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The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Credit CARD Act"),[1] was signed into law by President Obama on May 22, 2009. As described by the Senate Report, its purpose was "to implement needed reforms and help protect consumers by prohibiting various unfair, misleading and deceptive practices in the credit card market."[2] The Federal Reserve Board and other federal agencies had already begun addressing those issues by means of federal regulations, which had been scheduled to become effective on July 1, 2010.[3] The Credit CARD Act of 2009 therefore superseded, and in some respects supplemented, that administrative effort. The credit card reform effort has now been shifted back to the relevant federal agencies, which have been engaged in the process of drafting and proposing complicated, detailed, and lengthy regulations to implement the new Act.[4]

Some sections of the Credit CARD Act addressed matters outside the credit card relationship. For example, the Credit CARD Act

1. Pub. L. No. 111-24, 123 Stat. 1734 (2009).

2. S. Rep. No. 111-16, at 1 (May 4, 2009)(2009 WL 1260169).

3. The Board of Governors of the Federal Reserve System adopted final rules amending Regulation Z (which implements the Truth in Lending Act) on January 29, 2009. The rules were to become effective on July 1, 2010. *See* Truth in Lending, 74 Fed. Reg. 5244 (Jan. 29, 2009)(to be codified at 12 C.F.R. Pt. 226). On the same day, the Federal Reserve Board separately published a joint final rule with the Office of Thrift Supervision and the National Credit Union Administration (under powers granted by the Federal Trade Commission Act), which was intended to similarly amend Regulation AA. *See* Unfair or Deceptive Acts or Practices, 74 Fed. Reg. 5498 (Jan. 29, 2009)(to be codified at 12 C.F.R. Pt. 227).

4. For regulations implementing the first phase of the new statute, see Truth in Lending, 74 Fed. Reg. 36077 (July 22, 2009)(interim final rule relating to advance notice of credit card modifications and to the time for making payments); 75 Fed. Reg. 7658 (Feb. 22, 2010)(final rule). For regulations implementing the second phase, see Truth in Lending, 75 Fed. Reg. 7658 (Feb. 22, 2010)(over five hundred pages of regulations implementing the bulk of the new Act). For proposed regulations governing the final third phase of the Act (relating to reasonableness of fees and re-evaluation of increases in APR), see Truth in Lending, 75 Fed. Reg. 12334 (March 15, 2010).

included provisions regulating prepaid cards (such as gift cards),[5] mandating a variety of studies and reports, and even protecting the right to bear arms in national parks.[6] However, the primary focus of the Act was the regulation of the rights and obligations created between the issuer and the cardholder in the credit card relationship.

So what were the abuses that Congress intended to address, and how does the new statute address them?

I. Targeted Credit Card Practices

Comments generated during the adoption of the relevant regulations and testimony before Congress during hearings on the proposed act highlighted a variety of questionable techniques utilized by credit card issuers to increase profits. As the testimony at those hearings indicated, the cardholders who generate the greatest income for credit card issuers are not those who pay in full each month ("deadbeats"), but rather those who "stumble and slide" – i.e., miss payments and thereby incur default rates of interest and penalty fees.[7] Therefore, many of the techniques targeted by the new statute were those contributing to cardholder default. As a result, the best way to understand the new statute is to acquire a fundamental familiarity with such techniques in order to understand the attacks directed against them.

A. High Interest Rates

Probably the most basic technique for card issuers to increase profits in a credit card transaction is to contract for a high rate of interest – either on the initial balance, or as an increased rate in the event of default. Efforts to place interest ceilings on credit cards in the past have generally proven unsuccessful, although amendments to the Truth in Lending Act over time have at least mandated detailed disclosure of those rates.[8]

An additional problem has been that those interest rates have been structured to be raisable by the card issuer for future purchases, perhaps even effective immediately. Such a right may be stated in the credit card contract, but even if it is not, the contract is generally viewed as an at-will contract because it has no stated duration. Therefore, proposed modifications by card issuers are generally accepted by the cardholder by continued use of the card.

Of even more concern to cardholders, however, is the fear that increased interest rates will apply *retroactively* to purchases already made on the card. One study cited by the Senate Report found that "77 percent of credit card issuers reserve the right to increase a consumer's interest rate on both prospective balances and on consumers' pre-existing balances under 'any time, any reason' clauses."[9]

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5. 15 U.S.C.A. § 1693*l*-1 (West 2010). For the regulations amending Regulation E to implement this portion of the Credit CARD Act, see Electronic Fund Transfers, 74 Fed. Reg. 60986 (Nov. 20, 2009)(proposed rules); 75 Fed. Reg. 16580 (April 1, 2010)(final rules)(to be codified at 12 C.F.R. Pt. 205).

6. Pub. L. No. 111-24, 123 Stat. 1734, § 512 (2009).

7. Examining the Billing, Marketing and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers: Hearing on S. 414 Before the S. Comm. on Banking, Housing and Urban Affairs, 111th Cong. (Jan. 25, 2007) (statement of Elizabeth Warren, Professor, Harvard Law School)[2007 WL (F.D.C.H.) 184875].

8. Truth in Lending Act (TILA), 15 U.S.C.A. § 1601 et seq. (2010).

9. S. Rep. NO. 111-16 (May 4, 2009)(2009 WL 1260169, at 4).

Although critics of current credit card practices advocated limits on interest rates across the board, the most stinging criticisms were directed at those default rates imposed for missed payments. Testimony at the Congressional hearings indicated that card issuers currently charged default rates of 29% or more,[10] and that interest rates generally "at least double in the event of default."[11]

Objections to this first technique appear based on fundamental fairness and inequality of bargaining power. At the very minimum, critics argued that cardholders should be given time to make alternative credit arrangements before unilateral changes to the credit card contract become effective.

B. Improvident Extensions of Credit

A second way to increase credit card profit is to extend credit to risky borrowers. Although some such borrowers may default and prove judgment-proof, others may be a lucrative source of default interest payments and penalty fees. Particularly in light of the impact of credit card debt in the current economic climate, critics urged that Congress adopt some type of standard requiring card issuers to consider the ability of cardholders to repay in making the decision to extend credit. This criticism particularly applied to cards issued to youthful consumers like college students.

C. Exorbitant Fees

A third way for credit card issuers to increase profits is to impose fees, either in the form of penalties upon default or as a charge for a variety of services. Substantial criticism was directed at the exorbitant nature of the fees imposed by card issuers. Consider briefly some of the typical fees imposed by current credit card contracts.

1. Late Fees

These fees are charged when a credit card payment is late. Testimony before Congress indicated that the "average late fee has jumped from $13 in 1996 to over $30" in 2007.[12] Such fees are generally imposed in addition to a default interest rate.

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10. *Examining the Billing, Marketing and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers: Hearing on S. 414 Before the S. Comm. on Banking, Housing and Urban Affairs*, 111th Cong. (Jan. 25, 2007)(statement of Elizabeth Warren, Professor, Harvard Law School)[2007 WL (F.D.C.H.) 184875].

11. *Modernizing Consumer Protection in the U.S. Financial Regulatory System: Strengthening Credit Card Protections: Hearing on S. 414 Before the S. Comm. On Banking, Housing & Urban Affairs* 111th Cong. (Feb. 12, 2009) (statement of James C. Sturdevant, attorney)[2009 WL 344973 (F.D.C.H.)]. Professor Robert Manning testified as to his own recent experience with Citibank. Upon his very first late payment, Professor Manning's 'fixed rate' of 3.99% was increased to 32.24%. *Examining the Billing, Marketing and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers: Hearing on S. 414 Before the S. Comm. on Banking, Housing and Urban Affairs*, 111th Cong. (Jan. 25, 2007)(statement of Robert Manning, Professor of Finance, Rochester Institute of Technology) [2007 WL 184876(F.D.C.H.)].

12. *Examining the Billing, Marketing and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers: Hearing on S. 414 Before the S. Comm. on Banking, Housing and Urban Affairs*, 111th Cong. (Jan. 25, 2007)(statement of Robert Manning)[2007 WL (F.D.C.H.) 184875].

2. Over-the-Limit Fees

These fees are charged when the card holder exceeds the dollar amount of credit authorized on the card. Testimony at the Congressional hearings indicated that the amount of such an over-the-limit fee could be $49.[13]

3. Charges for Methods of Payment

Card issuers may charge a fee for payment by a method other than standard mail. For example, a charge of $15 might be imposed for payment by phone.[14]

4. Miscellaneous Fees

Testimony before Congress indicated that credit card contracts also impose a variety of other fees. Such fees include charges for customer service calls, increasing the amount of credit, cash advances, fulfilling requests for additional cards, balance transfers, wire transfers, and credit protection.

D. Unfair Procedures

A fourth method by which card issuers increase profit is to utilize procedures which increase the likelihood of cardholder default. Missed payments or other grounds for default lead to the imposition of increased rates of interest and to penalty fees. Testimony before Congress was highly critical of the following types of procedural devices utilized in credit card contracts:

1. Incomprehensible Card Agreements

The simple inability of the cardholder to understand his or her legal obligations may lead to breach. Testimony at the Congressional hearings was critical of lengthy agreements, buried information, failure to group and label related material, and the use of small typefaces.

2. Universal Default Provisions

Testimony was further critical of the drastic effects of universal default provisions. Such clauses provide that if the cardholder is in default on *any* obligation, even those owed to parties unrelated to the card issuer, the cardholder is treated as being in default on the credit card account. Thus, interest rates on the card are subject to increase, even including interest rates on existing card balances.

3. Double-Cycle Billing

A double-cycle (or two-cycle) billing provision establishes a particular method for calculating interest on the credit card balance. Under this method, "when a consumer pays the entire

13. *Id.* (statement of Professor Elizabeth Warren).

14. *Id.*

balance one month, but does not do so the following month, the bank calculates interest for the second month using the account balance for days in the previous billing cycle as well as the current cycle."[15] Commentators were critical of both the effect and the incomprehensibility of such clauses. Double-cycle billing has been described even by one Federal Reserve Board Governor as "so complex that few consumers can fully understand the implications of this practice, even in the presence of full disclosure."[16]

4. Application of Payments

Commentators were concerned that provisions in the credit card contract entitled card issuers to apply payments to principal balances bearing the lowest rate of interest rather than the highest.

5. Deceptive Introductory and Promotional Rates

Critics were concerned that introductory and promotional interest rates were used to lure cardholders into choosing particular cards, but that such rates were not thereafter fairly maintained.

6. Techniques Increasing the Likelihood of Late Payment

Critics also pointed to a variety of techniques designed by card issuers to decrease the chance of timely payment by cardholders. Such techniques included changes in the date payment was due, cutoff hours, changes in the place for mailing payment, prohibiting payment on weekends or holidays, locating the place for payment far away, and misleading customers about grace periods.

II. Implementation of the CARD Act of 2009

Congress adopted the CARD Act of 2009 to address a variety of these credit card practices. To ease the transition and permit time to address the detail, the CARD Act was implemented in three stages following its adoption on May 22, 2009. A few initial provisions (relating to advance notice of credit card modifications and the timing of payments) became effective ninety days after enactment. The bulk of the Act's provision, however, did not become effective until nine months following enactment (i.e., on February 22, 2010). Finally, two provisions relating to the reasonableness of fees and the obligation of issuers to re-evaluate increases in APR did not be-

15. "Fed Provides Highlights and Comments on Final Rules Regarding Credit Card Accounts," C.C.H. Federal Banking Law Reporter ¶95-629 (Dec. 18, 2008), 2008 WL 7050922 (C.C.H.).

16. Statement of Randall S. Krosnzer, quoted in Federal Banking Law Reports Letter No. 2272, C.C.H. Federal Banking Law Reporter – Report Letter Periodical 4 (June 16, 2008), 2008 WL 7050964 (C.C.H.).

come effective until fifteen months following enactment. Those provisions were particularly dependent upon the adoption of rules by designated federal agencies. Therefore, even though the Credit CARD Act mandated that final rules be adopted by those agencies within nine months following enactment, the effective date of the statutory provisions was further delayed.[17]

Let us briefly consider how the criticisms discussed above were addressed by the Credit CARD Act of 2009.

A. High Interest Rates

Congress rejected the invitation to set caps on either initial or default rates of interest. However, it did address the problem of card issuers unilaterally increasing interest rates, effective immediately. One of the provisions of the CARD Act (which was implemented in its first stage) expanded prior administrative regulations to require card issuers to provide written notice of any increase in annual percentage rate (APR) not later than forty-five days prior to the effective date of the increase.[18] The Act further provided that this written notice inform cardholders of their right to cancel the card, and that such cancellation could not be considered a default or result in the imposition of any other penalty.[19]

Provisions of the Credit CARD Act which did not become effective until the third stage of implementation imposed a more unique and creative type of cardholder protection from increases in interest rates. The new statute actually requires issuers which have increased APRs on any account after January 1, 2009 to review that decision on a periodic basis. If a card issuer has increased the APR on such an account based on such factors as credit risk and market conditions, the issuer is required to maintain "reasonable methodologies" to re-evaluate whether reductions in APR are warranted by changes in those factors at least once every six months.[20]

The Credit CARD Act also addressed cardholders' fear that interest rates on existing balances would be increased, particularly as a result of missed payments. The Act adopts as a general proposition the rule that "no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance . . . ."[21] That general rule is, however subject to four exceptions.[22] The rate on an existing balance can be increased if 1)the increase is disclosed in advance (e.g., the end of a promotional rate); 2) the increase results from a change in the applicable variable rate; or 3) the increase is the result of a workout arrangement.[23] The fourth exception relates to late payments. Although the

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17. *See, e.g.* Pub. L. No. 111-24, 123 Stat. 1734, § 102(b)(1)(effective dates of rules requiring penalty fees to be reasonable and proportional), and § 101(c)(effective date of rules requiring periodic re-evaluation of increases in APR).

18. 15 U.S.C.A. § 1637(i)(1)(West 2010). This general rule is subject to certain exceptions noted therein. For the implementing regulations, see 12 C.F.R. § 226.55 (2010), and the discussion of the final rules in Truth in Lending, 75 Fed. Reg. 7658 (Feb. 22, 2010).

19. 15 U.S.C.A. § 1637(i)(3-4)(West 2010).

20. 15 U.S.C.A. § 1665c(a-b)(West 2010). For the implementing regulations, see Truth in Lending, 75 Fed. Reg. 12334 (March 15, 2010)(proposed rules)(to be codified at 12 C.F.R. Pt. 226).

21. 15 U.S.C.A. § 1666i-1(a) (West 2010).

22. 15 U.S.C.A. § 1666i-1(b)(West 2010).

23. *Id.*

interest rate on an existing balance can be increased for missed payments, the issuer can only do so under the new Act if the payment is more than sixty days late.[24] Furthermore, the increase must terminate at the end of six months if the cardholder makes timely payments in the interim.[25] In order to keep the cardholder better informed, the Credit CARD Act further requires the issuer to send a written statement of the reason for such an increase, which must include notice that the increase will terminate after six months of timely payments.[26]

The new Act further extends the forty-five day notice requirement to *any* significant change in the terms of the credit card contract.[27] The parameters of "significant change" were left to determination by the Federal Reserve Board, which has promulgated rules that include increases in minimum payments and the acquisition of security interests within that phrase.[28]

Therefore, although the CARD Act of 2009 sets no new interest rate ceilings, cardholders are given some protection towards maintaining the rate on existing balances. Further, the new notice requirement at least gives cardholders time to arrange alternative financing, or to alter their use of the credit card, when they are notified of unfavorable prospective changes.

B. Improvident Extensions of Credit

The CARD Act of 2009 also addresses concerns regarding the improvident extension of credit, particularly in regard to aggressive marketing to college students. Whether these provisions have real teeth will be a question of interpretation and enforcement.

First, the new Act flatly states that a card issuer may not open a credit card account or increase the credit limit in regard to *any* consumer "unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account."[29] The regulations adopted to implement this section require the issuer to establish written policies to consider the cardholder's income or assets, and current obligations, in making that determination.[30] That determination should be based on a reasonable estimate of the minimum payment that the cardholder will be required to make.[31]

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24. 15 U.S.C.A. § 1666i-1(b)(4)(West 2010).

25. 15 U.S.C.A. § 1666i-1(b)(4)(B)(West 2010).

26. 15 U.S.C.A. § 1666i-1(b)(4)(A)(West 2010).

27. 15 U.S.C.A. § 1637(i)(2)(West 2010). For implementing regulations, see Truth in Lending, 74 Fed. Reg. 36077 (July 22, 2009)(interim final rules); 75 Fed. Reg. 7658 (Feb. 22, 2010)(final rule).

28. *See* 12 C.F.R. § 226.9(c)(2)(ii)(2010).

29. 15 U.S.C.A. § 1665e (West 2010).

30. 12 C.F.R. § 226.51 (2010).

31. 12 C.F.R. § 226.51(a)(2)(i)(2010).

Secondly, the new Act includes detailed provisions designed to protect consumers under the age of twenty-one. No card may be issued to a person under twenty-one unless an adult with the means to repay the debt agrees to co-sign,[32] or the cardholder submits financial information indicating an independent means of repaying the obligation.[33] A similar restriction is imposed upon any increase in credit limits.[34] Detailed provisions also restrict promotional gifts,[35] require colleges to disclose marketing agreements with card issuers,[36] and in addition require colleges to submit annual reports regarding marketing or affinity card agreements.[37] The Act further encourages colleges to restrict marketing locations and offer credit counseling during orientation programs.[38]

C. Exorbitant Fees

Congress addressed the concern over exorbitant credit card fees in two ways. First, it adopted a significant new general provision which regulates the amount of such fees. Secondly, it adopted specific provisions addressing particular types of fees.

As to the general provision, Congress for the first time adopted a standard of reasonableness and proportionality against which credit card fees shall be assessed in the future. The CARD Act states that the amount of any penalty fee or charge that a card issuer may impose for violation of the credit card contract (including late payment or over-the-limit fees) "shall be reasonable and proportional to such omission or violation."[39] The statute further directed the Federal Reserve Board to establish rules to establish standards for assessing whether that standard is met, including safe harbors for acceptable fees.[40] In issuing those rules, the Board was directed to consider costs incurred by the issuer, the deterrent effect of such penalty fees, and the conduct of the cardholder.[41] This section of the Act fell within the third stage of implementation of the Credit Card Act.

Pursuant to that directive, the Board in March of 2010 proposed rules which shall become effective on August 22, 2010.[42] First, those rules provide guidance as to the types of issuer costs which may be proportionally recovered as a result of a violation. Recoverable costs include costs of collection, notice to the cardholder, and efforts to resolve delinquencies such as workout and hardship arrangements. Card issuers will be required to re-evaluate those costs annually. Secondly, in regard to the deterrence factor, the proposed rules require issuers to use an empirically de-

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32. 15 U.S.C.A. § 1637(c)(8)(West 2010).
33. *Id.*
34. 15 U.S.C.A. § 1637(p)(West 2010).
35. 15 U.S.C.A. § 1650(f)(2)(West 2010).
36. 15 U.S.C.A. § 1650(f)(1)(West 2010).
37. 15 U.S.C.A. § 1637(r)(2)(A)(West 2010).
38. 15 U.S.C.A. § 1650(f)(3)(West 2010).
39. 15 U.S.C.A. § 1665d(a)(West 2010).
40. 15 U.S.C.A. § 1665d(b-e)(West 2010).
41. 15 U.S.C.A. § 1665d(c)(West 2010).
42. Truth in Lending, 75 Fed. Reg. 12334 (March 15, 2010)(proposed rules)(to be codified at 12 C.F.R. Pt. 226).

rived, statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations. Thirdly, as to cardholder conduct, the Board declined to require any type of individual assessment of cardholder conduct. However, the proposed rules take cardholder conduct into account in other ways. For example, penalty fees may not exceed the dollar amount of the violation (e.g., an over-the-limit fee could not exceed the $5 limit exceeded) and multiple fees may not be assessed for a single violation. Finally, the Board delayed action on the adoption of safe harbor fees due to insufficient information. A request was made for the submission of relevant data.

Only time will tell if the new requirement of reasonableness and proportionality will prove effective in reducing exorbitant credit card fees. Much will depend upon the interpretation and enforcement of the new regulations.

In regard to particular fees which were the subject of criticism, the Credit CARD Act adopted more particularized provisions. These provisions included the following:

1. Late Fees

Late fees were specifically listed in the fees subject to the new requirements of reasonableness and proportionality.[43] In addition, as discussed below, the Credit CARD Act adopted provisions designed to make late payments less likely.

2. Over-the-Limit Fees

In addition to requiring that over-the-limit fees be reasonable and proportional,[44] the CARD Act adopted a new provision requiring the express permission of cardholders for such fees to be charged at all.[45] The card issuer is free to extend additional credit without charge,[46] but may not impose a fee for that privilege unless the cardholder has expressly elected to permit the card issuer to complete the transaction (an "opt-in" format).[47] Such election requires the issuer to have provided advance notice of the fee to the cardholder, and any such election is revocable.[48] The Credit CARD Act further prohibits an issuer from manipulating an account to generate penalty fees,[49] and limits the frequency with which over-the-limit fees may be imposed.[50] For example, issuers are prohibited from imposing more than one over-the-limit fee per billing cycle.[51]

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43. 15 U.S.C.A. § 1665d(a)(West 2010).
44. *Id.*
45. 15 U.S.C.A. § 1637(k)(1)(West 2010).
46. 15 U.S.C.A. § 1637(k)(6)(West 2010).
47. 15 U.S.C.A. § 1637(k)(1)(West 2010).
48. 15 U.S.C.A. § 1637(k)(2)(West 2010).
49. 15 U.S.C.A. § 1637(k)(5)(B)(West 2010).
50. 15 U.S.C.A. § 1637(k)(7)(West 2010).
51. *Id.*

3. Method of Payment

The Credit CARD Act addressed concerns about charges for method of payment by simply prohibiting them. The Act provides that "the creditor may not impose a separate fee to allow the obligor to repay . . . by mail, electronic transfer, telephone authorization, or other means . . ." unless the payment involves an expedited service by a service representative.[52]

4. Miscellaneous Fees

All miscellaneous credit card fees should be likewise subject to the reasonableness and proportionality restriction.

D. Unfair Procedures

The Credit CARD Act of 2009 further adopted a number of provisions addressing unfair, misleading, or deceptive procedures utilized by card issuers.

1. Incomprehensible Card Agreements

Although the CARD Act itself did not directly address the format or language of current credit card contracts,[53] Congress did take steps towards greater transparency. New provisions of the Act require each issuer to maintain an Internet site on which the issuer "shall post the written agreement between the creditor and the consumer for each credit card account . . . ." [54] Further, the Federal Reserve Board has been directed to maintain a central repository of those agreements on its Internet site, which "shall be easily accessible and retrievable by the public."[55] The availability of such information should lead to closer scrutiny and comparison of credit card terms, and perhaps to greater uniformity and clarity.

The Credit CARD Act did adopt a handful of provisions intended to make the billing statement more cardholder-friendly, mainly directed at enhancing disclosure related to repayment. Statements are required by the statute to include a warning to the cardholder that making minimum payments will increase interest and time to repay.[56] Statements must further include information regarding the time required to pay the entire balance if only minimum payments are made (plus the total cost of doing so),[57] the monthly payment required to eliminate the balance in 36

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52. 15 U.S.C.A. § 1637(*l*)(West 2010).

53. This is one area in which the former rules may continue to supplement the statute. The federal regulations originally designed to go into effect on July 1, 2010 included new format requirements for certain tables in credit card applications and solicitations, including type size and boldface specifications. *See* Truth in Lending, 74 Fed. Reg. 5244 (Jan. 29, 2009).

54. 15 U.S.C.A. § 1632(d)(1)(West 2010).

55. 15 U.S.C.A. § 1632(d)(3)(West 2010).

56. 15 U.S.C.A. § 1637(b)(11)(A)(West 2010).

57. 15 U.S.C.A. § 1637(b)(11)(B)(West 2010).

months, and a toll-free number for information about credit counseling and debt management.[58] All of these disclosures must be conspicuously made in some form of table.[59]

2. Universal Default Provisions

The Credit CARD Act of 2009 also addressed the concern that card issuers could use defaults on *other* obligations to trigger increases in the APR applicable to existing balances. As discussed above,[60] card issuers under the new statute have only limited rights to increase that rate -- which do *not* include cardholder defaults on other obligations. The result is that universal default provisions should no longer be effective.

3. Double-Cycle Billing

Congress responded to concerns about the incomprehensibility and unfairness of double-cycle billing by simply prohibiting such a provision.[61] Card issuers should no longer be entitled to reach back to earlier billing cycles when calculating interest for the current cycle.

4. Application of Payments

To prevent card issuers from applying payments to balances bearing the lowest interest, the Credit CARD Act simply requires that issuers "shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted."[62]

5. Deceptive Introductory and Promotional Rate

The Credit CARD Act of 2009 further addressed concerns that the rates which lured cardholders into choosing a particular card might not be fairly maintained. Subject to certain exceptions, no increase in credit card rates or fees "shall be effective before the end of the 1-year period beginning on the date on which the account is opened."[63] Furthermore, no increase in APR that is defined by the Federal Reserve Board to be a "promotional rate" "shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect . . . ."[64]

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58. *Id.*
59. 15 U.S.C.A. § 1637(b)(11)(D)(West 2010).
60. *See discussion supra* notes 21-26, and accompanying text.
61. 15 U.S.C.A. § 1637(j)(West 2010). See also the implementing regulations at 12 C.F.R. § 226.54 (2010).
62. 15 U.S.C.A. § 1666c(b)(1)(West 2010). See also the implementing regulations at 12 C.F.R. § 226.53 (2010).
63. 15 U.S.C.A. § 1666i-2(a)(West 2010).
64. 15 U.S.C.A. § 1666i-2(b)(West 2010).

6. Techniques Increasing the Likelihood of Late Payment.

Finally, the Credit CARD Act restricted a variety of techniques previously utilized by card issuers to cause late payment. Card issuers may not treat payments as late unless they have adopted "reasonable procedures" to ensure that statements are mailed at least 21 days before payment is due.[65] If the card provides a grace period, then the statement must be mailed at least 21 days before the grace period expires.[66] If a change in the issuer's handling procedures (such as changing the address for payment) causes a delay in crediting payment, the issuer may not impose a late fee for sixty days after the change.[67]

Furthermore, payments are required to be due on the same day each month.[68] If that day is a day on which the issuer does not accept payments (such as a holiday or weekend), payment received on the next business day may not be treated as late.[69] Payment at a branch is payment to a bank.[70]

Enhanced disclosure is further required in the billing statement. The statement must disclose in a conspicuous location the date on which payment is due, together with any late fee.[71] If that late payment will result in an increase in APR, notice of the fact and the applicable increase must also be disclosed, and such disclosure must be made in close proximity to the due date.[72]

Conclusion

The Credit CARD Act of 2009 represents a significant step by Congress to ban unfair, misleading and deceptive practices by issuers, enhance cardholder disclosure, and protect underage consumers in the credit card markets. Whether the statute succeeds in adequately protecting cardholders from the targeted abuses will largely depend on the future implementation and enforcement of its provisions.

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65. 15 U.S.C.A. § 1666b(a)(West 2010).
66. 15 U.S.C.A. § 1666b(b)(West 2010).
67. 15 U.S.C.A. § 1666c(c)(West 2010).
68. 15 U.S.C.A. § 1637(o)(1)(West 2010).
69. 15 U.S.C.A. § 1637(o)(2)(West 2010).
70. 15 U.S.C.A. § 1637(b)(12)(C)(West 2010).
71. 15 U.S.C.A. § 1637(b)(12)(A)(West 2010).
72. 15 U.S.C.A. § 1637(b)(12)(B)(West 2010).