



OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Subject: Credit Card Practices

TO: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

PURPOSE

The Office of the Comptroller of the Currency (“OCC”) is issuing this advisory letter to alert national banks to the OCC’s concerns regarding certain credit card marketing and account management practices. These practices may entail unfair or deceptive acts or practices and may expose a bank to compliance and reputation risks.

Three practices, in particular, have come to the OCC’s attention and are addressed in this guidance. The first practice is soliciting for credit cards that advertise credit limits “up to” a maximum dollar amount, when that credit limit is, in fact, seldom extended. The second practice is using promotional rates in credit card solicitations without clearly disclosing the significant restrictions on the applicability of those rates. The third practice is increasing a cardholder’s annual percentage rate or otherwise increasing a cardholder’s cost of credit when the circumstances triggering the increase, or the creditor’s right to effectuate the increase, have not been disclosed fully or prominently.

DISCUSSION

“Up to” Marketing

Promotions for credit cards with credit limits “up to” a specified dollar amount are common in the credit card industry, and such marketing can be appropriate and beneficial to customers when the “up to” amount of credit offered is not essentially illusory,¹ a meaningful number of applicants receive a significant credit line,² material information about the cost and usefulness of

¹ In a recent advisory letter, the OCC noted the compliance and safety and soundness risks and concerns presented by credit card programs under which a nominal credit line is consumed by fees. *See* OCC Advisory Letter 2004-4, “Secured Credit Cards,” at 4 (April 28, 2004). The OCC advised that banks should not “offer unsecured credit cards if the amount of fees charged to the card upon issuance substantially reduces the amount of initial available credit and card utility.” *Id.* at 6.

² Credit lines should be established commensurate with a borrower’s creditworthiness and ability to repay the assigned limit in accordance with the terms of the card. “Credit Card Lending; Account Management and Loss Allowance Guidance” at 2, attached to OCC Bulletin 2003-1 (January 8, 2003).

the card is clearly and conspicuously presented, and disclosures are made in accordance with Regulation Z, 12 CFR part 226. On the other hand, certain practices present high compliance and reputation risks. Accordingly, national banks should not:

- Target consumers who have limited or poor credit histories with solicitations for credit cards with a maximum, or “up to,” credit limit that is far greater than most of these applicants are likely to receive.
- Provide most applicants with a “default credit line” (the lowest credit line available) that is significantly lower than the maximum amount advertised, while failing to disclose fully and prominently in the promotional materials the default credit line and the possibility that the consumer will receive it.
- Advertise the possible uses of the card when the initial available credit line is likely to be so limited that the advertised possible uses are substantially illusory.

To further mitigate associated risks, national banks should strongly consider providing and disclosing readily exercisable mechanisms for consumers to cancel the card at little or no cost when they learn the actual credit limit granted.

Promotional Rate Marketing

Another common industry practice is to use a promotional rate to attract customers and to induce new and existing customers to transfer balances from other credit cards. A typical promotional rate solicitation involves representations that an applicant or current cardholder may for a limited time receive a reduced annual percentage rate (“APR”) on certain credit card charges or transactions. The reduced APR generally will be in effect only for a specified number of months. Additionally, the low APR may be subject to other material limitations, and other features of the promotion may limit the consumer’s ability to benefit from the program. For example, the promotional rate may apply only to transferred balances and not to new purchases during the promotional rate period, or the borrower’s payments during the promotional rate period may be applied first to balances transferred pursuant to the promotional rate solicitation, and only after such transferred balances are paid off are payments applied to balances that are accruing interest at the ordinarily applicable (and higher) APR. In addition, consumer benefits from low initial APRs may be offset by the imposition of fees on any balances that are transferred.

Promotional rate offers may be beneficial to consumers, and the typical limitations and features described above are not, taken alone, contrary to law. Problems may arise, however, if material terms are not appropriately disclosed in promotional materials. Accordingly, national banks should not:

- Fail to disclose fully and prominently in promotional materials and credit agreements any material limitations on the applicability of the promotional rate, such as the time period for which the rate will be in effect, any circumstances that could shorten the promotional rate period or cause the promotional rate to increase, the categories of balances or charges

to which the rate will not apply, and if applicable, that payments will be applied to promotional rate balances first.

- Make representations that create the impression that material limitations regarding the applicability of the promotional rate do not exist.
- Fail to disclose fully and prominently in promotional materials and credit agreements any fees that may apply (e.g., balance transfer fees) in connection with the promotional terms.

Repricing of Accounts and Other Changes in Credit Terms

Credit card issuers may increase a consumer's APR to address credit risks that arise when a consumer fails to make timely payments on the account, and some credit card issuers may increase the APR when a consumer fails to make timely payments on other accounts, including accounts with other creditors. Some credit card issuers also may raise the consumer's APR for other reasons, such as the consumer's increased use of credit, failure to make more than the minimum monthly payment on the account with the issuer, or other behavior that reflects adversely on the consumer's credit rating. Credit card issuers may take other actions that also effectively increase the cost of credit for some consumers, such as shortening the due date for receipt of payment or raising the amount of fees for late payment, exceeding a credit limit, or obtaining a cash advance.³

These practices may well be appropriate measures for managing credit risk on the part of the credit card issuer. However, certain practices in connection with repricing credit card accounts and changing terms of credit card agreements may raise heightened compliance and reputation risks. Accordingly, national banks should not:

- Fail to disclose fully and prominently in promotional materials the circumstances under which the credit card agreement permits the bank to increase the consumer's APR (other than due to a variable rate feature), increase fees, or take other action to increase the cost of credit, such as, if applicable, failure to make timely payments to another creditor.
- Fail to disclose fully and prominently in marketing materials and credit agreements, as applicable, that the bank reserves the right to change the APR (other than due to a variable rate feature), fees, or other credit terms unilaterally.

CONCLUSION

The practices described in this advisory letter may involve unfair or deceptive acts or practices, or other violations of laws or regulations. These practices also can damage a bank's reputation and good name, and are contrary to the standards under which the OCC expects national banks to operate. Accordingly, in the OCC's view, a national bank should take steps necessary to avoid

³ In some circumstances, the credit agreement specifies when the credit card issuer may increase the APR, increase fees, or otherwise change the applicable credit terms. In other circumstances, the credit agreement permits the credit card issuer to make unilateral changes in terms.

engaging in such practices. In the event the OCC finds a national bank to be engaged in the practices identified in this advisory letter, it will take all appropriate supervisory action necessary to address the matter.

Questions concerning this advisory letter may be directed to the Community and Consumer Law Division at (202) 874-5750, the Credit Risk Division at (202) 874-5170, the Compliance Division at (202) 874-4428, or the appropriate supervisory office.

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