

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2020-0027]

**CARD Act Rules Review Pursuant to the Regulatory Flexibility Act; Request for
Information Regarding Consumer Credit Card Market**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of section 610 review and request for comments; request for information regarding consumer credit card market.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is requesting comment on two related, but separate, reviews. First, the Bureau is conducting a review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) Rules consistent with section 610 of the Regulatory Flexibility Act. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so that it can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. Second, the Bureau is conducting a review of the consumer credit card market, within the limits of its existing resources available for reporting purposes, pursuant to section 502(a) of the CARD Act, and is seeking comment on a number of aspects of the consumer credit card market.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2020-0027 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* 2020-RFI-CardActReviews@cfpb.gov. Include Docket No. CFPB-2020-0027 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake—CARD Act Rules RFA Review and Credit Card Market Review, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the specific rule or topic on which you are commenting at the top of each response (you do not need to address all rules or topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay and in light of difficulties associated with mail and hand deliveries during the COVID-19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. At that time, you can make an appointment to inspect the documents by telephoning 202-435-9169.

All submissions in response to this Request for Information (RFI), including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers

or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

The Bureau is requesting comment on the following two related, but separate, reviews: (1) the RFA section 610 review; and (2) the CARD Act section 502(a) review. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, or Krista Ayoub, Senior Counsel, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

The Bureau is requesting comment on two related, but separate, reviews. Part I sets forth a description of the review of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)¹ Rules (as defined below) that the Bureau is conducting consistent with section 610 of the Regulatory Flexibility Act (RFA).² As discussed below, the CARD Act Rules generally affect credit card issuers and other creditors that offer open-end (not home-secured) credit plans. The CARD Act Rules also affect certain credit unions that were offering certain multifeatured plans at the time the CARD Act Rules were adopted and were separately approving and underwriting certain advances under those plans. As part of this review, the Bureau is seeking comment on the economic impact of the CARD Act Rules on small entities so

¹ Pub. L.111-24, 123 Stat. 1734 (2009). One purpose of the CARD Act is to establish fair and transparent practices relating to the extension of open-end consumer credit plans.

² Pub. L. 96-354, 94 Stat. 1164 (1980).

that the agency can determine whether the rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

Part II discusses the review that the Bureau must conduct of the consumer credit card market every two years under section 502(a) of the CARD Act.³ To inform the Bureau's next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues identified in part II, as well as any information they believe is relevant to a review of the credit card market. This review relates to the credit card market generally, and not just to small entities.

The statutory authorities require these reviews, and these are not triggered by the current, COVID-19 related economic conditions, although the Bureau recognizes that the information submitted will reflect those conditions.

The Bureau believes that commenters may benefit from the Bureau issuing one RFI for the two reviews, because it expects that some commenters may wish to comment on both reviews and may find some benefit in commenting on both reviews at the same time. The Bureau requests that when a commenter makes a specific comment, the commenter indicates whether that comment relates to the RFA section 610 review, the CARD Act section 502(a) review, or both.

³ See 15 U.S.C. 1616(a).

I. RFA Section 610 Review

The RFA requires each agency to consider the effect on small entities for certain rules it promulgates.⁴ Specifically, section 610 of the RFA⁵ provides that each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.

The Bureau has published such a plan in the *Federal Register*.⁶ Section 610 provides that the purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.⁷ As also set forth in section 610, in each review the Bureau will consider several factors:

1. The continued need for the rule;
2. The nature of public complaints or comments on the rule;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with Federal, State, or other rules; and
5. The time since the rule was evaluated or the degree to which technology, market conditions, or other factors have changed the relevant market.⁸

⁴ The term “small entity” is defined in the RFA. See 5 U.S.C. 601(6).

⁵ 5 U.S.C. 610(a).

⁶ 84 FR 21732 (May 15, 2019).

⁷ 5 U.S.C. 610(a).

⁸ 5 U.S.C. 610(b).

A. CARD Act Rules

This section lists and briefly describes the rules that the Bureau plans to review in 2020 under the criteria described by section 610 of the RFA and pursuant to the Bureau’s review plan.⁹

1. The Rules

From July 2009 to April 2011, the Board of Governors of the Federal Reserve System (Board) published an interim final rule¹⁰ and three final rules,¹¹ primarily to implement a number of substantive and disclosure provisions required by the CARD Act. This document collectively refers to these four rules as the “CARD Act Rules.”¹² The CARD Act Rules amended Regulation Z, which implements the Truth in Lending Act (TILA),¹³ and the official staff commentary to the regulation, which interprets the requirements of Regulation Z.¹⁴ The Board issued the CARD Act Rules pursuant to its authority under section 2 of the CARD Act¹⁵ and TILA sections 105(a) and (f), 127(c)(5), 143, 148(d), and 149(b).¹⁶

⁹ 84 FR 21732 (May 15, 2019).

¹⁰ 74 FR 36077 (July 22, 2009).

¹¹ 75 FR 7658 (Feb. 22, 2010); 75 FR 37526 (June 29, 2010); 76 FR 22948 (Apr. 25, 2011).

¹² The CARD Act Rules also implemented the Credit CARD Technical Corrections Act of 2009. Pub. L. 111–93, 123 Stat. 2998 (2009); 75 FR 7658 (Feb. 22, 2010).

¹³ 15 U.S.C. 1601 *et seq.*

¹⁴ The CARD Act Rules were originally adopted by the Board in 12 CFR part 226 but, upon transfer of authority by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to implement TILA to the Bureau, were renumbered as 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016). The Bureau subsequently amended some of the provisions in the CARD Act Rules. *See, e.g.*, 78 FR 18795 (Mar. 28, 2013); 78 FR 25818 (May 3, 2013).

¹⁵ Section 2 of the CARD Act states that the Board “may issue such rules and publish such model forms as it considers necessary to carry out this Act.” Pub. L. 111–24, 123 Stat. 1734 (2009).

¹⁶ 15 U.S.C. 1604(a) and (f), 1637(c)(5), 1663, 1665c, and 1665d.

Many of the provisions in the CARD Act Rules apply to a “card issuer,” as defined in § 1026.2(a)(7),¹⁷ that extends credit under a “credit card account under an open-end (not home-secured) consumer credit plan,” as defined in § 1026.2(a)(15)(ii). Among other things, the CARD Act Rules contain provisions to implement the CARD Act that: (1) prohibit card issuers from extending credit without assessing the consumer’s ability to pay, with special rules regarding the extension of credit to persons under the age of 21;¹⁸ (2) restrict the amount of required fees that a card issuer can charge during the first year after an account is opened;¹⁹ (3) limit the amount card issuers can charge for penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit;²⁰ (4) restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts, and require subsequent reevaluations of rate increases;²¹ (5) restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt in to payment of such transactions in order for the fee to be charged;²² (6) restrict how payments in excess of the minimum payment may be allocated;²³ and (7) require card issuers to submit to the Bureau agreements for open-end consumer credit card plans, and agreements with institutions of higher education (or an affiliated organization) regarding the issuance of credit cards to students at that institution.²⁴

¹⁷ See also 15 U.S.C. 1602(o).

¹⁸ 12 CFR 1026.51.

¹⁹ 12 CFR 1026.52(a).

²⁰ 12 CFR 1026.52(b).

²¹ 12 CFR 1026.55 and 1026.59.

²² 12 CFR 1026.56.

²³ 12 CFR 1026.53.

²⁴ 12 CFR 1026.57(d) and 1026.58(c). The CARD Act Rules also contained the following other provisions to implement the CARD Act: (1) § 1026.5(a)(2)(iii); (2) § 1026.5(b)(2)(ii)(A) and (B); (3) § 1026.7(b)(11) and (12);

In addition to the provisions that implement the CARD Act, the CARD Act Rules also incorporated provisions of (1) a final rule amending Regulation Z that the Board adopted in January 2009 (January 2009 Regulation Z Rule);²⁵ and (2) the Board’s final rule amending Regulation AA under the Federal Trade Commission Act (FTC Act)²⁶ to protect consumers from unfair acts or practices with respect to consumer credit card accounts (January 2009 FTC Act Rule).²⁷ The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.²⁸ The CARD Act Rules also generally finalized provisions of the Board’s proposed rules to provide clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule (May 2009 Proposed Rules), with revisions as applicable to be consistent with the CARD Act.²⁹

The Board adopted the January 2009 Regulation Z Rule following a comprehensive review of TILA’s rules for open-end (revolving) credit that is not home-secured. The January 2009 Regulation Z Rule amended many of the Regulation Z provisions that apply to open-end credit, including those in subparts A (General) and B (Open-end Credit), appendix G, and related commentary. The January 2009 Regulation Z Rule was designed, in part, to improve the

(4) § 1026.9(c)(2), (e), (g), and (h); (5) § 1026.10(b)(2)(ii), (b)(3), (d), (e), and (f); (6) § 1026.11(c); (7) § 1026.16(f); (8) § 1026.57(a) through (c); and (9) § 1026.58(a) through (b) and (d) through (g).

²⁵ 74 FR 5244 (Jan. 29, 2009).

²⁶ 15 U.S.C. 41-58.

²⁷ See 74 FR 5498 (Jan. 29, 2009). The Board issued this final rule jointly with similar rules issued by the Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA).

²⁸ 74 FR 54124, 54125 (Oct. 21, 2009); 75 FR 7658, 7659 (Feb. 22, 2010). Because the Board incorporated the provisions of the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule, as amended, into the CARD Act Rules, the Board withdrew the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. 75 FR 7925 (Feb. 22, 2010).

²⁹ 74 FR 20784 (May 5, 2009); 74 FR 20804 (May 5, 2009).

effectiveness of the disclosures that “creditors,” as defined in § 1026.2(a)(17),³⁰ must provide under Regulation Z to consumers at application and throughout the life of an open-end account.³¹ The January 2009 Regulation Z Rule provisions, as amended, that the Board incorporated into the CARD Act Rules, included changes to the format, timing, and content requirements for the five main types of disclosures for open-end credit governed by Regulation Z: (1) credit and charge card application and solicitation disclosures;³² (2) account-opening disclosures;³³ (3) periodic statement disclosures;³⁴ (4) subsequent notices such as change-in-terms notices;³⁵ and (5) advertising provisions.³⁶ These revisions to the disclosure provisions generally affect creditors that offer open-end (not home-secured) credit plans (including credit card accounts and open-end plans that are not credit card accounts such as overdraft lines of credit and other personal lines of credit), and persons advertising open-end (not home-secured) credit, whether or not they are creditors.³⁷

Among other things, the CARD Act Rules also incorporated provisions from the January 2009 Regulation Z Rule that revised commentary to the definition of “open-end credit,” as defined in § 1026.2(a)(20).³⁸ These revisions clarified that advances that are separately

³⁰ See also 15 U.S.C. 1602(g).

³¹ One purpose of TILA is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. 15 U.S.C. 1601(a).

³² 12 CFR 1026.60.

³³ 12 CFR 1026.6(b).

³⁴ 12 CFR 1026.7(b).

³⁵ 12 CFR 1026.9(c)(2) and (g).

³⁶ 12 CFR 1026.16.

³⁷ 74 FR 5244, 5249, 5391 (Jan. 29, 2009).

³⁸ See also 15 U.S.C. 1602(j).

underwritten are generally not open-end credit but closed-end credit for which closed-end disclosures must be given.³⁹ The Board expected these revisions to primarily impact certain credit unions that were at that time offering certain multifeatured plans and were separately approving and underwriting certain advances under those plans.⁴⁰

The January 2009 FTC Act Rule contained provisions that are similar to several of those adopted in the CARD Act.⁴¹ The January 2009 FTC Act Rule was designed to protect consumers from unfair acts or practices with respect to consumer credit card accounts, including (1) requiring institutions to provide consumers with a reasonable amount of time to make a payment before the institution can consider the consumer late in making that payment; (2) requiring institutions to allocate amounts paid in excess of the minimum payment in specified ways; (3) restricting institutions from increasing rates on existing balances except in specified circumstances; (4) prohibiting institutions from imposing finance charges based on balances for days in billing cycles that precede the most recent billing cycle as a result of the loss of a grace period; and (5) limiting the amount of fees for the issuance or availability of credit that institutions may charge to an account during the first year after account opening. The CARD Act Rules generally incorporated these provisions, with revisions as applicable to be consistent with the CARD Act.

The May 2009 Proposed Rules generally proposed clarifications and technical amendments to the January 2009 Regulation Z Rule and the January 2009 FTC Act Rule. The Board proposed these clarifications to resolve confusion regarding how institutions would

³⁹ Comment 2(a)(20)-5.

⁴⁰ 74 FR 5244, 5258-60, 5391 (Jan. 29, 2009).

⁴¹ See 75 FR 7658, 7661-62, 7666-67 (Feb. 22, 2010).

comply with particular aspects of those rules. The proposed amendments to the January 2009 Regulation Z Rule also included several proposed provisions applicable to deferred interest plans, such as plans that permit a consumer to avoid interest charges if a purchase balance is paid in full by a certain date.⁴² The CARD Act Rules generally finalized the provisions in the May 2009 Proposed Rules, with revisions as applicable to be consistent with the CARD Act.

The Bureau recodified Regulation Z, including the amendments made by the CARD Act Rules, in 2011 when the Bureau assumed rulemaking responsibility under TILA.⁴³

2. The Market

As discussed above in part I.A.1, the CARD Act Rules primarily apply to credit card accounts and other open-end (not home-secured) products. The Bureau has monitored the credit card market generally, including through biennial reviews and submission of reports to Congress pursuant to section 502 of the CARD Act.⁴⁴ To date, the Bureau has issued four reports pursuant to that obligation—in 2013, 2015, 2017, and 2019 (collectively, the Reports).⁴⁵ Several of these Reports have examined changes in the credit card market since the CARD Act Rules became

⁴² 74 FR 20784, 20786-87, 20788-91 (May 5, 2009); *see also* 12 CFR 1026.7(b)(14) and 1026.16(h).

⁴³ 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016).

⁴⁴ *See* 15 U.S.C. 1616.

⁴⁵ *See* Bureau of Consumer Fin. Prot., *CARD Act Report*, (Oct. 1, 2013) (2013 Report), https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2015) (2015 Report), https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2017) (2017 Report), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Aug. 2019) (2019 Report), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf.

effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.⁴⁶

a. Credit Card Market

i. Market structure and participants

The credit card market is one of the United States' largest consumer financial markets, with nearly 170 million Americans having at least one credit card and collectively carrying nearly \$1 trillion in total credit card debt.⁴⁷ The market has been growing in recent years by most measures, with diverse participation from the largest banks to small community banks, from credit unions to non-bank program managers, and from servicers to fintech startups. The market is highly concentrated, with the 10 largest issuers consistently representing the majority of total credit card balances, while many smaller providers account for a smaller share of balances.

In 2010, there were 4,642 banks, thrifts, and credit unions that offered credit cards and as a result were affected by the CARD Act.⁴⁸ Of these affected entities, 4,044 were small entities as defined by the current SBA threshold of \$600 million or less in total assets.⁴⁹ The trend

⁴⁶ See 2017 Report at 19 n.13.

⁴⁷ See 2019 Report at 6, 11.

⁴⁸ This analysis considers data reported through the Federal Financial Institutions Examination Council (FFIEC) Call Report and NCUA Call Report to determine the number of banks, thrifts, and credit unions that participate in the credit card market. Call Report data are matched to data on institution characteristics and banking structure from the Board's National Information Center. Prior to the first quarter of 2012, thrifts were not required to file a Call Report, likely resulting in an underestimate of the number of thrifts operating in the credit card market prior to 2012. To determine whether an entity is considered small according to the Small Business Administration (SBA) definition, this analysis uses average assets across the calendar year.

⁴⁹ U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, effective Aug. 19, 2019, Sector 52 (Finance and Insurance), <https://www.sba.gov/document/support--table-size-standards>.

toward bank and credit union consolidation was present prior to the CARD Act and has continued, which has reduced the number of small entities participating in the credit card market. As of 2019, 4,305 banks, thrifts, and credit unions offered credit cards, of which 3,437 were considered small entities.⁵⁰

Consumer credit cards generally can be divided into two distinct segments: general purpose cards and private label cards. General purpose cards are credit cards that can be used to purchase goods and services at a wide range of merchants. These cards display the brand of a major payment card network, most commonly American Express, Discover, Mastercard, or Visa. General purpose cards are offered by many banks, credit unions, and community banks. Some card issuers specialize in offering credit cards to consumers with subprime credit scores, while others may offer credit cards to consumers with prime or non-prime scores.

In contrast, private label cards—sometimes called “store cards”—do not carry a network brand. Consumers can use these cards only at the particular merchant or affiliated group of merchants associated with the card. This segment is highly concentrated, with only a handful of providers representing the overwhelming share of private label credit card balances. Deferred interest is a notable feature with this kind of card.

ii. Credit card pricing structure and credit availability

Credit card pricing is fairly complex and involves different components, such as interest rates and fees. The cost to the consumer also depends on a number of consumer-dependent factors, such as the cardholder’s creditworthiness, usage of features and rewards, and repayment behavior.

⁵⁰ Other potentially affected small entities include non-depository institutions that issue credit cards, though data are currently too limited to assess the number of such entities.

Consumers who utilize a credit card may pay for that credit in a number of different ways. Consumers may be charged an annual (or monthly) fee. They may incur penalty fees if they violate the account terms, most commonly by making a payment late. They may be charged a variety of other fees relating to specific features or usages of the account, such as cash advance fees, balance transfer fees, or foreign transaction fees. Finally, consumers may pay interest charges if, for example, consumers carry a balance from month-to-month or utilize a cash advance.

As discussed above, pursuant to the CARD Act,⁵¹ the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. Several of these Reports have also examined changes in the credit card market since the CARD Act Rules became effective, although data have generally not been available to evaluate changes specific to small entities in a comparable level of detail as was possible for large entities.⁵² The Bureau's Reports observed the following changes in terms of credit card pricing following the implementation of the CARD Act: (1) Over-the-limit fees declined sharply, to a nearly non-existent level, after the effective date of the CARD Act opt-in rule in February 2010; (2) The average late fee declined from the fourth quarter of 2009 to the same quarter in 2010, following the effective date of the CARD Act Rules' safe harbors for penalty fee amounts; (3) There has been an increase in the amount and prevalence of annual fees following the CARD Act's

⁵¹ 15 U.S.C. 1616.

⁵² See 2017 Report at 19 n.13.

implementation;⁵³ and (4) The total fees, as a share of cycle ending balance, however, were 180 basis points (43 percent) lower in the fourth quarter of 2010 than the same quarter of 2008, prior to the implementation of the CARD Act. This effect was most noticeable for the deep subprime segment, which may be correlated with the 25 percent fee cap for cards in their first year as set forth in the CARD Act.

In addition, the Reports also found that, beginning in the first quarter of 2009 and continuing through the second quarter of 2010, the first full quarter after most of the provisions of the CARD Act took effect in February 2010, the account-weighted average retail annual percentage rate (APR)⁵⁴ increased by 230 basis points. The increase was more modest among accounts with deep subprime credit scores and highest among accounts held by consumers with prime and superprime credit scores. However, for accounts with deep subprime credit scores, the effective interest rate fell by 200 basis points from the fourth quarter of 2008 to the same quarter in 2012, with much of that decline occurring during the period prior to when most of the CARD Act provisions became effective in February 2010 when retail APRs were increasing. Also, the incidence of repricing⁵⁵ has come down significantly and has remained at very low levels since the CARD Act’s February 2010 effective date of limitations on repricing activity.

⁵³ Rewards cards may be a reason for the increase in credit card annual fees. *See* 2019 Report at 12. Credit card rewards programs have rapidly increased in prevalence over the past decade. Issuers are offering a greater diversity of rewards programs—and in many cases more compelling value propositions—to match the increasing popularity of these products with consumers. For many consumers, rewards have become central to the decision of which credit cards to acquire and how to use them. *See* 2015 Report at 263; 2017 Report at 60; 2019 Report at 100-101.

⁵⁴ Discussions of credit card interest rates often focus on the APR as it is the interest rate charged on balances (the “retail APR”). The APR is often used as shorthand for expressing the costs associated with using a credit card. However, for several reasons, the retail APR may not provide an accurate indication of the effective interest rates paid by consumers. The effective interest rate is defined as total interest charges for a period of time, stated as a percent of average cycle-ending balance for the same period of time. 2013 Report at 29.

⁵⁵ Repricing is a practice in which an issuer increases a consumer’s APR.

The Reports also found changes related to credit availability. First, the Reports found that there has been a reduction in the availability of credit for consumers with subprime scores as well as for students and young adults, the latter a direct effect of the CARD Act's restrictions on issuing cards to students and individuals under the age of 21. Second, a small but discernible percentage of applicants that issuers deemed otherwise creditworthy were declined as a result of insufficient income to satisfy the CARD Act's ability-to-pay requirement. Third, there has been a marked decline in the percentage of consumers receiving credit line increases on their accounts, also possibly due to the ability-to-pay requirement. Fourth, the Bureau reviewed evidence that suggested issuers might be using line management as a means of responding to revealed risk post-origination, in place of repricing balances in ways restricted by the CARD Act.

The Bureau's 2019 Report included a review of academic scholarship examining the CARD Act's effects. In many cases, these academic analyses corroborate the Bureau's findings from prior years' card market reports including, for example, findings that the CARD Act led to reductions in consumers' total payments toward certain fees such as late fees and over-limit fees. However, across the methodologies and analyses reviewed, a consistent theme is the challenge of disentangling the effects of the CARD Act itself, rather than the effects of other market changes such as the Great Recession. Overall, the scholarship review suggests that the CARD Act's effect on consumer welfare is mixed, with some scholarship suggesting the CARD Act may have had unintended consequences.⁵⁶

⁵⁶ See 2019 Report at 13.

iii. Other developments and innovation

The Reports also discuss new developments and innovation in the credit card market since the CARD Act Rules became effective. The following section discusses: (1) credit card agreements; (2) use of digital account servicing platforms; (3) new fixed payment features being offered; and (4) credit card payment rates.

The Bureau’s 2013 Report found that credit card agreements became simpler and shorter after the CARD Act Rules became effective.⁵⁷ However, the Bureau’s 2015 Report noted that card agreements became longer, but not more complex, from 2012 to 2014.⁵⁸ The Bureau’s 2017 Report noted declines in the complexity level of credit card pricing disclosures from 2009 to 2010, and that the level of complexity had remained stable.⁵⁹ These agreements remain complex documents.

Consumers are increasingly relying on digital account servicing platforms, such as websites or mobile applications, where consumers can view and manage account activity. As of 2018, 78 percent of active accounts were enrolled in online portals for general purpose cards, as compared to 55 percent in 2014.⁶⁰ The share of accounts held by consumers who opt out of paper billing statements has risen by more than one-third since 2014,⁶¹ and the share of accounts

⁵⁷ 2013 Report at 5, 63-66.

⁵⁸ 2015 Report at 119-23.

⁵⁹ See 2017 Report at 195-205.

⁶⁰ 2019 Report at 48.

⁶¹ 2019 Report at 49.

held by consumers who make payments against their accounts using digital channels has risen from 38 percent reported in 2013⁶² to 55 percent in 2018.⁶³

A few issuers have begun offering a feature that leverages a card's existing credit line to provide a fixed repayment plan that is separate from payments made toward the revolving balance on the account. Issuers have implemented a variety of these types of payment options into the card servicing platform for easier signup. New flexible payment features of credit card accounts fall into two categories: those that provide a payment plan for existing purchases and those that provide a payment plan for future purchases.⁶⁴

Fixed payment plans for existing purchases allow certain individual purchases made on a credit card to be paid off using fixed monthly payments over a set period of time. Issuers that offer this type of feature let consumers select eligible transactions through the card's mobile app or online portal for fixed monthly payments. The issuers' products (or announced products) differ slightly but, in general, purchases over a certain dollar threshold are eligible.⁶⁵

Credit repayment flexibility is not new, but today's options differ in their use of credit card mobile apps. One issuer launched a credit card balance management platform in 2009, but it was delivered separately from the primary account interaction. Today's repayment flexibility products are presented to the consumer in the flow of viewing his or her transaction history.

Eligible transactions are denoted with an icon that links to the product terms. A range of

⁶² 2013 Report at 68.

⁶³ 2019 Report at 53.

⁶⁴ *Id.* at 177.

⁶⁵ *Id.* at 178.

repayment periods and corresponding costs are offered (*e.g.*, three payments, six payments, or 12 payments). In addition, one issuer provides a corresponding feature through which cardholders may pay down the account balance in an amount equal to a specific transaction's dollar amount.⁶⁶

The second set of flexible repayment options for credit card accounts consists of features that provide a payment plan for purchases yet to be made. Multiple issuers offer cardholders the opportunity to receive a cash disbursement from an unused portion of their credit line, which is repaid in equal monthly payments over a set period of time. These initiatives allow the issuers to increase consumer use of portions of credit line that are not currently being used. A card issuer may offer this feature to cardholders that meet certain basic eligibility checks, such as satisfactory payment history on the card and meaningful unused line size. Cardholders may be able to select different lengths of repayment, depending on their eligibility. The transactions extended under this feature are repaid using equal monthly payments for a set period of time.⁶⁷

These fixed payment plans and their structures involve a broad array of regulatory provisions adopted in the CARD Act Rules, such as limitations on APR and fee increases, payment allocation rules, and ability to pay.⁶⁸

Credit card payment rates have been increasing since 2010, as measured by total payments as a share of total statement balances. It is unclear precisely what combination of factors has contributed to this change. However, increases in payment rates have coincided with

⁶⁶ *Id.*

⁶⁷ *Id.* at 179.

⁶⁸ *Id.*

some of the regulatory changes created by the CARD Act, such as clearer due dates, new ability-to-pay rules, and payment disclosure requirements, along with the improvement in macroeconomic conditions and changes in consumer profiles.⁶⁹

b. Other open-end (not home-secured) products

As discussed in part I.A.1, the CARD Act Rules include some provisions that apply to open-end (not home-secured) plans generally, including open-end plans that are not credit card accounts, such as overdraft lines of credit and other personal lines of credit. The Bureau is aware, through its market monitoring function, of the growth of open-end personal lines of credit. Several non-depository lenders offer small-dollar open-end personal lines of credit in amounts ranging from approximately \$500 to \$4,500. Some States specifically authorize personal small-dollar lines of credit. For example, the Tennessee Flexible Credit Act allows licensed lenders to make open-end lines of credit, unsecured or secured by personal property, with an outstanding principal balance of no more than \$4,000.⁷⁰ Even with this market monitoring, the Bureau does not know with certainty the total number of small entities that offer open-end (not home-secured) products that are not credit card accounts. Individuals and businesses may extend small amounts of consumer credit covered by TILA and Regulation Z without the Bureau's awareness.⁷¹

⁶⁹ See 2015 Report at 49-50.

⁷⁰ Tenn. Code Ann. sec. 45-12-101, 45-12-102, and 45-12-111.

⁷¹ See 12 CFR 1026.1(c)(1). Regulation Z generally applies to each individual or business that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) the credit is primarily for personal, family, or household purposes.

As discussed in part I.A.1, the CARD Act Rules also had an impact on certain multifeatured plans that were being offered by credit unions at the time the CARD Act Rules were adopted. Some reports suggest these plans were offered by over 3,000 credit unions prior to the adoption of the CARD Act Rules,⁷² with others citing a number just under 2,000,⁷³ although more recent data appear to be unavailable.

The NCUA in July 2012 issued a supervisory letter to provide guidance to federal credit unions on a permissible blended approach to multifeatured lending that is consistent with the CARD Act Rules.⁷⁴ In preparing this letter, NCUA consulted with the Bureau on the interpretation of Regulation Z as it relates to multifeatured open-end lending. Among other things, this letter discussed a permissible blended approach to multifeatured lending that has a single loan agreement with both open-end and closed-end credit subaccounts. NCUA indicated that this blended approach is consistent with Regulation Z, provided the credit union complies with the requirements under 12 CFR part 1026, subpart B for open-end credit and 12 CFR part 1026, subpart C, for each closed-end loan transaction under the single plan.

⁷² Nicole Kellner-Swick & Ashley L. Sweeney, *Multi-Featured Open-End Lending: The Past, Present and Future*, That Credit Union Blog (Jan. 23, 2013), <https://thatcreditunionblog.wordpress.com/2013/01/23/multi-featured-open-end-lending-the-past-present-and-future/>; Michelle A. Samaad, *Open-End Lending Drop Blamed on Regs, Confusion*, Credit Union Times (Aug. 5, 2012), <https://www.cutimes.com/2012/08/05/open-end-lending-drop-blamed-on-regbs-confusion/?slreturn=20180603145338>.

⁷³ In response to the initial regulatory flexibility analysis in relation to the January 2009 Regulation Z Rule, a commenter that provides insurance and related financial services to credit unions reported that based on internal records, over 1,900 credit unions with assets under \$50 million and that offer multifeatured plans would incur an average cost of \$100,000 per credit union to switch to closed-end disclosures if clarifications related to the definition of open-end credit were adopted as proposed. 74 FR 5244, 5391 (Jan. 29, 2009).

⁷⁴ Nat'l Credit Union Admin., *Multi-Featured Open-End Lending (MFOEL)* (July 2012), <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/multi-featured-open-end-lending-mfoel-0>.

3. Bureau Resources and Analysis

Since 2011, the Bureau has published various reports and other materials about the credit card market. As discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four Reports detailing its reviews of the state of the credit card market in which it examines, among other things, the cost and availability of card credit and recent innovations in the market. In 2011, the Bureau published findings from a Bureau-convened conference on the effects of the CARD Act.⁷⁵ Pursuant to the CARD Act,⁷⁶ the Bureau publishes annually a report that discusses agreements between card issuers and institutions of higher education (or certain organizations affiliated with such institutions) in connection with the issuance of credit cards. To date, the Bureau has published eight of these reports.⁷⁷ Other Bureau reports specific to the credit card market have generally focused on consumer behaviors in the market, including end-of-year credit card borrowing and patterns of revolving and repayment.⁷⁸

Pursuant to the CARD Act and TILA, the Bureau collects various information from card issuers. The Bureau collects credit card agreements from card issuers on a quarterly basis.⁷⁹

⁷⁵ See Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act/>.

⁷⁶ 15 U.S.C. 1637(r)(3).

⁷⁷ Bureau of Consumer Fin. Prot., *Student banking reports to Congress*, <https://www.consumerfinance.gov/data-research/student-banking/student-banking-reports-congress/> (last visited July 29, 2020). The Board published two such reports subsequent to the passage of the CARD Act but prior to the transfer of this CARD Act mandate to the Bureau.

⁷⁸ See Bureau of Consumer Fin. Prot., *Quarterly consumer credit trends: End-of-year credit card borrowing* (June 2018), <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-end-year-credit-card-borrowing/>; Bureau of Consumer Fin. Prot., *Data point: Credit card revolvers* (July 2019), <https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-card-revolvers/>.

⁷⁹ 15 U.S.C. 1632(d)(2) and (3).

The Bureau publishes the agreements on its website in the credit card agreement database.⁸⁰ In addition, the Bureau collects annually and publishes on its website college credit card marketing agreement data and credit card issuers' marketing agreements with colleges, universities, and their affiliates, as well as the number of cards covered by, and the amount of payments made by issuers under these agreements.⁸¹ The Bureau also collects information semi-annually from certain card issuers through its terms of credit card plans (TCCP) survey and publishes these data on its website.⁸² These data show features of the most commonly held (*i.e.*, modal) credit card for issuers that report such information. Other previously collected data include the credit card database, which shows monthly account-level aggregates for credit cards from several large issuers, and surveys of several credit card issuers including questions regarding card application and approval, digital account servicing, deferred interest, and loan performance.⁸³ Other data similar to these monthly account-level aggregates are also shared with the Bureau via memoranda of understanding (MOUs) with other bank regulators.

4. Previous Input to the Bureau

In 2011, the Bureau issued an RFI related to streamlining regulatory requirements (2011 RFI).⁸⁴ The 2011 RFI asked the public to identify provisions of the inherited regulations that the

⁸⁰ Bureau of Consumer Fin. Prot., *Credit card agreement database*, <https://www.consumerfinance.gov/credit-cards/agreements/> (last visited July 29, 2020).

⁸¹ 15 U.S.C. 1637(r)(2); Bureau of Consumer Fin. Prot., *College credit card marketing agreements and data*, <https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/> (last visited July 29, 2020).

⁸² 15 U.S.C. 1646; Bureau of Consumer Fin. Prot., *Terms of credit card plans (TCCP) survey*, <https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/> (last visited July 29, 2020).

⁸³ 12 U.S.C. 5512(c)(4).

⁸⁴ 76 FR 75825 (Dec. 5, 2011).

Bureau should make the highest priority for updating, modifying, or eliminating because they are outdated, unduly burdensome, or unnecessary. The 2011 RFI also discussed several specific requirements that may warrant review, such as the ability-to-pay rules. It also sought suggestions for practical measures to make complying with the regulations easier. The Bureau received around 10 letters that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups and other market participants, card issuers, and consumer advocacy groups.

Also, as discussed in part I.A.2 and pursuant to the CARD Act, the Bureau has published four biennial Reports on the state of the credit card market that examine, among other things, the cost and availability of card credit and recent innovations in the market. In connection with these Reports, the CARD Act requires the Bureau to “solicit comment from consumers, credit card issuers, and other interested parties.”⁸⁵ For each of the four Reports, the Bureau has done so through a RFI published in the *Federal Register*.⁸⁶ In these RFIs, the Bureau sought comment on various topics, including the terms of credit card agreements and practices of credit card issuers, the effectiveness of credit card disclosures, the adequacy of protection from unfair or deceptive acts or practices, whether the CARD Act affects the cost and availability of credit, whether the CARD Act has had an impact on issuer safety and soundness, whether the CARD Act had any effect on the use of risk-based pricing, and whether the CARD Act had any impact on credit card innovation. In response to the RFIs, comments were submitted by a variety of

⁸⁵ 15 U.S.C. 1616(b).

⁸⁶ 77 FR 75410 (Dec. 20, 2012); 80 FR 14365 (Mar. 19, 2015); 82 FR 13313 (Mar. 10, 2017); 84 FR 647 (Jan. 31, 2019).

stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, other industry-side market participants, individual consumers, and consumer advocacy groups. Each of the four Reports discussed the comments received, as applicable, in response to the relevant RFI.

The Bureau also received information about credit card accounts and open-end (not home-secured) credit generally in response to the Bureau’s 2018 Call for Evidence Initiative, which included requesting input on all inherited regulations and rulemaking authorities.⁸⁷ The Bureau received 13 comments that included information about credit card accounts and open-end (not home-secured) credit generally. These comments came from a variety of stakeholders, including trade groups representing credit card issuers and other market participants, card issuers, and consumer advocacy groups.

Through the RFIs discussed above, market monitoring, and other measures, the Bureau has heard concerns expressed by some card issuers and trade groups about several of the CARD Act Rules’ provisions and how they apply to credit card accounts, such as concerns about (1) application, account-opening, periodic statement, and advertising disclosure rules; (2) format and font size requirements for disclosures; (3) change-in-terms notice and penalty rate notice requirements; (4) billing error rights and procedures; (5) ability-to-pay requirements; (6) restrictions on rate and fee increases; (7) restrictions on certain fees imposed during the first year after account opening; (8) restrictions on penalty fees; (9) rules for reevaluating rate increases; (10) restrictions on how payments may be allocated; and (11) submission of account agreements to the Bureau.

⁸⁷ 83 FR 12881 (Mar. 26, 2018).

The Bureau’s experience suggests there is little overlap, duplication, or conflict between the CARD Act Rules and Federal, State, or other rules. The Bureau has not received any requests for a determination that the CARD Act Rules preempt State law.

B. Request for Comment

Consistent with the section 610 review plan, the Bureau asks the public to comment on the CARD Act Rules, including the following topics:

- (1) The current scale of the economic impacts of the rules as a whole on small entities and of their major components on small entities, including impacts on reporting, recordkeeping, and other compliance requirements.
- (2) Whether and how those impacts on small entities could be reduced, consistent with the stated objectives of applicable statutes and the rules.
- (3) Current information relevant to the factors that the Bureau is required to consider in completing a section 610 review under the RFA, as described above.

Where possible, please submit detailed comments, data, and other information to support any submitted positions.

II. CARD Act Section 502(a) Review

As discussed in part I.A.2, section 502(a) of the CARD Act⁸⁸ requires the Bureau to conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market every two years. As discussed in part I.A.4, to inform that review, CARD Act section 502(b) instructs the Bureau to seek public comment.⁸⁹

⁸⁸ See 15 U.S.C. 1616(a).

⁸⁹ See 15 U.S.C. 1616(b).

As discussed in part I.A.2, the Bureau has issued four Reports in relation to these reviews. The Bureau’s first Report describing this review was published in October 2013; the Bureau’s second such Report was published in December 2015; the Bureau’s third such Report was published in December 2017; and the Bureau’s fourth such Report was published in August 2019. To inform the Bureau’s next review, the Bureau invites members of the public, including consumers, credit card issuers, industry analysts, consumer groups, and other interested persons to submit information and other comments relevant to the issues expressly identified in part II.B below, as well as any information they believe is relevant to a review of the credit card market.

A. Background: The CARD Act

The CARD Act was signed into law in May 2009.⁹⁰ Passage of the CARD Act was expressly intended to “establish fair and transparent practices related to the extension of credit” in the credit card market.⁹¹ As discussed in part I.A.1, to achieve these agreed-upon purposes, the CARD Act changed the requirements applicable to credit card practices in a number of significant respects.⁹²

B. Request for Comment

In connection with its pending review, the Bureau seeks information from members of the public about how the credit card market is functioning. The Bureau seeks comments on the experiences of consumers and providers in the credit card market and on the overall health of the credit card market, as outlined in CARD Act section 502(a) and in (1) through (7) below. As noted above, while the Bureau identifies specific topics of interest below, the Bureau wants to be

⁹⁰ The CARD Act’s provisions took effect in three stages: August 2009, February 2010, and October 2011.

⁹¹ Pub. L. 111-24, 123 Stat. 1734 (2009).

⁹² See also 2013 Report at 10-13.

alerted to and understand the information that consumers, credit card issuers, industry analysts, consumer groups, and other interested persons believe is most relevant to the Bureau's review of the credit card market, so this list of subjects should not be viewed as exhaustive. Commenters are encouraged to address any other aspects of the consumer credit card market that they consider would be of interest or concern to the Bureau.

Please feel free to comment generally and/or respond to any or all of the questions below but please indicate in your comments on which topic areas or questions you are commenting:

- (1) The terms of credit card agreements and the practices of credit card issuers.
 - a. How have the substantive terms and conditions of credit card agreements or the length and complexity of such agreements changed over the past two years?
 - b. How have issuers changed their pricing, marketing, underwriting, or other practices?
 - c. How are the terms of, and practices related to, major supplementary credit card features (such as credit card rewards, deferred interest promotions, balance transfers, and cash advances) evolving?
 - d. How have issuers changed their practices related to deferment, forbearance, or other forms of debt relief or assistance offered to consumers?
 - e. How have creditors as well as third-party collectors changed their practices over the past two years of collecting on delinquent and charged-off credit card debt?

- f. Has the use of electronic communication (e.g., email or SMS) by creditors and debt collectors in connection with credit card debt grown or otherwise evolved?
- g. How are the practices of for-profit debt settlement companies changing and what trends are occurring in the debt settlement industry? How are creditors and non-profit credit counseling agencies responding to these changes and trends?

(2) The effectiveness of disclosure of terms, fees, and other expenses of credit card plans.

- a. How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?
- b. What further improvements in disclosure, if any, would benefit consumers and what costs would card issuers or others incur in providing such disclosures?
- c. How well are current credit card disclosure rules and practices adapted to the digital environment? What adaptations to credit card disclosure regimes in the digital environment would better serve consumers or reduce industry compliance burden?

(3) The adequacy of protections against unfair or deceptive acts or practices relating to credit card plans.

- a. What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? How might any such conduct be prevented and at what cost?

(4) The cost and availability of consumer credit cards.

- a. How have the cost and availability of consumer credit cards (including with respect to non-prime borrowers) changed since the Bureau reported on the credit card market in 2019? What is responsible for changes (or absence of changes) in cost and availability? Has the impact of the CARD Act on cost and availability changed over the past two years?
- b. How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use card credit?

(5) The safety and soundness of credit card issuers.

- a. How is the credit cycle evolving? What, if any, safety and soundness risks are present or growing in this market, and which entities are disproportionately affected by these risks? How, if at all, do these safety and soundness risks to entities relate to long-term indebtedness on the part of some consumers, or changes in consumers' ability to manage and pay their debts? Has the impact of the CARD Act on safety and soundness changed over the past two years?

(6) The use of risk-based pricing for consumer credit cards.

- a. How has the use of risk-based pricing for consumer credit cards changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on risk-based pricing changed over the past two years?

- b. How have CARD Act provisions relating to risk-based pricing impacted (positively or negatively) the evolution of practices in this market?
- (7) Consumer credit card product innovation.
- a. How has credit card product innovation changed since the Bureau reported on the credit card market in 2019? What has driven those changes or lack of changes? Has the impact of the CARD Act on product innovation changed over the past two years?
 - b. How have broader innovations in finance, such as (but not limited to) new products and entrants, evolving digital tools, greater availability of and new applications for consumer data, and new technological tools (like machine learning), impacted the consumer credit card market, either directly or indirectly? In what ways do CARD Act provisions or its implementing regulations encourage or discourage innovation? In what ways do innovations increase or decrease the impact of certain CARD Act provisions, or change the nature of those impacts?

Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register

Liaison, for purposes of publication in the *Federal Register*.

Dated: August 24, 2020.

/s/ Laura Galban

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.