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VIA E-MAIL: regs.comments@federalreserve.gov

April 14, 2010

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

Re: Docket No. R-1384 – Proposed Rule on Implementation of the CARD Act

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Federal Reserve Board (Board) in response to the proposed rule that would implement provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) that will be effective as of August 22, 2010. These include provisions that are intended to protect credit card users from unreasonable penalty fees and that require card issuers to reconsider interest rate increases every six months after the increased rate becomes effective. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,900 state and federal credit unions, which serve 93 million members.

Summary of CUNA's Comments

- For determining the amount of the penalty fee, the issuer may choose one of the following three alternatives: 1) fees based on costs; 2) fees based on deterrence; and 3) a "safe harbor" fee to be determined at a later time by the Board. Credit unions will most likely only be able to use the safe harbor approach, since the other two alternatives are overly cumbersome for smaller financial institutions.
- The Board will determine the safe harbor fees at a later time. We urge the Board to select a fee that is at the upper range of fees charged by credit unions, since credit union fees are reasonable and have always compared favorable to banks and thrifts. We also urge the Board to allow credit unions

and others to comment on these specific safe harbor fees before they are finalized.

- CUNA is concerned with the proposed provisions that would prohibit the imposition of multiple penalty fees because the Board deems the event to be a single transaction. We disagree that a late payment fee and a returned payment fee is always based on a single event or transaction, as indicated in the proposed official staff commentary.
- CUNA supports the provisions that would prohibit fees for transactions the issuer declines to authorize, inactivity fees, and fees associated with the termination of an account.
- The proposed rules would require card issuers to review an increase in the annual percentage rate (APR) no less frequently than once every six months until the time the rate is reduced to what it was before the increase. We believe the obligation to review these rate increases should end two years after the date of the initial increase since the burden on credit unions of reviewing these further after this two-year period far outweighs the benefits to the affected members.
- The proposed rules would require card issuers to have reasonable, written policies and procedures for conducting these six-month reviews. Credit unions would appreciate additional guidance in this area. If the Board develops such guidance, we believe credit unions and others should have the opportunity to comment before it is finalized.
- Under the proposal, if a rate is reduced as a result of a six-month review, the rate must be reduced within thirty days after the review. We suggest the Board increase this time period to 45 days to ensure all card issuers and their processors have sufficient time to comply with these new timing requirements.

Discussion

<u>Penalty Fees</u>

The CARD Act requires that penalty fees and charges imposed on credit card accounts be reasonable and proportional to the violation. These include late payment fees, returned payment fees, and over-the-limit fees.

The proposal outlines the following three alternatives for determining the amount of the penalty fees:

- <u>Fees Based on costs</u> - the penalty fee for a specific violation must represent a reasonable proportion of the costs incurred by the issuer as a result of the specific type of violation.
- <u>Fees Based on Deterrence</u> - the card issuer may charge a fee in an amount that is reasonably necessary to deter the specific type of violation. For this

alternative, the issuer must use an empirically derived and statistically sound model that reasonably estimates the effect of the fee on the frequency of violations.

- <u>"Safe Harbor" Alternative</u> - Under this third alternative, there would be a specific fee, as determined by the Board, for each violation that would be considered compliant with these provisions, otherwise known as a "safe harbor" fee. The proposal does not include these specific fees, but the Board has requested input on what the amount should be for these fees. Under this alternative, a penalty fee could exceed the specific safe harbor if it does not exceed five percent of the dollar amount associated with the violation, up to a specific amount, which the Board will also determine at a later time.

We are concerned with these proposed alternatives because we believe credit unions and other small financial institutions will have no choice but to use the safe harbor approach and will not be able to even consider either of the other two alternatives, while larger banking institutions will have the resources to be able to use any of these options. For example, to impose the fees based on the deterrence option requires the use of an "empirically derived and statistically sound model" that reasonably estimates the effect of the fee on the frequency of violations. Very few, if any, credit unions will be able to conduct or sponsor such a study. If this alternative is included in the final rule, we encourage the Board to provide significant flexibility so credit unions and others will clearly be able to use empirical models developed by others, to the extent these models can be applied to the specific credit union that wants to use them.

The fees based on costs alternative will also be unappealing for credit unions since the burden of calculating the required costs will usually outweigh the benefit of using this alternative, as opposed to the safe harbor approach. In addition, we believe that the range of the costs that may be considered in these calculations is too narrow. For example, the higher rates of losses and other related costs, such as the cost of holding reserves against these losses, would be excluded from the calculation under this proposal.

We disagree with this approach since there is a direct correlation between members who pay late or incur returned payment fees and the losses the credit union ultimately suffers as a result of the actions of these members. Losses for credit unions with regard to credit card accounts occur primarily because members do not pay their credit card bills, and these situations begin when members are late in paying their bills or make payments that have to be returned as a result of non-sufficient funds. For these reasons, we believe the higher rates of losses incurred by the credit unions, as well as the cost of holding reserves against these losses, should be considered in any calculation of the penalty fee.

However, as noted above, credit unions will for the most part choose to use the safe harbor alternative and will charge fees that do not exceed these amounts, as determined by the Board at a later time. CUNA recently provided the Board with information as to the fees currently charged by credit unions and another copy of the information is attached. We suggest that the safe harbor amounts be no less than the upper range of these fees. As member-owned, not-for-profit financial institutions, credit unions charge fees that are, by definition, "reasonable and proportional" to the violation since there is no profit component associated with these fees. Therefore, the specific safe harbors, as determined by the Board, should be high enough to accommodate the upper range of fees currently charged by credit unions.

To the extent the Board does not use credit union fee information as the model for the safe harbors, we believe these safe harbors should be high enough to encompass all the losses associated with the activities that result in these penalty fees. This would include, for example, processing and collection costs with regard to late and returned payments.

Once these determinations are made, we strongly urge the Board to allow credit unions and others the opportunity to comment on these specific fees before they are finalized. This is especially crucial for credit unions and other smaller financial institutions that will likely have no choice but to adopt these fees since they will not have the resources to utilize either of the other two alternatives.

Under the safe harbor alternative, a penalty fee could exceed the specific safe harbor amount in certain circumstances. Specifically, an issuer may impose a fee that does not exceed five percent of the dollar amount associated with the violation, up to a specific dollar amount that is also not currently specified. The Board has requested comments on this approach.

We certainly appreciate this flexibility in that it would allow fees to exceed the safe harbor in certain circumstances. However, we cannot offer specific comments on this approach until we know the specific amount of the safe harbor fees. In our view, if these safe harbor fees are at the upper range of the average for credit unions, as suggested above, then there may not be a need for this variance, at least for credit unions since they would have no reason to charge fees that exceed these suggested safe harbor amounts. In this situation, it would only be banks and thrifts that would have an interest in charging these higher fees, since their fees are currently much higher than the credit union averages.

We are also concerned with the proposed provisions that would prohibit the imposition of multiple penalty fees because they are deemed to be the result of a single event or transaction. For example, the proposed official staff commentary indicates that a late payment fee and a returned payment fee could not be charged due to a single payment.

However, we disagree that a late payment fee and a returned payment fee is always based on a single event or transaction. A consumer can make a payment late and not incur a returned payment fee. A consumer may also make a payment on time but the payment could then be returned due to non-sufficient funds in the consumer's account. As a result, we believe making a late payment and not having funds in the account to cover it are often two independent events and, therefore, it would be appropriate to be able to charge a late fee if the payment is late and to charge a separate returned payment fee if it is returned due to non-sufficient funds.

The proposal would prohibit fees for transactions the issuer declines to authorize, primarily because there is no dollar amount associated with a declined transaction and because the costs are relatively low. In addition, the proposal would prohibit inactivity fees or fees associated with the closure or termination of an account because these are also not associated with dollar amounts. Credit unions generally do not charge these types of fees so we have no objection to these prohibitions.

Re-evaluation of Interest Rate Increases

Consistent with the CARD Act, the proposed rules would require card issuers to review an increase in the APR no less frequently than once every six months until the time the rate is reduced to what it was before the increase. In the proposal, the Board requested comments as to whether this periodic review obligation should end at a certain time period after the rate is initially increased, regardless of whether the rate is ever decreased.

We believe the obligation to review these rate increases should end two years after the date of the initial increase. In our view, the burden on credit unions of reviewing these increases after this two-year period far outweighs the benefits to the affected members. Credit unions would suffer tremendous administrative costs if they were required to monitor these rate increases indefinitely, or until the credit card account is closed.

We certainly understand that rate increases may be the result of infrequent mistakes with regard to the handling of credit in which a decrease may certainly be warranted after a period of time, assuming the member does not repeat these mistakes. However, if a member does not qualify for a rate decrease after two years, then it is much less likely that the member's payment behavior will change for the better after that period of time. Therefore, we believe it would no longer be productive for the credit union to continue this review process.

The proposal would require card issuers to have reasonable, written policies and procedures for conducting these six-month reviews, and the Board has requested comments as to whether more guidance is needed on what is considered "reasonable." Credit unions would certainly appreciate specific guidance in this area. However, if the Board develops such guidance, we believe credit unions and others should have the opportunity to comment before it is finalized.

Under the proposal, if a rate is reduced as a result of a six-month review, the rate must be reduced within thirty days after the review. A number of credit unions and their processors are concerned that thirty days may not be sufficient to make these required changes. We suggest the Board increase this time period to 45 days to ensure that all card issuers and their processors have sufficient time to comply with these new timing requirements.

Thank you for the opportunity to comment on the proposed rule that will implement these provisions of the CARD Act that will be effective as of August 22, 2010. If you have questions about our comments, please contact Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 638-5777.

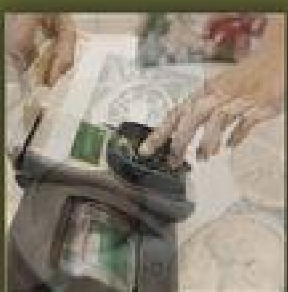
Sincerely,

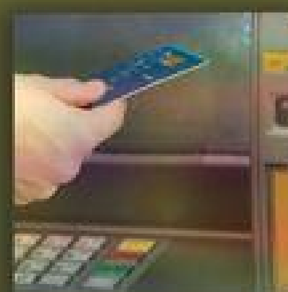
Jeffrey P. Bloch
Senior Assistant General Counsel

An E-Scan Report

Credit Union Fees Survey

For Strategic Planning



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Introduction & Methodology

This report summarizes the results of a survey of nearly 3,255 affiliated credit unions of all asset sizes. This survey research was conducted by CUNA's Research & Advisory Services department between July and September of 2008.

To maximize the study's reliability, a three-wave mailing was employed. In July, a six-page questionnaire was sent to 3,253 credit unions. A cover letter requesting the credit union's participation in the survey was included with the survey. As an incentive, credit unions were offered a discount on the report if they responded to the survey. The surveys could be filled out online or returned directly to CUNA Market Research in postage-paid envelopes.

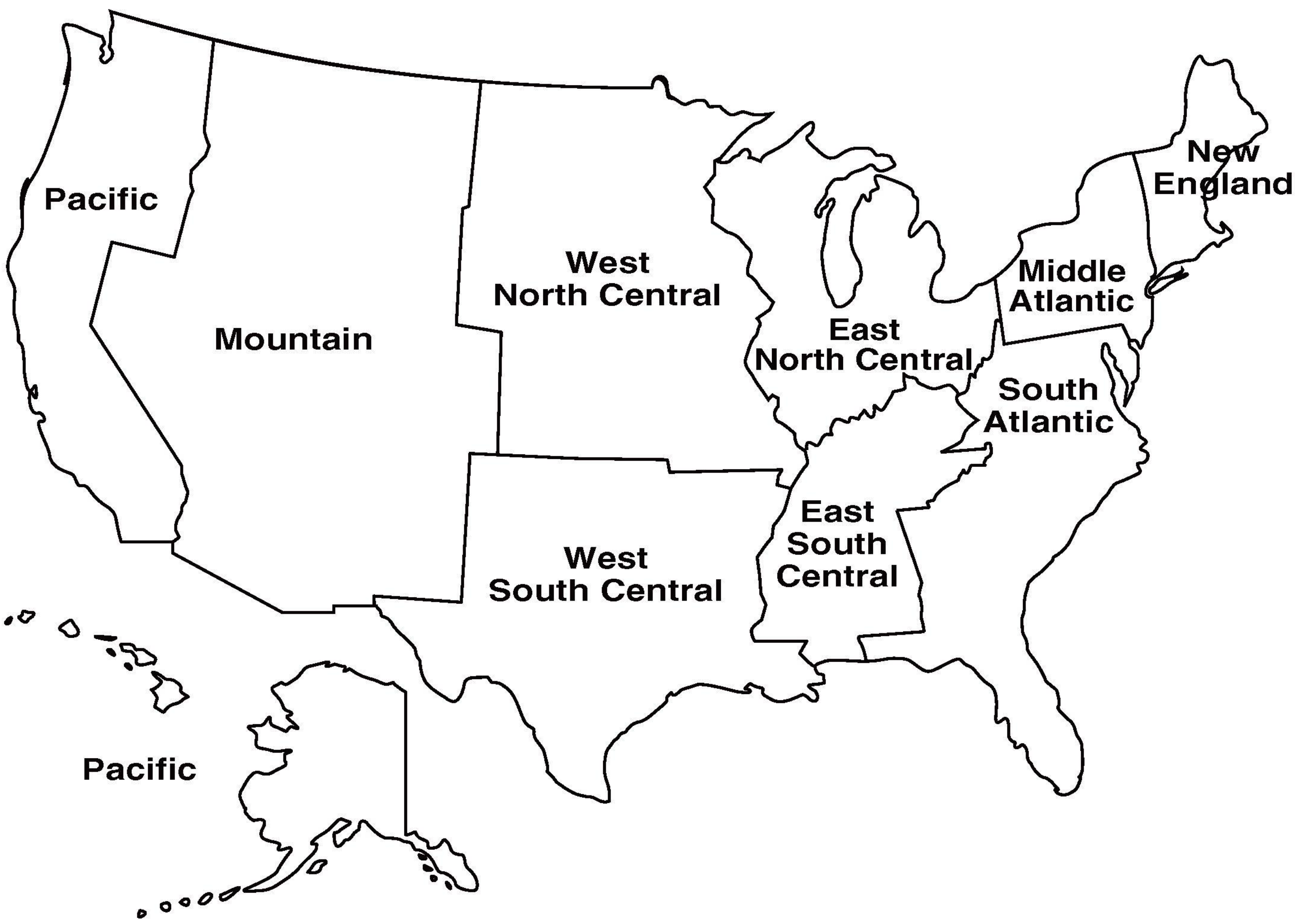
Responses were monitored. After three weeks, credit unions that did not respond to the initial mailing were sent a follow-up postcard, again requesting their survey participation. In August, a third invitation to participate in the survey along with another questionnaire was sent to the sampled credit unions that had not yet participated.

By September 2008, 1,346 usable questionnaires were completed, resulting in a response rate of 42%. The sample was stratified by credit union asset size and larger credit unions were over-sampled to ensure representation. The data collected was weighted to adjust for the over- or under-representation of credit unions in any strata. Weighting is a standard survey analysis procedure designed to increase the reliability of the survey results and to ensure the results are not biased by a specific group of credit unions.

Based on the final number of usable questionnaires, the maximum sampling error for the overall percentages is + 2.4% at a 95% confidence level. That is, we can be 95% sure that the true percentages for the credit union population fall within 2.4 percentage points of those presented in this study.

Credit Union Fees Survey

About the Regions



REGIONS

Northeast = New England (ME, NH, VT, MA, RI, CT); Middle Atlantic (NY, NJ, PA)

Midwest = East North Central (OH, IN, IL, MI, WI);
West North Central (MN, IA, MO, ND, SD, NE, KS)

South = South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL);
East South Central (KY, TN, AL, MS); West South Central (AR, LA, OK, TX)

West = Mountain (MT, ID, WY, CO, NM, AZ, UT, NV); Pacific (WA, OR, CA, AK, HI)

Credit Card Offerings

Overall, 53% of credit unions across the nation offer credit cards. This figure rises to about 90%, however, among credit unions with $50 million or more in assets (Figure I and Table 6-1). For several years, credit card portfolios have been losing profitability and this trend is expected to continue with the credit crisis and its potential impact on delinquencies and charge-off rates. Despite these woes, the majority (84%) of credit unions offering credit cards own their credit card portfolio (Table 6-2).

Overall, credit unions offer a median of two separate credit card programs. Although the number of programs offered ranges from one to 10, 40% of credit unions offer one credit card program. As expected, the median number of credit card programs offered by credit unions increases with asset size (Table 6-3).

The vast majority (84%) of credit unions offers Classic credit cards, half (52%) offer Platinum cards, while one-third (31%) offer Gold credit cards (Figure II and Table 6-4). The likelihood of a credit union offering Classic cards and Gold cards has declined slightly since 2006. As asset size increases so does the likelihood that a credit union will offer Gold and Platinum credit cards.

Figure I
Offer Credit Cards by CU Asset Size

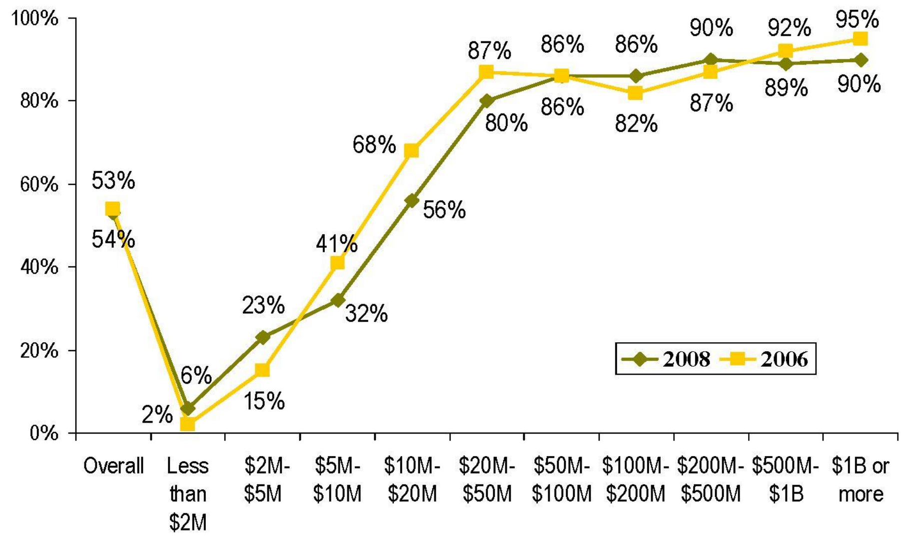
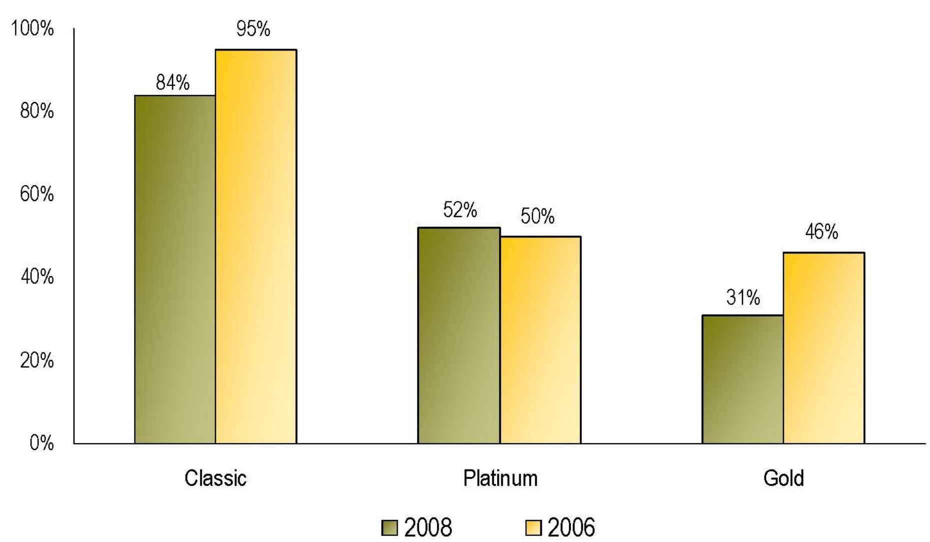


Figure II
Types of Credit Cards Offered



Note: Limited to credit unions offering credit cards.

Annual Fees

By and large, credit unions do not charge annual fees for their credit cards. Just about 5% of credit unions charge annual fees for each of the three credit card types studied, similar to 2006 findings (Table 6-5).

Annual fees for the three types of credit cards range from $5 to $99, with medians of about $14 for Classic credit cards, $30 for Gold credit cards, and $23 for Platinum credit cards (Table 6-6). Annual fees for Classic and Platinum credit cards are similar to the ones presented in the 2006 study. Gold credit card annual fees, however, have increased from a median of $20 in 2006.

Late-Payment Fees and Penalties

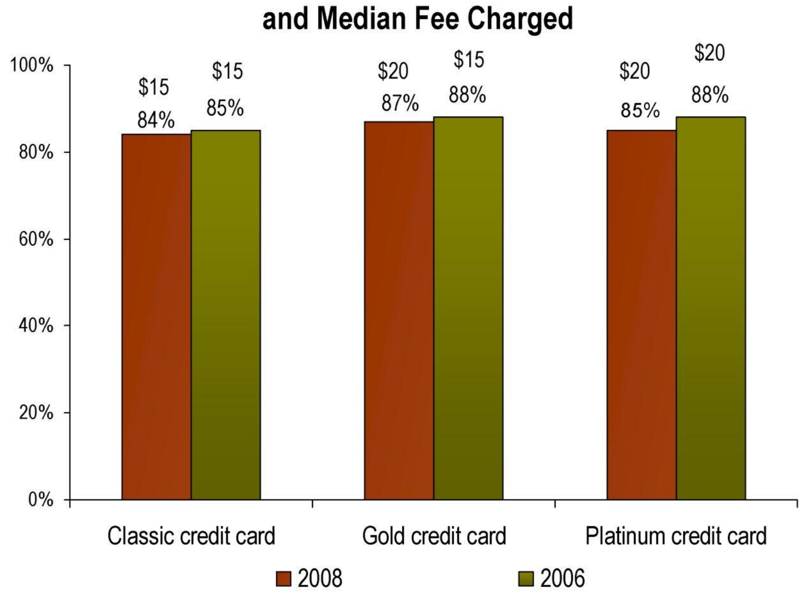
Late-payment credit card fees are much more prevalent than annual fees. About 95% to 99% of credit unions charge a late-payment fee for the three credit card types (Table 6-7). This is also

Late-Payment Fees

Credit Card Type		2008	2006
Classic	% that charge a fee*	95%	94%
	Median flat-dollar amount**	$20	$15
	Median % of payment due**	5%	5%
	Median number of days after due date**	10	10
Gold	% that charge a fee*	98%	96%
	Median flat-dollar amount**	$20	$20
	Median % of payment due**	5%	5%
	Median number of days after due date**	10	10
Platinum	% that charge a fee*	99%	96%
	Median flat-dollar amount**	$20	$20
	Median % of payment due**	5%	5%
	Median number of days after due date**	10	10

**Based on credit unions that offer the particular credit card.*
***Based on credit unions that charge a late-payment fee for the particular credit card.*

Figure III
Percent of Credit Unions Charging an Over-Credit-Limit Fee and Median Fee Charged



Note: Limited to credit unions offering the specified credit card.

similar to the prevalence in 2006. Most credit unions charge a flat-dollar fee vs. a fee based on the percentage of the payment due.

Among credit unions charging a flat-dollar late-payment fee, fees range from $2 to $40 for Classic, Gold, and Platinum credit cards (Tables 6-8 through 6-10). The median flat-dollar late-payment fee is $20 for each of the three credit card types. For Gold and Platinum cards, this fee is identical to the one reported in 2006. For Classic cards, however, the median fee in 2006 was slightly lower at $15.

Fees range from 1% to as much as 50% among credit unions assessing a late-payment fee based on a percentage of the payment due (Tables 6-11 through 6-13). The median percentage late-payment fee is 5% for each of the three cards studied – identical to the median percentage charged in 2006.

Among credit unions charging late-payment fees, the number of days after the due date when the fee is charged ranges from 1 to 40 days with a median of 10 for Classic, Gold, and Platinum credit cards (Tables 6-14 through 6-16).

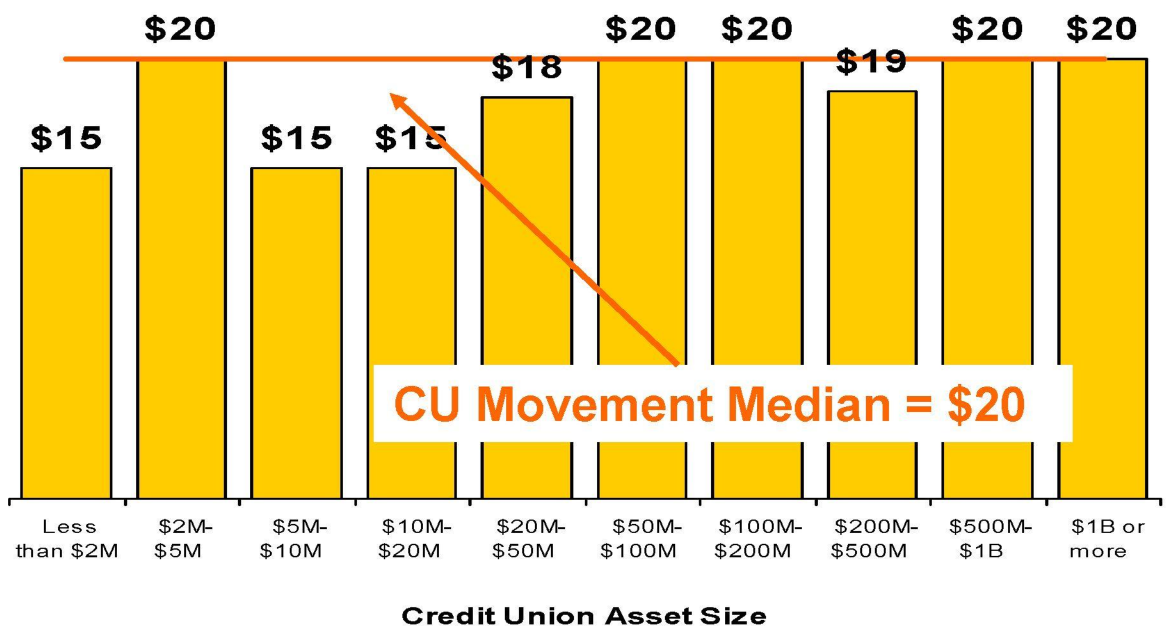
Beyond late fees, 17% of credit unions will also increase the credit card interest rate as a penalty for late credit card payments (Table 6-17). This is comparable to the 2006 figure. Of credit unions that increase interest rates after late payments, about 50% will do so after two late payments. About 20% will increase the interest rate after one late payment and the same percentage will do so after three late payments (Table 6-18).

Over-Credit-Limit Fees

Over-credit-limit fees are also quite common among credit unions offering credit cards. About 85% of credit unions offering credit cards charge an over-credit-limit fee for Classic, Gold, and Platinum credit cards, similar to the findings in 2006 (Table 6-19). The majority of credit unions will assess the fee as a flat-dollar amount. Over-credit-limit fees range from $1 to $39 for Classic, Gold, and Platinum credit cards. Median fees are $15 for Classic credit cards, and $20 for Gold and Platinum credit cards (Tables 6-20 through 6-22). The median over-credit-limit fee for Gold cards rose from $15 in 2006, while the same fees for Classic and Platinum credit cards remained unchanged (Figure III).

Credit Card Late Payment Fees

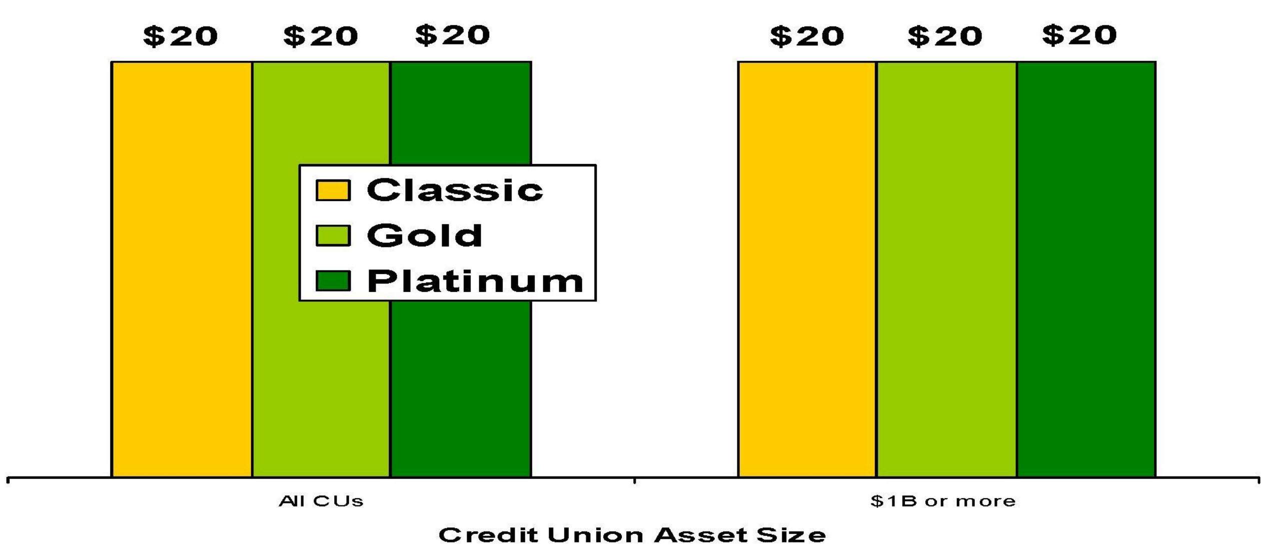
(Median Fee at Insitutions that Charge)



Source: 2008-2009 Credit Union Fees Survey. Based on classic credit cards.

Credit Card Late Payment Fees

(Median Fee at Insitutions that Charge)



Source: 2008-2009 Credit Union Fees Survey.