

Richard A. Courtney, CELA
Certified Elder Law Attorney
4400 Old Canton Road, Suite 220
Jackson, Mississippi 39211
601-987-3000 or 1-866-ELDERLAW
For more Articles, go to: www.elderlawms.com



MEMBER

The Credit Card Accountability Responsibility and Disclosure Act of 2009

We have counseled many families in which older adults have become financially distressed due to credit card bills. At times, these problems have been made worse by the marketing and billing practices of credit card companies. On May 22, 2009, President Obama signed into law the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit CARD Act of 2009) in an effort to better control such harmful practices.

Amending the Truth in Lending Act, the Credit CARD Act of 2009 requires that credit card companies notify cardholders in writing at least 45 days prior to any change in the annual percentage rate (APR). The notification must also inform cardholders that they have the right to cancel the account before the effective date of the rate increase. If a cardholder cancels the account, the cancellation cannot be considered a default on the account, and cannot trigger an obligation to repay the account in full.

Credit card companies are further prohibited from increasing annual percentage rates (APRs) that apply to existing balances unless specific conditions apply. An APR may be increased only if 1) the index on which the rate is based changes, 2) it is a promotional rate that has expired, 3) a cardholder fails to comply with a hardship workout plan, or 4) the account falls 60 days past due.

What's more, if a rate increase is triggered by a cardholder falling 60 days past due on the account, the credit card company must inform the cardholder that the rate increase will be terminated (and the rate restored to what it was before the increase) once the cardholder has made timely minimum payments for six months.

Other features of the Credit CARD Act of 2009 include:

- If different APRs apply to separate portions of an outstanding balance, the amount of any payment beyond the minimum payment due must be applied to the portion of the balance with the highest APR.
- If the payment due date is a date when a creditor does not receive or accept payments by mail (e.g., weekends and holidays), the creditor cannot treat a payment received on the next business date as a late payment.
- Credit card companies are prohibited from charging a cardholder an over-the-limit fee unless the cardholder authorizes the credit card company to complete the transaction that causes the balance to go over the limit (opt-in).
- Credit card companies are prohibited from charging a fee based on the manner in which a payment is made (e.g., on line, by telephone).
- Extension of credit to consumers under age 21 is prohibited, unless the consumer demonstrates the independent means of repaying the debt or has a cosigner over 21 capable of repaying the debt.

While this law provides some needed protections, Money Magazine (July 2009) finds that the bill falls short in the following particulars:

- The law will not take effect until February 2010, which “gives card issuers plenty of time to tack on fees, hike rates sky-high, and yank perks on any cards you hold now.”
- There is nothing to stop card companies from raising your rate on newly accrued debt, even though they cannot raise your rate on existing balances if you pay within 60 days. (A proposal by Sen. Bernie Sanders of Vermont to cap interest rates at 15% was defeated.)
- The new regs restrict how much you can be charged in fees when you exceed your credit limit, but there are no guidelines on other fees, including late-payment and balance-transfer charges. (Issuers are expected to earn \$20 billion this year in penalty fees alone according to industry consultants.)