

# SPECIAL COMPLIANCE ALERT

July 16, 2009

## FRB INTERIM FINAL RULES — CREDIT CARD ACT OF 2009

On July 15, 2009, the Federal Reserve Board (FRB) issued its interim final rule amending Regulation Z to implement parts of the recent Credit Card Act of 2009 (Act). The FRB rules address the most immediate provisions of the Act effective August 20, 2009. The FRB will issue additional rules later to address the remainder of the Act that has either a February or August 2010 effective date.

**Effective Date:** The FRB final Reg. Z rules are effective August 20, 2009.

**Coverage:** The FRB final rules generally address the following three key requirements of the Act.

1. **Reasonable time to pay** – minimum payment due date at least 21 days following statement mailing; ends weekend deadlines and fluctuating due dates (Sec. 106). *Impacts periodic statement delivery for all open-end credit – credit cards, consumer open-end and HELOCs.*
2. **Grace periods** – grace period must be at least 21 days after periodic statement mailing date (Sec. 106). *Impacts periodic statement delivery for any open-end credit plan with grace period provision, generally credit cards.*
3. **Notice of rate changes and significant changes** – required 45-day notice of rate and fee changes; notice of right to cancel and fair repayment terms (Sec. 101). *Impacts ability to change rates and terms on credit card accounts.*

### Overview of FRB Reg. Z Amendments:

**1. Periodic Statement and Grace Period – Reasonable Time to Pay.** The FRB’s amendment is simple: Credit unions must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date and the date which any grace period expires. This rule increased the existing mailing/delivery date requirement [Reg. Z 226.5(b)(2)(ii)] from 14 to 21 days. It also changed the standard from an absolute deadline to a requirement for procedures designed to meet the deadline.

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*... credit unions wanting to change rates or other terms on existing credit card balances will need to get change notices out by August 4, 2009, with an effective date not later than August 19, 2009.*

## FRB INTERIM FINAL RULES—CREDIT CARD ACT OF 2009 (CONT.)

a. All Open End Accounts. This requirement will apply to all open end credit accounts: credit cards, open end consumer loans and home equity lines of credit.

b. Payment Due Date. This term is now defined to mean the date by which a minimum periodic payment must be made in order to avoid being treated late for any purpose. Also, the due date ignores any additional period after the due date that a credit union may provide before imposing a late fee. Ironically, a specific “payment due date” has never been required to be disclosed in the initial loan disclosures or on periodic statements for open end credit. The only required payment disclosure is the date on which the “free-ride” or grace period for credit card purchases ends. The Reg. Z changes do not include the disclosure of the payment due date on any initial loan or disclosure or periodic statements going forward.

c. Grace Period. The term grace period means the period within which a credit balance must be paid to avoid finance charges (i.e., the grace period for purchase on a credit card account). It does not include or relate to a late payment, courtesy or grace period.

d. Failure to Comply. If the credit union cannot adopt reasonable procedures to meet the 21-day statement delivery rule, the credit union cannot treat any late payment on an affected account as late for any purpose including, late fees, credit reporting, etc. Thus, until compliance with this delivery period can be achieved, the credit union will need to forego late fee collection processes. *(Note: The FRB suggested a safe harbor disclosure, due to the immediate implementation burden: If the statement payment due dates or grace period dates cannot be changed by August 20, the credit union could add a prominent disclosure that the consumer’s payment will not be treated late if received within 21 days after statement delivery. This would seem to stretch the language of the Act a bit too much for comfort. Further, this suggestion is not in the regulation or the Official Staff Comments, but is in the preamble discussion material. If you cannot meet the 21-day delivery period, we believe cannot impose a late fee, whether the safe harbor disclosure is given or not.)*

e. What Reg. Z Does Not Require. It is important to note what the 21-day periodic statement rule does not require. For example:

- No required disclosure of payment due date in initial loan disclosure;
- No required disclosure of payment due date on periodic statements (except credit cards);
- No required change in the billing cycle;
- No required change in late fee; and
- No required change in existing automatic payment authorizations of members.

Also, the Reg. Z changes should not require you to abandon your open-end loan program and convert back to dark age of closed end consumer lending.

f. Implementation Issues. Credit unions will need to consider the following steps to implement “reasonable procedures” to satisfy this 21-day periodic statement delivery requirement, including:

- Review loan and credit card agreement disclosure for payment due date provisions and any necessary changes;
- Review periodic statements for any payment due date disclosures and any necessary changes;
- Prepare and send notices to members of affected accounts to change the existing due dates to build in the necessary 21-day period;
- Review e-statement posting/delivery timing; and
- Reprogram late payment periods to begin with new payment due dates.

**2. Notice of Change in Rates and Other Significant Terms.** The FRB final rules flesh out the Act’s new requirement for a 45-day notice of changes in rates or other significant terms of credit card accounts. The rules impose three basic requirements:

a. Forty-five Day Advance Notice. For credit card accounts, if the credit union will make a significant change to an account term or increase the minimum periodic payment, the credit union must provide written notice at least 45 days before the effective date of the change.

**FRB INTERIM FINAL RULES (CONT.)**

For the purpose of this requirement “significant” terms include:

- APRs;
- Fees for issuance or availability of credit cards;
- Fixed or minimum finance charges ;
- Transaction charges (such as cash advances);
- Grace periods during which credit may be repaid without a finance charge ;
- Balance computation method;
- Cash advance fees ;
- Late payment fees ;
- Overlimit fees;
- Balance transfer fees;
- Returned payment fees; and
- Costs of insurance or debt cancellation.

As in the past, advance notice is not required if the member agrees to the change. In addition, note that these requirements only apply to credit card plans, not to other open-end loans. Home equity lines of credit are excluded, even if they are subject to credit card access. *(Note that changing the payment due date does not require 45 days advance notice; in fact, delaying the due date does not require any advance notice. Thus, members can be notified of delayed September due dates in their August statements mailed the first week in September.)*

b. Right to Reject Changes. In addition to the 45-day advance notice requirement, if rates or other significant terms are amended, borrowers must be provided with the right to reject the change and continue paying on the account.

c. Repayments After Rejection of Changes. If the borrower opts-out of a change in terms, the credit union may terminate their access to additional credit, but may not impose minimum payment requirements less beneficial than either: (i) the payment terms in effect at the time the borrower notifies the credit union that new terms are rejected; (ii) payments amortized over 5 years; or (iii) a percentage of the outstanding balance that is no more than twice the percentage required at the time the borrower notifies the credit union of the rejection.

*As a practical matter, this means that credit unions wanting to change rates or other terms on existing credit card balances will need to get change notices out by August 4, 2009, with an effective date not later than August 19, 2009.*

(Please call Brian Witt or Hal Scoggins of Farleigh Wada Witt and we can assist you with more detailed implementation guidelines, compliance advice, forms review and change in terms notices.)

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