

NAFCU’S SECTION-BY-SECTION ANALYSIS OF THE CREDIT CARD ACT

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NAFCU's Section-by-Section Analysis of the Credit CARD Act

TITLE I – CONSUMER PROTECTION

Sec. 101. Protection of Credit Cardholders.

Advance Notice of Changes

This section amends Section 127 of the Truth in Lending Act (TILA) by requiring credit unions to provide 45 days advance notice for any increase in an APR or any “other significant change” in the terms of the account. “Other significant terms” include an increase in any fee or finance charge – as well as other terms identified by the Federal Reserve in a future rulemaking. Credit unions may want to look at which terms require advanced notice under current Regulation Z, 12 C.F.R. 226.9(c), for guidance on which terms might be considered “significant.”

A "Right to Cancel" statement must accompany the advanced notice to the member. The statement needs to inform the member of his/her right to cancel the account and, in effect, reject the changes. The Federal Reserve Board is required to establish rules regarding the "Right to Cancel." It is unclear what information would be required to accompany this "Right to Cancel" statement but it would most likely need to include the terms that will apply to the cancelled account (i.e., no new purchases; retain existing APR and terms for the existing balance; repayment options, etc.) Additionally, the section prohibits a credit union from requiring a member who exercises his right to cancel the account to repay the obligation in full. Further, cancellation of the card cannot be construed as a “default” and the credit union would not be able to charge a penalty or fee to close the account. Rather, the credit union needs to provide a repayment method that is no less beneficial than one of the methods in Section 171(c)(2) of TILA.

Effective Date: August 20, 2009.

Restrictions on Raising APRs on Outstanding Balances

Section 101 of the Credit CARD Act also amends Section 171 of TILA and restricts the ability of a credit union to increase the APR on an outstanding credit card balance. This restriction is stronger than the Unfair or Deceptive Acts or Practices (UDAP) regulations issued earlier by NCUA and the Federal Reserve.

Credit unions will not be able to increase any APR, fee, or finance charge applicable to an outstanding balance unless an exception applies. The following are the four exceptions:

- ◆ An increased APR, that will apply after a disclosed period of time, was disclosed at account opening;
- ◆ An increase in a variable APR as a result of the operation of an index;
- ◆ An increase in an APR due to the completion of a workout arrangement or failure to comply with a workout arrangement; or
- ◆ If a minimum payment is more than 60 days late, and the credit union provides a 45-day advance notice of the increased APR. The credit union would also need to terminate the increased APR if a member made on-time payments for the following 6 months.

Subsection (c) establishes the requirements for repayment of outstanding balances. Credit unions must amortize outstanding balances over a period of not less than 5 years or require a minimum periodic payment that is no more than twice the periodic payment percentage prior to the change. The credit union could also offer a repayment method that is more beneficial to the member than the two approved methods.

“Outstanding balance” means the amount owed on a credit card account as of the 14th day after the date the credit union sends the 45-day advance notice to the member. *Note:* The UDAP regulations had defined this as the 7th day after the notice was sent and will need to be amended.

Effective Date: February 22, 2010.

Review of Cards with Increased APRs

Section 101 of the Credit CARD Act also adds Section 148 to the TILA. This section will require credit unions to review, at least once every 6 months, accounts where the credit union has raised APRs due to credit risk of the borrower, market conditions, or other factors. If the factors that prompted the increase in the APR are no longer present, the credit union would need to reduce the APR. If the review results in a need to further increase the APR, the credit union would need to send a new 45-day advance notice.

The Federal Reserve must establish regulations for this section within 9 months. The compliance deadline is 15 months from the signing of the Credit CARD Act (i.e., August 22, 2010).

Limitations on APR Increases in the First Year

Section 101 of the Credit CARD Act also adds Section 172 to the TILA. Credit unions will not be allowed to increase the APR, fees, or finance charge during the first year of a new credit card account unless one of the four exceptions in Section 171(b) applies (see two sections prior).

This section also requires that promotional APRs be at least 6 months in length. The Federal Reserve has the ability to adopt rules to provide reasonable exceptions to the 6 month promotion timeline, if necessary.

Effective Date: February 22, 2010.

Sec. 102. Limits on Fees and Interest Charges.

This section adds subsection (j) to Section 127 of TILA – which prohibits double-cycle billing.

This section also adds subsection (k) to Section 127 of TILA – which requires an opt-in for over-the-limit transactions if a fee is assessed. A credit union will not be able to charge an over-the-limit fee unless the member has “opted-in” to allowing over-the-limit transactions to be processed rather than rejected. If a member opts-in, the credit union is only allowed to charge one over-the-limit fee per billing cycle and would only be allowed to charge an over-the-limit fee for the next two billing cycles if the member’s balance still exceeds their credit limit. The Federal Reserve is required to issue regulations relating to the disclosure, form, and timing of the opt-in notice to credit cardholders.

Further, this section adds subsection (l) to Section 127 of TILA – which limits a credit union’s ability to charge a fee for payments made via certain payment channels. The credit union would not be allowed to impose a separate fee for payments made by mail, electronic transfer, telephone, or other means – *unless* the payment involves an expedited service provided by a live member service representative. Thus, an expedited telephone payment to a live service representative could be charged a fee, but a telephone payment through an automated bill payment system could not be charged a separate fee.

Effective Date: February 22, 2010.

Section 102 of the Credit CARD Act also adds Section 149 to TILA. This section requires that any penalty fee (i.e., late payment fee, over-the-limit fee) on a credit card account be reasonable and proportional to the violation.

The Federal Reserve and the federal banking agencies, including NCUA, are required to issue regulations to clarify what “reasonable and proportional” fees would be. The regulations may include “safe harbors” – where fees below a certain amount would be deemed “reasonable and proportional” for that type of fee (i.e., a late payment fee of \$XX or below will be deemed reasonable and proportional).

The regulations must be finalized by February 22, 2010, with an effective date of August 22, 2010.

Sec. 103. Use of Terms Clarified.

This section adds subsection (m) to Section 127 of TILA which includes restrictions on using the term “fixed rate” in the terms of a credit card account. A credit union may only

use the term “fixed” if it refers to an APR that will not change or vary for any reason over the period stated in the account terms. The Federal Reserve included detailed restrictions on the use of “fixed” in advertising APRs in its new amendments to Regulation Z. Credit unions should look to Regulation Z for additional information on using “fixed” to describe a credit card’s APR. Under Regulation Z, an advertisement may refer to a rate as “fixed” if the advertisement specifies a time period the rate will be fixed and that the rate will not increase during that period. If a time period is not specified, the advertisement may refer to a rate as “fixed” only if the rate will not increase while the plan is open. See 12 C.F.R. § 226.16(f). This means that if the credit union does not specify a time period, the credit union has no ability to increase the APR if it refers to an account as “fixed” – i.e., a 45-day advance notice would not be able to increase the APR by merely sending a 45-day notice.

Effective Date: February 22, 2010.

Sec. 104. Application of Card Payments.

This section amends Section 164 of the TILA to reflect the prompt crediting of payments made by 5:00 p.m. on the due date. If a member makes a payment by 5:00 p.m. on their due date, the credit union would not be able to charge a late fee. The credit union would not need to post the payment on the day the payment is received, but must credit the account as of that date. The new section will read as follows:

“§ 164. Prompt and fair crediting of payments.

(a) IN GENERAL - Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form by 5:00 p.m. on the date on which such payment is due in the amount, manner, and location indicated by the creditor to avoid the imposition thereof.”

Section 104 of the Credit CARD Act also requires that credit unions allocate any payment above the minimum periodic payment to the balance with the highest APR. *Note:* This is a stronger requirement than under UDAP (which allowed the credit union the option of *pro rata* application of payments). Thus, if a member has a minimum payment of \$50 and makes a \$300 payment – the \$250, in excess of the minimum, must be applied to the balance on the card with the highest APR. There are also other restrictions for certain deferred interest arrangements.

Additionally, if the credit union changes its mailing address or method of handling member’s payments, it can not charge a late fee for 60 days – if that change causes a material delay in the crediting of a member’s payment. If a credit union provides two options for payments (such as an old mailing address and a new mailing address) during a transition period, the change would most likely not cause a material delay. The section is intended to prevent card issuers from switching their method of accepting payments to force customers’ payments into being late (and, thereby, collecting the fee income).

Effective Date: February 22, 2010.

Sec. 105. Standards Applicable to Initial Issuance of Subprime or “Fee Harvester” Cards.

This section prevents a card issuer from giving consumers a credit card that would have more than 25% of its available credit accounted for by fees relating to the account’s opening. In other words, if the fees would be more than 25% of the available credit – they must be paid for in a manner other than charging them to the credit card.

Effective Date: February 22, 2010.

Sec. 106. Rules Regarding Periodic Statements.

This section adds subsection (o) to Section 127 of TILA. It requires that the payment due date for a credit card account must be the same day each month (i.e., the 18th of May, then the 18th of June, then the 18th of July, etc.)

Effective Date: February 22, 2010.

Timing of Payments

Additionally, this section adds Section 163 to TILA. Subsection (a) of Section 163 indicates that a credit union may not treat any payment as late (i.e., they may not charge a late payment fee) unless the periodic statement is mailed or delivered at least 21 days before the payment due date. *Note:* This section applies to any “open end consumer credit plan” and is not limited to credit card accounts.

Grace Periods

Subsection (b) of Section 163 also requires that if a card issuer offers a grace period, the card issuer must mail the periodic statement at least 21 days before the expiration of the grace period. In effect, the rule requires grace periods to be 21 days or longer. *Note:* Grace periods are not mandated by the Credit CARD Act. Rather, if a credit union offers a grace period – it must be 21 days or longer.

Effective Date: August 22, 2009.

Sec. 107. Enhanced Penalties.

This section increases the penalties for violations of TILA. This section strengthens the penalty by authorizing a minimum fine of \$500 and a maximum of \$5,000 in penalties but also leaves the door open for higher penalties if a “pattern or practice” of violations is established.

Sec. 108. Clerical Amendments.

The term “open end consumer credit plan has been added to the existing definition of “open end credit plan.” The definition remains substantially the same.

Sec. 109. Consideration of Ability to Repay.

This section adds Section 150 to TILA:

Sec. 150. Consideration of Ability to Repay.

“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.”

This section does not mandate the Federal Reserve to issue regulations; however, the Fed may do so to clarify the steps that credit unions must take when considering a member’s ability to repay the account. Initially, it appears the credit union would need to obtain documentation at account opening and before any credit limit increase that verifies a member’s stated income.

Effective Date: February 22, 2010.

TITLE II – ENHANCED CONSUMER DISCLOSURES

Sec. 201. Payoff Timing Disclosures.

This section requires a written statement providing a warning to members about making only the minimum payment on their credit card accounts. Similar language was included in the Bankruptcy Act of 2005 and incorporated into Regulation Z by the Federal Reserve. This section will move up the effective date – from July 1, 2010 to February 22, 2010 for these repayment disclosures. See 12 C.F.R. § 226.7(b)(12) and Appendix M1, M2, and M3 for further information on these disclosures. Model samples are provided in Appendix G, see G-18(C); G-18(D); and G-18(E).

Subsection (c) requires the Federal Reserve, along with Treasury, to issue guidelines for establishing a toll-free number to provide information to consumers about credit counseling and debt management services.

Guidelines must be issued within 6 months (i.e., by November 22, 2009).

Sec. 202. Requirements Relating to Late Payment Deadlines and Penalties.

Subsection (A) requires credit unions to disclose the due date by which a payment must be received in order to be considered on time. The late fee amount that will be charged on payments received after the due date must also be disclosed. Amendments to Regulation Z also addressed this issue, see 12 C.F.R. § 226.7(b)(11).

Subsection (B) requires credit unions to disclose the penalty rate that will apply to the account if a payment is not received by the due date. See 12 C.F.R. § 226.7(b)(11)(b) and Appendix G – model form G-18(B) and G-18(D).

Subsection (C) requires that credit unions credit payments made in person at a branch of the credit union as of the date on which the payment is made. In other words, if a member makes a credit card payment at the credit union's branch on his/her due date – the credit union would not be able to charge a late fee even if the payment is not processed until a later date.

Effective Date: February 22, 2010.

Sec. 203. Renewal Disclosures.

This section amends Section 127(d) of TILA which details the process by which card issuers charge annual fees on existing accounts. The section removes the prior paragraph (2) which allowed card issuers the ability to provide a renewal disclosure on the periodic statement that the annual fee appeared on – if the card issuer also allowed 30 days for the consumer to reject the annual fee and close the account. This option has been removed from TILA.

After February 22, 2010, Section 127(d) of TILA will appear as follows:

“(d) DISCLOSURE PRIOR TO RENEWAL.—

(1) IN GENERAL. -- A card issuer that has changed or amended any term of the account since the renewal that has not been previously disclosed or imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of—

(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

(B) the information described in subsection (c)(1)(A) or (c)(4)(A) that would apply if the account were renewed, subject to subsection (e); and

(C) the method by which the consumer may terminate continued credit availability under the account.

(2) SHORT-TERM RENEWALS.--The Board may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

Therefore, the credit union would have to provide information about the annual fee or other periodic fee at least 30 days before the annual fee is assessed and the card is renewed. The Federal Reserve will need to amend Regulation Z – Part 12 C.F.R. § 226.9(e) – to reflect these amendments.

Effective Date: February 22, 2010.

Sec. 204. Internet Posting of Credit Card Agreements.

This section requires that creditors post their credit card agreements on their websites. Additionally, creditors will need to electronically submit their agreement to the Federal Reserve Board. The Federal Reserve Board will post creditors' credit card agreements on a central internet site for public viewing.

The Federal Reserve, in consultation with the other Federal banking agencies (including NCUA), must produce regulations regarding the format for posting agreements on the internet. The Federal Reserve also has the ability to provide exceptions to posting on the internet if the burden outweighs the benefit of increased transparency.

Effective Date: Upon Final Regulations from the Federal Regulators.

Sec. 205. Prevention of Deceptive Marketing of Credit Reports.

This section amends the Fair Credit Reporting Act by requiring that any advertisement for a "free credit report" must disclose that free credit reports are available under Federal law at: "AnnualCreditReport.com." For television advertisements, the disclosures must be included in the audio and visual part of the advertisement.

The Federal Trade Commission (FTC) is required to issue final regulations by February 22, 2010. The regulations shall determine the specific disclosures required and how the disclosures apply to internet advertisements. If an advertisement is made after February 22, 2010, and the FTC has not finalized its regulations – the advertisement must include the disclosure: "free credit reports are available under Federal law at: 'AnnualCreditReport.com'."

Effective Date: February 22, 2010.

TITLE III – PROTECTION OF YOUNG CONSUMERS

Sec. 301. Extensions of credit to underage consumers.

This section amends Section 127 of TILA by adding consumer protections aimed to limit the ability of creditors to issue open end credit to consumers who have not reached the age of 21.

In short, credit unions will not be able to issue open end credit (note – this is not limited to credit cards) to a member under the age of 21 unless: a) A parent, spouse, or legal guardian over the age of 21 co-signs; or b) The consumer under the age of 21 provides

financial information showing independent means of repaying any obligations. The Federal Reserve shall issue regulations that will give creditors the standards for determining the ability to repay.

Effective date: February 22, 2010.

Sec. 302. Protection of young consumers from prescreened credit offers.

This section amends the Fair Credit Reporting Act to limit the ability of prescreened offers to include information for consumers under the age of 21 unless the consumer consents to the sharing.

Effective date: February 22, 2010.

Sec. 303. Issuance of credit cards to certain college students.

This section amends Section 127 of TILA to prohibit creditors from increasing credit card limits for accounts jointly owned by consumers under the age of 21 and the consumer's parent, spouse, or legal guardian, without the written consent of the parent, spouse, or legal guardian. (This assumes that person is over the age of 21.)

Effective date: February 22, 2010

Sec. 304. Privacy Protections for college students.

This section amends Section 140 of TILA to restrict marketing credit cards to college students. First, institutions of higher learning must disclose contracts with card issuers regarding the marketing of credit cards. Card issuers may not offer inducements for students to apply for open end credit plan if the inducement is on campus, near campus (as determined by a regulation issued by the Federal Reserve), or at an event sponsored by the institution of higher learning.

In addition, Congress strongly urges institutions of higher learning to adopt certain policies outlined in the section.

Effective date: February 22, 2010

Sec. 305. College Credit Card Agreements.

This section amends Section 127 of TILA to limit the ability of card issuers to issue "affinity" cards under an agreement between the issuer and an institution of higher learning. The definition of college affinity card would not appear to cover a credit union that serves an institution of higher learning. That being said, the more a card contains symbols, mascots, pictures, or emblems that identify more with the institution than the credit union, compliance risk may increase. If your credit union serves an institution of higher learning, this section should be reviewed closely.

The section also requires creditors to submit an annual report to the Federal Reserve detailing all terms and conditions of all business marketing and promotional agreements and college affinity card agreements with an institution of higher learning, an alumni association, or foundation affiliated with the school.

Effective date: February 22, 2010.

TITLE IV – GIFT CARDS

Sec. 401. General-use prepaid cards, gift certificates, and store gift cards.

This section amends the Electronic Funds Transfer Act to limit the ability of gift card issuers to issue fees on such cards.

In short, no dormancy fee can be issued unless the gift card has been dormant for the 12-month period ending on the day when the fee is imposed. The Federal Reserve can issue additional requirements via regulation.

In addition, issuers of gift cards must make disclosures related to dormancy fees. Cards may not expire before 5 years after issuance.

This entire section appears to require regulations by the Federal Reserve Board.

Sec. 402. Relation to State laws.

This section amends the Electronic Funds Transfer Act to give the Federal Reserve the power to exempt the requirements concerning dormancy fees, expiration dates of gift cards or general use cards within a State if the Board determines that under the State's law, the requirements are subject to the same subject matter that are substantially similar and there is adequate provision for enforcement. This must be done via regulation.

Sec. 403. Effective date.

This section requires that the provision under this title (applicable to gift cards) will become effective 15 months after the Act became law. (i.e., August 22, 2010).

TITLE V – MISCELLANEOUS PROVISIONS

Sec. 501. Study and report on interchange fees.

This section requires the Comptroller General of the U.S. to conduct a study on the use of credit by consumers, interchange fees and their effects on merchants and consumers.

Sec. 502. Board review of consumer credit plans and regulations.

This requires the Federal Reserve to review (within two years, and every two years thereafter) the credit card market, including credit card terms, the adequacy of disclosures, the adequacy of protections against unfair or deceptive credit card acts and practices, and the effects of the implementation of this Act.

Sec. 503. Stored value.

This section requires no later than 270 days after the enactment of the Act, Treasury (in consultation with DHS) to issue final regulations that implement the Bank Secrecy Act concerning stored value cards. In other words, expect BSA-related compliance efforts to increase if your credit union offers stored value cards.

Sec. 504. Procedure for timely settlement of estates of decedent obligors.

This section amends TILA by adding Section 140A which requires the Federal Reserve to issue regulations to ensure that the estate of any deceased obligor of a credit card account can be resolved in a timely manner.

Sec. 505. Report to Congress on reductions of consumer credit card limits based on certain information as to experience or transactions of the consumer.

Requires a report to Congress as noted in the title of the section.

Sec. 506. Board review of small business credit plans and recommendations.

This section requires the Federal Reserve to review small business (50 or fewer employees) credit plans and thereafter make a report to Congress as to how such plans can be protected.

Sec. 507. Small business information security task force.

This section creates a small business security task force that will study small business security needs and how to help small businesses prevent the loss of credit card data.

As many credit unions have incurred costs due to data breaches at small businesses, this study may provide an opportunity for the industry to communicate the need for additional security requirements for vendors.

Sec. 508. Study and report on emergency pin technology.

This section requires the Federal Trade Commission to issue a study on the cost-effectiveness of creating an ATM technology that allows a consumer who is under duress to electronically alert local law enforcement.

Sec. 509. Study and report on the marketing of products with credit offers.

This requires the Comptroller General of the U.S. to issue a study as outlined in this section's title.

Sec. 510. Financial and economic literacy.

This section requires the Secretary of Education and the Treasury Department to coordinate efforts with the President's Council of Financial Literacy to evaluate existing financial literacy efforts.

Sec. 511. Federal trade commission rulemaking on mortgage lending.

This section requires the Federal Trade Commission, in consultation with the Federal Reserve, to issue regulations concerning unfair and deceptive acts and practices in the mortgage lending arena.

Sec. 512. Protecting Americans from violent crime.

This section amends the Code of Federal Regulations concerning the rights of the individuals to carry firearms in the National Park System or the National Wildlife Refuge System.

Sec. 513. GAO study and report on fluency in the English language and financial literacy.

This section requires GAO to issue a study as outlined in the title of this section.