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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CHASE BANK USA, N. A. *v.* MCCOY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09–329. Argued December 8, 2010—Decided January 24, 2011

Regulation Z—promulgated by the Federal Reserve Board (Board) pursuant to its authority under the Truth in Lending Act—requires credit card issuers to disclose certain information to cardholders. The version of the regulation in effect at the time this dispute arose obliges issuers to provide to cardholders an "[i]nitial disclosure statement," 12 CFR §226.6, specifying "each periodic rate that may be used to compute the finance charge," §226.6(a)(2). It also imposes "[s]ubsequent disclosure requirements," §226.9, including notice to cardholders "[w]henever any term required to be disclosed under §226.6 is changed," §226.9(c)(1). When "a periodic rate or other finance charge is increased because of the consumer's delinquency or default," notice must be given "before the effective date of the change." *Ibid.*

At the time respondent McCoy filed suit, he was the holder of a credit card issued by petitioner Chase Bank. The cardholder agreement provided, in relevant part, that McCoy was eligible for "Preferred rates" as long as he met certain conditions. If any of those conditions were not met, Chase reserved the right to raise the rate, up to a pre-set maximum, and to apply the change to both existing and new balances. McCoy alleges that Chase increased his interest rate due to his delinquency or default and applied that increase retroactively, and that this action violated Regulation Z because Chase did not notify him of the increase until after it had taken effect. The District Court dismissed his complaint, holding that because the increase did not constitute a "change in terms" under §226.9(c), Chase was not required to notify him of the increase before implementing it. The Ninth Circuit reversed in relevant part, holding that Regulation

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Z requires issuers to provide notice of an interest-rate increase prior to its effective date.

Held: At the time of the transactions at issue, Regulation Z did not require Chase to provide McCoy with a change-in-terms notice before implementing the agreement term allowing it to raise his interest rate, up to a pre-set maximum, following delinquency or default. Pp. 7–19.

(a) This case requires the Court to determine the meaning of a regulation promulgated by the Board under its statutory authority. However, Regulation Z's text is unclear with respect to the crucial interpretive question at issue: whether a change to an interest rate, pursuant to previously-disclosed contractual provision, constitutes a change to a "term required to be disclosed under §226.6" requiring a subsequent disclosure under §226.9(c)(1). Because of this ambiguity, the Court must look to the Board's own interpretation of the regulation for guidance in deciding this case. Pp. 7–12.

(b) The Board has made clear in its *amicus* brief to this Court that, in its view, Chase was not required to give McCoy notice of the interest rate increase under the applicable version of Regulation Z. This Court defers to an agency's interpretation of its own regulation, advanced in a legal brief, unless that interpretation is "plainly erroneous or inconsistent with the regulation." *Auer* v. *Robbins*, 519 U. S. 452, 461 (internal quotation marks omitted). In *Auer*, the Court deferred to the Secretary of Labor's interpretation of his own regulation, presented in an *amicus* brief submitted by the agency at the Court's invitation. The Court held that the fact that the interpretation came in a legal brief did not, "in the circumstances of th[at] case, make it unworthy of deference." *Id.*, at 462. The interpretation was "in no sense a *post hoc* rationalization advanced by an agency seeking to defend past agency action against attack," *ibid.* (internal quotation marks and alteration omitted), and there was "no reason to suspect that the interpretation [did] not reflect the agency's fair and considered judgment on the matter in question," *ibid.* The brief submitted by the Board here, at the Court's invitation, is no different. As in *Auer*, there is no reason to believe that the Board's interpretation is a "*post hoc* rationalization" taken as a litigation position, for the Board is not a party to this case. And its interpretation is neither "plainly erroneous" nor "inconsistent with" the indeterminate text of Regulation Z. Thus, there is no reason to suspect that the Board's position in its *amicus* brief reflects anything other than its fair and considered judgment as to what the regulation required at the time this dispute arose. That Congress and the Board may currently hold a different view does not mean that deference is not warranted to the Board's understanding of what the applicable version of Regulation Z re-

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quired. Under *Auer*, therefore, it is clear that deference to the interpretation in the agency *amicus* brief is warranted. Pp. 12–16.

(c) McCoy errs in arguing that deference to a legal brief is inappropriate because the interpretation of Regulation Z in the Official Staff Commentary commands a different result. While Commentary promulgated by the Board as an interpretation of Regulation Z may warrant deference as a general matter, the Commentary explaining the requirements at issue in this case largely replicates the ambiguity present in the regulatory text, and therefore offers no reason to disregard the interpretation advanced in the Board's *amicus* brief. Pp. 16–19.

559 F. 3d 963, reversed and remanded.

SOTOMAYOR, J., delivered the opinion for a unanimous Court.