



Credit Card Accountability Law 2009





Today's Presenters



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Credit Card Accountability Law 2009: An Overview



President Barack Obama - May 22, 2009

“With this new law, consumers will have the strong and reliable protections they deserve. We will continue to press for reform that is built on transparency, accountability, and mutual responsibility – values fundamental to the new foundation we seek to build for our economy.”

President Barack Obama
May 22, 2009



Christopher Dodd Chair - April 3, 2008

“Credit cards can be a valuable financial tool for millions of Americans. When used wisely, and on fair terms, credit cards can help families better position themselves to pursue financial goals such as owning a home or financing higher education for their children. Unfortunately, however, credit cards too often pose a potential to harm consumers rather than help them. Confusing, misleading, and in some cases predatory practices have become standard operating procedure for some in the credit card industry.

- Christopher Dodd
Chair, Senate Banking Committee
April 3, 2008



Ben S. Bernanke - December 28, 2008

“Because improved disclosure alone cannot solve all the problems consumers face in trying to manage their credit card accounts, the Board was persuaded that fundamental changes are needed to establish a new baseline of fairness in the way credit card plans operate.”

Chairman Ben S. Bernanke
December 28, 2008



Credit Card Accountability, Responsibility and Disclosure Act of 2009

- A/K/A Credit Cardholders' Bill of Rights.
- Signed into law on May 22, 2009.
- Interim regulations issued July 15, 2009.
- The Federal Reserve Board will address proposed rules in stages.



Title I: Consumer Protection Ten Important Provisions



Section 101(a): “Advance Notice of Rate Increase and Other Changes Required” (New Section 127(i) of TILA)

- 45 Days Notice of “Any Significant Change,” including changes to:
 - APR
 - Issuance or Availability Fees
 - Fixed Finance and Minimum Interest Charges
 - Transaction Charges
 - Grace Period
 - Balance Computation Method
 - Cash advance Fees
 - Late Payment Fees
 - Over-the-Limit Fees
 - Balance Transfer Fees
 - Returned Payment Fees
 - Required Insurance
 - Debt Cancellation
 - Debt Suspension Coverage

- NOT Changes Unlikely To Result In Fee Increase Or “Costly Surprise”



Section 101(a): “Advance Notice of Rate Increase and Other Changes Required” (New Section 127(i) of TILA)

- “Clear and Conspicuous”
- Right to Cancel = Right to Reject Changes
- Cancellation Is NOT An Event of Default
- No Change In Repayment Terms UNLESS:
 - 5-Year Amortization
 - 2x Outstanding Balance
 - No Less Beneficial
 - Same Terms
 - “Section 171(c) Repayment Terms”
- Effective August 20, 2009



Section 171: “Limits on Interest Fees and Finance Charge Increases Applicable To Outstanding Balances”

- Prohibits APR, Fee, and Finance Charge Increases EXCEPT:
 - Expiration Of Specified Time Period
 - Variable Rates
 - Hardship/Workout Agreements
 - 60+ Day Delinquent Accounts
 - “Section 171(b) Exceptions”
- Prohibits Change In Repayment Terms On Outstanding Balances UNLESS They Satisfy The Section 171(c) Repayment Terms



Section 148: “Interest Rate Reduction on Open End Consumer Credit Plans”

- Affirmative Duty To Evaluate Card Holders Prior To APR Increase, And Conduct Review Every Six Months Thereafter
- “Reasonable Methodologies”
- Must “reduce APR previously increased when reduction is indicated by the review.”
- Board Rules: Due 2/22/10; Effective 8/22/10



Section 172: “Additional Limits On Interest Rate Increases”

- Rule: No First-Year Increases Unless A Section 171(b) Exception Applies
- Promotional Rates Must Last At Least Six Months
- Fed Rulemaking:
 - “Promotional Rate”
 - “Reasonable Exceptions”



Section 102: “Limits On Fees And Interest Charges”

- NO:
 - Finance Charges For On-Time Payments
 - Double-Cycle Billing
 - Over-The-Limit Fees UNLESS Consent
 - Only 1 O-T-L Charge Per Cycle;
Maximum Of 2 Charges Over 3 Cycles
 - Payment Method Fees



Section 149: “Reasonable Penalty Fees On Open End Consumer Credit Plans”

- Credit Card Penalties Must Be “Reasonable and Proportional” to the “Omission or Violation”
- Subject To Anticipated Heavy Rulemaking, Including “Safe Harbor” Provisions
- Consideration for Board in issuing rules:
 1. The cost to the creditor for such omission or violation.
 2. The deterrence effect of the fee.



Section 104: “Application Of Card Payments”

- Payments Before 5:00 P.M. Are Timely
- Payments In Excess Of Minimum Must Be Allocated To Highest Rate First UNLESS Subject To Deferred Interest Plan
- No Fees For Late Payments Due To Material Change In Mailing Address



Section 106: “Rules Regarding Periodic Statements”
Section 163: “Timing of Payments”

- Same Due Date Every Month
- Weekend/Holiday Due Dates: Timely Paid On Next Business Day
- 21-Day Mailed Or Delivered Rule
- “Reasonable Procedures” Prerequisite To “Late Treatment”
- “Grace Period”
- “Courtesy Period” Is Not A Legal Deadline



Section 109: “Considerations of Ability to Pay”

- “A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.”



Title II: Enhanced Consumer Disclosures



Section 201: Payoff Timing Disclosures

- Minimum payment warning: “Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.”



Section 201: Payoff Timing Disclosures

- Creditors will have an obligation to inform consumers of the financial consequences of making only minimum payments on their credit cards.
- Each credit card statement must set forth prepayment information that applies to the outstanding balance, including:
 1. The number of months it would take to pay the entire balance if the customer makes only the minimum payment.
 2. The total cost to the customer, including interest and principal, of paying balance in full if the customer makes only the minimum payment.
 3. The monthly payment amount that would be required for the customer to pay off the outstanding balance in 36 months.
 4. A toll-free number at which the customer can get information about credit counseling and debt management services.



Section 202: Requirements Relating to Late Payment Deadlines and Penalties

- The periodic statement must notify the customer of the date on which a late fee will be charged if payment is not received and the amount of the late fees.
- If a late payment may result in an increase in the APR, the periodic statement must include a conspicuous notice of that fact, together with the applicable penalty APR.



Section 202: Payments at Local Branches

- If a financial institution maintains branches or offices at which account payments are accepted, the date the obligor makes a payment at such branch or office must be considered the date the payment is made for purposes of determining whether a late fee may be imposed.



Section 204: Internet Posting of Credit Card Agreements

- Each creditor must 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.
- The creditor must also provide a copy of the agreement to the Board so it can publish it on its site.



Title III: Protection of Young Consumers



Section 301: Extension of Credit to Underage Consumers

- No credit card may be issued to someone under 21 unless the person submits a written application which:
 - a. Contains the signature of a cosigner 21 years of age or over having the means to repay and joint liability for debts incurred by the young consumer or;
 - b. Submission by the young consumer of financial information indicating an independent means to repay.
- Any credit line increases must be approved by the cosigner. (Section 303).



Section 302: Protection of Young Consumers from Prescreened Credit Offers

- Creditors will not be permitted to obtain a consumer report which indicates that someone is under 21 for prescreening purposes.



Section 304: Privacy Protections for College Students

- An institution of higher education shall publicly disclose any contract made with a card issuer for purposes of marketing a credit card.
- Inducements prohibited at or near the campus or at a campus event.



Section 305: College Credit Card Agreements

- Each creditor must submit an annual report to the Board containing the terms and conditions of all student credit card agreements.



Title IV: Gift Cards



Key Dates

- Board must issue regulations by February 2010
- Title IV becomes effective August 2010



Section 915(a): Scope of Title IV

- General Use Prepaid Cards
 - Redeemable at multiple, unaffiliated merchants or ATM's
 - Issued in a requested amount
 - Purchased or loaded on a prepaid basis
 - Honored upon presentment



Gift Certificates

- Redeemable at a single merchant or affiliated merchants
- Specified amount that may not be increased
- Purchased on a prepaid basis
- Honored upon presentment



Store Gift Cards

- Redeemable at single merchant or affiliated group of merchants
- Issued in a specified amount, regardless of whether it may be increased in value
- Purchased on a prepaid basis
- Honored upon presentment



Section 915(a)(2)(D): Exclusions

- Telephone services
- Reloadable and not marketed as a gift card or gift certificate
- Loyalty, reward, and promotional gift cards
- Not marketed to the general public
- Issued in paper form only
- Redeemable for admission to events or venues



Section 915(b): Prohibition on the Imposition of Fees

- Dormancy fees and service fees prohibited
- Exception
 - 12 months of inactivity
 - Disclosures
 - Limit of 1 fee per month
 - Compliance with any additional Board requirements
- One-time issuance fee for general use prepaid cards



Section 915(b)(3): Disclosure Requirements

- Required disclosures
 - The fact that a dormancy fee will be charged
 - Amount
 - Frequency
 - Fee assessed because of inactivity
- Disclosures required before purchase
- Exclusion for gift certificates
 - distributed pursuant to an award, loyalty, or promotional program; and
 - there is no money or value exchanged



Section 915(c): Prohibition on Expiration Dates

- Unless
 - The expiration is not earlier than 5 years after:
 - When the gift certificate was issued, or
 - When funds were last loaded to a store gift card or a general-use prepaid card
 - Expiration terms must be clear and conspicuous



Section 915(d): Additional Rulemaking

- Possible caps on dormancy fees
- Applicability of the EFTA and Regulation E



Remedies

- Violations of Credit Card Act of 2009 trigger remedies found in TILA, FCRA or EFTA depending on which section is involved.
- An additional TILA remedy has been created for cases involving an established pattern or practice which violates the law.
- To the extent that a violation also constitutes an “unfair practice” plaintiffs may be able to obtain even more substantial remedies by adding state deceptive trade practice remedies.



Applicable August 20, 2009

- Requirement of advance notice of rate increases or significant changes in terms.
- Rules governing voluntary closure or cancellation of the account.
- Rules addressing reasonable procedures to ensure that the periodic statements are mailed not later than 21 days before payment is due and the timing of payments.



Applicable May 22, 2010

- Rules governing reasonableness of penalty fees and interest rate reductions.



Applicable February 22, 2010

- Everything else!



What the Credit Card Act Does *Not* Do

- Although attempts were made to include a provision that would cap APR at 18%, they were voted down.



What the Credit Card Act Does *Not* Do

- Also did not disturb the National Bank Act provision that allows national banks to charge interest at the highest rate allowed under the law of the state where it is located.



Thank You for Your Participation