



April 3, 2013

CFPB FINALIZES CREDIT CARD FEE RULE

The Consumer Financial Protection Bureau (CFPB) has issued a final rule generally limiting the total amount of fees that a credit card issuer may require a consumer to pay to 25 percent of the credit limit in effect when the account is opened. The rule amends Regulation Z and applies the limitation only during the first year after account opening.

The Credit Card Accountability Responsibility and Disclosure Act of 2009 added Section 127(n)(1) to the Truth in Lending Act, which prohibits payment of any fees (other than late, over-the-limit, or returned payment fees) from the credit made available under the terms of a credit card account if the terms of the account require the payment of fees in the first year that, in the aggregate, exceed 25 percent of the total amount of credit authorized when the account is opened.

In January 2010, the Board of Governors of the Federal Reserve System (FRB) issued Section 226.52(a) of Regulation Z implementing Section 127(n)(1) and limiting the total amount of fees to "25 percent of the credit limit in effect when the account is opened." The original limitation applied only during the first year after account opening. In April 2011, the FRB expanded Section 226.52(a) to include fees payable prior to account opening. This expansion was in response to the FRB's understanding that certain credit card issuers were requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed the 25 percent limit. The expanded rule was scheduled to become effective on October 1, 2011.

In July 2011, a lawsuit challenging the FRB's authority to expand Section 226.52(a) was filed in the United States District Court of South Dakota. On July 21, 2011, the FRB's authority to implement Regulation Z was transferred to the CFPB. In September 2011, the court granted a motion for preliminary injunction filed by the card issuer in the lawsuit, which stopped the portion of the FRB's 2011 final rule applying Section 226.52(a) (renumbered to Section 1026.52(a) under the CFPB's rulemaking authority) to pre-account opening fees from becoming effective. See our ALERT of Oct. 7, 2011.

In April 2012, the CFPB proposed amending Section 1026.52(a) to provide that the fee limit apply only during the first year after account opening. The CFPB issued the proposal in order to resolve uncertainty created by the South Dakota litigation. Many of the over 50 electronic and 1,000 written comments, most of which were from the general public, opposed the amendment arguing that it would

reduce protections for vulnerable consumers. While the CFPB indicates that it takes seriously the concerns raised by commenters, it continues to believe the rule is necessary to resolve the uncertainty currently existing. The CFPB indicated that it will continue to monitor the credit card market to determine if further action is necessary to protect consumers.

The rule became effective March 28, 2013. □

✧ *Mike Tomkies and Margaret Stolar*

CFPB REPORTS ON COMPLAINTS

The Consumer Financial Protection Bureau (CFPB) recently issued a report summarizing the CFPB's Consumer Response complaint system with respect to complaints received from July 21, 2011 through February 28, 2013. The CFPB established a Consumer Response office and system for addressing consumer complaints as part of the CFPB's July 21, 2011 launch. The CFPB began accepting credit card complaints on July 21, 2011 and now accepts complaints related to mortgages, bank accounts and services, private student loans, and other consumer loans. Most recently, on October 22, 2012, the CFPB began handling credit reporting complaints. Eventually, the complaint handling system is to be expanded to cover other products and services, such as money transfers, payday loans and debt collection.

From July 21, 2011 through February 28, 2013, the CFPB received 30,600 credit card complaints, which accounted for 26% of all complaints received. Mortgage-related complaints comprised nearly half of the complaints reported.

The report displays the complaints by category, reflecting the nature of the grievance selected by the consumer from a list of 33 options at the time of submission. The report lists the top 10 categories by volume of complaints as follows:

- Billing disputes – 15%
- APR or interest rate – 10%
- Identity theft/fraud/embezzlement – 8%
- Credit reporting – 7%
- Closing/canceling account – 6%
- Other – 6%
- Collection practices – 5%
- Late fee – 4%
- Credit card protection/debt protection – 4%

2750 HUNTINGTON CENTER 41 S. HIGH STREET COLUMBUS, OHIO 43215

TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600 WWW.DLTLAW.COM

To see all previously issued ALERTS, visit our website at WWW.DLTLAW.COM. To decline future ALERTS, please contact us at ALERTS@DLTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.



- Collection debt dispute – 4%

Companies already have responded to approximately 24,800 complaints or 96% of the complaints sent to them for response. The median amount of relief reported was approximately \$125 with \$25 being the most common amount of relief for the approximately 5,300 credit card complaints where companies reported relief. □

✧ *Mike Tomkies and Margaret Stolar*