

Periodic Rate Re-Evaluations for Credit Card Accounts: Making a List, Checking It Twice (Every Year)

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In September, the Bureau of Consumer Financial Protection released a report of its supervisory highlights from the summer. The report summarizes the Bureau's observations from its examinations of auto loan servicers, credit card companies, debt collectors, mortgage servicers, payday lenders, and small business lenders. While the report does not add or change legal requirements, it does signal where the Bureau is focusing its attention. As a result, a company subject to Bureau supervision would be wise to review its compliance procedures for any matter that appears in the report. For credit card companies, the Bureau's latest report highlighted one area for improvement: periodic re-evaluation of rate increases.

The Bureau's rules implement the requirement under the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 that a credit card issuer who increases the annual percentage rate on a consumer's account (other than a home-secured credit card account) re-evaluate that increase under certain circumstances. If the factors that led to the increase no longer exist, the creditor must reduce the APR to account for that fact. The requirement applies only to rate increases that trigger an issuer's obligation to give the consumer 45 days' notice of the rate increase under 12 C.F.R. § 1026.9(c)(2) or (g). At least once every six months after the increase, the issuer must review either:

- the factors that led to its decision to increase the consumer's APR; or
- the factors that it considers when it decides what APR it will apply to a similar new credit card account.

If the issuer determines that it must reduce the account's APR as the result of such a review, the reduction must take effect within 45 days after completing that review. For example, if an issuer increases a consumer's APR solely because prevailing interest rates have risen, and interest rates later fall, the issuer must decrease the consumer's APR accordingly. The obligation to re-evaluate the rate increase continues until the issuer reduces the rate enough to negate the increase. For example, if an issuer increases the rate by a percentage point and then reduces the rate by half of a percentage point six months later, the issuer must still re-evaluate that rate increase no later than six months after the half-point reduction.

The Bureau found in its examinations of credit card issuers between January and July that some issuers inadvertently failed to re-evaluate all eligible accounts. Additionally, the Bureau found that some issuers failed to consider the appropriate factors in the re-evaluations because they conflated re-evaluation factors. Finally, the Bureau found that some issuers failed to reduce rates of accounts eligible for reductions because they imposed criteria beyond what the CARD Act and Regulation Z allow.

How can you avoid these problems? First, flag a consumer credit card account whenever you increase the rate on that account because of the consumer's default, increases in market rates, or another factor and the 45-day notice period under 12 C.F.R. § 1026.9(c)(2) or (g) applies. You must review that account at least once every six months, starting six months after the rate increase. Second, make sure to consider every factor that prompted the rate increase or, alternatively, the factors that you use to set rates on new accounts of the same type. Third, if the account qualifies for a rate reduction under those factors, the analysis is over, and you must reduce the rate within 45 days of the analysis. Finally, if you reduce the interest rate, don't remove the flag on the account if the new rate is still higher than the rate on that account before the rate increase. You must continue to re-evaluate those accounts at least once every six months.

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