



NEW FEDERAL CREDIT CARD ACT OF 2009

By: Stephen F. Chiccarelli

The Credit Card Act of 2009 comes on the heels of the Final Rule established by the federal bank regulators in 2008. *The Act's effective date will be February 22, 2010*, and while the new statute overlaps substantially with its predecessor, its overall scope is quite a bit broader. Below are some highlights of the new statutory provisions.

Provisions Regarding Consumer Protection

- Section 101 of the Act now requires a 45-day advance notice of rate increases or “other significant changes.”
 - Notice not required if increase or change is due to:
 - expiration of an introductory/teaser rate
 - a change in an index/variable rate cards
 - completion or failure of a hardship arrangement
- Retroactive changes in the account terms will no longer be permitted (except in special situations).
- Issuer may not increase APR or fees for new transactions unless due to:
 - an expiration of a specified period of time
 - a variable rate
 - completion or failure of a workout
 - 60-day delinquency on the account
 - This provision outlaws “universal default” clauses.
- There is no penalty for cardholders that want to close their account.
- Issuers must provide APR reductions if circumstances arise that would warrant a reduction.
- Penalty fees must be reasonable and proportional to the omission or violation.
- “Double-cycle” billing is no longer allowed.
- Cardholder payments in excess of the minimum MUST be allocated to balances with higher APR rates.
- Bills must be sent out no later than 21 days before the due date.
- Prohibition of “over-limit” fees unless cardholder has expressly elected to permit extension of additional credit.



- Minimum payment notices that inform cardholder of:
 - months needed to repay if only minimum payments are made
 - total cost (including interest and principal) of paying balance through minimum payments
 - monthly amount needed to pay off debt in 36 months
 - credit counseling phone number
- “Fixed” rate only refers “to an APR or interest rate that will not change or vary for any reason over the period specified in the terms governing the account.”

Provisions Regarding Consumer Disclosures

- Clear disclosure on how long it would take to pay off a credit card balance if cardholder makes only the minimum payment each month.
- Clear disclosure on the total cost in interest and principal payments if a cardholder makes only the minimum payment each month.
- Late payment deadline and postmark date are required to be clearly shown and disclosed to cardholders.

Provisions Regarding Protection of Young Consumers

- Credit cards cannot be issued to people under the age of 21 unless they have an adult co-signer or show proof that they have the means to repay the debt (proof of reasonable income).
- College students will be required to receive permission from parents or guardians in order to increase credit limit on joint accounts they hold with those adults.
- People under the age of 21 will now be protected from pre-screened credit card offers unless they specifically opt-in for offers.

Provisions Regarding Stored-Value Products (i.e. Gift Cards)

- Gift cards are now required to remain active for at least five years from the day of their activation.
- Dormancy or inactivity fees on gift cards can no longer be imposed unless there have been no activity in a 12-month period.
- Dormancy or inactivity fees must be clearly disclosed to gift card buyers.
- If the gift card expires after 5 years, the terms of expiration needs to be clearly disclosed to gift card buyers.

Criticisms of the Credit CARD Act of 2009

While the above provisions are mostly viewed as needed measures, they are not entirely without criticism. Below are some of the contentions held by analysts of the Credit Card Act of 2009.

- As credit card companies make profits primarily from fees and interest, the fact that the Act curtails one (fees) likely means an increase in the other (interest) to make up the difference. As it now stands, the Act imposes no restrictions on the level of interest rates or on the size of the rate increases that are allowed
- The Act is silent on the industry practice of reducing credit limits at any time for any reason.
- The Act does nothing to ban the forced arbitration clauses that are buried in almost every credit card agreement.
- Analysts believe the act may have unintended consequences. For instance, annual fees, disappearing rewards programs, or shorter (or no) grace periods will likely become prevalent. Also, cardholders who are irresponsible with their usage of credit cards will find lower credit limits and higher interest rates from the start.

The Act's Coverage (Are Open Accounts Covered? Not Specifically.)

- The Credit CARD Act of 2009 does not provide clear definitions for the terms "creditor" or "issuer." Nevertheless, it can be reasonably inferred by statements within the Act itself that its terms reference actual credit card companies and/or stores that actually provide credit cards (as opposed to small local businesses that simply provide "open accounts").
 - The Act uses these terms when referencing "credit cardholders" or simply "cardholders," implying that the Act is only to be applied to those companies that actually distribute physical credit cards.
 - The aim of the Act itself is to regulate the use of credit card interest rates, billing cycles, and other provisions unique to their use; the Act does not seek to regulate all forms of credit.



Stephen F. Chiccarelli
Partner—Baton Rouge
Phone: 225.381.8037
Fax: 225.376.5619
Email: stephen.chiccarelli@bswllp.com

Stephen F. Chiccarelli practices extensively in credit and debtor bankruptcy litigation, general collections litigation and construction and lien law issues as they relate to collection and bankruptcy.