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Alert

New Credit Card Law to Reform Current Industry Practices

June 1, 2009

On May 22, 2009, President Obama signed the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (also referred to as the Credit CARD Act of 2009) (H.R. 627) (the "Act"). This Alert provides an outline of the key provisions of the Act. In general, the Act's credit card provisions amend the Truth in Lending Act ("TILA"); its prescreening provisions amend the Fair Credit Reporting Act; and its stored value provisions of the Act amend the Electronic Funds Transfer Act ("EFTA"). Several provisions amending TILA and EFTA will require interpretation and rulemaking by the Federal Reserve Board (the "Board"). The Act mandates many of the yet-to-be effective rules already issued by the Board in December 2008,[1] but also imposes additional restrictions. We can expect the Board to build on and expand its December 2008 rules to address the significantly broader scope of the Act.

The various provisions of the Act go into effect at different times, starting 90 days after the date of enactment to 15 months from the date of enactment. In general, the majority of the provisions go into effect on Feb. 22, 2010. Several requirements, including the 45-day notice requirement for increased APRs and "significant changes" to card agreements and the requirement that bills are sent 21 days before the due date, go into effect 90 days after the date of enactment. The requirements under the Act become effective regardless of whether or not the Board issues implementing regulations prior to the applicable effective dates.

The Act Prevents Unfair Increases in Interest Rates and Changes in Terms

- The Act prohibits raising interest rates in the first year after a credit card account is opened and on existing balances unless: (1) the increase is under a variable interest rate; (2) the increase is at the end of the promised time for a promotional rate; (3) the minimum payment is not received within 60 days after the due date; or (4) the increase is due to the completion of a workout.
- A credit card issuer cannot change the terms for repaying a balance except to give the cardholder either five years to pay off the outstanding balance at the old rate or to increase the minimum payment to no more than twice as much as the old minimum payment.
- A credit card issuer that increases a cardholder's interest rate since Jan. 1, 2009, must review the account every six months and decrease the rate if indicated by the review. This provision becomes effective 15 months after the date of enactment and is subject to enforcement only by administrative means.
- Promotional rates must last at least six months.

[1] For a summary of the Board's rules issued in December 2008, please see our Alert dated Dec. 23, 2009 entitled *Banking Agencies Adopt Rules to Protect Credit Card Customers and Federal Reserve Adopts Further Protections by Amending Regulations Z and DD*, available at http://www.srz.com/122308BankingAgenciesAdoptRulesProtectCreditCardCompanies/.

The Act Places Limits on Fees and Penalty Interest

- The Act prohibits over-the-limit fees unless the consumer has requested to allow transactions that will exceed the credit limit. The Act also requires credit card issuers to provide notice regarding the cardholder's ability to revoke the opt in each time the cardholder is assessed an over-the-limit fee. An over-the-limit fee may be imposed only once per billing cycle if the balance is above the credit limit on the last day of the billing cycle.
- If the interest rate increases because payment is not received within 60 days after the due date, the rate must be reduced to the original lower rate if the consumer pays on time for 6 months.
- The Act prohibits credit card issuers from charging a fee to pay a credit card debt, whether by mail, telephone or electronic transfer, except for live services to make expedited payments.
- Penalty fees (*e.g.*, late fees and over-the-limit fees) must be reasonable and proportional to the omission or violation. The Board must issue rules to set standards to decide what levels are reasonable, and it may set up "safe harbors" for acceptable fee levels. This provision becomes effective 15 months after the date of enactment.
- The Act prohibits a credit card issuer from reaching back to an earlier billing cycle when calculating the amount of interest charged in the current cycle (*i.e.*, "double cycle" billing).
- The Act prohibits credit card issuers from charging fees for opening a credit card where the fees total more than 25% of the credit limit.

The Act Requires Credit Card Issuers to Consider Consumers Ability to Repay

- Credit card issuers must "consider" the consumer's ability to make the required payments under the credit card terms before issuing a new card or increasing a card's credit limit.

The Act Requires Fairness in the Application and Timing of Card Payments

- Amounts in excess of the minimum payment must be applied to the highest interest rate, except in the last two months before a deferred interest balance is due.
- The Act prohibits credit card issuers from setting early deadlines for payments. Payments must be received by 5 p.m. at a location set by the issuer.
- If the due date is on a day when the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose.
- Payments made at local branches of the creditor must be credited the same day.
- Due dates must be on the same day each month.
- The Act prohibits card issuers from treating a payment as late unless the bill is mailed or delivered at least 21 days before the due date.

The Act Enhances Disclosures of Card Terms and Conditions

- The Act requires 45-day written notice before the credit card issuer can raise the APR or make any other significant change to the card agreement. No notice is required for: (1) a rate increase at the end of the promised time for a promotional rate, (2) a rate increase under a variable rate, or (3) a rate increase due to the completion of a workout.
- The Act requires credit card issuers to provide disclosures to consumers upon card renewal when the account terms have changed.

- The Act requires credit card issuers to provide individual consumer account information and to disclose the period of time and total interest it will take to pay off the card balance if only minimum monthly payments are made.
- The Act requires full disclosure in periodic statements of payment due dates and applicable late payment penalties.
- Credit card agreements must be posted online and the Board must keep a public website to provide them to the public.

The Act Protects Young Consumers and College Students

- Before issuing a credit card to a person under the age of 21, the credit card issuer must obtain an application that contains either a signature of a co-signer over 21 or information indicating an independent means of repaying any credit extended.
- Credit card issuers may not raise the credit limit on accounts held by a person under the age of 21 who has a consigner without written permission from the cosigner. The cosigner must also assume joint liability for the credit limit increase.
- The Act prohibits prescreened credit card offers to people under the age of 21 unless the consumer has consented to receive prescreened offers.
- The Act restricts credit card issuers from providing tangible gifts to students on college campuses in exchange for filling out credit card applications. This restriction also applies to locations near campus as determined by the Board and at events sponsored by or related to a college.
- The Act requires colleges to publicly disclose any marketing contracts made with a credit card issuer.

The Act Provides Gift Card Protections

- The Act covers gift certificates, store gift cards and general-use prepaid cards. The Act does not cover rewards, loyalty, telephone or promotional cards and does not cover paper gift cards or paper gift certificates. In addition, the Act does not cover cards that are reloadable and not marketed or labeled as a gift card or gift certificate. For example, reloadable payroll cards or government benefit cards are not covered.
- Gift certificates, store gift cards and general-use prepaid cards covered by the Act may not expire less than five years from the date the card was purchased or money was last added to it, whichever is later.
- The Act prohibits fees if the covered certificate or card has been used within the past 12 months. If a certificate or card remains unused for 12 months, then there can be one fee per month.
- Stronger state laws continue to apply, including for both expiration dates and fees.
- The Act requires the Board to determine the extent to which EFTA and Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

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