



# **Top 10 Credit CARD Act Compliance Issues**

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# Overview

- Common Credit Card Issues
  - *Credit CARD Act of 2009*
  - Specific Content & Format Requirements for Notices
  - **Increased Focus**
    - CFPB & UDAAP

# Common CARD Act Issues

## 1. When does the right to reject apply?

### – 12 CFR 1026.9(c)(2)(iv)(B)

- “Significant change in account terms” – 1026.9(c)(2)(ii)
  - Change to term required by 1026.6(b)(1) or (b)(2);
  - Change to term required by 1026.6(b)(4); or
  - Acquisition of security interest
- Only credit card accounts
- Does not apply to other open-end credit products
- Does not apply to APR increases
- Does not apply to increases in monthly payment\*
- Does not apply when member is 60 days late

# Common CARD Act Issues

## 2. Renewal Notices

- Just for cards with annual fees? No.
- 12 CFR 1026.9(e)
  - “or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer”
- “Significant change in account terms”
  - Lowered fee not covered by 12 CFR 1026.9(c)(2)(ii) but credit union needs to disclose the reduced fee – either at the time of change or at “renewal”

# Common CARD Act Issues

## 2. Renewal Notices – Two Options

1. Send notice when term is changed even though the change does not trigger a “change in terms” notice
  2. Send renewal notice under 12 CFR 1026.9(e)
- Remember – this is a reduction of a fee or term
    - Send notice on periodic statement of change and update disclosures – one and done.
    - If CU waits for “renewal” notice – would need to monitor and track when member’s card is renewed and disclose more than just the changed term
  - No formatting requirements for “renewal notice”

# Common CARD Act Issues

## 2. Renewal Notices – Annual Fee

“If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account.”

The notice shall contain the following information:

- (i) The disclosures contained in §1026.60(b)(1) through (b)(7) that would apply if the account were renewed; and
- (ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

# Common CARD Act Issues

## 3. Reducing a member's credit limit

- Provide 45-days advance notice? No.
- No requirement to provide a notice prior to reducing a member's credit limit (the CU needs this ability for safety & soundness purposes)
- However, if CU charges over-the-limit fee – the CU needs to send a notice 45-days prior to charging a fee for exceeding the lowered credit limit
  - 12 CFR 1026.9(c)(2)(vi)
  - Remember, 12 CFR 1026.56 (Opt-in process for over-the-limit fees on credit cards)

# Common CARD Act Issues

## 3. Reducing a member's credit limit

- Provide adverse action notice?
- Two different notices (Reg B and FCRA)
  - But, use the same definition of “adverse action”
  - 12 CFR 1002.2(c)
- If action is specific to that member (i.e., credit score drop), both notices would be required
- If member has a “*delinquency as to that account*”, an adverse action notice would not be required
  - 12 CFR 1002.2(c)(2)(ii)
  - Still send a letter with lowered credit limit?



# Common CARD Act Issues

## 4. Format for Change-in-Terms Notice

- 12 CFR 1026.9(c)(2)(iv)(D)
- In most cases, notice must be in Tabular Format
  - Exceptions for increased minimum periodic payment and describing the security interest being acquired
- Notice can be on periodic statement or
- Notice can be sent separately
  - Front of first page; or
  - Clearly segregated on a separate page
- In either case – must be in Tabular Format
  - G-20 or G-21 Model Forms

# Common CARD Act Issues

## 4. Format for Change-in-Terms Notice

### G-20 Change-in-Terms Sample (Increase in Annual Percentage Rate)

#### Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%

# Common CARD Act Issues

## 4. Format for Change-in-Terms Notice

### G-21 Change-in-Terms Sample (Increase in Fees)

#### Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. These changes will take effect on 5/10/12. For more detailed information, please refer to the booklet enclosed with this statement.

You have the right to reject these changes, unless you become more than 60 days late on your account. However, if you do reject these changes you will not be able to use your account for new transactions. You can reject the changes by calling us at 1-800-xxx-xxxx.

Revised Terms, as of 5/10/12	
Late Payment Fee	Up to \$35.
Returned Payment Fee	Up to \$35.

# Common CARD Act Issues

## 5. Caps on Penalty Fees – Credit Cards

- 12 CFR 1026.52(b)
  - Fees covered by cap include:
    - Late payment fee; returned payment fee; over-the-limit fee; declined access check fee
  - Fees not covered by cap include:
    - Balance transfer; cash advance; foreign transaction; annual fees; fees for reissuing lost or stolen card; fees for expedited payment
- **New Safe Harbor Levels – 12 CFR 1026.52(b)(1)(ii)**
  - \$26.00 for first violation of the same type
  - \$37.00 for subsequent violation of same type in 6 mo. Period
  - However, remember “transaction caps”
    - Fee cannot be more than the dollar amount of violation

# Common CARD Act Issues

## 5. Caps on Penalty Fees – Credit Cards

- Multiple Fees for Single Event or Transaction
  - What if member pays late with a check that bounces?
    - Can the credit union charge both a late payment fee (\$25) and a returned check fee (\$25)? No.
    - These are considered the same event or transaction
- Prohibited Fees (these transactions have no cost):
  - Fees for account inactivity;
  - Fees for the closure or termination of an account; and
  - Fees for transactions the credit union declined.

*Note:* Declined access check fee is different (amount of check)

# Common CARD Act Issues

## 6. Ability to Pay – Young Members

- **12 CFR 1026.51(b)**
  - Applies to members under the age of 21
    - Must have independent ability-to-pay; or
    - Co-signer or joint applicant (over 21) who can pay
- Applies both during initial account opening and any credit limit increases
  - **Before the CU can increase the credit limit**, must obtain *written agreement* from the co-signer or joint applicant (over 21) – 12 CFR 1026.51(b)(2)
  - Written agreement needs to be specific to limit increase

# Common CARD Act Issues

## 7. No Fee or APR Increases During First Year

- **12 CFR 1026.55(b)(3)**
  - Advance Notice Exception
    - Increase APR or Fee with 45-day advance notice
  - Exception **cannot** be used in first year of the account
- **Example:** New Safe Harbor Level for Late Fees
  - For 2014, can charge up to \$26 for late payment fee
  - But, must provide 45-day advance notice
  - Increased \$26 fee cannot apply to members who opened credit card accounts within past 12 months
  - CU **can** provide notice now, apply increased fee later

# Common CARD Act Issues

## 8. No Fee or APR Increases During First Year

- 12 CFR 1026.55(b)(3)

**Example:** Switching from non-variable to variable rate

- Changing from non-variable to variable requires a 45-day change in terms notice (even if APR stays the same)
  - Cannot apply to accounts within first year of account
  - Can provide notice now and delay the change until after the end of accountholders first year
- 
- Same restriction applies for across the board APR increases



# Common CARD Act Issues

## 9. APR Rate Reevaluations

- 12 CFR 1026.59

- Credit unions must review APR increases every six months
  - Review actual factors for the rate increase; or
  - Factors the CU current uses for new accounts
- **Example** – Across the board APR increase
  - CU reviews the factors every six months
  - Document current pricing; Document review process
- **Special Situation** – Acquired Portfolio – 1026.59(g)
  - If prior CU had increased APRs, review must still occur
  - *Optional Process* - can review once and be done

# Common CARD Act Issues

## 10. Agreements for All Open Accounts

- 12 CFR 1026.58(e)
- Card issuer must post an individual's credit card agreement on their website (such as in online banking); or
- Promptly provide the agreement to a cardholder upon request (send within 30 days).
  - **Must also post on issuer's website a process the cardholder can use to request agreement**
    - Email and telephone number

# Common CARD Act Issues

## BONUS: Credit Card Add-On Products

- **Deceptive Marketing Practices**
  - Unfair, Deceptive or Abusive Acts or Practices (UDAAP)
  - Large banks fined by CFPB
- Third-Party Products
  - Credit Monitoring
  - Debt Protection
  - Identity Theft Protection Services
- Third-Party Vendors used deceptive practices; banks were issued the fines and received the bad publicity
  - **Best Example of Vendor Management**

# Common CARD Act Issues

## BONUS: Credit Card Disclosures

- Be sure “Credit Card Tips” section is updated
  - Until January 2013, could use the Federal Reserve language. Now, must be CFPB.

For Credit Card Tips from  
the Consumer Financial  
Protection Bureau

To learn more about factors to consider when applying for or using a credit card, visit  
the website of the Consumer Financial Protection Bureau at  
<http://www.consumerfinance.gov/learnmore>

- *Tip:* Give your disclosures a complete review
  - Are all your terms still accurate?
  - Do they match your advertisements?

# Future Changes?

- **Transparency**

- *Minimum payment & late payment warnings*
  - Only required for periodic statement
  - CFPB looking at adding to online (and mobile?)
- *Reward programs*
  - Not currently covered by Regulation Z
    - Contractually-based
  - Are terms upfront, fair and reasonable?

# Key Takeaways

- **Credit CARD Act Compliance Continues**
  - Not a one-time change
  - Review the CU's current practices
    - Did you get everything right?
- CFPB's focus means potential changes
- Monitor your vendors
- *Bonus: Where are your complaints?*
  - Use complaints as a roadmap

# Questions?

Email me to sign-up for our free Regulatory E-Alerts

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