

# Aldrich Bonnefin & Moore, PLC

## [ C O N S U M E R L E N D I N G U P D A T E ]

JUNE 2010

### FED PROPOSES RULES FOR IMPLEMENTING CREDIT CARD ACT PROVISIONS – PHASE III

The FRB has issued proposed amendments to Regulation Z that represent the third stage (or Phase III) of rulemaking for implementing the requirements of the Credit Card Accountability Responsibility and Disclosure Act (the Credit Card Act). The Phase III proposal aims to protect credit card holders from what some view as unreasonable late payment and other penalty fees and to require credit card issuers to reconsider increases in interest rates. Among other things, the Phase III proposal would:

- Prohibit card issuers from imposing late payment fees that exceed the amount of the delinquent minimum payment. For example, card issuers could not impose a \$39 fee when a consumer is late making a \$20 minimum payment. In this case, the fee could not exceed \$20.
- Prohibit card issuers from imposing a penalty fee based on account inactivity or the closure or termination of an account.
- Prohibit card issuers from charging a late payment fee and a returned payment fee based on a single payment.
- Require card issuers to disclose the reasons for increasing the rate on an account. Un-

der the proposal no more than four principal reasons could be disclosed and the reasons would have to be listed in the order of importance.

- Where the APR has been increased on a credit card account, require card issuers to review accounts, at least every six months, to assess whether the factors used to increase the APR have changed and, if so, reduce the APR. This would apply to all credit card accounts in which the APR has been increased since January 1, 2009.

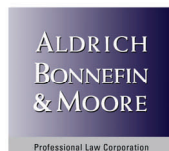
The Phase III proposed revisions are to become effective August 22, 2010.

For more information on the Phase III proposed rule refer to BCG Handout #10-4B, “Proposed Changes to Regulation Z Implementing Credit Card Act of 2009: Phase III” (April 2010).

### ONLINE MODEL PRIVACY FORM BUILDER AVAILABLE

The federal bank and thrift agencies recently made available an online form builder for financial institutions to download and use in connection with providing the model consumer privacy notices required under the privacy regulations implementing the Gramm-Leach-Bliley (GLB) Act.

Under final regulations issued on December 1, 2009, the agencies adopted a model privacy form



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that financial institutions can rely on as a safe harbor to meet the disclosure requirements under the privacy rules. As part of the final rules, the agencies promised to provide a downloadable, fillable version of the model form for use in creating a customized notice. The Online Form Builder (Form Builder) is now available at the FRB's website at [www.federalreserve.gov/bankinfo/privacy\\_notice\\_instructions.pdf](http://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf).

The Form Builder guides users through several versions of the model form to design one that is best suited for the particular business and policy. For example, the user can choose a version based on whether the institution provides an "opt-out" for consumers. The Form Builder creates a privacy notice which qualifies for a legal "safe harbor," thus satisfying the GLB Act requirements. Institutions are advised, however, that to obtain the safe harbor, the instructions in both the regulations and the Online Form Builder must be followed.

### **CONSUMER CREDIT REPORT FURNISHER EXAM PROCEDURES ADOPTED**

The FFIEC has adopted examination procedures for use in determining whether financial institutions that regularly report information to consumer reporting agencies ("furnishers") are complying with the requirements of the FCRA, as amended by the FACT Act. The exam procedures provide an overview of the duties imposed on furnishers, which become effective July 1, 2010. Duties of furnishers include requirements to:

- Establish and implement written policies and procedures regarding the accuracy and integrity of consumer information that is furnished to a consumer reporting agency, including taking into consideration the interagency guidelines adopted by the agencies in 2009.
- Conduct reasonable investigations of disputes submitted to the institution by a consumer concerning the accuracy of any information contained in his or her consumer report that pertains to an account or other relationship that the furnisher has or had with the consumer.

A checklist for determining compliance also is included as a part of the exam procedures.

### **FFIEC ISSUES Q&AS ON SAFE ACT**

The federal banking and thrift agencies, through the FFIEC, have provided some guidance in the form of questions and answers (Q&As) regarding the federal registration requirements under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act or Act). Under the SAFE Act, individual employees of depository institutions who engage in residential mortgage loan originations are required to register on a federal registration system that is being developed by the agencies. The Q&As, which have been posted on the FFIEC website, provide a brief overview of the SAFE Act registration requirements. The Q&As also note that while the FDIC has approved a draft of final regulations to implement the provisions of the Act, the draft is still under review and has not yet been finalized. A final rule will be published once the review process is complete. At that time additional information regarding the registration requirements also will be provided. The Q&As can be accessed at [www.ffiec.gov/safeact.htm](http://www.ffiec.gov/safeact.htm).