

June 2009

Changes Enacted by the Credit Card Accountability, Responsibility, and Disclosure Act of 2009

On May 22, 2009, President Obama signed into law the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 ("CCARDA"). CCARDA amends several federal laws and regulations, including the Truth in Lending Act, the Fair Credit Reporting Act, and Regulations AA and Z. Some of these changes are effective as of August 20, 2009, while others will become effective nine months and 15 months from enactment. This *Client Alert* summarizes CCARDA's major provisions and the heightened requirements these provisions will impose on credit card issuers in the coming months.

Changes Effective on August 20, 2009

Advance Notice of Change in Annual Percentage Rate (APR). CCARDA requires that creditors give 45 days advance notice of any change in APR in a clear and conspicuous written form. There are several exceptions to this 45-day notice requirement:

- An increase in the APR applied to transactions made after a specified period of time, provided that the creditor has clearly and conspicuously disclosed this period of time and the increased APR.
- An increase due to a variable APR as provided in the credit card agreement and according to a publicly available rate.
- An increase due to completion of (or default under) a loan workout or temporary hardship arrangement, as long as the terms of the arrangement have been conspicuously disclosed to the consumer and the increased rate or charge does not exceed the rate or charge applied before the arrangement.

Timing of Payments. CCARDA includes provisions that will impact creditors' timing in delivering billing statements to customers. A creditor cannot treat a payment as late unless the creditor has adopted procedures designed to ensure that statements are received 21 days before the payment due date. If the card provides for a grace period during which the cardholder can pay the bill without an additional charge, the additional charge cannot be imposed unless the creditor mails or delivers the statement to the cardholder at least 21 days before the end of the grace period.

CONTACT INFO:

Cleveland Office

Thomas W. Ostrowski
Partner
216.583.7350
tostrowski@ulmer.com

Jeffrey Baddeley
Counsel
216.583.7036
jbaddeley@ulmer.com

1660 West 2nd St.
Suite 1100
Cleveland, Ohio
44113-1448
firm 216.583.7000
fax 216.583.7001

www.ulmer.com

Changes Effective in February 2010

Increases in APR, Fees, or Finance Charge. In general, CCARDA prohibits creditors from increasing the APR, fee, or finance charge applicable to outstanding balances. This prohibition does not apply to:

- An increase in the APR applied to transactions made after a specified period of time, provided that the creditor has clearly and conspicuously disclosed this period of time and the increased APR.
- An increase due to a variable APR as provided in the credit card agreement and according to a publicly available rate.
- An increase due to completion of (or default under) a loan workout or temporary hardship arrangement, as long as the terms of the arrangement have been conspicuously disclosed to the consumer and the increased rate or charge does not exceed the rate or charge applied before the arrangement.
- An increase because the cardholder's minimum payment is over 60 days past due, provided that the creditor has notified the cardholder of the increase. The creditor must also inform the cardholder that the increase will end in six months if the cardholder makes all minimum payments on time during that period.

With respect to new accounts, CCARDA prohibits creditors from increasing an account's APR, fee, or finance charge until at least one year after opening the account, unless the increase is one of the four types listed above.

Promotional Rates. CCARDA requires that promotional rates cannot be increased until six months after the effective date of the rate.

Changes to Repayment Terms for Outstanding Balances. CCARDA limits the ability of creditors to change the repayment terms for existing balances. A creditor may only change the repayment terms if one of the following methods is used: (1) an amortization period of at least five years; (2) a required minimum periodic payment that includes a percentage of the existing balance equal to no more than twice the percentage required before the increase; or (3) another method "no less beneficial to the consumer."

Limits on Fees and Interest Charges. CCARDA prohibits creditors from imposing interest charges on portions of a consumer's balance paid by the due date, a practice known as "double-cycle billing." CCARDA also places restrictions on fees charged for



the extension of credit beyond the amount authorized, or “over-the-limit fees.” Over-the-limit fees may not be charged unless the consumer has expressly elected to allow over-the-limit transactions which will result in a fee. These fees may be imposed only once per billing cycle and the creditor must provide notice of the consumer’s right to revoke the election in each billing statement where an over-the-limit fee is imposed.

CCARDA further limits fees by prohibiting creditors from imposing a separate fee to make a payment, whether the payment is made by mail, phone, or electronic transfer, unless the consumer pays via expedited service by a service representative. CCARDA also regulates “fee-harvester cards,” defined as cards requiring first-year fee payments totaling more than 25 percent of the amount of credit available. No payment of fees may be made from the available credit under these types of cards.

Application of Payments. Other provisions require creditors to meet certain standards with respect to due dates and the application of payments. CCARDA prohibits creditors from setting a payment deadline earlier than 5:00 p.m. and requires that payments must be due on the same day each month. The date on which a customer makes a payment at a branch which accepts payments in person must be considered the date on which the payment is made for the purpose of late fees. Furthermore, payments made in excess of the minimum must be applied to the balance with the highest interest rate first, followed by each successive balance with the highest interest rate.

Consideration of Ability to Repay. CCARDA requires that creditors consider the ability of a consumer to make the required payments before opening a new account.

Payoff Timing Disclosures. Consumers must be provided with a clear warning on all billing statements that making only the minimum payment will increase repayment time and the amount of interest owed. Billing statements must also include the number of months it will take to repay the entire balance if only the minimum payment is made each month and the total cost to the consumer of repaying in this manner. This information must be followed by the monthly payment amount required to eliminate the balance in 36 months and the total cost of repaying in that time.

Late Payment Disclosures. In addition to the payoff timing disclosures listed above, billing statements must also include the payment due date, the date on which a late fee will be charged, and the amount of the late fee. If one or more late payments will result in an increased APR, the statement must also provide conspicuous notice of this fact.



Protection of Young Consumers. CCARDA contains several provisions aimed at protecting young consumers from credit card debt. These provisions include a prohibition on issuing cards to consumers under the age of 21, unless the consumer has submitted a written application with either the signature of a co-signer or financial information indicating an independent means of making payments. The law also prohibits consumer reporting agencies from furnishing credit reports for the purpose of making prescreened credit offers to consumers under the age of 21, unless the consumer has expressly given consent to the consumer reporting agency.

Miscellaneous Provisions. CCARDA includes a variety of provisions designed to enhance transparency and consumer awareness. For example, creditors must conspicuously disclose any changed terms of a customer's account at least 30 days before the account's renewal date. The law also requires that creditors maintain an Internet site which includes copies of the written agreements for each account. The Board of Governors of the Federal Reserve System ("the Board") will use this information to establish a public repository of credit card agreements online.

Changes Effective in August 2010

Several provisions of CCARDA become effective in August of 2010. One such provision requires that if a creditor increases a customer's APR, the creditor must review the customer's account at least once every six months to assess whether the factors which contributed to the increase have changed. The creditor must then reduce the APR if indicated by this assessment. Another provision requires that all penalty fees be "reasonable and proportional" to the violation. CCARDA requires the Board to issue final rules within the next nine months setting standards for the enforcement of both of these provisions.

We will continue to keep you informed as regulations implementing this law are issued by the Board. Compliance with these changes is made particularly important by the fact that CCARDA also provides for enhanced penalties for violations. The foregoing is only a general guide to some of the most significant changes enacted by CCARDA. Credit card issuers and other issuers of open-ended credit may obtain further information by contacting one of the attorneys listed.

