



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-74-2009
December 23, 2009

REGULATION Z – OPEN-END CONSUMER CREDIT CHANGES

Notice of Statutory Amendment, Additional Guidance

Summary: On November 6, 2009, President Obama signed the Credit CARD Technical Corrections Act of 2009, which narrowed the scope of application of the Credit CARD Act's requirement that creditors mail or deliver periodic statements at least 21 days before the payment due date to credit card accounts only. Previously, this requirement applied to all forms of open-end credit, including home equity lines of credit. This Financial Institution Letter (FIL) updates the information provided in FIL-44-2009, "Regulation Z – Open-End Credit Changes," by notifying bankers of this statutory change and providing additional guidance on how to provide the required advance notice of change(s) in interest rates or other significant terms.

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Highlights:

- The Credit CARD Technical Corrections Act, signed into law on November 6, 2009, amended section 106(b) of the Credit CARD Act and, by reference, the amendments to Regulation Z issued by the Federal Reserve Board (FRB), effective August 20, 2009. The rule originally required creditors to mail or deliver periodic statements at least 21 days before the payment is due for **all** open-end credit plans. As revised, the 21-day periodic statement requirement is now limited to **credit card accounts only**, effective immediately.
- As highlighted in FIL-44-2009, the Credit CARD Act requires creditors to give 45 days' advance notice of increases in the annual percentage rate (APR) or other significant terms of a credit card account. To implement this requirement, the FRB exercised its interpretive authority to permit a creditor to apply the change or increase to transactions occurring more than 14 days after the 45-day advance notice is sent. The rule does not require the notice to explain how and when the new rates or terms will take effect.
- Because the interplay between the 14-day and 45-day periods may catch some customers by surprise, and to prevent customer confusion, the FDIC encourages institutions to provide an additional statement in the 45-day notice to clarify that, whether or not a consumer accepts or rejects an interest rate increase or other significant change, the changed terms will automatically apply to transactions that occur more than 14 days after the notice has been provided (i.e., sent). This is intended to give consumers enough time to adjust their use of the credit card following receipt of the notice.

REGULATION Z – OPEN-END CONSUMER CREDIT CHANGES
Notice of Statutory Amendment; Additional Guidance

Statutory Amendment

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) established new disclosure requirements and substantive limits on certain practices relating to open-end consumer credit plans. The Credit CARD Act provisions are taking effect in stages between August 2009 and August 2010. Rules concerning periodic statements and advance notice of significant changes in terms took effect on August 20, 2009, and were implemented by the Federal Reserve Board (FRB) through an interim final regulation published on July 22, 2009. 74 Fed. Reg. 36077 (July 22, 2009), available at <http://edocket.access.gpo.gov/2009/pdf/E9-17195.pdf>. In addition, proposed regulations relating to interest rate increases, over-the-limit transactions, and student cards, effective February 22, 2010, were published in the *Federal Register* on October 21, 2009. 74 Fed. Reg. 54124, available at <http://edocket.access.gpo.gov/2009/pdf/E9-23733.pdf>.

The FDIC issued FIL-44-2009, “Regulation Z, Open-End Consumer Credit Changes,” on August 6, 2009, to provide bankers with notice of these provisions, and to provide information on other sections of the law that are not effective, but which have immediate impact. This Financial Institution Letter (FIL) updates FIL-44-2009 to provide notice of the recent statutory change regarding periodic statements discussed above, as well as guidance on additional recommended disclosures for the 45 day advance notice of interest rate increases or other significant changes in terms.

21- Day Periodic Statement Now Required For Credit Card Accounts Only – On November 6, 2009, President Obama signed the Credit CARD Technical Corrections Act of 2009. This statute amends section 163(a) of the Truth in Lending Act to narrow the scope of application of the new requirement added by the Credit CARD Act that creditors mail or deliver periodic statements at least 21 days before the payment due date to apply only to credit card accounts, as opposed to all open-end credit plans. The FDIC anticipates that the FRB will further revise Regulation Z, Section 226.5(b)(2), which implemented the 21-day billing rule, to conform with this change.

Additional Guidance

Advance Notice of Interest Rate Increases or Other Significant Changes in Account Terms – For open-end (not home-secured) consumer credit card accounts, the interim final rule requires that creditors provide consumers with 45 days’ advance notice of

interest rate increases or other significant changes in account terms, including when the increase or change is the result of a delinquency or default, or as a penalty for other actions specified in the account agreement. *See* 12 C.F.R. 226.9(c)(2)(i); (g)(3).¹ Pursuant to the Credit CARD Act, Regulation Z now provides consumers with a right to reject such changes, unless the consumer fails to make the required minimum periodic payment within 60 days of the due date for that payment. If a consumer exercises his or her right to reject changes in rate or other terms, special protections apply. The protections include a prohibition on (1) applying the change or increase to the consumer's existing account balance, (2) imposing fees or treating the account as in default solely as a result of the consumer's rejection of the change, or (3) requiring repayment of the outstanding balance using a method that is less beneficial than either (a) the repayment method in effect on the date the creditor received notice of the rejection by the consumer, or (b) an amortization period of not less than five years.

Recommended Additional Disclosures for the 45 Days' Advance Notice – To implement the advance notice requirements of the Credit CARD Act, the FRB exercised its interpretive authority under TILA to apply the increased rate or other change to transactions occurring more than 14 days after the creditor sends (delivers) a notice. 12 C.F.R. 226.9(h)(3)(ii). The FRB's interim final rule also does not require creditors to explain in clear terms that the 45-day advance notice to consumers that the new terms will be applied to transactions occurring more than 14 days after the 45-day notice is provided. In other words, the only way for a consumer to avoid paying the increased rate (or avoid application of the other significant change) during days 15 through 45 of the required notice period is for the consumer to fully repay those charges before the effective date of the change on day 45.

Because the operation of the interim final rule has the potential to surprise consumers and without sufficient time to change their account usage, and until this issue is clarified by the FRB's ongoing rulemaking process, the FDIC recommends that when creditors apply changes or increases to future transactions, the 45 days' advance notice should include a statement to alert the consumer to the imposition of the new terms on transactions occurring more than 14 days after the notice is provided. This statement should explain that, regardless of whether a consumer accepts or rejects a change or increase, the change will apply to transactions occurring more than 14 days after the notice has been provided, and the notice should specify this date. For example, the statement might read: "Whether or not you reject this change in terms, the new terms will apply to any transactions you initiate after [month/day/year]." This statement should be included with other information required to be provided in the notice.

Sandra L. Thompson
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¹ Other provisions of the Credit CARD Act may impact the content of change-in-terms notice and the types of changes that are permitted, which are not effective until February 22, 2010. Additional rules and guidance will be issued to address those provisions.

