

Updated Credit Card and Overdraft Rules Alert

December 19, 2008

On December 18, 2008, the Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Association approved final regulations regarding credit card and other consumer banking practices that will not take full effect until July 1, 2010. Copies of the final rules and an OTS summary are attached.

The vote on the final rules follows a period during which the agencies accepted comments on draft rules proposed in May 2008. The final rules mostly mirror those May 2008 draft rules (summarized in this [Kelley Drye Advisory](#)), though there is at least one notable change. The proposed rules included a provision that would have required banks to offer consumers an opportunity to opt out of overdraft protection services. If no such opt out was offered, then the bank would be prohibited from charging overdraft fees. The final rules backed away from this requirement. Instead the Federal Reserve proposed for comment changes to its Electronic Fund Transfers Act rules that would provide consumers with choices regarding overdraft protections.

Prior to the issuance of the draft credit card rules, Congress had been discussing legislation to address perceived unfair credit card practices. Specifically, Representative Maloney (D-NY) had introduced legislation to create a Credit Card Holders' Bill of Rights. To view a document prepared by Kelley Drye comparing that bill to the final regulations, [click here](#). Despite lawmakers renewed calls for legislation to supplement the final regulations and provide protections prior to July 2010, the outlook for legislative action is not clear, particularly given the other financial concerns that we expect to occupy the attention of the 111th Congress.