angela from Nevada explained to Consumers Union that she has held her account in good standing for many years and is afraid of how a closed account will look on her credit report.

I have a credit score of 850, which is near perfect. Nonetheless, every single credit card I have, with the exception of one, has jacked up my interest rates from 9.9% to 15.99%, 10.99% to 18.99%, and so on. This is incomprehensible, and even when I called the company who put my rate up to such a horrendous rate (for no reason) -- Citibank -- they told me there's nothing they can or will do, and that if I don't like it, I can close my account. Gee, that's some great service from a bank that is essentially owned by the

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<sup>21</sup> Truth in Lending, 74 Fed. Reg. at 36085 (interim final rule).

U.S. citizenry. I have been a card member with them for TWELVE years, with no late payments, no cause for concern, have never been anywhere near my limit, nor over it, and they basically told me to buzz off. Nonetheless, I don't want to damage my "credit score" so I didn't close the card.

To ensure that consumers have the full benefit of the right to reject, we ask that the Board require creditors to freeze accounts when a consumer rejects a change, rather than terminating accounts.

**VIII. Expand the right, provided by TILA Section 171(b)(4)(B), for consumers to earn their way out of a penalty interest rate.**

TILA Section 171(b)(4)(B) allows consumers to earn their way out of a penalty interest rate increase by making the first six on-time payments after the penalty rate is applied. This can lead some consumer accounts to be subject permanently to penalty rates, despite consistent on-time payments. We urge the Board to broaden the right so that consumers will have the ability to earn their way out of penalty rate increases after any six consecutive on time payments. In addition, we urge the Board to address this issue in its upcoming rulemaking to define what a reasonable and proportional penalty rate is.

The CARD Act creates TILA Section 149 to ensure that the amount of penalty fees and charges are reasonable and proportional to the violation and directs the Board to establish standards for making this determination. The provision lays out considerations for the Board including costs incurred by the creditor, deterrence and conduct of the cardholder, as well as any other factors the Board deems necessary. It is fully within the Board's power to expand this right to cure within its definition of reasonable and proportional penalty rates.

Consumers who pay 60 days late and are not able to make the first 6 on time payments following a justified penalty rate increase should not incur endless penalty charges for the life of their account. Unexpected emergencies such as job loss or illness may force consumers to miss making on time credit card payments during the first 6 months after a penalty rate increase. The law already permits creditors to pass costs to the consumer through reasonable increases in an interest rate. It is not reasonable though for these increases to be applied perpetually if a consumer's behavior changes significantly. The cost to a cardholder of an endless APR increase will quickly outweigh the cost to the creditor of a few late payments.

For this reason we urge the Board to limit the time frame during which a creditor can continue to charge an increased penalty fee, to any six month period in which a cardholder makes consistent on time payments.

**IX. The Board should strengthen the prohibition on credit card inducements at institutions of higher education.**

- a. Inducements should be completely banned on, near, or at an event of a campus of an institution of higher education.*

The purpose of the inducement prohibition is to reduce the ubiquitous placement on college campuses of credit card application tables littered with gifts given in exchange for students signing up for credit based on the inducement rather than a considered decision. The Board's current proposal allows creditors to continue inducing applications from non-students on campus but provides no realistic way to differentiate between students and non-

students. By not completely banning this practice on campus, the Act's prohibition is not fully realized.

Though the Board requires creditors to have a reasonable procedure for determining whether an applicant is a college student, the Board suggests in proposed comment 57(c)-6 that it is enough for the creditor to ask the applicant whether he or she is a college student. This is a wholly unenforceable requirement which would allow the prohibition to be easily circumvented. To truly prohibit the practice of persuading college students to sign up for credit that they don't need, the Board must completely ban creditors from providing tangible inducements on, near, or at events of campuses of institutions of higher education.

*b. The Board should define "campus of an institution of higher education."*

The Board leaves the definition of "campus," for the purposes of the prohibition on inducements, up to the institution itself to define. Because this definition can greatly vary depending upon the location and type of institution, we ask that the Board include defining language to provide some amount of guidance.

Specifically, we ask that the Board define campus to mean property which is utilized by a institution of higher education or an organization affiliated with an institution of higher education to host academic or non-academic student activities.

*c. Non-physical inducements that can be promptly exchanged for a tangible item should be prohibited.*

The Board exempts non-physical inducements such as discounts, rewards points, or promotional credit terms from the definition of tangible item in comment 57(c)-1. We ask that the Board tighten this exemption to ensure that the prohibition is not circumvented through creative practices.

Discounts and rewards points that can be promptly "cashed in" for tangible goods that would otherwise be prohibited under the law should be considered the same as a tangible good. For example, a creditor should be prohibited from offering 5,000 rewards points to sign up for a card, if the applicant can obtain immediate financial benefit by using those points under the terms of the rewards program in exchange for cash or another tangible item.

**X. Restore the alternative procedure permitting imposition and refund of an annual fee.**

A drafting error deleted Section 127(d) in the CARD Act and we urge the Board to restore Section 226.9(e)(2) of the regulation to ensure that consumers and issuers continue to have the alternative option for handling annual fees, which is contained in this section. If issuers are allowed to first impose an annual fee and then refund it if the card is not renewed, as Section 127(d) permitted, consumers are more likely to notice the fee at the time that they pay their bill and will exercise their right to cancel the card if it appears on the statement. By contrast, a notice that the fee is about to be imposed if the card is not canceled in 30 days is likely to escape notice by the vast majority of consumers who do not read stuffers and other notices sent by issuers. By restoring the regulation at Section 226.9(e)(2), issuers will also benefit by having an alternative procedure by which to handle imposing annual fees.

We ask that the Board use its authority to permit a procedure that will increase consumers' awareness and the likelihood that they will exercise their right to cancel a card before becoming liable for a new annual fee.

**XI. Conclusion**

Thank you for considering these comments. Consumers Union looks forward to reviewing the upcoming proposals to regulate the provisions of the CARD Act which go into effect in August 2010.

Sincerely,

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1535 Mission Street  
San Francisco, CA 94103

# **ATTACHMENT A**

Citibank (South Dakota), N.A.  
c/o Customer Service Center  
P.O. Box 6148  
Sioux Falls, SD 57117-6148



For your Citi card ending in

October 13, 2009

Dear

**We are making changes to your account terms.**

To continue to provide our customers with access to credit, we have had to adjust our pricing. The terms of your account will be changing. These changes include an increase in the variable APR for purchases to 29.99% and will take effect November 30, 2009. As always, you have the right to opt out and pay down your balance under your current terms. If you opt out, you may use your account under the current terms until the end of your current membership year or the expiration date on your card, whichever is later. At that time, we will close your account.

If you accept these changes, we have designed a program where you can earn interest back each month that can help offset the increase in your purchase APR.

**Earn interest back every month.**

Here's how -- make your payment on time every month.

Each month you do, you will receive a credit on your billing statement equal to 10% of your total interest charge on purchase balances. This can help offset the increase in your purchase APR. Start earning interest back in December and January, and you will see the full credit on your statement no later than February 2010 and monthly after that.

If in any month you do not pay on time, you may not be eligible to continue to participate in this program.

We reserve the right to change or end this program with 30 days' prior written notice. Please see the back of this letter for further details.

Please read the Notice of Change in Terms and Right to Opt Out beginning on the back of this letter so you are fully aware of all your account changes. Please call toll free 1-866-915-9424 should you have any questions.

We are committed to providing you with the information, tools, and support you need to best manage your credit. We have also enclosed a brochure that highlights the built-in tools of your Citi card.

Sincerely,

Ken Stork  
Citibank (South Dakota), N.A.

**Further Details of the Interest Back Program:** You will not be able to earn the statement credit if your account is closed, you default under your Card Agreement, you are currently participating in a payment arrangement program, or your account is converted to another Citi product that is not eligible for this program. Once you default, you may not be eligible to continue earning the statement credit based upon your record with us. Statement credit earned through this program will be calculated by multiplying the percentage stated in this program by the sum of the monthly billed interest charges on purchases. Payments that result in a credit balance will not be included in the calculation.

## Notice of Change in Terms and Right to Opt Out

Please save this notice for future reference.

*The U.S. Prime  
Rate plus  
26.74%*

**The Changes.** Your Card Agreement is changing. The changes will be effective November 30, 2009. The changes will be effective whether or not you receive a billing statement.

- The variable APR for purchases is being increased. This purchase APR will equal ~~the U.S. Prime Rate plus 26.74%~~ *the U.S. Prime Rate plus 26.74%*. As of September 15, 2009, this purchase APR is 29.99%. This APR equals a daily periodic rate of 0.0822%.
- The variable APR for cash advances is being increased. This cash advance APR will equal the U.S. Prime Rate plus ~~26.74%~~ *26.74%*. As of September 15, 2009 this cash advance APR is 29.99%, which equals a daily periodic rate of 0.0822%.
- The variable APR for default is being increased. This default APR will equal the U.S. Prime Rate plus up to 26.74%. As of September 15, 2009, this default APR is 29.99%. This APR equals a daily periodic rate of 0.0822%.
- The Transaction Fee for Balance Transfers is being increased. This fee will be 5% of the amount of ~~the balance transfer~~ *the balance transfer*, but not less than \$10. This fee is a FINANCE CHARGE. This fee is in addition to any periodic fee that may be imposed with a promotional offer.
- The Transaction Fee for Cash Advances is being increased. This fee will be 5% of the amount of the cash advance, but not less than \$10. This fee is a FINANCE CHARGE.

### You Have the Right to Opt Out.

You may opt out by calling or writing us by November 29, 2009, unless you become 60 days late.

If you opt out of these changes, you may use your account under the current terms until the end of your current membership year or the expiration date on your card, whichever is later.

At that time, we will close your account, which means you will no longer have access to credit on this account. You can continue to repay the balance under the current terms.

If your card account is closed you will not be able to earn rewards (such as points, miles or cash back) and you will lose any accumulated rewards unless you call us to redeem before your account is closed.

Call us toll-free at 1-866-915-9424. (Please have your account number available.)

or

Write us at Customer Service Center, P.O. Box 6218, Sioux Falls, South Dakota, 57117-6218. Include your name, address and account number on your letter.

### ----- Information Update -----

We are replacing the "Changes to this Agreement" section of your Card Agreement with the following:

**"We may change the rates, fees, and terms of this Agreement from time to time as permitted by law. The changes may add, replace, or remove provisions of this Agreement. We will give you advance written notice of the changes and a right to opt out to the extent required by law."**

# **ATTACHMENT B**





October 14, 2009

For your Wells Fargo® credit card  
account ending in [REDACTED]

Consulte el dorso para más  
información en español

**RE: IMPORTANT NOTICE REGARDING CHANGES TO YOUR ACCOUNT**

The purpose of this letter is to let you know that some of the terms of your Credit Card Customer Agreement and Disclosure Statement (the "Agreement") are being modified. These changes are not a reflection of how you have managed your account with us or your credit score.

The table below summarizes the changed terms. Please carefully review this entire Change in Terms Notice for the complete text of all changes and retain this information in your files for future reference.

| Subject                  | Brief description  |
|--------------------------|--|
| Interest rate increased  | Important information regarding an increase to your Standard Rate for Purchases and Cash Advances, is below. |
| Overlimit fee eliminated | Overlimit fees will no longer be assessed. See below for more details.                                       |

The specific changes to your Agreement (the "New Terms") are underlined throughout this notice. The New Terms below replace the corresponding terms in your Agreement. The New Terms regarding Interest rate increases become effective November 30, 2009 and will apply to all billing cycles beginning on or after that date, unless you follow the opt-out procedures and close your account as described below.

The New Terms include an increase to the **FINANCE CHARGE** rate that is charged on Purchases. The "Margin" on Purchases is being increased to 13.35 percentage points. (The **ANNUAL PERCENTAGE RATE (APR)** on Purchases is a variable rate based on the Index Rate plus the "Margin".) In addition, the minimum **APR** on Purchases is being increased to 19.10% (Daily **FINANCE CHARGE** rate of .05232%). This means that regardless of changes to the Index Rate, the **APR** on Purchases will not be lower than 19.10%. As of the date of this notice, the **APR** for Purchases is 19.10% (Daily **FINANCE CHARGE** rate of .05232%). These increases to the Purchase **APR** will apply to both new Purchases made on your account as well as any existing Purchase balances unless you follow the opt-out procedures and choose to close your account as described below.

The New Terms include an increase to the **FINANCE CHARGE** rate that is charged on Cash Advances. The "Margin" on Cash Advances is being increased to 18.24 percentage points. (The **ANNUAL PERCENTAGE RATE (APR)** on Cash Advances is a variable rate based on the Index Rate plus the "Margin".) In addition, the minimum **APR** on Cash Advances is being increased to 23.99% (Daily **FINANCE CHARGE** rate of .06572%). This means that regardless of changes to the Index Rate, the **APR** on Cash Advances will not be lower than 23.99%. As of the date of this notice, the **APR** for Cash Advances is 23.99% (Daily **FINANCE CHARGE** rate of .06572%). These increases to the Cash Advance **APR** will apply to both new Cash Advances made on your account as well as any existing Cash Advance balances unless you follow the opt-out procedures and choose to close your account as described below.

If you accept the New Terms, no action is required.

**If you want to opt-out and close your account:** If you choose not to accept the changes above, you will have to notify us on or before November 29, 2009, and close your account. Please either (a) call 1-800-642-4720 or (b) write to Wells Fargo Card Services, PO Box 10347, Des Moines, IA 50306-0347. If you choose to close your account, you may pay off any existing balances under the current pricing terms of your account but you will not have the ability to use the account for further transactions.

If your account remains open as of November 30, 2009, or if you re-open your account at any time after having opted-out, the changes in this notice will be applied to outstanding balances and new transactions occurring on or after November 30, 2009.

**Overlimit fee elimination:** In addition to the above changes, we want to inform you that, beginning February 22, 2010, we will no longer charge an Overlimit fee if we allow your account to exceed the credit limit.

**Rewards program changes:** We are also modifying our Wells Fargo Rewards® program cash redemption options. On January 1, 2010, the following changes will take effect.

- The Cash Reward redemption option will change as follows:
  - At the 50,000 point level the cash reward will be \$500.
  - At the 25,000 point level the cash reward will be \$250.

**If you have any questions regarding these changes, please contact us at 1-800-642-4720. We are available to assist you 24 hours a day, seven days a week.**