

From: David
Subject: Regulation Z - Truth in Lending (Credit Card Act)

Comments:

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Name: David
Affiliation: Non-Credit Union
Category of Affiliation:
Address:

City:
State:
Country:
Zip:
PostalCode:

Comments:

Dear Madam/Sir: 10/20/09 On July 15, 2009 the Board issued an interim final rule implementing the provisions of the Credit Card Act that went into affect on August 20, 2009 (Regulation Z - Truth in Lending - R-1364). I previously submitted two comments with respect to R-1364. I would like to address those two comments with respect to R-1370 that was released on September 29, 2009 and is effective February 22, 2010. The first comment was with respect to a change in Variable rate. I asked that Regulation Z be more specific with respect to a change in variable rate. R-1364 clearly stated that a change in a variable rate "in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under control of the creditor and is available to the general public" does not require notice to the consumer and does not require that the consumer be given the choice to reject the change. However, R-1364 did not clarify that this provision does not permit a card issuer to increase the variable rate by changing the method used to determine that rate (such as increasing the margin). I am glad to see that R-1370 addresses this issue and specifically states that a card issuer cannot increase a variable rate by changing the method used to determine that rate (such as by increasing the margin). That being said, once the additional provisions take place on February 22, 2010, it would make sense that a change in the calculation (such as by increasing the margin) on outstanding balances would be prohibited (considered an increase in the APR), and that a change in the calculation (such as by increasing the margin) on new balances would be a "significant change" that would permit the cardholder to have the option to opt out. Note that my understanding is that between August 20, 2009 and February 22, 2010, an increase in the margin, for example, would be allowed on all balances, but the cardholder must be given notice and the option to opt out (although again the increase in margin is not specifically stated in R-1364 as a significant change). My only suggestion is

that the list of significant changes in R-1370 be updated to specifically include a change in the way the variable rate is calculated for new balances (such as increasing the margin). That way there is no confusion to the understanding that after February 22, 2010 an increase in the margin calculation would be prohibited for outstanding balances (considered an increase in APR) and that an increase in the margin for new balances would be a significant change that requires notice and the right to opt out. The result is that an increase in the margin, for example, would be specifically listed as a "significant change" to a new balance that would require notice and the right to opt out. My second comment was with respect to minimum payments. It appears that R-1364 and R-1370 address increases in minimum payments in response to the exercising of an opt out provision by the cardholder. Although increases in minimum payments require notice, they don't require an opt out provision and they are not considered to be a "significant change." There is the following language in R-1370 and R-1364: "A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase." There is also additional language in R-1370 and R-1364: "a required minimum payment that includes a percentage of the balance that is not more than twice the prior percentage." In R-1364's section governing home equity plans and open end plans that are not credit cards, there is language regarding the minimum period payment increasing from 2% to 5%. The problem is that the guidance on increasing minimum payments is murky, and the guidance appears to limit itself to a card issuer's reaction to a card holders opting out of a significant change. There appears to be no guidance on a card issuer increasing a minimum payment that is not in response to a cardholder having opted out of a change in terms (significant change). To be specific, Chase recently increased the minimum payments of many of its cardholders who have low fixed rates from "2% of the balance to 5% of the balance." Many of the Chase cardholders had low fixed rates (such as 2%) and found that their minimum payment had tripled. This increase appears to be unrelated to any rejections of terms. Although this change appears to have been done prior to August 20, 2010, and therefore would not be prohibited at that time, the impact of this practice should be addressed in R-1370. I recommend some additional guidance on increasing minimum payments in response to an opting out of a significant change, and also increasing the minimum payment without regard to any opting out on the part of the cardholder. Let's look at an example of the Regulation's murky explanation of minimum payments. There is the following language in R-1370: 55(c)(2) Repayment of protected balance. 1. No less beneficial to the consumer. A card issuer may provide a method of repaying the protected balance that is different from the methods listed in § 226.55(c)(2) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with § 226.55(c)(2)(iii). There is also the following language in R-1370 (c) Treatment of protected balances. (1) Definition of protected balance. For purposes of this paragraph, "protected balance" means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph

(b)(3) of this section. 428 (2) Repayment of protected balance. The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods: (i) The method of repayment for the account before the effective date of the increase; (ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or (iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase. (d)

Continuing application. This section continues to apply to a balance on a credit card account after: (1) The account is closed or acquired by another creditor; or (2) The balance is transferred from a credit card account issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 226.5b). The Regulation does not appear to reconcile these two provisions or in any way explain how they interrelate. Let's assume that a person has \$20,000 debt. To pay it off in 5 years, this person would have to pay \$333 a month for 60 months (20,000/60). \$333 is reasonable. However, if the minimum payment is currently \$333 a month, and the card issuer instead chooses to increase the minimum payment by "not more than twice," then the minimum payment can increase to \$666. Is this the correct analysis? Does the "not more than twice" language refer to something other than just the minimum payment? \$666 may be unrealistic for some people, resulting in default and in the card issuer being allowed to increase the APR for being over 60 days late in making the payment. So now the cardholder has an even higher minimum payment (the min payment increase and also the increase in the APR). It would be hard to imagine this individual being current for 6 months, and if they can, to only get the payment down to \$666. I recommend that references to minimum payments be clarified, and that additional guidance be provided. Thank you, David