

A Mortgage and Consumer Finance Law Update

06/05/09

On May 27, 2009, President Obama signed into law the Credit Card Act of 2009 ("Act"). This Act amends the Truth-in-Lending Act to make sweeping changes to the terms offered and disclosures provided by consumer credit card issuers. The Act also contains new federal restrictions on gift cards, gift certificates and some pre-paid cards. The provisions of the Act regarding advance notice of rate increases and other changes in account terms, as well as the provisions regarding the timing of periodic statements, take effect in 90 days. The provisions on interest rate reductions, reasonable and proportionate fees, and restrictions on gift cards and pre-paid cards become effective in 15 months. The remaining provisions become effective in nine months. The Act charges the Federal Reserve Board ("FRB") with drafting the implementing regulations. To some extent, the Act modifies and expedites the FRB's credit card rule changes that were to take effect on July 1, 2010.

Summary of the Act's Provisions

The Act will require card issuers to establish the consumer's ability to repay credit when the account is established and when a credit limit is being increased. It will impose new limitations on a card issuer's ability to increase Annual Percentage Rates ("APRs"). With limited exceptions, card issuers will be prohibited from increasing APRs in the first year and, thereafter, must provide 45 days advance written notice of the rate increases. In addition, the rate increases may not be applied to existing balances and the borrower must be allowed to repay the balance on certain terms. In some cases, creditors will be required to reduce rates after they are increased. Promotional rates must last for at least six months and creditors will not be able to promote a rate as being "fixed" unless it cannot increase, for any reason, during the specified fixed rate period.

The Act imposes new requirements on the crediting of payments and on the disclosures that must be made on the periodic statements. These include a general requirement to credit payments on the day of receipt. They also include required disclosures of payment due dates, late payment fees, penalty rates and a minimum payment warning. In addition, creditors will be required to mail or deliver the periodic statements at least 21 days prior to the payment due date or the end of any free-ride period.

Card issuers will be prohibited from employing "double cycle billing," and there will be new limitations on the amounts of penalty and other default-related fees. There will also be new restrictions on, and disclosures of, over-the-limit fees. Moreover, if a creditor requires that certain fees be paid within the first year of the account and those fees may exceed 25 percent of the available credit, the fees may not be debited against the credit limit. The Act also contains new restrictions on marketing and offering cards to college students and those under age 21.

The new restrictions on gift cards, gift certificates and pre-paid card fees include restrictions on dormancy, inactivity and service fees. They will also require advance disclosure of the fees and will prohibit card expiration periods of less than five years.

For a more detailed summary of the Credit Card Act of 2009, please visit:
<http://www.lanepowell.com/wp-content/uploads/2009/06/060509.pdf>.

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