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CFPB Signals Additional Concerns about Consumer Credit Card Market with Report on CARD Act

By Rick Fischer, Oliver Ireland, Obrea Poindexter and Matt Janiga

Today, the Consumer Financial Protection Bureau (“CFPB”) released the “CARD Act Report,” a report summarizing the CFPB’s views on the impact of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act” or “Act”) on the consumer credit card market (“Report”). The Report was issued pursuant to Section 502(a) of the CARD Act, which mandates that the CFPB conduct a biennial review of the consumer credit card market, including the effect of the Act on the cost and availability of credit and the adequacy of protections for credit cardholders. With the Report, the CFPB signals that it has concerns about four features found in the consumer credit card market: deferred interest programs, online disclosures, rewards programs and grace periods. The CFPB also highlights continuing concerns about the offering of add-on products and pre-account opening fees.

In a press release accompanying the Report, CFPB Director Richard Cordray states that “[t]he CARD Act brought better consumer protections and fairness to the marketplace, but we found there is more work to be done.” The CFPB states that the Report draws upon publicly and commercially available data, as well as data obtained by the CFPB through its supervision of large credit card issuers.

CFPB’s Concerns about Consumer Credit Card Features

In the Report’s section on the adequacy of current consumer protections, the CFPB identifies outstanding areas of concern about the following card products and features.

- *Deferred interest programs:* The Report states that approximately 43% of deep subprime cardholders did not pay their deferred interest balances in full by the required payment date and, thus, incurred interest on the entire deferred interest balance. Based on this, the CFPB indicates that it intends to study the risks and benefits of such programs.
- *Online disclosures:* The Report expresses concern over whether disclosure requirements for paper statements adequately translate to electronic media. The Report uses the required minimum payment warnings as an example, and expresses concern that consumers may not be viewing these disclosures before paying through online portals or automatic payment methods. The Report also notes that the CFPB intends to study “how card issuers ensure that consumers receive disclosures in different channels.”
- *Rewards programs:* The Report questions whether disclosures concerning rewards features are made in a clear and transparent manner that allow consumers to comparison shop between products. The Report suggests the CFPB has concerns about the manner in which promotional and incentive rewards are disclosed, whether formulas used to calculate rewards are easily understood by cardholders and the forfeiture of rewards points.
- *Grace periods:* The Report questions whether consumers understand disclosures about the requirements to qualify for and maintain grace periods, and whether current disclosures are presented in a clear and transparent manner.

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- **Add-on products**: The CFPB states that it remains concerned about the way add-on products are marketed and will continue to pursue deceptive practices in the market. The Report also highlights recent actions the CFPB has taken against credit card issuers offering add-on products.
- **Fee harvester cards**: The CFPB states that it will continue to monitor the use of application fees in connection with account openings to determine whether it should take action under its available authorities. During the course of CARD Act implementation, issuers challenged the application of the Act's limitation on fees to pre-account opening fees, such as application fees. To resolve uncertainty created by litigation, the CFPB said it issued a revision to Regulation Z's Section 1026.52(a) requirements that permitted pre-account opening fees as an exclusion to the CARD Act's 25-percent limitation on first-year fees, but that it intends to monitor use of such fees closely.

Review of CFPB's Analysis and Views

In an effort to support the CFPB's stated concerns about the adequacy of consumer protections in the credit card market, and based on its analysis of data and experience monitoring the credit card market, the CFPB's Report analyzes the CARD Act's impact on the cost of credit; the availability of credit; agreements, disclosures and issuer practices and product innovation.

Cost of Credit

The CFPB writes that the overall cost of credit, including interest rate charges and other fees, have declined. The CFPB made specific statements in the following areas.

- **Total cost of credit**: The CFPB states that "among the card issuers represented in the [CFPB's] credit card database (representing between 85% and 90% of credit card industry balances), the total cost of credit – *i.e.* the annualized sum of all amounts paid by consumers (including both interest charges and fees) divided by the average of outstanding balances – *declined* by 194 basis points from Q4 2008 to Q4 2012." Nevertheless, the CFPB acknowledged that "it is unclear how much of that change is attributable to the CARD Act."
- **Rates and annual fees**: The Report notes that the amount and frequency of annual fees has increased since enactment of the CARD Act, with the average annual fee rising by approximately two dollars. The Report also states that the average annual percentage rate increased by 230 basis points at times that corresponded with the passage and implementation of the CARD Act, before declining slightly for super prime and prime customers in 2011. The CFPB writes that the increases in both rates and annual fees were an intended consequence of the CARD Act, as the Act directs issuers to shift from back-end pricing, such as penalty rates and fees, to more transparent up-front pricing.
- **Reduction in penalty fees**: The CFPB also writes that overlimit fees have effectively been eliminated, and that the size of late payment fees has declined due to CARD Act limitations on these fees. Specifically, the CFPB states that "consumers paid about \$2.5 billion less in overlimit fees than they paid in 2008" and that the reduction in late payment fees "resulted in a \$1.5 billion decrease in late fees paid by consumers in 2012."

Availability of Credit

The CFPB writes that "[w]hile the amount of available credit card credit has generally decreased since the financial crisis began, there is still \$2 trillion of unused credit for consumers with credit cards." Nevertheless, the Report states that "[t]he evidence suggests that the CARD Act had a discernible impact on credit availability in three discrete respects."

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- First, the CFPB notes that there has been a substantial decrease in the number of credit card accounts originated among students and other consumers under the age of 21. The CFPB writes that this is an intended effect of the CARD Act, and that young consumers are better protected from credit cards they cannot afford.
- Second, the CFPB states that a small but discernible percentage of applicants that are otherwise creditworthy are being declined as a result of insufficient income to satisfy the Act's ability-to-pay requirement.
- Third, the CFPB notes that there has been a marked decline in the number of consumers receiving unsolicited credit line increases (also referred to as "proactive line increases") on their accounts, and that at least some of these limitations on access to credit appear to be intended consequences of the CARD Act.

The CFPB based its analysis of the availability of credit on available metrics, such as the number of mailed solicitations, new account originations, application approval rates and credit line size. While the CFPB acknowledges that certain metrics, such as the decline in origination volume for subprime borrowers, "suggests a reduction in availability of credit for customers with subprime scores," the CFPB states that there is nearly \$38.6 billion in unused subprime credit lines and that the reductions in the availability of credit started before the enactment of the CARD Act. Comparing the post-recession recovery in the credit card market to the markets for auto loans, first-lien mortgages, home equity loans and home equity lines of credit, the CFPB states that the data "do not suggest that, in general, recovery in the card marketplace has been negatively impacted by the CARD Act."

Agreements, Disclosures and Issuer Practices

The Report also reviews required and voluntary post-CARD Act changes to cardholder agreements, disclosures and issuer practices.

- *Voluntary agreement improvements*: The CFPB acknowledges that many issuers have improved the readability of their credit card agreements. Specifically, the CFPB notes that agreements now have more than 2,000 fewer words and that the readability score of these agreements has improved to a 55.3 out of a possible 60 points on the Flesch-Kincaid scale. In his remarks about the Report, Director Cordray applauded issuers who have made such voluntary changes.
- *Periodic statement disclosures*: The Report states a belief that minimum payment warnings led to a slight reduction in the number of consumers making only the minimum payment, but that minimum payment disclosures could warrant future study. The CFPB expresses concern that a "meaningful number of consumers" may not see the minimum payment warnings because they make payments online or through automatic payment methods.
- *Interest rate reviews*: The Report states that interest rate reviews have benefited consumers, potentially helping millions of consumers save as much as \$2.1 billion in interest payments.

Product Innovation

The Report briefly discusses the CARD Act's impact on product innovation, noting that the Act was intended to restrict innovations deemed harmful to consumers. The CFPB states that post-CARD Act innovations have focused on providing simple and transparent account features and terms.

The Report may be accessed at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

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The CFPB's press release on the topic may be found at <http://www.consumerfinance.gov/newsroom/cfpb-finds-card-act-reduced-penalty-fees-and-made-credit-card-costs-clearer/>, and Director Cordray's remarks may be found at <http://www.consumerfinance.gov/newsroom/director-cordray-remarks-at-the-card-act-field-hearing/>.

Contact:

Rick Fischer

(202) 887-1566

rfischer@mofocom

Oliver Ireland

(202) 778-1614

oireland@mofocom

Obrea Poindexter

(202) 887-8741

opoindexter@mofocom

Matt Janiga

(202) 887-6955

mjaniga@mofocom

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