



October 14, 2009

Fed Requests Comments on Second Set of Regulation Z Rules Implementing the New Credit Card Law

Executive Summary

- The Federal Reserve Board (Fed) has recently published a second set of proposed rules that implement certain provisions of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act). The CARD Act was enacted earlier this year, which prohibits and restricts a number of credit card practices.
- This new proposal implements the provisions of the CARD Act that will become effective on February 22, 2010. These include provisions that require minimum payment warnings on credit card statements, prohibit the increase of interest rates during the first year the account is opened, require co-signers for consumers who are under the age of 21 in order to open an account, and require that payments above the minimum amount be applied to balances with the highest interest rate, in addition to a number of other requirements.
- This proposal follows an earlier interim final rule that implements the CARD Act provisions that were effective as of August 20, 2009. This includes the requirement to send periodic statements at least 21 days before the payment is due, which as of now applies to all open-end credit in addition to credit cards, and the requirement to provide a 45-day notice when the rate and certain terms of a credit card account are changed.
- It is expected that both the interim final rule and these new proposed rules will be finalized together before the end of the year.
- Most of the CARD Act provisions apply only to credit cards. However, earlier this year, the Fed issued comprehensive rules that amend the Regulation Z open-end credit rules, which encompass credit card, as well as other open-end plans, and a number of those are also addressed in the CARD Act. In general, for these provisions, the Fed is not limiting their scope to credit cards if the earlier Regulation Z rules apply them to all open-end accounts, although there are exceptions to this general approach.

- In general, the provisions that apply only to credit cards will not apply to charge cards, home equity lines of credit (HELOCs) even if they are accessed by a credit card, and will not apply to debit cards that access overdraft lines of credit.
- The provisions of the earlier Regulation Z rules that are not addressed in the CARD Act will remain in effect. **However, the Fed is considering changing the effective date of at least some of those provisions from July 1, 2010 to February 22, 2010 to ensure consistency.** The provisions of these rules that are inconsistent with the CARD Act provisions will be amended or withdrawn to ensure consistency. The applicable provisions of the unfair and deceptive acts and practices (UDAP) rules that were issued earlier this year will also be changed or withdrawn, as necessary, so they conform to the CARD Act requirements.
- **Comments on the proposed rules are due to the Fed by November 20** and are due to CUNA by November 10, 2009. **If commenting directly to the Fed, you must refer to Docket No. R-1370.**

Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Senior Vice President and Deputy General Counsel Mary Dunn at mdunn@cuna.com, Senior Assistant General Counsel Jeff Bloch at jbloch@cuna.com, or Regulatory Counsel Luke Martone at lmartone@cuna.com; or mail them to Mary, Jeff, and Luke in c/o CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004. You may also contact us if you would like a copy of the proposed rules or you may access them on the Internet at the following address: <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090929a1.pdf>

BACKGROUND

In January 2009, the Fed issued a final rule that included comprehensive changes to the open-end credit rules under Regulation Z, as well as the official staff commentary, which primarily affect credit cards and other revolving credit plans. These include comprehensive changes to the format, timing, and content requirements for the credit card application and solicitation disclosures, account-opening disclosures, periodic statements, change-in-term notices, and advertising provisions. Click below for more information: http://www.cuna.org/reg_advocacy/member/download/finalanalysis_fed_020909.pdf

At the same time, the National Credit Union Administration, the Fed, and the other federal financial institution regulators issued a final rule under the UDAP Act that prohibits or restricts a number of credit card practices. Click below for more information: http://www.cuna.org/reg_advocacy/member/analysis/ncua_022309.html

In May 2009, the CARD Act was enacted that amended TILA to include many of the acts or practices that were included in the UDAP rules issued in January 2009, which also included provisions of the Regulation Z rules that were issued at that time. However, there are a number of differences, such as expanding the requirement for sending periodic statements 21 days in advance to all open-end consumer credit, while the UDAP rule limited this provision to credit cards. The CARD Act also includes provisions that were not included in the rules issued in January 2009.

The Fed has now issued the second in a series of rules to implement the CARD Act. These proposed rules implement the provisions that will be effective on February 22, 2010. The Fed had earlier issued an interim final rule to implement the provisions that became effective on August 20, 2009 and will later issue rules to implement the provisions that will be effective on August 22, 2010. These rules will also not affect provisions of the Regulation Z and UDAP rules issued in January 2009 to the extent they are not addressed in the CARD Act. Click below for more information on the interim final rule that was issued earlier:

http://www.cuna.org/reg_advocacy/reg_call/rcc_073009.html

DESCRIPTION OF THE PROPOSED RULES AND PROPOSED CHANGES TO THE OFFICIAL STAFF COMMENTARY

I. General Disclosure Requirements

The CARD Act requires that for credit cards, the term “fixed” to describe the annual percentage rate (APR) may only be used if the APR will not change over the period specified in the terms of the account. The Regulation Z rules issued earlier this year contained similar provisions and those will continue to apply to address these CARD Act provisions and will also apply to all open-end credit, in addition to credit cards. Under the Regulation Z rules, if no period of time is specified, then the term “fixed” may not be used unless it will not increase while the credit plan is open. The Regulation Z rules also apply these provisions to other similar terms, in addition to “fixed,” but will allow creditors to decrease the rate even if it is described in this manner.

When a card issuer substitutes or replaces an existing credit card account with another, the proposal will provide guidance as to whether the issuer must provide a notice of the terms of a new account or provide a 45-day change-in-terms notice. This will be determined by whether the:

- Card issuer provides a new credit card.
- Card issuer provides a new account number.
- Account provides new features or benefits.
- Account can be used at a greater or lesser number of merchants.
- Card issuer implemented the substitution or replacement on an individualized basis.

- Account becomes a different type, such as a charge card being replaced with a credit card.

If most of the above factors apply, then the substitution or replacement should be considered a new account. If not, then it can be considered a change-in-terms.

II. Periodic Statements

The CARD Act requires creditors to have reasonable procedures to ensure that they deliver periodic statements at least 21 days before the due date. Although these provisions were addressed in the interim final rule that was issued earlier, this proposal clarifies that notwithstanding the due date on the periodic statement, credit unions may charge late fees and otherwise consider the payment as late 21 days after the statement is delivered. For example, if a credit union were to have a due date 19 days after the statement is delivered, it may go ahead and charge a late fee after the 21-day period elapses. However, the credit union would still be subject to penalties and litigation as a result of not complying with the provision to have reasonable procedures for delivering these statements at least 21 days before the due date. Also, notwithstanding these provisions, creditors may continue to impose finance charges for accounts without a grace period, regardless of whether they comply with these requirements.

Under the CARD Act, a card issuer who charges a late fee must clearly disclose on the periodic statement the payment due date, or the earliest date in which a late payment fee may be charged if it differs from the due date, along with the amount of the late payment fee. The creditor must also disclose if a penalty APR will be imposed and what that rate will be.

The Regulation Z rules issued earlier this year contained similar provisions and those will continue to apply to address these CARD Act provisions, although this proposal contains the following revisions:

- These Regulation Z provisions will now only apply to credit cards, not to all open-end credit as originally required under the earlier Regulation Z rules. This also means these provisions will not apply to HELOCs, even if they are accessed by credit cards, and will not apply to overdraft lines of credit that are accessed with debit cards. Although charge cards are excluded, these accounts must still disclose the due date, and that date must be the same each month, as described below for credit cards.
- This due date disclosure requirement will apply, even if a late payment fee or penalty APR is not imposed.
- The due date disclosed must be the date indicated in the terms of the legal obligation and not a different date, such as situations in which another law prohibits a late fee from being imposed until a certain number of days after the due date.

As mentioned above, the CARD Act requires that payment due dates for credit cards must be the same date each month. This proposal implements these provisions with the following clarifications:

- The same due date means the same numerical date, such as the 25th of each month and not the same relative date, such as the “third Tuesday of each month.” This will essentially mean creditors will not be able to set due dates that are on the 29th, 30th, or 31st, since not all months have these dates. Credit unions in these situations will have to change the due dates.
- Creditors may adjust due dates from time to time, such as in response to a consumer’s request or when a creditor acquires new accounts. However, the new due date must be the same numerical date each month going forward.
- Regulation Z currently allows billing cycles in excess of one month, as long as the cycle does not exceed a quarter of a year. This proposal does not change these current Regulation Z provisions, as long as the due date in each cycle is on the same numerical date.
- Using the same numerical date will mean that certain of these dates will at some point fall on weekends and holidays in which creditors do not accept mailed payments. Under other provisions of the CARD Act and Regulation Z, creditors must accept such payments on the next business day without treating it as late. However, in these situations, the same numerical date must still be disclosed on the periodic statement, as opposed to disclosing the next business day.

Minimum Payment Warnings

The CARD Act requires the following minimum payment warning disclosures, which differ from those required under the Regulation Z rules issued earlier this year:

- A warning statement that making only minimum payments will increase the interest paid and the time it will take to repay the balance.
- The number of months it will take to repay the balance if only minimum payments are made.
- The total cost to repay the balance, including interest and principal payments, if only minimum payments are made.
- The monthly payment required in order to repay the balance in 36 months, and the total of the interest and principal payments that will be incurred.
- A toll-free number in which the consumer may receive information about credit counseling and debt management services.

This information must be clear and concise and in the form of a table, except for the general warning statement. The information must also be in the order as listed above.

Although the CARD Act applies these provisions to all open-end credit, this proposal will limit these provisions to credit cards, similar to the Regulation Z rules issued earlier this year.

This means HELOCs will not be included, even if they are accessed by credit cards, and overdraft lines of credit accessed by debit cards will also not be included.

The proposal also includes the following provisions that implement these minimum payment warning requirements:

- The general warning statement must be as follows (in bold as shown):
Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance.
- The minimum payment is to be calculated based on the minimum payment formulas, the APRs, and the outstanding balance applicable to the account. For other terms, creditors may make assumptions.
- If the repayment period is less than two years, it must be disclosed by number of months. Otherwise, it must be disclosed in years, rounded to the nearest whole year.
- The minimum payment total cost estimates (the total of payments and interest when minimum payments are made) must be rounded to the nearest whole dollar.
- The following statements must also be included on the periodic statement:
 - The minimum payment estimate and the minimum payment total cost estimate are based on the outstanding balance shown on the periodic statement.
 - The minimum payment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance.
- The monthly payment and total costs to repay the balance in 36 months do not have to be disclosed if the minimum repayment estimate is less than three years. Otherwise, the estimated monthly payment and the total cost estimate must be rounded to the nearest whole dollar. There must also be a statement on the periodic statement that the card issuer estimates the consumer will repay the outstanding balance in three years if the consumer pays the estimated monthly payment for three years.
- The card issuer must disclose on the periodic statement the savings estimate for repaying the balance in 36 months, which will be the difference between the total cost estimate of repaying the balance by making minimum payments and the total cost estimate by making the payments required to pay off the balance in 36 months.

- If negative amortization or no amortization occurs, then the following has to be disclosed on the periodic statement in lieu of the above information:
 - The following warning statement (in bold as shown): **Minimum Payment Warning:** Even if you make no more charges using this card, if you make only the minimum payment each month we estimate **you will never pay off the balance shown on this statement** because your payment will be less than the interest charged each month.
 - The following statement: If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner.
 - The estimated monthly payment to repay the balance in 36 months, although the total cost estimate would not be disclosed.
 - The fact that the consumer will repay the balance shown in three years if the consumer pays this estimated monthly payment for three years.
 - The toll-free telephone number for obtaining more information about credit counseling services.
- The following refers to the toll-free telephone number requirement:
 - Card issuers must provide the name, street address, telephone number, and website address of at least three credit counseling services that have been approved by the United States Trustee or a bankruptcy administrator. These must be in the same state as the billing address on the account, unless the consumer requests otherwise.
 - Creditors may use automated systems and may use toll-free numbers designed to handle other types of consumer service calls, as long as the option to receive this information is prominently disclosed, such as listing this among the first menu of options. Creditors may also use third-party systems.
 - Even though it was mentioned in the CARD Act, disclosure of debt management services will not be required.
 - If requested by the consumer, the card issuer must provide this same information for a credit counseling entity that provides services in another language specified by the consumer.
 - Creditors may obtain information about credit counseling services from the United States Trustee's website or from the relevant bankruptcy administrator and may disclose this website to the consumer. Creditors may also rely on the information on this website and do not have to provide the required information if it is not available on this website. However, the creditor must refer to the website at least annually to verify and update this information.
 - Creditors may not provide advertisements or marketing materials through the toll-free number, but may provide educational information.

- The creditor has the option to not provide the minimum payment disclosures in a billing cycle immediately after two cycles in which the consumer paid the entire balance, had a zero balance, or a credit balance. These disclosures also do not have to be provided for a cycle in which the minimum payment will pay the outstanding balance.
- The proposal will eliminate the exemption in the Regulation Z rules for accounts when a fixed repayment period is specified in the account agreement and the required minimum payments will amortize the balance within this period.

The proposed rule provides model forms and samples that are to be used and includes certain information that must be in bold type. Separate forms are provided when the minimum repayment estimate is more than three years, less than three years, and when there is negative or no amortization. Also, these minimum payment disclosures, the due date, late payment fee, penalty APR, ending balance, and minimum payment due must be grouped together on the first page, and there are additional model forms and samples that are to be used for these disclosures.

III. Subsequent Disclosure Requirements

The proposal amends provisions regarding the requirement to provide a 45-day notice for certain changes in terms. Although this was addressed in the earlier interim final rule since these CARD Act provisions were effective as of August 20, 2009, this proposal includes additional provisions consistent with the Regulation Z rules issued earlier this year and also includes the following clarifications:

- The 45-day notice does not apply if the consumer has agreed to the change, in which case the notice must be given before the effective date of the change.
- Although Regulation Z will apply these requirements to all open-end credit, there are certain requirements that only apply to credit cards, such as the right to reject term changes, and these new Regulation Z provisions will not apply them to other types of open-end credit.
- For open-end credit besides credit cards, there must be a disclosure of any right to opt-out. This is not included for credit cards because other provisions of the CARD Act provide these types of protections.
- The right to reject changes will not apply to rate increases. The proposal includes revised model forms to reflect the consumer's right to reject certain changes. These will also reflect that for credit cards, rate increases only apply to new balances.

Under the CARD Act, an increase in the APR is not subject to the change-in-terms notice requirements if it is increased after a specified period of time if that time period was previously disclosed to the consumer and if the APR that applies afterwards is also disclosed.

The proposal will require this disclosure to be in writing and that it be in close proximity and equal prominence with the disclosure of the temporary rate that applies during this time period. Also, for a brief period of time after these rules go into effect, issuers offering a deferred interest or other promotional rate at a point of sale may disclose a range of rates or an “up to” a certain rate, out of recognition it will take time to make the system updates.

The CARD Act also provides an exception when rates are raised as a result of the completion or failure to comply with a workout arrangement, as long as the terms were previously disclosed, including the rate that will apply after the arrangement. The proposal will require the following:

- The disclosures must be in writing and if the rate disclosed is variable, then this fact must also be disclosed, along with how the rate is determined.
- The notice must disclose the extent to which certain fees are reduced and fees that will apply if the consumer completes or fails to comply with the workout arrangement.
- The notice must also indicate, if applicable, that timely minimum payments must be made in order to remain eligible for the arrangement.

Under current Regulation Z rules, creditors that assess annual or other fees based on inactivity or activity must provide a renewal notice before the fee is imposed. However, a fee can be assessed before the notice is provided, as long as the fee is reversed if the consumer receives a delayed notice and chooses to terminate the account. The proposal implements the provisions of the CARD Act that no longer allows these delayed notices. Renewal notices will also be required when accounts terms are changed since the last renewal, even if renewal fees are not imposed, if these terms were not previously disclosed. The notice must be provided at least 30 days before the renewal date. However, this will only apply if the term is included in the account-opening table.

The proposal implements the requirement to provide a 45-day change-in-terms notice when the rate is increased due to delinquency, default, or as a penalty. This will change the equivalent provisions that were included in the Regulation Z rules issued earlier this year so they conform to the comparable CARD Act provisions. This notice must be provided after the occurrence of the event that gave rise to the increase.

The proposal provides the general content requirements, as well as separate content requirements for credit cards. The model forms were issued earlier this year in connection with the comparable Regulation Z changes will be changed accordingly. The general notice will require the following:

- A statement that the delinquency, default, or penalty rate has been triggered and the date it will apply.
- The circumstances in which it will no longer apply or that it will remain in effect indefinitely.

- The balances the rate increase will apply and the balances, if applicable, in which the current rate will apply, unless the minimum payment is more than 60 days late.

Separate content requirements apply for credit cards when the rate is increased because the minimum payment is more than 60 days late. In these situations, the notice must state the reason for the increase and that it will cease to apply if the creditor receives the next six consecutive minimum payments before the due date.

Under the CARD Act, the creditor has the option to amortize the existing balance over a time period of no less than five years if the consumer rejects a significant change. The proposal clarifies that this amortization period may not begin earlier than the date when the creditor was notified of the rejection. The account balance will be the balance at the end of the day when the credit availability is terminated or suspended. If the credit availability is not terminated or suspended, then the balance will be as of the date no earlier than the date when the creditor was notified of the rejection. Also, if credit availability is terminated or suspended, creditors may not charge fees that were not charged before the change was rejected, such as a closed account fee.

IV. Payments

The CARD Act prevents a creditor from treating a payment as late if it is received before 5 PM on the due date in the amount, manner, and location as indicated by the creditor. This is similar to changes in the Regulation Z rules issued earlier this year. This proposal modifies those changes as follows to ensure consistency with the CARD Act:

- This provision will apply to all payments, not just to mailed payments as was the case with the earlier Regulation Z rules.
- The flexibility in the earlier Regulation Z rules that may have permitted earlier cut-off times will no longer be available.

These payment provisions will apply to all open-end credit, which is consistent with the earlier Regulation Z rules. Also, the 5 PM cut-off time will be in the time zone of the location specified by the creditor for receipt of payments.

For payments made in-person at branches of financial institutions, the cut-off time may be no earlier than the close of business of that branch, even if it closes after 5 PM, and these must be credited as of the date the payment is made. “In-person” means a transaction conducted with an employee, such as a teller, and would not include other situations, such as using a mail slot. Also, these provisions for in-person payments only apply to “depository institutions,” as defined in the Federal Deposit Insurance Act, which does not include credit unions. It may be that this was intended to exclude retailers and the exclusion for credit unions was inadvertent.

The CARD Act requires creditors to not treat payments as late if the due date is on a day when payments are not received, such as holidays and weekends, and the payment is received on the next business day. Similar to the Regulation Z rules issued earlier this year, the proposal will limit this to mailed payments, which means this flexibility will not apply to payments a consumer makes by other means, such as by telephone or electronically, if the creditor accepts payments in this manner. Also, these provisions will apply to all open-end credit, similar to the Regulation Z rules issued earlier this year.

For credit card accounts, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as by mail, electronically, or by telephone, unless the method involves an expedited service by a customer service representative of the creditor. This is similar to the requirements outlined under the CARD Act. The proposal clarifies that this requirement would not affect fees imposed after the due date, such as a late fee, and also clarifies that “expedited” means crediting the payment on the same day as received or the next business day if the payment is received after the creditor’s cut-off time. The proposal also clarifies that the expedited service must be conducted by a live customer service representative in order for a fee to be charged, which would exclude automated systems.

The CARD Act prohibits a card issuer from imposing a late fee or finance charge for a late payment if the issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments and the change causes a material delay in crediting a payment made during the 60-day period after the change is made. These provisions will only apply to credit cards.

The proposal implements this provision and clarifies it applies only to addresses and offices, including branches, where payments are accepted. The proposal also clarifies “material change” to mean a delay that would result in a late payment fee or charge and also indicates creditors may continue to impose finance charges for credit cards without grace periods, notwithstanding these provisions.

V. Timely Settlement of Estates

Consistent with the CARD Act, card issuers must adopt reasonable procedures to ensure that the administrator or executor of an estate can determine and pay the balance on the deceased credit card account in a timely manner. These provisions will only apply to credit cards, and card issuers may use their current procedures, as long as they otherwise comply with these requirements.

Under these provisions, creditors may not impose fees or charges on these accounts upon receiving a request for the amount of the balance from an administrator or executor, even if there is another authorized user on the account.

However, such fees may be imposed if they apply to time periods before the request was made or if there is a joint accountholder.

The creditor may receive the request for the balance by writing or by telephone, and the creditor must then provide the information in a timely manner either in writing or by telephone. Thirty days will be considered “timely,” and these provisions do not preclude creditors from providing this information to other appropriate persons, in addition to administrators and executors.

VI. Evaluation of Consumer’s Ability to Pay

The Card Act prohibits creditors from opening a new credit card account, or increasing the credit limit for an existing account, unless the creditor considers the consumer’s ability to make the required payments. For credit limit increases, these provisions will apply when the request is made by the consumer or when the card issuer unilaterally decides to increase the limit.

The proposed rules will interpret this to mean the ability to make the required minimum payments. Since the creditor will not know the exact amount of the minimum payments at the time it is analyzing the consumer’s ability to make the payments, the proposal will allow creditors to use a reasonable method to estimate this amount. In these situations, the creditor should make this estimate based on the consumers using the full credit line and using the minimum payment formula and interest rate that applies to the account.

Creditors must have reasonable policies and procedures in considering the ability to make these payments, and they may consider credit reports, credit scores and other factors consistent with Regulation B, the Equal Credit Opportunity Act. The creditor may rely on this information or on information provided by the consumer and there is no requirement that the creditor would have to otherwise verify the information. Also, this determination of income, assets, or other factors must be based on facts and circumstances known at the time the new account is opened or when the credit limit is increased.

VII. Provisions Applicable to Underage Consumers and College Students

Consistent with the CARD Act, the proposal will prohibit creditors from issuing a credit card to a consumer under the age of 21, unless:

- He or she has obtained the signature of a cosigner who is at least 21 and has the means to repay the debt and agrees to joint liability; or
- Alternatively, the consumer under the age of 21 may provide information indicating he or she has the ability to make the required payments.

These provisions will only apply to credit cards even though certain language in the CARD Act appeared to extend this to other types of open-end accounts.

This will only apply to the opening of a credit card account, as opposed to other situations in which credit cards are issued, such as when cards are replaced or reissued. However, if an individual has assumed joint liability, the credit limit may not be increased unless he or she agrees in writing to assume joint liability for this increase.

The individual assuming joint liability may include a cosigner, guarantor, or joint applicant and this liability may continue after the consumer reaches 21, if this is consistent with the agreement between the parties. The “ability to repay” will mean the ability to make the minimum payments. The ability to make the minimum payment will also apply to the consumer under the age of 21 who chooses to demonstrate that he or she has the ability to make the required payments.

The date for determining whether the consumer is under the age of 21 will be the date the application is submitted or the date the consumer requests a credit limit increase. If the increase is provided in the absence of a request, this date will be the date the increase was considered by the creditor.

These provisions will not apply to consumers under the age of 21 who are added as an authorized user and who would have no liability for the debt. Those assuming joint liability do not have to agree in writing to assume liability for a credit line increase if they were the ones who requested the increase.

VIII. Fee Limitations

The proposal implements the provisions in CARD Act with regard to fee limitations. The proposal will prohibit creditors from imposing required fees (other than late payment fees, over-the-limit fees, and returned payment fees) during the first year of the account if they exceed 25% of the credit limit. If this limit is exceeded, the creditor may comply if it reverses the charges, and associated interest, at the end of the billing cycle in which they were imposed.

IX. Allocation of Payments

Under the proposal, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account, the card issuer will be required to allocate the excess amount first to the balance with the highest APR and then any remaining portion to the other balances in descending order based on the applicable APR. Issuers will be permitted to allocate an excess payment based on the APRs and balances on either the date the preceding billing cycle ends, the date the payment is credited to the account, or any day in between.

Issuers will be required to comply with the allocation of payments provisions even if doing so results in the loss of any grace period on a consumer's card balance. These proposed provisions apply only to credit card accounts, and not to all open-end consumer credit plans.

Special Rule for Balances Subject to Deferred Interest or Similar Programs

Under the proposal, when a credit card account balance is subject to a deferred interest or similar program, the issuer must allocate any excess payment amount first to that balance during the two billing cycles immediately preceding expiration of the deferral period.

In addition, when a balance is subject to such a deferred-interest type of program that provides that the consumer will not be obligated to pay interest that accrues on the balance if it's paid in full prior to the expiration of a specified period, that balance will be treated as having a 0% APR for purposes of allocating any excess payment.

X. Limitations on the Imposition of Finance Charges

The proposal will prohibit issuers from applying the "double-cycle billing" computation method to consumers' card balances. Specifically, issuers will be prohibited from imposing finance charges as a result of the loss of a grace period on a credit card account if those charges are based on balances for days that precede the most recent billing cycle.

Furthermore, an issuer will be prohibited from imposing finance charges as a result of the loss of a grace period on a credit card account if those charges are based on any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period. Issuers will not be required to use a particular method to comply with this requirement, but the proposal includes an example of an acceptable method.

The proposal includes an exception to the prohibitions on double-cycle billing and charges on balances repaid within the grace period; these prohibitions will not apply to any adjustment to a finance charge as a result of the resolution of a dispute or the return of a payment for insufficient funds.

XI. Limitations on Increasing APRs, Fees, and Charges

The proposal will generally prohibit card issuers from increasing APRs, fees, or finance charges (referred to as "rate(s)" in this comment call) that are currently disclosed as: (1) fees for the issuance of availability of credit; (2) fixed finance charges and minimum interest charges; or (3) fees for required insurance, debt cancellation, or debt suspension coverage.

The restriction will apply to both new transactions and “outstanding balances”—which TILA defines as the amount owed (balance) as of the fourteenth day after notice of an increase was provided.

Under TILA, as amended by the CARD Act, issuers are only prohibited from increasing “rates” that apply to outstanding balances. However, the Fed believed the rule would be more easily understood if rather than “not prohibiting” increases in rates for new transactions, the rule instead allow such increases as an exception to the general prohibition.

The non-mutually exclusive exceptions to the prohibition are the:

- Temporary rate exception;
- Variable rate exception;
- Advance notice exception;
- Delinquency exception;
- Workout and temporary hardship arrangement exception; and
- Servicemembers Civil Relief Act exception.

Temporary Rate Exception: A creditor may increase a “rate” following a period of at least 6 months, so long as: (1) prior to commencement, the length of the period and rate to follow were disclosed; (2) after the period, the creditor does not apply a higher rate than disclosed; and (3) the creditor does not apply the previously-disclosed rate to transactions that occurred prior to the period.

Variable Rate Exception: A creditor may increase a “rate” that varies according to an index that is not under the creditor’s control and is publicly-available. Issuers may not increase a variable rate by changing the method used to determine that rate. However, issuers may change the day of the month on which index values are measured to determine changes to the rate.

Advance Notice Exception: Generally, after a credit card account has been open for at least one year, the issuer may increase the “rate” for new transactions provided it has complied with the current notice requirements for “changes in terms,” “supplemental credit devices and additional features,” and “increases in rates due to delinquency or default or as a penalty.” While an issuer may increase the rate for new transactions after the first year, it may not increase the rate for an existing balance that resulted from transactions which occurred during the first year; the Fed terms this the “protected balance.”

In determining the repayment terms for a “protected balance,” the issuer may use one of the two methods included in the proposal. The first method requires the amortization period for the protected balance to be no less than 5 years, beginning when the increased rate becomes effective.

The second method requires the minimum periodic payment for the protected balance to be no more than *twice* the minimum payment required by the method used prior to the increase. Alternatively, an issuer may use a different method, so long as it is “no less beneficial” to the consumer than one of the two provided.

Delinquency Exception: An issuer may increase a “rate” if it has not received the minimum periodic payment within 60 days of the due date. However, the issuer must have sent a clear and conspicuous notice of the increase to the consumer stating the reason for the increase and that the increase will cease under certain conditions. Specifically, if the issuer receives 6 consecutive minimum payments on or before the due date following the increase, the increase rate must be reduced to its previous level.

Workout and Temporary Hardship Arrangement Exception: An issuer may increase a “rate” upon the completion or failure of a workout or temporary hardship arrangement, provided:

- A clear and conspicuous disclosure of the terms of the arrangement was sent prior to commencement; and
- Any increased rate may not exceed the rate that existed prior to commencement of the arrangement.

Servicemembers Civil Relief Act Exception (SCRA): If a “rate” has been decreased pursuant to the SCRA, an issuer may increase that rate once the SCRA no longer applies. However, the issuer may not apply a higher rate to transactions that occurred prior to the decrease than the previous rate that had applied to those transactions.

The general prohibition on increasing “rates” will continue to apply to card account balances subsequent to the following:

- The account being closed (by the consumer or issuer);
- The account being acquired by another issuer; or
- The card account balance being transferred from the issuer to another credit account provided by that issuer—or its affiliate or subsidiary—(transfer to a home equity account is excluded).

However, the prohibition will cease to apply if the consumer chooses to transfer a credit card balance to a card provided by a different issuer.

XII. Requirements for Over-the-Limit Transactions

The proposal defines an “over-the-limit transaction” as an extension of credit necessary to complete a transaction—at the consumer’s request—that causes the credit card limit to be exceeded. The definition is not intended to cover fees or charges by the creditor that may cause the limit to be exceeded.

Opt-In (Consent) Requirement

Generally, for credit card accounts under an open-end (not home-secured) consumer credit plan, the proposal will prohibit a creditor from assessing a fee for paying an over-the-limit transaction unless the consumer is given notice and a reasonable opportunity to opt-in to the creditor's payment of the transactions, and chooses to do so. The proposal includes illustrative examples of "reasonable opportunity." The opt-in notice may be oral, electronic, or written; the creditor must provide an opt-in notice immediately prior to and contemporaneously with obtaining oral or electronic consent. However, creditors will not need to comply with the electronic disclosure requirements of the E-Sign Act.

If a consumer opts-in, the creditor will need to provide notice of the right to opt-out of future over-the-limit fees after such a fee has been assessed. In addition to disclosure of over-the-limit fees on the periodic statement, the proposal will require the opt-out notice to be included on the front of any page of each periodic statement if such a fee was assessed in that period. An opt-out notice will be required regardless of whether the fee was imposed due to an over-the-limit transaction initiated by the consumer in the prior cycle or because the consumer failed to reduce the account balance below the credit limit in the next cycle.

Other Information Regarding the Opt-In Requirement

- The requirement will not apply to creditors that have the policy and practice of declining to pay or authorize any transactions they reasonably believe would exceed the credit limit.
- The requirement will apply whether the creditor assess over-the-limit fees per transaction or as a periodic account or maintenance fee imposed each cycle for the creditor's payment of the transactions regardless of whether the credit limit was exceeded during a particular cycle.
- The requirement will apply to all credit card accounts, even those opened prior to the effective date of the rule.
- Prior to the consumer opting-in, the creditor will be permitted to pay an over-the-limit transaction, so long as no fee is assessed.
- A creditor may not assess an over-the-limit fee unless the consumer has opted-in, even if the creditor is unable to avoid paying a transaction that exceeds the limit. For example, in some cases, a merchant may not submit credit card transactions for authorization; in such instances, if the transaction exceeds the credit limit, no over-the-limit fee may be assessed if the consumer had not opted-in. Similarly, no fee may be assessed if the final transaction amount exceeds the amount submitted for authorization and results in an over-the-limit transaction.
- However, a creditor may assess fees unrelated to the payment of an over-the-limit transaction itself even if the consumer has not opted-in. Such as, a balance transfer fee—provided the fee is assessed regardless of whether the transfer exceeds the credit limit.

- Even if a consumer has opted-in, a creditor is not required to pay or authorize over-the-limit transactions.
- For joint accounts, a creditor may act on the request to opt-in or -out by a jointly-liable account holder.
- Once notified, the creditor will need to implement a consumer's request to opt-out as soon as reasonably practicable.

Content and Format

Creditors will need to provide consumers with the opt-in notice before an over-the-limit fee may be assessed; the notice must include:

- The dollar amount of any fees or charges. Creditors that use a range of fees will be permitted to disclose that the consumer may be assessed a fee “up to” the maximum fee or provide the range.
- An explanation that an over-the-limit transaction could result in the loss of a promotional rate, imposition of a penalty rate, or both—if applicable.
- Information about the consumer's right to affirmatively consent (opt-in) to the creditor's payment of the over-the-limit transaction, including the methods the consumer may use to opt-in.
- The proposal includes model opt-in notices that may be used (or a notice substantially similar to them) as a safe harbor for compliance purposes.

At the creditors' option, the notice may include:

- A brief description of the potential benefits to opting-in—such as that certain transactions that would otherwise be declined may be approved.
- A statement that payment of over-the-limit transactions is at the creditor's discretion.

Prohibited Practices

In connection with over-the-limit fees, creditors will be prohibited from:

- Imposing more than one over-the-limit fee in a given billing cycle.
- Imposing a fee for the same over-the-limit transaction(s) in more than 3 billing cycles; furthermore, fees may not be imposed for the second or third cycle unless the account balance continues to exceed the limit by the due date of either cycle. However, the limitation does not apply if the consumer engages in additional over-the-limit transactions in either of the two subsequent cycles.
- Imposing an over-the-limit fee caused by the creditor's failure to promptly replenish the consumer's available credit after the payment has been posted to the account.
- Conditioning the amount of credit granted on the consumer opting-in to the over-the-limit feature.
- Imposing an over-the-limit fee if the limit is exceeded solely because of fees or interest charged (this includes all “charges imposed as part of the plan”) by the creditor during the billing cycle.

XIII. Special Rules for Marketing Open-End Credit to College Students

Definitions

“College student credit card” – a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student. The term will encompass college affinity cards.

“Affiliated organization” – an alumni organization or foundation affiliated with or related to an institution of higher education.

“College credit card agreement” – any business, marketing, or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to currently-enrolled college students. The term will encompass an agreement even if the marketing is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement.

Public Disclosure of Agreements

The proposal will require institutions of higher education to publicly disclose any credit card marketing contracts or other agreements made with an issuer. The proposal includes examples on how to fulfill this requirement, such as by posting the documents on the institution’s website, or by providing them for free upon request. In addition, institutions will be prohibited from redacting any contracts or agreements they are required to publicly disclose.

Prohibited Inducements

A card issuer will be prohibited from offering students at an institution of higher education any tangible items to induce them to apply for an open-end consumer credit plan (offered by that issuer), if the offer is made at or near (within 1,000 feet of) the campus, or at an event sponsored by or related to the institution. The restriction will apply regardless of whether the person to whom the tangible item is given actually applies for or opens and account. Furthermore, the restriction will apply to offers mailed to students living on or near the campus.

An event would be considered to be related to the institution if the marketing of the event uses the name, emblem, mascot, or logo of the institution, or other words, pictures, or symbols identified with the institution in a way that implies that it endorses or sponsors the event.

Under the proposal, issuers will need to implement reasonable procedures for determining whether someone is a student before giving them the tangible item. For example, simply asking an individual whether he or she is a student would suffice, and the issuer may rely on the response.

Annual Report to the Board

Creditors that are a party to one or more college credit card agreements will be required to register with the Fed and submit annual reports regarding the agreements. Creditors that were a party to agreements at any time during 2009 will be required to register by February 1, 2010 and submit their initial report by February 22, 2010.

Annual reports will need to include:

- A copy of each agreement in effect during the period covered by the report;
- The total dollar amount of payments pursuant to the agreement from the creditor to the institution (or affiliated organization) during the period, and how the amount is determined;
- The number of card accounts opened pursuant to the agreement during the period;
- The total number of card accounts that were open at the end of the period; and
- A copy of any memorandum of understanding that relates to the agreement or that controls any obligations or distribution of benefits.

XIV. Internet Posting of Credit Card Agreements

Under the proposal, issuers of credit cards will be required to post the agreements for each plan they currently offer to the public on their websites and also to submit the agreements to the Fed for posting on its publicly-available website on a quarterly basis. The Fed expects to provide additional details regarding the electronic submission process in a technical specifications document that will be posted on its website.

The proposal includes a de minimis exception based on an issuer's total number of open accounts. Specifically, an issuer will not be required to submit any agreements if it has fewer than 10,000 open credit card accounts, as of the end of the previous quarter.

Any card issuer not covered under this exception that offered one or more credit card agreements as of December 31, 2009 will be required to register with the Fed no later than February 1, 2010. Under the proposal, if an issuer makes changes to an agreement previously submitted to the Fed—even if the changes are nonsubstantive—the issuer will be required to submit the entire revised agreement.

An agreement would be deemed “offered” if the issuer is soliciting or accepting applications for new accounts that would be subject to that agreement. In addition, an issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons.

Agreement

The proposal defines “agreement” or “credit card agreement,” as a written document(s) evidencing the terms (“pricing information”) of the legal obligation or prospective legal obligation between a card issuer and a consumer for a credit card account. An agreement would be deemed to include certain information, such as APRs and fees, even if the issuer does not otherwise technically include this information in the document evidencing the terms of the legal obligation.

Agreements Posted on Card Issuer’s Website

Issuers will be required to provide each individual cardholder with access to his or her specific credit card agreement, by either: (1) posting it on the issuer’s website; or (2) making it available upon request.

Issuers making agreements available upon request must accept requests through both its website and by calling a toll-free number listed on the website. Issuers will be required to send or otherwise make the agreement available within 10 business days of the request. However, such issuers may provide the agreement electronically or in paper form, regardless of the consumer’s specific request.

Under the proposal, the requirement to provide access to agreements applies to all credit card accounts, regardless of whether the agreements are required to be submitted to the Fed—including agreements of issuers that qualify for the de minimis exception and plans that are no longer offered to the public.

QUESTIONS TO CONSIDER REGARDING THE REGULATION Z PROPOSED RULE (The Fed has specifically requested comment on these issues)

1. Should the required compliance date for the Regulation Z final rules issued earlier this year remain July 1, 2010 for those provisions in which the CARD Act does not require compliance by February 22, 2010?

2. For the requirement to post credit card agreements on websites or otherwise make them available, the Fed is proposing to exempt creditors with fewer than 10,000 accounts. Is this level appropriate?

3. When a card issuer substitutes or replaces a credit card, the Fed has provided guidance as to whether the issuer must provide a change-in-terms notice or provide notice of a new account. Are there additional facts and circumstances that should be considered? Are there alternative approaches that should be considered?

4. Because of the requirement that due dates must be on the same date each month, due dates cannot be on the 29th, 30th, or 31st of each month since not all months have these dates. What will be the operational burden of changing due dates if they currently fall on these dates and the burden of processing all payments on the 1st through 28th of each month?

5. For the minimum payment warnings, card issuers must be prepared to provide information on three credit counseling organizations. Would a different number be more appropriate? Card issuers will be required to verify and update this information annually. Is this appropriate or should it be more or less frequently?

6. The Regulation Z rules issued last year provided an exemption to the minimum payment warnings when there was a specified repayment period in the account agreement and the minimum payment will amortize the balance over this period. The proposed rule eliminates this exemption. Should the exemption be retained since, for example, the 36-month disclosure may not be helpful when this fixed period is more than 3 years? For these types of fixed payment accounts, do consumers tend to repay within the fixed period such that the 36-month requirement would not be useful?

7. The requirement to provide the 45-day change-in-terms notice does not apply if the consumer agrees to the change. This is intended to be very limited and would not apply when the consumer requests that an account be reopened or requests an upgrade to a different account with different credit and features, such as reward features, as it would be difficult to determine if this was suggested by the creditor. What are the operational or other burdens of this approach, since situations requiring a change-in-terms notice would result in delays?

8. For the requirement that cut-off times be no earlier than 5 PM, is it appropriate that this should apply to the time zone of the location specified by the creditor for receipt of payments for those payments not made by mail? Somewhat different rules apply for in-person payments, such as that the cut-off time will be the time the branch or office closes. However, these “in-person” provisions will only apply to banks and thrifts, and not to credit unions or retailers, although the exclusion for credit unions may be inadvertent. Do you agree with this approach?

9. Creditors will not be permitted to charge fees after receiving a request for the balance from the administrator or executor of the deceased accountholder's estate. Should creditors be able to resume charging fees if the administrator or executor fails to pay the balance within a certain period of time? The proposal indicates the creditor should provide the balance within 30 days after receiving the request from the administrator or executor. Is this a sufficient amount of time?

10. When opening an account or increasing the credit limit, the creditor must determine if the consumer can afford the minimum payments. Are there other methods creditors may use to estimate these minimum payments? As proposed, creditors will not be required to verify information, such as that obtained from the consumer or from credit reports. Should there be a requirement to verify this information?

11. Should creditors be required to segregate the over-the-limit opt-in notice from other account disclosures? Such a requirement may ensure that the information is not obscured within other account documents and overlooked by the consumer, for example—in preprinted language in the accounting opening disclosures—leading a consumer to inadvertently consent to having the over-the-limit transactions paid or authorized by the creditor.

12. Once consumers have opted-in, should creditors be required to provide them with written confirmation in order to verify that they intended to make the election?

13. Should consumers be allowed to opt-in and -out using each of the three methods (orally, electronically, and in writing)?

14. Should creditors be allowed to obtain consumer consent for the payment of over-the-limit transactions prior to effective date of the final rule? If so, under what circumstances? Such an approach could allow creditors to phase in their processing of consumer opt-ins and alleviate the compliance burden that may otherwise occur if notices could not be sent, and opt-ins obtained until February 22, 2010.

15. Is additional guidance necessary for an over-the-limit fee that is determined by other means (as opposed to a flat fee)—such as a percentage of the over-the-limit transaction?

16. Should the rule permit or require any other information to be included in the opt-in notice?

17. Would it be helpful if the Fed established a safe harbor for implementing opt-out requests—such as five business days from the date of request?

18. The proposal will prohibit creditors from imposing an over-the-limit fee if the limit is exceeded solely because of fees or interest charged by the creditor during the billing cycle. Are there any operational issues that may arise from the proposed prohibition?

19. The proposed definition of “college student credit card” will include affinity cards. Should the Fed create an independent definition of affinity cards?

20. A card issuer will be prohibited from offering students tangible items to induce them to apply, if the offer is made at or near (within 1,000 feet of) the campus. Are there any other appropriate ways to determine whether a location is “near” the campus?

21. Should additional information be included in the annual report issuers will submit in regard to college student credit cards?

22. The proposal defines “agreement” as a written document evidencing the terms of the legal obligation between an issuer and a consumer for a credit card account. An agreement would be deemed to include certain information, such as APRs and fees, even if the issuer does not otherwise technically include this information in the document evidencing terms of the legal obligation. Should more or less information be included in “agreement”?

23. The proposal will require an issuer that makes changes to an agreement previously submitted to the Fed—even if nonsubstantive changes—to submit the entire revised agreement. Should nonsubstantive changes require resubmission?

24. The proposed de minimis exception would not alleviate the administrative burden on large issuers of submitting agreements for credit card plans with a very small number of open accounts. Should there be a de minimis exception applicable to a small credit card plan offered by issuers of any size, and if so, how should “credit card plan” be defined?

25. Any additional comments, questions, or concerns with the proposed rule?
