

Client Alert

March 26, 2015

CFPB Initiates Second CARD Act Review

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On March 19, 2015, the Consumer Financial Protection Bureau (“CFPB”) published a notice and request for information (“2015 RFI”) regarding the impact of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”), as required by Section 502(a) of the CARD Act. The CARD Act requires that the CFPB conduct this review every two years; the last such effort was undertaken beginning in late 2012 (“2012 RFI”).

In announcing this initiative, CFPB Director Richard Cordray said, “With today’s inquiry, the Bureau is seeking to further understand how the credit card market is working in practice and how credit card protections affect consumers and credit card issuers.” The information collected will form the basis of a CFPB report to Congress on the state of the consumer credit card market, and will be used by the CFPB to “inform future policy decisions on the topic.”

The 2015 RFI, like the 2012 RFI, covers statutory requirements for the review, including:

- The terms of credit card agreements and the practices of credit card issuers;
- The effectiveness of disclosure of terms, fees and other expenses of credit card plans;
- The adequacy of protections against unfair or deceptive acts or practices or unlawful discrimination relating to credit card plans; and
- Whether implementation of the CARD Act has affected: (i) the cost and availability of credit, particularly with respect to non-prime borrowers; (ii) the use of risk-based pricing; or (iii) credit card product innovation.

However, the 2015 RFI also requests information on the following topics, which are beyond the statutory requirements for the review.

- *Online disclosures*: The CFPB wants to improve its understanding of how card issuers ensure that consumers accessing their accounts primarily through online or mobile channels receive information and required disclosures.
- *Rewards products*: The CFPB is interested in consumer understanding of, and the transparency with which issuers disclose to consumers, information regarding eligibility, value and other rules that apply to rewards offers associated with credit cards.
- *Grace periods*: The CFPB wants to determine the transparency with which issuers disclose to consumers the terms and limitations governing grace periods and how such disclosures could be improved.

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- *Add-on products:* The CFPB has requested information regarding the frequency with which card issuers offer additional products that are supplementary to the extension of credit and what steps issuers take to prevent unfair, abusive or deceptive marketing practices with respect to such products.
- *Fee harvester cards:* The CFPB seeks to understand the prevalence of and costs associated with credit cards that have high fees, such as sizeable application fees.
- *Deferred interest products:* The CFPB is interested in what alternatives to deferred interest products exist for “vulnerable consumers,” as well as such consumers’ understanding of the costs associated with retroactively assessed interest.
- *Debt collection:* The CFPB has requested information regarding issuers’ practices with respect to minimizing losses resulting from delinquent customers.
- *Ability to pay:* The CFPB wants to improve its understanding of issuers’ implementation of the “ability to pay” standards with respect to application approval, initial extension of credit and credit line increases.

Comments are due by Monday, May 18, 2015.

A copy of the CFPB press release may be found here:

<http://www.consumerfinance.gov/newsroom/cfpb-launches-public-inquiry-to-inform-agency-review-of-the-credit-card-market/>.

The CFPB’s 2013 CARD Act Report, which resulted from its initial inquiry, may be found here:

http://www.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

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