

CREDIT CARD ACT OF 2009

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Effective Dates and Rule Writing

- Board must write at least three sets of rules
 - 90-day provisions—Interim rule issued July 2009
 - 9-month provisions—Proposal issued September 2009
 - 15-month provisions—Proposal expected January 2010
- Proposals to Accelerate Effective Date
 - Legislative proposal—December 2009
 - Regulatory proposal—February 2010 for all Regulation Z
- Status of UDAP Rule
- Status of January 2009 Regulation Z Rule
 - Timing—still July 1, 2010?
 - Content—how will it mesh with the new Act?



Effective Dates and Rule Writing

- Some sections went into effect on August 20, 2009
 - 45-day notice of rate increases and other “significant changes”
 - Consumers’ right to cancel increases/changes
 - Minimum 21-day payment periods
- Most sections are effective February 22, 2010
 - Retroactive rate increases and protected balances
 - Payment allocation requirement
 - New statement disclosures
- Some sections are effective August 22, 2010
 - Reasonable penalty fees
 - Interest rate reductions



Requirements Effective August 20, 2009



Notice of Rate Increase or Other Significant Changes - Section 101(a)

- Interim Final Rule prohibits an issuer from
 - Increasing the APR on an account or
 - Making another “significant change” to the agreement
- Unless the issuer has provided the consumer with a 45-day advance written notice of the rate increase or change



Notice of Rate Increase or Other Significant Changes - Section 101(a)

- A “significant change” includes an increase in a fee or finance charge in addition to an increase in the APR
- Interim Final Rule defines a significant change to include:
 - Any term required to be disclosed in the account-opening disclosures
 - Increase in the minimum payment
 - Certain additional terms, such as grace period and balance computation method
 - Reduction in credit limit if a penalty fee or rate can result



Notice of Rate Increase or Other Significant Changes

Section 101(a)

There are three exceptions to this 45-day advance notice requirement:

1. Expiration of time – with proper advance disclosure of the time period and “go to” rate
2. Variable rate – publicly available and beyond issuer’s control
3. Workout or temporary hardship arrangement – with proper advance disclosure of purpose, time frame and “return to” rate



Notice Content for Increased Rate or Significant Change - Section 226.9(c)

Content of 9(c) Change Notice

1. Statement that changes are being made
2. Description of the changes made to significant terms or increase in the minimum payment
3. Effective date of changes
4. Statement of consumer's right to reject the changes and instructions on how to reject, including toll-free telephone number
5. If applicable, a statement that account will be closed or privileges suspended if changes are rejected
6. Where applicable, statement that credit limit has been decreased (if over-the-limit-fees or penalty rates will be imposed)



Notice Content Requirements for Penalty Rate Section 226.9(g)

Content of 9(g) Notice

1. Statement that a penalty rate has been triggered
2. Date on which the penalty rate will be effective
3. Circumstances under which the penalty rate will cease to apply, or that the rate will apply indefinitely
4. Statement of consumer's right to reject the rate increase, including instructions for rejecting the increase
5. If applicable, a statement that the consumer's ability to use the account will be terminated or suspended if the consumer rejects the increase



Notice of Rate Increase or Other Significant Changes - Section 101(a)

- Implementation and Compliance Issues of Interim Rule:
 - Disclosure of specific effective date for change
 - Advance disclosure of specific “go-to” rate for promotional programs
 - Advance disclosure of “go to” rate for workout/hardship arrangements
 - Transitional guidance and cure notices
 - For promos entered into before August 20, 2009, an issuer could provide a description of “go to” rate, rather than the actual rate
 - For promos entered into before August 20, 2009, an issuer could provide oral disclosures
 - Prior to August 20, 2009, issuers could send promo disclosures stating the type of rate and length of period



Right to Cancel

Section 101(a)

- Every 45-day written notice must include statement of consumer's right to reject the rate increase or significant change prior to the effective date
- The issuer cannot treat the rejection as a default
- Specifically, the issuer may not:
 - Require the consumer to repay the obligation in full
 - Impose a penalty or fee for the cancellation
 - Impose a repayment method that is less beneficial to the consumer than:
 - Doubling the minimum payment
 - Requiring amortization of balance over five years



Right to Cancel

Section 101(a)

- Interim Final Rule does not permit issuer to impose existing penalty pricing terms without 45-days notice and right to reject
- Instead, an exception is provided for:
 - 60-day delinquency – no right to reject
 - Minimum payment increases – no right to reject
 - Certain 14-day transactions – no right to reject transactions that occur 14 days after provision of 45-day notice
- **September Proposal would modify the right to cancel**
 - Would not apply to rate increases



The Interim Final Rule prohibits an issuer from

- Treating a payment as late for any purpose
- Imposing additional finance charges
- Unless the issuer has adopted reasonable procedures designed to ensure that each periodic statement is mailed or delivered to the consumer at least 21 days before the due date
- This requirement also applies to the grace period



Minimum 21-Day Payment Period

Section 106

- The requirement applies to all open-end credit accounts including home equity lines of credit
- Implementation guidance provided for non-credit card accounts
- For a period of time, statements can be out of technical compliance provided
 - Creditor does not treat payment received within 21 days as late and discloses such



Requirement Effective February 22, 2010



Scope of CARD Act

- The majority of CARD Act provisions apply only to credit card accounts
 - Right to reject
 - Repayment disclosures
 - Repricing limitations
- Some provisions apply to all open-end accounts
 - 21-day time to pay
 - 45-day notice requirements
- Home equity lines accessed by a credit card are generally excluded
- Overdraft lines of credit accessed by a debit card would be excluded

Limits on Retroactive Price Increases

Section 101(b)

- Prohibits a rate or fee increase on an outstanding balance, unless one of six exceptions applies:
 1. Temporary rate – with proper advance disclosure of time period and “go to” rate
 2. Variable rate – publicly available and beyond issuer’s control
 3. Workout or temporary hardship arrangement – with advance proper disclosure of purpose, time frame and “return to” rate
 4. 60-day delinquency in making minimum payment – with proper disclosure and right to cure
 5. Advance notice – with 45-day advance written notice
 6. Servicemembers Civil Relief Act – with 45-day advance written notice



Limits on Retroactive Price Increases

Section 101(b)

- Also, contingent rate or fee increases prohibited
 - Limitation impacts relationship banking (*i.e.*, employee accounts and consumers with multiple products)
 - May require restructuring of relationships



Limits on Retroactive Price Increases

Section 101(b)

- Proposal clarifies that the prohibition on increasing fees only applies to fee increases on outstanding balances
 - For example, an increase or addition of a closed account fee could not apply to the outstanding balance
- An issuer is not prohibited from increasing a fee that applies to the account as a whole or to new transactions
 - For example, increasing a late fee or a returned check fee would not be so limited
 - Increasing the annual fee is not so limited as long as increase is not based solely on the protected balance
- Nevertheless, a 45-day written notice still is required for such fee changes and consumers would have the right to reject the fee increase

Exceptions to Limits on Price Increases

Section 101(b)

Exception 1: Temporary Rate

- A rate may be increased at the expiration of a specified period of time if:
 - Prior to the beginning of that period, the issuer discloses, in a clear and conspicuous written notice, both the length of the period and the rate that will apply at expiration of the period
 - The increased rate does not exceed the previously disclosed rate and
 - The increased rate is not applied to transactions that occurred prior to the commencement of the reduced rate period
 - However, rolling or consecutive rate reduction periods are permissible as long as the “go to” rate does not exceed the rate in effect prior to the initial reduced rate period
 - And, stepped rates are permissible if properly disclosed



Exceptions to Limits on Price Increases

Section 101(b)

Exception 2: Variable Rate

- A variable rate may increase, if the rate increase is based on an index that is:
 - Not under the control of the issuer
 - Available to the public
- An issuer will be restricted in its ability to change a non-variable rate to a variable rate
 - Could require ongoing use of both fixed and variable rates for the same account
 - Could cause complex payment allocation issues
- But, an issuer can change a variable rate to a fixed rate if the fixed rate is lower than the indexed rate on the date of the change

Exceptions to Limits on Price Increases

Section 101(b)

Exception 3: Workout or Temporary Hardship Arrangement

- A rate, fee or finance charge can be increased upon the consumer's completion, or failure to comply with the terms, of a workout or temporary hardship arrangement
- Provided that:
 - The new rate, fee or finance charge does not exceed the rate, fee or finance charge that applied to that category of transactions prior to commencement of the arrangement and
 - The terms of the arrangement, including any increase due to the completion or failure to comply with the arrangement, are properly disclosed to the consumer in writing before the start of the arrangement
- So clear disclosure becomes condition of the issuer's ability to increase the rate, fee or finance charge



Exceptions to Limits on Price Increases

Section 101(b)

Exception 4: 60-Day Delinquency

- A rate, fee or finance charge may be increased, and the increase may be applied to the outstanding balance, if the consumer has not made a minimum payment within 60 days
- But only if:
 - The issuer provides the 45-day advance notice required by Section 101(a)
 - The issuer provides a clear and conspicuous written statement of the reason for the increase and
 - The consumer is given the right to cure (or reduce the rate, fee or finance charge) after making six consecutive timely payments
 - The cure period is for the six statement periods following the increase, not some later six consecutive payments
 - Cure does not require recrediting
 - If cure occurs, an issuer must reduce the rate to the prior applicable rate for all transactions that occurred prior to 14 days after the date on which the 45-day delinquency notice was provided



Exceptions to Limits on Price Increases

Section 101(b)

Exception 5: Advance Notice

- A rate, fee or finance charge can be increased for new transactions if the issuer complies with 45-day notice requirement or other applicable notice requirements
- However, the consumer will have the right to reject the rate or fee increase
 - Issuer can close the account upon rejection IF the issuer discloses this possibility in the 45-day change notice
 - Otherwise, a new 45-day notice period would be required



Exceptions to Limits on Price Increases

Section 101(b)

Exception 6: Servicemembers Civil Relief Act (“SCRA”)

- A rate increase would be permitted if an issuer decreases a rate as required by the SCRA once the SCRA rate limitation no longer applies
- However, an issuer would not be permitted to apply a rate that exceeds the rate that applied to the transaction prior to a decrease
- The Board did not propose a corresponding exception to the 45-day advance notice requirement because of its belief that a consumer leaving military service should receive a 45-day advance notice of a rate increase



Exceptions to Limits on Price Increases

Section 101(b)

- Implementation and Compliance Issues:
 - Similar to the UDAP Rule, dual notice of anticipatory repricing should be permitted, but not addressed in Proposal
 - Application of rate increase to a mid-cycle change; that is, where the 45-day notice period ends in the middle of a billing cycle
 - No retroactive effect so the issuer could only apply the increased rate for the remaining days of the billing cycle
 - However, a delay in implementing the increased rate to the beginning of the next billing cycle is permissible without relinquishing the right to increase the rate



Limitations on Initial and Promotional Rates and Fees - Section 101(d)

- An increase in a rate, fee or finance charge on a credit card account may not be effective before the end of the first year after the account is opened
 - Exceptions described earlier apply (for example, a rate increase if the consumer is 60 days delinquent)
 - Proposal includes May 2009 clarifications on what is a new account
 - A new account is not:
 - A balance transfer with the same issuer
 - A transfer of an account through a merger or acquisition



Limitations on Initial and Promotional Rates and Fees - Section 101(d)

- An issuer may not increase a promotional rate within six months after the date the promotional rate takes effect
 - This limitation is subject to such reasonable exceptions as the Board may establish by rule
 - The Board has proposed to apply the same exceptions described earlier
 - For example, a promotional rate could be a variable rate or could be increased should a 60-day delinquency occur, subject to the 45-day notice requirements



Limits on Fees and Interest Charges

Section 102

- *Prohibition on Penalties for On-Time Payments*
 - Proposal prohibits double-cycle billing
 - This prohibition does not apply to:
 - A finance charge adjustment resulting from the resolution of a dispute or
 - A return of a payment for insufficient funds
 - The Board also proposes to include other similar payment failures, such as a closed account or a payment stopped by the consumer



Limits on Fees and Interest Charges

Section 102

- *Partial grace requirement*
 - Proposal requires issuers offering a grace period to provide a grace period for partial payments
 - Clarifies that an issuer is not required to offer a grace period
 - Clarifies that an issuer can establish requirements for grace period qualification
 - Provides examples indicating that the requirement does not apply if the consumer does not qualify for a grace period under the terms of an account agreement
 - For example, the requirement for full payment two cycle's in a row
 - For example, the requirement that the consumer pay the previous balance in full
 - Clarifies that issuers must comply with payment allocation rule even if compliance results in loss of the grace period or higher interest charges



- *Opt In Required for Imposition of Over-the-Limit Fees*
 - Proposal prohibits an issuer from charging an over-the-limit fee when a consumer exceeds the authorized credit limit, unless the consumer opts in before that transaction
 - Applies to any transaction that causes the consumer to exceed the limit
 - Before opting in, the consumer must receive a notice disclosing the over-the-limit fee
 - This notice can be oral, electronic or in writing, but consumer must be able to revoke using same method or methods established by the issuer for the opt in
 - If a consumer opts in and a fee is imposed, the issuer must notify the consumer of the right to rescind the opt in
 - This right to cancel the opt in must be given on the statement that includes the over-the-limit fee



Limits on Fees and Interest Charges

Section 102

- Proposal includes the following model language

G-25(A)—Consent Form for Over-the-Credit Limit Transactions

Your right to request over-the-credit limit coverage

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of \$XX and may increase your APRs to the Penalty APR of XX.XX%.

You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want us to authorize transactions that go over your credit limit, please:

- Call us at [telephone number];
- Visit [Web site]; or
- Check the box below, and return the form to us at [address].

I want you to authorize transactions that exceed my credit limit. I understand that if I go over my credit limit, I will be charged a fee of \$__ and my APRs may be increased.



Limits on Fees and Interest Charges

Section 102

- *Limitations on Over-the-Limit Fees*
 - The CARD Act requires Board to prescribe regulations to prevent unfair or deceptive acts or practices relating to over-the-limit transactions
 - In response, the Proposal prohibits an issuer from:
 - Imposing more than one over-the-limit fee per billing cycle
 - Imposing an over-the-limit fee in more than three billing cycles for the same transaction, subject to a limited exception
 - Imposing an over-the-limit fee because of the issuer's failure to promptly replenish available credit
 - Conditioning the amount of the credit limit on the consumer's consent to payment of over-the-limit transactions
 - Imposing an over-the-limit fee if a consumer exceeds his or her credit limit solely because of fees or interest charged during the billing cycle



Limits on Fees and Interest Charges

Section 102

- *Limits on Fees Related to Method of Payment*
 - Proposal prohibits an issuer from imposing a separate fee when a consumer makes a payment on the account
 - The prohibition applies regardless of whether the payment is made by mail, electronic transfer, telephone authorization or other means
 - Proposal expressly exempts from this prohibition a payment that involves an expedited service initiated by an actual representative of the issuer
 - “Expedited” means “crediting a payment the same day” or the next day, if received after cut-off time
 - “Expedited” is not necessarily tied to the payment due date
 - The Board indicates there are other reasons for an expedited payment
 - For example, a payment to reduce the balance in anticipation of another transaction



Application of Card Payments

Section 104

- *Timely Receipt of Payments*
 - The Proposal prohibits an issuer from imposing a late fee or finance charge on a consumer's account if the issuer receives the consumer's payment in an identifiable form by 5:00 p.m. on the date the payment is due
 - Specifically, an issuer is prohibited from setting a cut-off time for payments by mail, electronic means, telephone or in person earlier than 5:00 pm
 - Applies to all open-end credit accounts
- If an issuer permits payments at a branch or office of that “depository institution,” the payment cut-off time depends on the hours of that branch or office
 - Assumes payment to a teller or other representative, not a “mail” facility at the branch or office
 - Does not apply to payments accepted at a retail location of a co-brand partner of the issuer



Application of Card Payments

Section 104

- *Application of Payments*
 - The Proposal requires an issuer to apply any amount paid in excess of the minimum payment:
 - First to the card balance subject to the highest rate of interest
 - Then to each successive balance subject to the next highest rate of interest, until the payment is exhausted
 - Proposal clarifies that limitation only applies to credit card accounts
- The issuer may apply the minimum payment amount to a balance or balances
 - The issuer may determine the amount of the minimum payment applicable to the account



Application of Card Payments

Section 104

- The Proposal has a special requirement for deferred interest arrangements:
 - The issuer must apply the entire amount in excess of the minimum payment to the deferred interest balance during the last two billing cycles immediately preceding the expiration of the period during which interest is deferred
- Proposal includes special disclosure requirements for deferred interest programs
 - Periodic statement – must show interest accruing and disclose final deferred payment date
 - Advertising – must condition “same as cash” type statements on timely repayment



- *Due Dates for Credit Card Accounts*
 - Proposal requires the payment due date for a credit card account to be the same calendar day each month
 - “Same day” means the same numerical day of the month
 - For example, 25th of every month is okay; third Tuesday of every month is not okay
 - Board requests comment on impact of having only 28 possible payment dates each month
 - If the payment due date is on a day on which the issuer does not receive or accept payments by mail (including weekends and holidays), the Proposal prohibits an issuer from treating a payment received on the next business day as late for any purpose



Consideration of Ability to Repay

Section 109

- The Proposal prohibits an issuer from:
 - Opening a credit card account for a consumer or
 - Increasing the credit limit of a consumer's existing account
- Unless the issuer has considered the ability of the consumer to make the required minimum payments under the terms of the account based on the consumer's income or assets and current obligations
 - Reasonable policies and procedures for considering ability to repay are required
 - Issuer would have to estimate required minimum payment
 - Safe harbor for estimating required payment, but this estimate (based on full line utilization immediately) overstates required payment



Consideration of Ability to Repay

Section 109

- Proposal does not require issuer to verify information provided before opening the account or increasing the credit limit
- Proposal permits reliance on the information provided by the consumer or on information in credit reports
 - However, use of information from third parties other than credit bureaus is unclear
 - Also, use of estimated income and/or obligations is unclear
 - No diminish exception proposed (e.g., accounts with limits less than \$500 or \$1,000)
 - Rule, as proposed, goes far beyond statute and could present substantial difficulties at POS



Minimum Payment and Payoff Timing Disclosures - Section 201

- Proposal requires new periodic statement disclosures
 - The amount of time and the total cost involved in paying the balance in full when making only minimum payments
 - The monthly payment amount required to pay off the balance in 36 months
 - The total cost of repaying the balance in 36 months
 - Savings compared to making only the minimum payments
 - Toll-free telephone number about credit counseling
 - Three government-approved organizations in customer's state, verified annually



Minimum Payment and Payoff Timing Disclosures - Section 201

- Alternative disclosures if negative amortization
- Exceptions for accounts paid in full for two consecutive months
- Proposal requires due date, late payment fee or rate, ending balance, minimum payment due and repayment disclosures grouped together on first page of statement



Minimum Payment and Payoff Timing Disclosures - Section 201

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information

New Balance	\$1,784.53
Minimum Payment Due	\$53.00
Payment Due Date	4/20/12

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a \$35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

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. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	10 years	\$3,284
\$62	3 years	\$2,232 (Savings=\$1,052)

If you would like information about credit counseling services, call 1-800-xxx-xxxx.



Renewal Disclosures

Section 203

- If an issuer has changed any term of account agreement since last renewal without disclosing that change to the consumer, the issuer must provide the consumer with a renewal disclosure at least 30 days prior to the scheduled renewal date
- What does “any term” mean?
 - Requirement would only apply to terms required to be disclosed in account-opening
 - So should only apply if significant term changes have not been disclosed through a 45-day written notice, such as an interest rate reduction
 - Requirement would not apply to insignificant fees, such as an expedited fee or statement copy fee



Internet Posting of Credit Card Agreements - Section 204

- Proposal requires an issuer to make quarterly submissions to the Board of “credit card agreements,” defined as “a written document or documents evidencing the terms of the legal obligation . . . between a card issuer and a consumer”
 - The term “[a]greement” is defined to include “pricing information,” such as information included in the account-opening disclosure
- Proposal sets standards for submitting agreements to the Board
 - For example, information that might vary from one cardholder to another depending on a cardholder’s creditworthiness or other factors, such as pricing information, must be set forth in an addendum to the agreement
 - Issuers would not be required to submit state or other federal law disclosures, privacy policies or solicitation materials that are not incorporated into the agreement



Internet Posting of Credit Card Agreements - Section 204

- An issuer would be required to post on its Web site the agreements submitted to the Board
- Issuers would be required to make available to individual consumers their specific credit card agreements by either:
 - Posting and maintaining the consumer's agreement on the issuer's Web site
 - Promptly providing a copy of the consumer's agreement upon request
 - Consumers must be able to make such a request through the Web site or by toll-free number



Extension of Credit to Underage Consumers - Section 301

- An issuer is prohibited from issuing a card to a consumer who is younger than 21, unless the issuer obtains a written application from the consumer
- The application must either:
 - Include the signature of a cosigner who is at least 21 who has the means to repay the debts incurred by the young consumer and who will be jointly liable for debts incurred in connection with the account before the consumer reaches the age of 21 or
 - Present financial information showing that the young consumer has independent means of repaying debts incurred in connection with the account



Extension of Credit to Underage Consumers - Section 301

- Prohibition would apply only at account opening, not
 - A renewal on an existing account
 - A replacement card for one lost or stolen
- Prohibition would not apply to authorized users who are not personally liable
- Proposal explains that issuers must comply with Regulation B
 - Policy of refusing to consider an application from a consumer under the age of 21 is prohibited



Increasing the Credit Limit

Section 303

- Proposal limits the ability of an issuer to increase the credit limit on a credit card account with a young “liable” cardholder
 - The limitation applies where a parent, legal guardian or spouse of the consumer, or any other individual, has assumed joint liability for the debt incurred by the consumer
 - The issuer cannot increase the credit limit before the consumer reaches the age of 21, unless the parent, guardian, spouse or other person approves the increase in writing and assumes joint liability for the increased limit



Requirements Effective August 22, 2010



Interest Rate Reduction

Section 101(c)

- The Act requires an issuer who increases the rate on a credit card account based on risk factors to consider changes in “such factors” when subsequently determining whether to reduce the rate on that account
- The Act expressly states that this section should not be construed to require a reduction in any specific amount
- The Board must write rules by February of 2010



Interest Rate Reduction

Section 101(c)

- Specifically, the issuer must:
 - Maintain reasonable methodologies for assessing risk factors
 - Review, every six months, any account where the rate has been increased for risk since January 1, 2009
 - Assess whether the risk factors have changed, including whether the risk has declined
 - Reduce the rate when a reduction is indicated by the review
 - If a rate is increased, the issuer must provide the 45-day notice, including the reason for the rate increase
- Does the reference to “such factors” limit the issuer’s ability to modify its risk models?



Limits on Fees and Interest Charges

Section 102

- *Reasonable Penalty Fees*
 - The Act prohibits an issuer from imposing a penalty fee or charge in connection with any omission or violation of a credit card agreement unless the fee is “reasonable and proportional” to the omission or violation
 - This restriction applies, for example, to any late payment, over-the-limit fee or other penalty fee
 - The Board is required to establish standards for assessing this requirement by considering:
 - The costs incurred
 - The deterrence value of the fee
 - The conduct of the cardholder
 - Such other factors as are deemed appropriate

