

IS YOUR EDUCATIONAL INSTITUTION READY FOR THE CREDIT CARD ACT?

Federal regulations implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit CARD Act”) took effect on February 22, 2010. Several provisions affect higher education institutions, their students, and their respective relationships with credit card issuers. The new rules amend the Federal Reserve Board’s Regulation Z, which implements the Truth in Lending Act, and will apply to most public, private non-profit, and private for-profit institutions.

What Do the Act and Regulations Require?

There are three primary mandates that affect higher education institutions and their students:

1. Institutions must publicly disclose their agreements with credit card issuers or creditors relating to the marketing of credit cards.

- Disclosure can be made by posting such agreements on the institution’s web site or by providing a copy at no cost and within a reasonable time to any party that requests the information. The rules leave open the possibility of other means of compliance.
- Official commentary says that disclosure must be made without redaction and that the rules invalidate any confidentiality provisions in the agreements to the contrary.
- If there are related amendments, schedules, and/or memoranda of understanding that would be considered a part of an institution’s agreement with a credit card issuer, they must also be disclosed.
- Schools should also note that credit card issuers must file an annual report with the Federal Reserve Board, beginning with an initial report covering the **2009** calendar year, that contains:
 - copies of credit card agreements with institutions, alumni organizations, and foundations affiliated with or related to an institution
 - including any memoranda of understanding that directly or indirectly relate to such agreements or that control any obligations or distribution of benefits between such entities;
 - the total dollar amount paid to institutions pursuant to such agreements;
 - the total number of credit card accounts opened pursuant to such agreements during the period covered by the report; and
 - the total number of such accounts open as of the end of the period.

2. *Credit card issuers and creditors are prohibited from offering students tangible items as inducements to apply for or participate in credit plans on or near campus or at an event sponsored by or related to an institution.*

- Tangible items are physical items such as gift cards, t-shirts, pizza, and magazine subscriptions. Discounts, reward points, or promotional credit terms are not considered tangible items.
- Credit card issuers are not prohibited from making tangible items generally available to students for promotional purposes, as long as the items are offered to all students, whether or not the student applies for or opens a credit plan.
- “Near campus” means within 1000 feet of the border of the campus.
- An event is considered “related to” an institution if the marketing of the event uses the name, emblem, mascot, or logo of the institution or other words, pictures, or symbols identified with the institution in a way that implies the institution endorses or sponsors the event.

3. *Credit card issuers are prohibited from issuing cards to individuals who are under 21 years of age unless the issuer has obtained financial information demonstrating that the individual has the independent ability to make the minimum payments or another party who is at least 21 years old agrees to be a cosigner, guarantor, or joint applicant for the card.*

- Although this is a prohibition on the card issuer, not the school, it should be explained as part of any orientation program developed pursuant to the recommendations below.

What Do the Act and Regulations Recommend?

In addition to the above-referenced requirements, it was also the “Sense of Congress” that institutions of higher education should consider adopting the following policies related to credit cards:

1. Require card issuers marketing a credit card on campus to notify the institution of the location of each marketing event in advance;
2. Limit the number of locations on campus at which issuers can market credit cards; and
3. Offer credit card and debt education and counseling sessions as a regular part of any orientation program for new students.

Although this statutory language is non-binding, it may foretell future regulation or might be used in litigation as part of a Congressional intent or duty of care analysis.

Penalties for Violation

An educational institution’s violation of these new regulations can result in:

- Administrative action by the Federal Trade Commission even if the violation was unintentional or an isolated event; and
- Criminal liability, including a fine of up to \$5,000 and/or imprisonment for up to one year, for willful and knowing violations.

If you have any questions or would like assistance in complying with the new Credit CARD Act or Regulation Z, please contact attorney Jason McCarter at (770) 901-8864 or jmccarter@dowlohn.com.