FDIC

Federal Deposit Insurance Corporation
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Financial Institution Letter
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REGULATION Z – OPEN-END CONSUMER CREDIT CHANGES

Notice of Immediate and 90-Day Changes

Summary: The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) amended the Truth in Lending Act (TILA) to establish fair and transparent practices for open-end credit plans, including credit cards. The Federal Reserve Board (FRB) announced interim final regulations to implement those provisions of the Credit CARD Act that take effect on August 20, 2009. The FDIC expects the institutions it supervises to take appropriate steps to ensure compliance with these new requirements.

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Highlights:

Provisions of the Credit CARD Act generally take effect on February 22, 2010, and the FRB will issue additional implementing regulations. However, the following provisions immediately affect open-end credit plans, including credit cards. On or after August 20, 2009:

- Applicable to <u>all</u> open-end consumer credit accounts, including credit cards and home equity lines of credit accessed by a credit card, creditors must mail or deliver periodic statements at least 21 days before the payment is due.

- Applicable to credit card accounts, creditors must give 45-days notice of increases in the Annual Percentage Rate (APR) or other significant changes in terms, including a notice of the right to cancel the account.

All increases in the APR of a credit card account after January 1, 2009, must be reviewed beginning in August 2010 for a possible reduction in the APR based on the same factors used to justify the increase.

The FDIC is focused on enforcing compliance with these and other provisions of law, including taking action to address practices that are or may be unfair or deceptive in violation of Section 5 of the Federal Trade Commission Act.

The new regulations are available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090715a1.pdf.

REGULATION Z − OPEN-END CONSUMER CREDIT CHANGES
Notice of Immediate and 90-Day Changes

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) was enacted to ensure fair treatment of consumers and transparent practices relating to the extension of credit under open-end consumer credit accounts, including credit cards. It amends the Truth in Lending Act (TILA) and several other statutes and gives responsibility to the Board of Governors of the Federal Reserve System (FRB) to promulgate regulations.

The Credit CARD Act's amendments to TILA take effect in three stages. The interim final rule adopted by the FRB on July 15, 2009 (available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090715a1.pdf), implements the provisions of the Credit CARD Act that take effect on August 20, 2009. The FRB will issue separately regulations to implement the provisions that take effect on February 22, 2010, and August 22, 2010.

The FDIC expects that card issuers it supervises have begun planning for compliance with the Credit CARD Act's requirements. This Financial Institution Letter is intended to highlight the most immediate compliance requirements, including ensuring that all institutions that offer open-end credit are aware of the "time to pay" rules.

The FDIC is focused on enforcing compliance with these and other provisions of law, including taking appropriate action to address practices that are or may be unfair or deceptive in violation of Section 5 of the Federal Trade Commission Act.

A summary of the Credit CARD Act's key provisions with immediate impact on credit card issuers follows:

Interest Rate Reduction. Section 101(c) of the Credit CARD Act adds Section 148 to TILA. The Section establishes new requirements for changes in interest rates on credit cards under open-end consumer credit plans. Any interest rate increases that have occurred − or will occur − since January 1, 2009, will be subject to a mandatory "look back" review at least once every six months, beginning 15 months after enactment. Using a "reasonable methodology," creditors will be required to assess the same risk factors used to justify an interest rate increase in determining whether a corresponding decrease in the interest rate is justified.

The FRB is required to issue final rules within nine months after enactment to implement the requirements of and evaluate compliance with the new Section 148.

Institutions should note that although the specific repricing provisions have not taken effect, the FDIC expects institutions it supervises to demonstrate regular meaningful progress in preparing for full compliance with these new restrictions and requirements. The FDIC urges institutions to ensure they adopt reasonable methodologies for determining rate changes as well as adequate procedures to review accounts.

Changes Effective on August 20, 2009 (90 Days After Enactment)

1. Advance Notice of Rate Increase and Other Changes Required: Section 101(a) of the Credit CARD Act amends Section 127 of TILA to add a subsection that will require a creditor to provide at least 45 days advance written notice of:

(a) an increase in any APR other than:

- a properly disclosed introductory rate;
- in the case of a variable rate, a change in the index; or
- the cardholder's failure to comply with the terms of a workout agreement; or

(b) other significant changes in the terms of the agreement (such as increases in fees or finance charges).

2. Notice of Right to Cancel: The 45-day advance notice described above must be clear and conspicuous and contain a statement of the consumer's right to cancel the account before the effective date of the change. The FRB is drafting rules to implement this section. Creditors should be aware that exercising the right to close or cancel an account by a consumer cannot be deemed to be an event of default and cannot trigger the imposition of any other penalty or fee. It also cannot trigger an immediate obligation to pay the outstanding balance in full or through a method that is less beneficial than either:

(a) a five-year amortization period, beginning on the effective date of the increase; or

(b) a required minimum periodic payment that includes a percentage of the outstanding balance equal to no more than twice the percentage required on the date on which the creditor was notified of the rejection.

3. Time to Pay: Section 106(b) of the Credit CARD Act amends TILA to prohibit a creditor from treating a payment on an open-end consumer credit plan as late for any purpose unless the creditor has adopted reasonable procedures designed to ensure periodic statements are mailed or delivered no later than 21 days before the payment due date.

Special rules for accounts with grace periods. If a creditor offers a grace period (a period within which consumers may repay an outstanding balance without incurring any additional finance charge), any additional finance charge(s) may not be imposed unless the creditor mails or delivers a statement reflecting the charge(s) at least 21 days before the payment is due to avoid that finance charge.

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