



# Regulatory Practice Letter

ADVISORY

RPL Number 09-21

## Credit CARD Act: Consumer protections related to the use of credit cards

### Executive Summary

On May 22, President Obama signed H.R. 627, the *Credit Card Accountability, Responsibility and Disclosure Act of 2009* (also known as the *Credit CARD Act of 2009* and hereinafter the "CARD Act"), into law. Among other things, it amends the *Truth-in-Lending Act* ("TILA") to provide additional consumer protections for credit card lending. These provisions generally take effect nine months following enactment (February 2010) except some have tighter timeframes, as noted below.

### Background

In December 2008 the Federal Reserve Board ("Fed"), the Office of Thrift Supervision ("OTS") and the National Credit Union Administration ("NCUA") jointly issued final rules pursuant to their authority under the *Federal Trade Commission Act* to prohibit institutions from engaging in certain acts or practices that are deemed unfair or deceptive ("UDAP") in connection with consumer credit card accounts. The Fed separately released a complementary final rule directed at credit card and other open-end credit accounts that amended its Regulation Z, which implements TILA. In general,

each of these final rules is scheduled to go into effect July 1, 2010. (Please refer to RPL 09-01 and RPL 09-02 for details.) In early 2009, separate bills were introduced in the House of Representatives (H.R. 627, the *Credit Cardholders; Bill of Rights*) and the Senate (S. 414, the *Credit Card Accountability, Responsibility and Disclosure Act*) to address consumer credit card protections. The bills were very similar with regard to intent and content. The bills also overlapped measurably with the rules promulgated by the Fed, OTS and NCUA though with earlier effective dates. The final legislation, the CARD Act, contains provisions similar to the agencies' rules, including those requiring a 45-day notice of any increase in a consumer's interest rate, statements to be mailed at least 21 days in advance of the due date, and prohibitions on double-cycle billing. However, the CARD Act also introduces new protections, including restrictions on credit extended to consumers under the age of 21, new statement disclosures regarding repayment periods, and requirements for creditors to reinstate certain previously increased interest rates

**Subject:**  
**Protection of consumers that use credit cards**

**As Issued By:**  
**Public Law 111-24, signed by President Obama May 22, 2009**

**Date:**  
**June 4, 2009**

## Description

The CARD Act is comprised of the following five parts, highlights of which are discussed in more detail below:

- Title I Consumer Protection
- Title II Enhanced Consumer Disclosures
- Title III Protection of Young Consumers
- Title IV Gift Cards
- Title V Miscellaneous Provisions

Except as otherwise noted, the provisions of the CARD Act go into effect 9 months following enactment (February 2010).

### Title I:

#### Consumer Protection

- A creditor shall provide written advance notice of any increase to the annual percentage rate ("APR") on any credit card account not later than 45 days prior to the effective date. (Effective 90 days following enactment – August 2009)
- A creditor shall provide written advance notice of any significant change to the terms on any credit card account (as determined by the Fed) not later than 45 days prior to the effective date. (Effective 90 days following enactment - August 2009)
- The notice shall contain a statement concerning the account holder's right to cancel.
- Promotional interest rates may not be increased for a period of six months.
- Increases in interest rates may not be made during the first year after the account is opened, except for the reasons detailed below.
- Increases in APR, fees or finance charges may not be applied to

outstanding balances except in cases where:

- A previously disclosed specified period of time, such as a promotional period, has expired.
- The interest rate is tied to an index.
- The consumer has completed a workout arrangement or has failed to comply with a workout arrangement.
- The consumer has not made the minimum payment within sixty days of the due date.

When the consumer has not made the minimum payment for sixty days from the due date, the creditor must provide the consumer with written notice of the reason for the increase in the rate as well as a statement that the increase in rate will terminate not later than 6 months after it is imposed provided the creditor receives the minimum required payments on time during that period.

Creditors are required to maintain "reasonable methodologies" for determining the APR applicable to a consumer's credit card account based on factors that include the credit risk of the consumer, market conditions, or other factors. For all credit card accounts where a creditor has increased the APR on the account based on these factors at any time since January 1, 2009, the creditor must assess whether such factors have changed (including whether any risk has declined) not less than once every six months. The creditor must increase or decrease the APR when a reduction is indicated by the review. The creditor must provide written notice to the consumer no less than 45 days prior to any increase in the APR along with a

statement of the reason for the increase.

The Fed is required to issue final rules to implement the requirements for creditor account reviews and also to evaluate compliance within 9 months of enactment, and those rules must become effective no later than 15 months following enactment.

Other provisions under Title I include:

- A prohibition on double-cycle billing and penalties for on-time payments;
- An opt-in requirement for over-the-limit transactions when a fee is imposed. The creditor must provide the consumer with notice of any over-the-limit fee and the consumer's right to revoke the election prior to the imposition of any fee. The Fed is to establish regulations governing the form and timing of the election, as well as related disclosures. Over-the-limit fees may be imposed only once during a billing cycle and only once in each of two successive billing cycles, subject to certain exceptions;
- The Fed, in consultation with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the OTS and the NCUA (collectively, the "Agencies") shall issue final rules no later than 9 months after enactment, to become effective 15 months after enactment, for assessing whether the amount of any penalty fee or charge is reasonable and proportional to the omission or violation to which the fee or charge relates. Further, the Fed, in consultation with the other agencies, may also issue rules to

provide an amount for any penalty fee or charge that would be presumed to be reasonable and proportional.

- The creditor must apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.
- Statements must be mailed or delivered to the consumer not later than 21 days prior to the due date or payments made on the account may not be considered late for any reason. (Effective 90 days following enactment – August 2009)
- The due date for a credit card account shall be the same day each month.
- A creditor may not open a credit card account or increase a credit limit on an existing account without considering the “ability of the consumer to make the required payments under the terms of the account” (i.e., suitability).

#### Title II:

##### Enhanced Consumer Disclosures

- Each billing statement must include a table showing the repayment schedule of the outstanding balance at the current interest rate, including:
  - The number of months and the total interest paid if only the minimum payments are made;
  - The monthly payment required to eliminate the outstanding debt in 36 months; and,
  - A toll-free number to access credit counseling and debt management services.

- Each billing statement must include late payment information, including the date on which the payment is due, the date on which the late fee will be imposed, the amount of the fee, and notice that an increase in the APR may result from late payments.
- Each creditor shall establish and maintain an Internet site on which the creditor shall post the written agreement between the creditor and the consumer for each credit card account. Copies of the agreements are also to be provided to the Fed.
- Any advertisement for a free credit report in any medium shall prominently disclose in such advertisement that free credit reports are available under Federal law at: AnnualCreditReport.com.

#### Title III

##### Protection of Young Consumers

- Consumers under the age of 21 may not obtain a credit card account or other open-end consumer credit plan unless a written application is submitted to the creditor and 1) signed by a cosigner over the age of 21 indicating joint liability, or 2) supported by information indicating that the consumer has independent means for repaying the proposed extension of credit.
- The credit limit on accounts established for a consumer under the age of 21 with a cosigner may not be increased unless the cosigner approves of the increase in writing.
- Within 9 months of the date of enactment, each creditor shall submit an annual report to the Fed with the terms and conditions of

any business, marketing, or promotional agreements or college affinity card agreements that it has with an institution of higher education, including alumni organizations or foundations.

#### Title IV

##### Gift Cards

- In general, a dormancy fee, an inactivity charge or fee, or a service fee may not be imposed with respect to a gift certificate, store gift card, or general-use prepaid card unless the potential charges have been disclosed and there has been no activity on the card within the 12 months prior to the imposition of the charge.
- Gift cards may not have an expiration date that is less than five years from the date of issuance.
- The Fed is to issue final rules regarding gift cards within 9 months following enactment and to take effect within 15 months from enactment.

#### Title V

##### Miscellaneous Provisions

- Within two years of the enactment date, and every two years thereafter, the Fed shall conduct a study of the credit card market including:
  - Agreement terms;
  - Issuer practices;
  - The effectiveness of disclosures;
  - The protections against unfair and deceptive acts and practices; and
  - Whether the CARD Act has affected the cost and availability of credit, the safety and soundness of credit card issuers, the use of risk-based

pricing, and product innovation.

- Within one year of enactment, the Fed, in consultation with the Agencies and the Federal Trade Commission, shall submit a report to Congress on the extent to which creditors reduced credit limits or raised interest rates in the three years ending on the date of enactment (May 22, 2009) based on
  - The geographic location of a transaction or the merchant involved;
  - The types of transactions; and
  - The identity of the mortgage holder of the consumer's primary residence.
- Within 9 months of enactment, the Fed shall conduct a study of the use of credit cards by small businesses and prepare a report to Congress, including recommendations for administration and/or legislative initiatives, as appropriate.
- Within 9 months of enactment, the Secretary of Education, the Treasury and the President's Advisory Council on Financial Literacy shall coordinate to evaluate and prepare a comprehensive list of all Federal financial and economic literacy programs for a report to be submitted to Congress.

### **KPMG Commentary**

When the Fed, OTS and NCUA finalized their rules under UDAP and Regulation Z in December 2008, Fed Chairman Ben Bernanke noted that the rules, along with proposed rules on overdraft services, "represent the most comprehensive and sweeping reforms ever adopted by the Board [Fed] for credit card accounts." In a statement

applauding the Fed's actions, Senator Chris Dodd, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, announced that he intended to pursue more legislation in 2009 to ban certain additional credit card practices. Legislation introduced in the Senate and the House of Representatives early in 2009 ultimately resulted in the CARD Act, which now represents even more regulatory change with regard to credit cards than promulgated previously by the Fed, OTS and NCUA.

It is notable that quite a few of the provisions in the CARD Act overlap with the final rules released by the agencies, including the requirement to give a 45-day notice prior to an increase in interest rates, an implied requirement for periodic statements to be mailed at least 21 days before the due date (the agencies called it a safe harbor), and a requirement that allocations of payments in excess of the minimum payment be applied to balances with the highest interest rate (though the final rules also permitted a pro rata application). However, in some of these instances, requirements that would have become effective in July 2010 will now need to be operational before September 2009, which is a significant acceleration in timing. Further, many of the provisions of the CARD Act become effective in February 2010, which is more than four months earlier than would have been required by the agencies' final rules.

The requirements of the CARD Act and other recent consumer-oriented issuances such as the Home Affordable Modification Program and the final rules from the agencies on UDAP and Regulation Z address the same

fundamental concern. That concern is whether the credit requested is "suitable" for the customer. Basically the recent laws and rules expect financial institutions to consider whether the customer can afford the credit offered and if it is a safe and sound risk for the financial institution.

It will be necessary for the Fed to now re-write sections of Regulation Z to meet the different requirements of the CARD Act and this will likely heighten the awareness of credit card practices for examiners and be reflected in future examinations.

The protections afforded by the CARD Act expand the focus to gift cards and to credit cardholders under the age of 21. The new law will require companies that issue or service credit cards and gift cards to make process changes or enhancements throughout their business including in the areas of information systems, marketing, risk modeling (i.e., pricing), policies and procedures, training, compliance monitoring and auditing. In order to be compliant by the effective dates, all companies that issue or service credit cards or gift cards will need to ensure appropriate resources are dedicated to the changes required by the CARD Act. At a minimum, consideration should be given to:

- IT systems changes to meet the CARD Act requirements, including the timing of notice requirements, repayment disclosures, limitations on increases in rates, application of payments and late fees.
- Disclosure language for all mediums, including print, TV and direct mail.
- Redesign of periodic statements.

- Redesign of marketing materials.
- Policies and procedures for determining the APR applicable to a consumer's credit card account and for ongoing risk monitoring related to increases and decreases in risk.
- Policies and procedures for determining a credit applicant's ability to repay extensions of credit.
- Assessing whether fees charged are "reasonable and proportional."

The Fed will be required to issue final rules by February 2010 in the following areas:

- Creditor reviews of the risk in consumer account and compliance;
- Form and timing of the opt-in requirement for over-the-limit fees;
- Assessing the reasonableness and proportionality of fees; and
- Gift card operations

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