



## The Price of Playing Fair

*CARD Act protects consumers Congress thinks can't protect themselves, yet consumers will ultimately pay*

By Jay Reeve

**Y**ou have no doubt heard about the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009. In response to a perceived outcry from its constituency, Congress has extended government involvement to yet another aspect of the financial industry. President Obama signed the CARD Act on May 22, 2009, and it becomes effective Feb. 22, 2010.

However, a couple of provisions from the Act became effective on Aug. 20, 2009. Issuers now must give cardholders at least 45 days' notice before raising their interest rates (the old notice period was 15 days), and statements must be mailed to cardholders at least 21 days prior to the due date.

Briefly, the CARD Act focuses on what Congress believes to be the unfair, perhaps even predatory, practices of credit card issuers. The CARD Act places significant restrictions on an issuer's ability to charge late payment fees, raise interest rates, unilaterally change cardholder agreements, and adjust payment due dates.

New minimum age requirements will

likely drive issuers away from college campuses (if they weren't gone already), the concept of "universal default" (a practice where a cardholder can be defaulted by an issuer for an event of default on another credit card) has been overhauled, and the practice of permitting over-the-limit credit card purchases for a fee has been all but eliminated.

Issuers are also required to apply payments (after deducting interest, of course) to the balances with the highest interest rate. There are many more restrictions, prohibitions, and limitations contained in the CARD Act, but you get the drift. Congress has passed more legislation designed to protect the consumers who, Congress believes, cannot protect themselves.

### Unintended Consequences

The impact of the CARD Act on issuers is fairly clear. The marketing and operational activities of large issuers will now be more strictly regulated. Issuers have been hard at work for some time in restructuring their policies and operations to achieve

timely compliance. As so often is the case, new government regulation in an industry segment leads to increased expenses and lower revenues in that segment. This "profit compression" is what encourages companies to search for new and innovative ways to bolster those weakened profits. This often leads to what many analysts and writers following the CARD Act are referring to as the "unintended consequences" that may result from this legislation.

The "intended consequences" of the CARD Act actually are quite transparent: Credit card issuers will be forced to abandon many of their practices that focus on unsophisticated and/or undisciplined consumers, thereby enhancing the overall financial health of the entire consumer base. The problem is, of course, that many "unintended consequences" may result from this legislation that will trickle down through the system directly back to the subjects that were the focus of the legislation. One consequence, whether intended or unintended, is inevitable: Issuers will replace the lost revenue from another source ... period.

### New Revenue Streams

So where will this revenue be found? In the magic world of credit card issuers, there are two main sources of revenue. The first source is their customers: the now better-protected cardholders. Many writers and bloggers believe that issuers will return to charging "annual fees" for credit cards, eliminate "grace periods" for late payments from good cardholders, lower credit limits, raise interest rates, and rein in many of the "rewards programs" that have been so popular with consumers, all in accordance with the new CARD Act requirements, of course. Issuers may also raise the minimum payment amount that cardholders can pay on their monthly statement. Some anecdotal evidence suggests that these minimums have been raised from 2 percent to 5 percent for some cardhold-



ers. The effect of this kind of response to the CARD Act could restrict the rebound expected in consumer spending if the economy starts to improve.

The second source of issuer revenue comes from the “other side” of the credit card house: the acquirers and their customers (processors, ISOs, VARs, and, ultimately, the merchants). Issuers may yet again increase assessments or come out with more unique and imaginative types of “new” fees to pass on to the acquiring side of the house. As with almost all assessments and any new fees that come along from either the issuers or the payment brands, these fees will trickle downhill and land at the merchants’ feet.

If this happens, it will certainly add fuel to the growing fire of outrage over what many merchants consider to be unfair and deceptive charges being collected from them already. The petition drive being undertaken by 6,300 7-Eleven franchisees, licenses, and store operators

nationwide may only be a pebble in the ocean if issuers try and recoup revenue from increasingly agitated merchants. If Congress listens as intently to the merchants as it does to the cardholders, the issuers could find themselves being regulated at both ends of their revenue sources in short order.

Even if opponents of higher merchant fees are rebuffed, and even if Congress doesn’t enter the fray on these issues, a renewed push may come from critics of the long-despised “anti-discrimination” rules the payment brands cling to. The payment brands have protected their turf almost from inception with rules that prohibited merchants from charging higher fees to cardholders for accepting their cards, or refusing to accept an otherwise validly tendered card. Critics of this so-called “anti-competitive” strategy may gain new strength if other price protection measures are not adopted by the issuers, or forced upon them by Congress.


## Consumers Lose

In any event, one truth remains clear. Regardless of the path issuers pursue to recover revenue, the negative impacts will continue to be passed downhill to the same source: the consumers. The consumers may be better protected by this new legislation, but their wallets will be lighter, too.

If revenue is not recouped directly by the issuers from the consumer cardholders, it will be recouped from them after passing from the issuers to the acquirers, then the processors, then the ISOs, then the merchants, and finally, of course, to the consumers. Requiring issuers to “play fair” is the right thing to do; but fairness has a price—and it will ultimately be paid by the consumer. **TT**

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