

Highlights of Final Rules Regarding Credit Card Accounts

Regulation AA (Unfair Acts or Practices) Final Rule

The final rule amends Regulation AA to prohibit unfair or deceptive acts or practices by banks in connection with credit card accounts. The effective date for the Regulation AA amendments is July 1, 2010.

- Time to Make Payments. The final rule prohibits banks from treating a payment as late for any purpose unless the bank provides a reasonable amount of time for the consumer to make that payment. The rule provides a safe harbor for banks that send periodic statements at least 21 days prior to the payment due date.
- Allocation of Payments. When different annual percentage rates (APRs) apply to different balances on a credit card account (for example, purchases, balance transfers, cash advances), the final rule requires banks to allocate payments exceeding the minimum payment to the balance with the highest rate first or pro rata among all of the balances.
- Increasing Interest Rates. The final rule requires banks to disclose at account opening all interest rates that will apply to the account and prohibits increases in those rates, except in certain circumstances. First, if a rate disclosed at account opening expires after a specified period of time, banks may apply an increased rate that was also disclosed at account opening. Second, banks may increase a rate due to the operation of an index (in other words, the rate is a variable rate). Third, after the first year, banks may increase a rate for new transactions only after complying with the 45-day advance notice requirement in Regulation Z. Fourth, banks may increase a rate if the minimum payment is received more than 30 days after the due date.
- Two-Cycle Billing. The final rule prohibits banks from calculating interest using a method referred to as “two-cycle billing.” Under this method, when a consumer pays the entire account balance one month, but does not do so the following month, the bank calculates interest for the second month using the account balance for days in the previous billing cycle as well as the current cycle.
- Financing of Security Deposits and Fees. The final rule addresses concerns regarding subprime credit cards with high fees and low credit limits. Banks would be prohibited from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if charges assessed during the first 12 months would exceed 50 percent of the initial credit limit. The rule also limits the security deposits and fees charged at account opening to 25 percent of the initial credit limit and requires any additional amounts (up to 50 percent) to be spread evenly over at least the next five billing cycles.

Regulation Z (Truth in Lending) Final Rule

The final rule amends Regulation Z to improve the effectiveness of the disclosures consumers receive in connection with credit card accounts and other revolving (non home-secured) credit plans. The effective date for the Regulation Z amendments is July 1, 2010.

- Applications and solicitations. The final rule contains format and content changes to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. These disclosures are provided in the form of a table that summarizes the key account terms. The changes include:
 - Format Revisions. New format requirements for the summary table include rules regarding type size, the use of boldface type for certain key terms, and the placement of information.
 - Content Revisions. Creditors must disclose the duration that penalty rates may be in effect, simplify disclosures about variable rates and revise disclosures regarding when a grace period is offered on purchases or when no grace period is offered.
- Account-opening disclosures. The final rule enhances the cost disclosures provided at account opening to make the information more conspicuous and easier to read. Certain key terms must be disclosed in a summary table at account opening, which is substantially similar to the table required for credit and charge card applications and solicitations.
- Periodic statement disclosures. The final rule contains revisions to make disclosures on periodic statements more understandable, primarily by making changes to the format requirements, such as by grouping fees and interest charges together. The changes include:
 - Interest Charges and Fees. Interest charges and fees must be grouped separately, with a monthly total for each. Interest charges must be itemized according to the type of transaction (such as interest charged on purchases, and interest charged on cash advances). Separate year-to-date totals for fees and interest charges are also required.
 - Effective APR. The requirement to disclose an “effective annual percentage rate” is eliminated due to the lack of consumer understanding of this term. New requirements to disclose interest and fee totals for the month and year-to-date should more effectively inform consumers of the total cost of credit.

- Minimum Payment Disclosure. The effect of making only the minimum required payment on the time to repay balances must be disclosed, as required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- Changes in consumer's interest rate and other account terms. The final rule expands the circumstances under which consumers receive written notice of changes in the account terms (such as, an increase in the interest rate), and increases the amount of time these notices must be sent before the change becomes effective. The changes include:
 - Increase in Advance Notice for Changes in Terms. The final rule increases the amount of advance notice before a changed term can be imposed from 15 to 45 days to better allow consumers to obtain alternative financing or change their account usage.
 - Requiring Prior Notice for Penalty Rate Increases. Creditors must provide 45 days' prior notice before the creditor increases a rate due to the consumer's delinquency or default or as a penalty.
 - Summary Table. When a change-in-terms or penalty-rate notice accompanies a periodic statement, the final rule requires creditors to provide a tabular disclosure on the front side of the periodic statement showing the key terms being changed.
- Additional protections. The final rule includes the following additional protections for consumers:
 - "Fixed" Rates. Advertisements may refer to a rate as "fixed" only if a time period is specified for which the rate is fixed and the rate will not increase for any reason during that time, or if a time period is not specified, if the rate will not increase for any reason while the plan is open.
 - Cut-off Times and Due Dates for Mailed Payments. Creditors must set reasonable cut-off hours for mailed payments to be considered timely on the due date. The final rule deems 5 p.m. to be a reasonable time. When mailed payments are not accepted on the due date, such as on weekends or holidays, creditors must consider a payment received on the next business day as timely.

Highlights of Rules Regarding Overdraft Services

Regulation DD (Truth in Savings) Final Rule

The final rule amends Regulation DD to address depository institutions' disclosure practices related to overdrafts. The effective date for the Regulation DD amendments is January 1, 2010.

- Disclosure of Aggregate Overdraft Fees. The final rule extends to all institutions the requirement to disclose on periodic statements the aggregate dollar amounts charged for overdraft fees and for returned item fees (for the statement period and the year-to-date). Currently, only institutions that promote or advertise the payment of overdrafts must disclose aggregate amounts.
- Disclosure of Balance Information. The final rule requires institutions that provide account balance information through an automated system to provide a balance that does not include additional funds that may be made available to cover overdrafts.

Regulation E (Electronic Fund Transfers) Proposed Rule

The proposal amends Regulation E to provide consumers certain protections relating to the assessment of overdraft fees. The proposal replaces previously proposed amendments under Regulations AA and DD addressing overdraft services.

- Consumer Choice Regarding Overdraft Services. The proposal solicits comment on two approaches to providing consumers a choice regarding the payment of ATM and one-time debit card overdrafts by their financial institution.
 - Opt-out: Under one approach, an institution would be prohibited from imposing an overdraft fee unless the consumer is given an initial notice and a reasonable opportunity to opt out of the institution's overdraft service, and the consumer does not opt out.
 - Opt-in: The second approach would prohibit an institution from imposing an overdraft fee for paying such overdrafts unless the consumer affirmatively consents (or opts in) to the institution's overdraft service.
- Debit Holds. The proposal would prohibit institutions from imposing an overdraft fee when the account is overdrawn because of a hold placed on funds in the consumer's account that exceeds the actual transaction amount. The proposed rule is limited to debit card transactions in which the actual transaction amount generally can be determined within a short period of time after the transaction is authorized (for example, transactions at gas stations and restaurants).

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1. Preferences and Credit Card Transfers

- 1.1. **Payment of a credit card balance through a balance transfer from another credit card within 90 days was a transfer of an interest of the debtors in property subject to avoidance as a preference.**

Parks v. FIA Card Services, N.A. (In re Marshall), 550 F.3d 1251 (10th Cir. 2008).

The debtors had credit card accounts with MBNA. They used their Capital One credit cards to pay off their MBNA accounts in a balance transfer within 90 days before filing a chapter 7 petition. The chapter 7 trustee filed an adversary complaint against MBNA (now FIA Card Services) seeking to avoid the payments as preferential transfers under 11 U.S.C. § 547(b). The bankruptcy court held that the payments were not preferences because the funds used were not property in which the debtors had an interest; the transaction merely substituted creditors which had no impact on property of the estate or the value of claims against the estate. The district court affirmed. The earmarking doctrine exempted the funds from treatment as preferences because the debtors lacked the requisite control over the payments (the debtors could not compel Capital One to pay), and the payments were really a bank-to-bank transfer. The Tenth Circuit reversed. The debtors, even if never in actual possession of the loaned money, still exercised dominion and control over the funds because they could direct the distribution. The earmarking doctrine did not apply because Capital One placed no conditions on the debtors' use of the funds. The transfer also diminished the estate. The loan proceeds from Capital One were an asset of the estate for an instant, and the preferential transfer look back is not time sensitive, no matter how fleeting the asset's presence in the estate.

- 1.2. **Payment of a credit card balance through a balance transfer check drawn on another credit card within 90 days was a transfer of an interest of the debtors in property subject to avoidance as a preference.**

Dilworth v. MBNA America Bank, N.A. (In re Dilworth), 560 F.3d 562 (6th Cir. 2009).

The debtor used a balance transfer check drawn on her Citi credit card to pay the balance on her MBNA credit card within 90 days of filing for chapter 7. The trustee sought to avoid the transfer as preferential. The creditor contended that the check transfer did not diminish the estate because the debtor had simply substituted one creditor for another. The appeals court found that the determinative factor in the diminution-of-estate analysis is the degree of control exercised by the debtor in distributing the funds. The debtor decided who to pay with the funds from Citi. Even if the transfer was bank-to-bank, the economic result is the same as if Citi handed the money to the debtor and the debtor immediately handed the money to MBNA. The earmarking doctrine did not apply because it requires that the lender, not the debtor, decide which creditor receives the money from the loan. Here, the debtor controlled the distribution, and the debtor decided to pay MBNA. Citi did not direct the debtor to use the funds to pay MBNA. The transfer

was therefore preferential and avoidable by the trustee.

- 1.3. **Payment of a credit card balance with “convenience checks” drawn on another credit card within 90 days was a transfer of an interest of the debtors in property subject to avoidance as a preference.**

MBNA America Bank, N.A. v. Meoli (In re Wells), 561 F.3d 633 (6th Cir. 2009).

In the 90 days before she filed for bankruptcy, the debtor wrote two \$5,000 convenience checks from her Chase Bank account against the debt on her MBNA credit card account. The chapter 7 trustee sought to avoid and recover the transfers as preferences. The court held that the convenience checks were transfers of the debtor’s interest in property because the debtor exercised the requisite degree of control over the property. She was free to use the checks for any reason. Chase Bank advertised that the checks could be used to transfer balances, pay bills, make a purchase, or get extra cash. Therefore, the debtor exercised complete control over the funds, and she had an ownership interest in the funds. The earmarking doctrine likewise did not apply because the lender, Chase Bank, did not designate payment to a particular creditor. The transfers were thus preferential.

2. Credit Card Billing Practices

- 2.1. **Bank did not violate federal regulation by applying a higher interest rate to the entire billing cycle in which default occurred.**

Swanson v. Bank of America, N.A., 559 F.3d 653 (7th Cir. 2009).

The credit card holder’s contract provided that the Bank could increase her interest rate from 18% to 32% if her balance exceeded the \$5,000 credit limit at the end of two months in any rolling 12-month period. The Bank sent notice indicating the higher, penalty rate would take effect at the beginning of the billing cycle to which it applied. The card holder’s account was over the credit limit in August, November, and December 2007. The Bank raised her rate effective at the start of the November-December billing cycle. That cost the card holder more than if the Bank notified her in December of the raised rate and then applied the increase at the start of the December 2007 to January 2008 billing cycle. The card holder contended that a Federal Reserve regulation, 12 C.F.R. § 226.9(c), forbids rate changes that apply to the entire billing cycle in which the change occurs. The court found the regulation and its official commentary ambiguous because they did not address what advanced notice is required when the terms of a contract authorize an interest rate increase. But there was no good reason to override the parties’ contract, when the contract unambiguously authorized the Bank to raise the rate. Also, there was no reason to interpret the regulation to create a conflict because the Federal Reserve changed the rules regarding retroactive penalty rate increases, which take effect July 1, 2010.

3. Credit Cards and the Fair Debt Collection Practices Act (FDCPA)

3.1. **Debt collector's letter to consumer did not misrepresent the character of the debt by including a separate "interest due" line item because the statement was true and not material.**

Hahn v. Triumph Partnerships, LLC, 557 F.3d 755 (7th Cir. 2009).

After the defendant had purchased overdue credit card debts from HSBC Bank USA, it sent the plaintiff a letter saying she owed \$1,134.55 on an overdue credit card debt. The letter listed \$1,051.91 as "amount due" and the remaining \$82.64 as "interest due." The letter also indicated the total sum was "inclusive of interest accrued in accordance with the terms of your original agreement." The parties agreed that \$1,051.91 was the balance of her credit card debt, including accrued interest, at the time the defendant purchased the debt and the \$82.64 was the interest accrued after the defendant purchased the credit card debt. The consumer sued under the FDCPA alleging the debt collector violated 15 U.S.C. § 1692e by misrepresenting the character of the debt because the \$82.64 as "interest due" was false. The court held that the statement was not misleading and was true. The debt collector's choice in reporting interest in one line item rather than another (or in two line items) did not harm the consumer and could even assist some people. Reporting the post-transfer interest separately could help some debtors to check whether the debt collector applied the correct rate to the balances it acquired from the issuing bank. Materiality is an element in an action under § 1692e because a statement cannot mislead unless it is material, so a false but non-material statement is not actionable.

3.2. **Debt collector's letters to consumer were not false or misleading because the notice need not include separate line items for interest charged by the original creditor.**

Wahl v. Midland Credit Management, Inc., 556 F.3d 643 (7th Cir. 2009).

A debt collector purchased a consumer's debt from the original credit card issuer. The collection agency sent the consumer a series of collection letters. The final letter listed \$1,181.49 as an "amount due" and "current balance." The back side of the letter broke the sum down into parts, identifying the "principal balance" as \$1,149.09 and a total of \$32.40 in "accrued interest" since the collector purchase the debt. In other words, the "principal balance" represented what the consumer owed the card issuer before issuer transferred the account to the debt collector. The consumer alleged that the debt collector violated 15 U.S.C. § 1692e by listing a "principal" balance that included interest accrued on the account before the debt collector purchase the debt from the card issuer. The court held the statement was not false. The consumer can't win by showing the term "principal balance" is false in a technical sense; she must show the statement would mislead the unsophisticated consumer. The defendant—here, the debtor collector, not the original creditor—was important because the interest charged on the account by the card issuer

was part of the principal balance in the eyes of the debt collector. The unsophisticated consumer, with knowledge of her account history, would understand that the “principal balance” included interest charged by the original creditor.

3.3. Law firm and debt collector’s state court collection complaint did not violate the FDCPA when the complaints used statements characterizing the consumer’s credit card debt as a loan.

Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (6th Cir. 2009).

The consumer filed a class action against a law firm and debt collection agency. She alleged they violated the FDCPA by using a complaint in a state court collection action that contained statements that appeared to characterize her credit card debt as a loan. The consumer argued that the description was false under the FDCPA because credit card debt was actually a merchant’s account receivable, not a loan. The court read the complaint as a whole and in a common sense manner under the least-sophisticated-consumer standard. The complaint was susceptible to one reasonable reading, and it would not mislead or deceive the consumer. Omitting the words “credit card” from the complaint did not mislead because other parts of the complaint mentioned the consumer’s credit card account number and the balance due on the account. The consumer also admitted to “pretty much” understanding the complaint.

3.4. Credit card debt collector did not have affirmative duty to report debt as disputed and its threat-to-sue letter appeared to be an empty threat to take action it could not legally take for purposes of the FDCPA.

Wilhelm v. Credico, Inc., 519 F.3d 416 (8th Cir. 2008).

The debtor’s credit card debt was assigned for collection to successive debt collectors, Pinnacle and Credico. Credico sent a letter threatening to sue unless the debtor paid over \$8,000, an amount that included a charge of interest on interest in violation of North Dakota law. The debtor disputed the debt and demanded verification. Credico did not sue. The debtor then filed a class action. The district court granted summary judgment, dismissing the debtor’s claims. The debtor alleged the debt collectors: (1) violated 15 U.S.C. § 1692e(8) by failing to report his dispute of the debt; (2) violated § 1692e(5) by sending the threat-to-sue letter because it was an action that could not be taken legally; and (3) violated the FDCPA by attempting to collect a debt computed in violation of state law (North Dakota prohibits interest on interest). The court held that the debt collectors did not have an affirmative duty to disclose that the debtor disputed the debt. Only if the debt collector elects to communicate credit information is it required to include such material information. The threat-to-sue letter appeared to be an empty threat because the letter failed to disclose that Credico would not sue anyone who timely disputed the debt and requested validation. A reasonable jury could find that the threat was an action that could not be taken legally under § 1692e(5). Dismissal of the interest-on-interest claim was appropriate because the debt collector established the bona fide error defense—the violation was unintentional and caused by an objectively reasonable error despite the use

of preventative procedures.

3.5. **Attorneys' attempt to collect a credit card debt was not time-barred and did not violate the FDCPA.**

Avery v. First Resolution Management Corp., 561 F.3d 998 (9th Cir. 2009).

A credit card holder sued a debt collection agency and attorneys assigned to collect the debt under the FDCPA because they illegally attempted to collect a time-barred debt. The district court granted the attorneys' summary judgment motion. The Ninth Circuit affirmed. The plaintiff, an Oregon resident at all relevant times, received a credit card offer from Provident National Bank. Under the terms of the original credit card agreement, New Hampshire law applied to the dispute. New Hampshire's statute of limitations for an action on a credit card is three years. But the time period is tolled if a defendant is absent from or residing out of the state at the time the cause of action accrues (NH RSA 508:4). The plaintiff contended that the tolling statute should be read to mean the "forum state," Oregon, not New Hampshire. Even if the application of New Hampshire's tolling statute was unconstitutional as applied to the card holder, or if the law of the forum state applied, Oregon law provides that Oregon's limitations period applies if another state's limitation period imposes an unfair burden in defending the claim. And Oregon's statute of limitations on contractual claims is six years. The action against the card holder to collect the debt was filed within six years and therefore was not time-barred.

4. Credit Cards and the Fair Credit Reporting Act (FCRA)

4.1. **Identity theft victim's judgment against credit reporting service upheld because there was sufficient evidence supporting actual damages from reporting service's repeated failures to correct its errors.**

Robinson v. Equifax Information Services, LLC, 560 F.3d 235 (4th Cir. 2009).

Robinson discovered a thief stole her identity and ruined her credit. She asked Equifax to correct the errors on her credit report. After several years, she still had problems because Equifax mishandled her credit file. She sued under the FCRA and a jury ultimately awarded her \$200,000 in actual damages. The Fourth Circuit upheld the damages award. Robinson presented evidence to the jury showing her damages from Equifax's conduct. She was denied opportunities to get a mortgage, she suffered emotional and physical distress in dealing with the struggles with Equifax, and she lost income from missing about 300 hours of work addressing Equifax's mistakes. Over the course of almost five years, Equifax had several times mistakenly placed Robinson's address and social security number on credit files established by the identity thief, each of which reported bad credit accounts. Those bad credit files were then sent to various creditors requesting Robinson's credit report.

4.2 **Credit reporting agency did not violate the FCRA by selling a credit report to a creditor for “account review” on a closed credit card account.**

Levine v. World Financial Network Nat'l Bank, 554 F.3d 1314 (11th Cir. 2009).

Levine had a retail credit card. In 1998, Levin paid his balance in full and closed the account. In 2001, the issuing credit card company initiated an account review program and began purchasing consumer reports from Experian twice a year. The card issuer told Experian it used the scores for marketing purposes and that all requests were for current customers. Experian sold Levine’s report to the card issuer. Levine later sued under the FCRA arguing that because the account was closed, the card issuer must have sought the report for a purpose other than that permitted by the FCRA. The district court granted summary judgment to Experian. The Eleventh Circuit affirmed. The text of the FCRA was ambiguous and did not distinguish between open and closed accounts. The court relied on *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47 (2007), to hold that Experian’s interpretation of the FCRA that it may sell reports for closed accounts was objectively reasonable, and the court would not consider Experian’s subjective intent.

5. Credit Cards and the Truth In Lending Act (TILA)

5.1. **Credit card issuer did not violate TILA by refusing to reimburse charges incurred by card holder’s secretary.**

Asher v. Chase Bank USA, N.A., 2009 WL 465083 (7th Cir. Feb. 20, 2009) (unpublished).

Asher’s personal secretary had the responsibility of preparing the credit card statements and checks to pay the bills for the family business. She used her position to incur and conceal fraudulent charges on Asher’s credit card over several years while Asher paid the bills in full without knowing. Asher later discovered the fraudulent charges and notified the card issuer, Chase Bank. After investigating, Chase Bank notified Asher it would not reimburse him because he was liable for the charges. Asher filed suit against Chase Bank alleging it violated TILA because the Act provides that a cardholder incurs no liability from the unauthorized use of a credit card. The district court granted summary judgment for Chase Bank because Asher’s action under TILA was brought later than the one-year statute of limitations. The Seventh Circuit affirmed but on different grounds. A claim under 15 U.S.C. § 1643 is subject to a one-year statute of limitations. Unless otherwise provided, a claim under federal law accrues when the plaintiff has discovered or reasonably should have discovered the injury. The claim was not time-barred because the violation occurred and the limitations period started when Chase Bank notified Asher for the final time in January 2005 that he was liable, and Asher filed his suit in September 2005. Nonetheless, Chase Bank did not violate TILA because the charges were not “unauthorized.” The secretary had apparent authority because Asher paid the bills,

including the fraudulent charges, in full for three years without protest.

5.2. **Notice provisions in TILA and federal regulations require credit card issuer to provide contemporaneous notice of discretionary interest rate increases due to consumer defaults.**

McCoy v. Chase Manhattan Bank, USA, N.A., 559 F.3d 963 (9th Cir. 2009).

McCoy alleged that Chase Bank increased the interest rates on his credit card retroactively to the beginning of his payment cycle after his account was closed to new transactions as a result of a late payment to Chase or other creditors. McCoy claimed the rate increase violated TILA and Delaware law because Chase Bank gave no notice of the increase until the next periodic statement, after the rate was already in effect. The district court dismissed the complaint, holding that no notice was required because Chase Bank discloses the highest rate it could apply due to a default in its cardmember agreement. The Ninth Circuit held the Regulation Z, adopted by the Federal Reserve Board to implement TILA, and its official commentary require creditors to give contemporaneous notice of discretionary interest rate increases because of a consumer's default. A plaintiff states a TILA claim if the card issuer fails to give notice of an interest rate increase because of a delinquency or default or when the credit card contract allows the creditor to increase the rate at its discretion but does not include the specific terms for an increase.

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3.2. **Debt collector's letters to consumer were not false or misleading because the notice need not include separate line items for interest charged by the original creditor.**

Wahl v. Midland Credit Management, Inc., 556 F.3d 643 (7th Cir. 2009).

A debt collector purchased a consumer's debt from the original credit card issuer. The collection agency sent the consumer a series of collection letters. The final letter listed \$1,181.49 as an "amount due" and "current balance." The back side of the letter broke the sum down into parts, identifying the "principal balance" as \$1,149.09 and a total of \$32.40 in "accrued interest" since the collector purchase the debt. In other words, the "principal balance" represented what the consumer owed the card issuer before issuer transferred the account to the debt collector. The consumer alleged that the debt collector violated 15 U.S.C. § 1692e by listing a "principal" balance that included interest accrued on the account before the debt collector purchase the debt from the card issuer. The court held the statement was not false. The consumer can't win by showing the term "principal balance" is false in a technical sense; she must show the statement would mislead the unsophisticated consumer. The defendant—here, the debtor collector, not the original creditor—was important because the interest charged on the account by the card issuer

was part of the principal balance in the eyes of the debt collector. The unsophisticated consumer, with knowledge of her account history, would understand that the “principal balance” included interest charged by the original creditor.

3.3. Law firm and debt collector’s state court collection complaint did not violate the FDCPA when the complaints used statements characterizing the consumer’s credit card debt as a loan.

Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (6th Cir. 2009).

The consumer filed a class action against a law firm and debt collection agency. She alleged they violated the FDCPA by using a complaint in a state court collection action that contained statements that appeared to characterize her credit card debt as a loan. The consumer argued that the description was false under the FDCPA because credit card debt was actually a merchant’s account receivable, not a loan. The court read the complaint as a whole and in a common sense manner under the least-sophisticated-consumer standard. The complaint was susceptible to one reasonable reading, and it would not mislead or deceive the consumer. Omitting the words “credit card” from the complaint did not mislead because other parts of the complaint mentioned the consumer’s credit card account number and the balance due on the account. The consumer also admitted to “pretty much” understanding the complaint.

3.4. Credit card debt collector did not have affirmative duty to report debt as disputed and its threat-to-sue letter appeared to be an empty threat to take action it could not legally take for purposes of the FDCPA.

Wilhelm v. Credico, Inc., 519 F.3d 416 (8th Cir. 2008).

The debtor’s credit card debt was assigned for collection to successive debt collectors, Pinnacle and Credico. Credico sent a letter threatening to sue unless the debtor paid over \$8,000, an amount that included a charge of interest on interest in violation of North Dakota law. The debtor disputed the debt and demanded verification. Credico did not sue. The debtor then filed a class action. The district court granted summary judgment, dismissing the debtor’s claims. The debtor alleged the debt collectors: (1) violated 15 U.S.C. § 1692e(8) by failing to report his dispute of the debt; (2) violated § 1692e(5) by sending the threat-to-sue letter because it was an action that could not be taken legally; and (3) violated the FDCPA by attempting to collect a debt computed in violation of state law (North Dakota prohibits interest on interest). The court held that the debt collectors did not have an affirmative duty to disclose that the debtor disputed the debt. Only if the debt collector elects to communicate credit information is it required to include such material information. The threat-to-sue letter appeared to be an empty threat because the letter failed to disclose that Credico would not sue anyone who timely disputed the debt and requested validation. A reasonable jury could find that the threat was an action that could not be taken legally under § 1692e(5). Dismissal of the interest-on-interest claim was appropriate because the debt collector established the bona fide error defense—the violation was unintentional and caused by an objectively reasonable error despite the use

of preventative procedures.

3.5. **Attorneys' attempt to collect a credit card debt was not time-barred and did not violate the FDCPA.**

Avery v. First Resolution Management Corp., 561 F.3d 998 (9th Cir. 2009).

A credit card holder sued a debt collection agency and attorneys assigned to collect the debt under the FDCPA because they illegally attempted to collect a time-barred debt. The district court granted the attorneys' summary judgment motion. The Ninth Circuit affirmed. The plaintiff, an Oregon resident at all relevant times, received a credit card offer from Provident National Bank. Under the terms of the original credit card agreement, New Hampshire law applied to the dispute. New Hampshire's statute of limitations for an action on a credit card is three years. But the time period is tolled if a defendant is absent from or residing out of the state at the time the cause of action accrues (NH RSA 508:4). The plaintiff contended that the tolling statute should be read to mean the "forum state," Oregon, not New Hampshire. Even if the application of New Hampshire's tolling statute was unconstitutional as applied to the card holder, or if the law of the forum state applied, Oregon law provides that Oregon's limitations period applies if another state's limitation period imposes an unfair burden in defending the claim. And Oregon's statute of limitations on contractual claims is six years. The action against the card holder to collect the debt was filed within six years and therefore was not time-barred.

4. Credit Cards and the Fair Credit Reporting Act (FCRA)

4.1. **Identity theft victim's judgment against credit reporting service upheld because there was sufficient evidence supporting actual damages from reporting service's repeated failures to correct its errors.**

Robinson v. Equifax Information Services, LLC, 560 F.3d 235 (4th Cir. 2009).

Robinson discovered a thief stole her identity and ruined her credit. She asked Equifax to correct the errors on her credit report. After several years, she still had problems because Equifax mishandled her credit file. She sued under the FCRA and a jury ultimately awarded her \$200,000 in actual damages. The Fourth Circuit upheld the damages award.

Robinson presented evidence to the jury showing her damages from Equifax's conduct. She was denied opportunities to get a mortgage, she suffered emotional and physical distress in dealing with the struggles with Equifax, and she lost income from missing about 300 hours of work addressing Equifax's mistakes. Over the course of almost five years, Equifax had several times mistakenly placed Robinson's address and social security number on credit files established by the identity thief, each of which reported bad credit accounts. Those bad credit files were then sent to various creditors requesting Robinson's credit report.

4.2 **Credit reporting agency did not violate the FCRA by selling a credit report to a creditor for “account review” on a closed credit card account.**

Levine v. World Financial Network Nat'l Bank, 554 F.3d 1314 (11th Cir. 2009).

Levine had a retail credit card. In 1998, Levin paid his balance in full and closed the account. In 2001, the issuing credit card company initiated an account review program and began purchasing consumer reports from Experian twice a year. The card issuer told Experian it used the scores for marketing purposes and that all requests were for current customers. Experian sold Levine’s report to the card issuer. Levine later sued under the FCRA arguing that because the account was closed, the card issuer must have sought the report for a purpose other than that permitted by the FCRA. The district court granted summary judgment to Experian. The Eleventh Circuit affirmed. The text of the FCRA was ambiguous and did not distinguish between open and closed accounts. The court relied on *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47 (2007), to hold that Experian’s interpretation of the FCRA that it may sell reports for closed accounts was objectively reasonable, and the court would not consider Experian’s subjective intent.

5. Credit Cards and the Truth In Lending Act (TILA)

5.1. **Credit card issuer did not violate TILA by refusing to reimburse charges incurred by card holder’s secretary.**

Asher v. Chase Bank USA, N.A., 2009 WL 465083 (7th Cir. Feb. 20, 2009) (unpublished).

Asher’s personal secretary had the responsibility of preparing the credit card statements and checks to pay the bills for the family business. She used her position to incur and conceal fraudulent charges on Asher’s credit card over several years while Asher paid the bills in full without knowing. Asher later discovered the fraudulent charges and notified the card issuer, Chase Bank. After investigating, Chase Bank notified Asher it would not reimburse him because he was liable for the charges. Asher filed suit against Chase Bank alleging it violated TILA because the Act provides that a cardholder incurs no liability from the unauthorized use of a credit card. The district court granted summary judgment for Chase Bank because Asher’s action under TILA was brought later than the one-year statute of limitations. The Seventh Circuit affirmed but on different grounds. A claim under 15 U.S.C. § 1643 is subject to a one-year statute of limitations. Unless otherwise provided, a claim under federal law accrues when the plaintiff has discovered or reasonably should have discovered the injury. The claim was not time-barred because the violation occurred and the limitations period started when Chase Bank notified Asher for the final time in January 2005 that he was liable, and Asher filed his suit in September 2005. Nonetheless, Chase Bank did not violate TILA because the charges were not “unauthorized.” The secretary had apparent authority because Asher paid the bills,

including the fraudulent charges, in full for three years without protest.

- 5.2. **Notice provisions in TILA and federal regulations require credit card issuer to provide contemporaneous notice of discretionary interest rate increases due to consumer defaults.**

McCoy v. Chase Manhattan Bank, USA, N.A., 559 F.3d 963 (9th Cir. 2009).

McCoy alleged that Chase Bank increased the interest rates on his credit card retroactively to the beginning of his payment cycle after his account was closed to new transactions as a result of a late payment to Chase or other creditors. McCoy claimed the rate increase violated TILA and Delaware law because Chase Bank gave no notice of the increase until the next periodic statement, after the rate was already in effect. The district court dismissed the complaint, holding that no notice was required because Chase Bank discloses the highest rate it could apply due to a default in its cardmember agreement. The Ninth Circuit held the Regulation Z, adopted by the Federal Reserve Board to implement TILA, and its official commentary require creditors to give contemporaneous notice of discretionary interest rate increases because of a consumer's default. A plaintiff states a TILA claim if the card issuer fails to give notice of an interest rate increase because of a delinquency or default or when the credit card contract allows the creditor to increase the rate at its discretion but does not include the specific terms for an increase.

A Summary (as of May 9, 2009) of 2009 Credit Card

Legislation and Regulation

Credit CARD Act of 2009 – S.414

Credit Cardholder’s Bill of Rights Act of 2009 – H.R. 627

Amendments to Regulation AA (Unfair and Deceptive Acts)

Amendments to Regulation Z (Truth-in-Lending)

Amendments to Regulation DD (Truth in Savings)

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Credit CARD Act of 2009 – S.414

Credit Cardholder’s Bill of Rights Act of 2009 – H.R. 627

On April 30, 2009, the House of Representatives overwhelmingly passed H.R. 627, the Credit Cardholder’s Bill of Rights Act of 2009, by a vote of 357 to 70, putting pressure on the Senate to pass their own measure, S. 415, the Credit CARD Act of 2009. President Obama, a strong supporter of credit card reform and increased protections for consumers, has stated his intent to sign credit card reform legislation before Memorial Day, 2009.

On March 31, the Senate Banking Committee voted to approve S. 414, the Credit CARD Act of 2009 (the “Senate Bill”). The Senate Bill is now ready for a vote before the full Senate. Lobbyists have cited two major sticking points in the Senate bill: language that would repeal Federal Reserve language (in the amendment to Regulation Z) allowing retroactive rate increases for payments made 30 days late and a requirement that gift cards be valid for five years. Neither provision is included in credit card legislation that the House passed last week.

Both bills seek to address consumer problems associated with increases in interest rates, unreasonable fees and penalties, disclosures on billing statements and consumers who are minors. For the most part, the Senate Bill has stricter provisions and policies for credit card companies to follow. The Senate Bill has also commissioned some studies pertaining to credit card practices and has issued provisions relating to greater regulatory and Congressional oversight of credit card companies. Provided below is a summary of the key provisions in the Bills.

In December 2008, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and the National Credit Union Administration (NCUA) jointly announced a changes to Regulation Z as it pertains to Credit Card accounts. The changes to

Regulation Z are to take effect on July 1, 2010. Some of the provisions in the House and Senate Bills are already covered in the changes, and highlights are presented at the end of this document.

The following issues are addressed in the bills as of May 9, 2009.

Interest Rates

- **Notice.** Credit card companies must provide 45 days notice before any interest rate increase takes effect.
- **“any time, any reason” rate increases.** Credit card companies often have clauses in the credit card agreements allowing for increases in interest rates at any time, for any reason. The Senate Bill expressly prohibits this practice and any “unilateral changes to cardholder agreements...until after the date on which the credit card will expire if not renewed.” The House Bill does not expressly prohibit this action.
- **Universal Default.** Credit card companies have provisions in the credit card agreements allowing for increases in interest rates due to cardholder actions that are unrelated to the cardholder's performance on that card (ex. making a late payment on a different credit card). The Senate Bill provides that the interest rate may increase due to the cardholder's violation of the terms of the credit card agreement. However, such violation must be “directly related to the account”. The House Bill does not expressly exclude this practice.
- **Double-Cycle Billing.** Double-cycle billing is a common practice, where interest charges are calculated based on credit card debt that has *already been paid on time*. This practice is expressly prohibited in both the House Bill and the Senate Bill.

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- **Retroactive Rate Increases.** Credit card companies often apply increased interest rates to the entire existing credit card balance. The Senate Bill expressly prohibits this practice and requires that increased interest rates only apply to balances acquired after the new interest rate takes effect. The House Bill prohibits these retroactive increases in some cases and offers other options for paying off the existing card balance.
- **Application of Payments Received.** The Senate Bill requires that payments received must be applied first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest. The House Bill allows credit card companies to *elect* to either apply payments (1) proportionally to the card balances or (2) to the balance with the highest rate first.

Fees & Penalties

- **Over-the-limit Fees.** Both the Senate Bill and the House Bill allow cardholders to elect whether over-the-limit transactions should be allowed on their account. For those cardholders that allow over-the-limit transactions, over-the-limit fees may only be imposed *once* during a billing cycle.
- **“Reasonable” Penalties.** The Senate Bill provides that any penalty should be reasonably related to the cost to the credit card company of the omission or violation.
- **Interest charges.** The Senate Bill provides that fees should not be taken into account when calculating interest charges.
- **Paying a Billing Statement.** The Senate Bill provides that there should not be a separate fee for allowing a cardholder to pay an extension of credit or finance charge.

Disclosures and Billing Statements

- **Billing Statement.** Billing Statements must be mailed to the cardholder at least 21 days prior to the statement due date.
- **Payment Figures for Cardholders.** The Senate Bill requires that credit card companies disclose on the billing statement, in a conspicuous and prominent location, in a typeface as large as the largest type on the statement, the following:
 - The total number of months it would take a card holder to pay off the existing balance if they were to only pay the required minimum monthly payment each month
 - The total cost to the cardholder, including interest, if they were to pay off the existing balance by only paying the minimum monthly payment each month
 - The monthly payment amount required to completely pay the existing balance in 36 months

Youth Consumers

- **Minimum Age.** The Senate Bill requires a cardholder to be 21 to open a credit card account. The House Bill requires a cardholder to be 18 to open a credit card account.
- **Exceptions to Minimum Age.** The Senate Bill allows a person under the age of 21 to open an account if they can: (1) get the signature of a parent or guardian indicating joint liability, (2) show proof of an independent means of paying off the balance, or (3) complete a certified financial literacy or financial education course for young consumers. Such courses must be offered or certified by the Office of Financial Literacy and Education.

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- **Pre-screened Credit Offers.** The Senate Bill requires that a consumer reporting agency can only list those consumers that are at least 21 years old, or that are between 18 and 21 and have elected to have their name and address included on lists provided by a consumer reporting agency. The purpose of this provision is to curb aggressive credit card marketing campaigns directed to young people.

Regulatory Oversight

- **Evaluation of Credit Card Policies.** The Senate Bill requires that certain regulatory agencies provide annual reports to Congress regarding enforcement and compliance with the provisions of the Bill.
- **Credit Card Information Collection.** The Senate Bill requires that the Federal Reserve collect information relating to credit card transactions, including interest rates charged and fees charges. The Federal Reserve should report to Congress on the profitability of credit card operations of depository institutions.

Studies

- **Interchange Fees.** The Senate Bill requires a study to be conducted on interchange fees and their effects on consumers and merchants. These are the fees that merchants are required to pay to process consumer payments made via a credit card. The study focuses on the undisclosed nature of such fees and the costs and factors associated with such fees.
- **Safety Rating System.** The Senate Bill requires a study to be conducted on a proposed credit card safety rating system. The system would use a 5-star rating system to evaluate

the risks and relative safety of credit card terms. The study is to assess whether this would be beneficial and how the system would be implemented.

THE STATUS OF THE CREDIT CARD LEGISLATION CITED IN THESE MATERIALS IS CHANGING DAILY, AND IT IS LIKELY THAT LEGISLATION WILL BE FINALIZED PRIOR TO THE JULY 16, 2009 OPENING DAY OF THIS CONFERENCE. THESE MATERIALS WILL BE UPDATED JUST PRIOR TO JULY 16, 2009

**Credit, Credit Scores and Bankruptcy Before and After
The Great Collapse of 2008: Easy Money to No Money**

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Introduction

This presentation will focus on the impact of the Great Collapse of 2008 on the consumer debtor facing the prospect of a bankruptcy filing. It will review the structure of the credit reporting industry and offer some insights to demystify credit reports and credit scores. After covering the fundamentals of the credit scoring industry and the altered credit landscape after the Great Collapse, strategies for preserving and repairing credit will be discussed.

Be aware that for the most part the material described herein is not the product of state or federal law and that by its nature is subject to rapid change without notice. In fact, that kind of change has prompted this topic to be added to the consumer forum this year. In addition, many of the sources for the information provided are not subject to verification due to their confidential or proprietary nature. As a result, the material should not be relied upon as binding or authoritative. Rather this material is presented to inform the consumer bankruptcy practitioner generally regarding the fundamentals of the consumer finance industry and how those fundamentals have changed since the Great Collapse of 2008.

This presentation is for educational purposes only. It should not be attributed as the views of any of the presenters or their clients.

I. Consumer Credit: The Difference a Few Days/Months Make

In less than a year, the world of consumer credit made a screeching U-turn. In the everyday world of consumer finance the conversations once went something like this:

BGC (Before the Great Collapse but after 2002)

-Can you spot me a few bucks?

Look in the mail and pick the best deal.

Don't like the rate, remember your home is a bank.

Need more home value, reapply next week.

Need more income, anything's possible and remember if you say it's so, that's good enough for us.

Tough credit score, no problem any more.

Bankruptcy last year, sign right here.

A few months later that conversation sounded a little different:

AGC (After the Great Collapse)

-Can you spot me a few bucks?

Gimme that credit card! You were a day late on your cable bill last month, deadbeat.

Your home equity loan is history! Your four bedroom home in that leafy suburb -a good investment- are you dreaming, you're so upside down you make me sick.

A car loan? Is this a joke, you're carrying balances on credit cards and you want a car loan?

How long have you been with your present employer Mr. Obama? C'mon, stop wasting my time, come back in a couple years if you find some steady work.

Bankruptcy? You paid back 60% in a Chapter 13, great, tell you what, let's just say I'll call you when I'm ready but don't sit by the phone.

II. Consumer Credit 101

Virtually no consumer credit is granted in America without the credit grantor “pulling” a credit report and a credit score on the applicant. To understand how rapid and extreme the change has been in our consumer credit climate, it's first necessary to review the basic components of the consumer credit industry.

Key Parts of the System

1) Credit Grantor- bank, mortgage company, home equity lender, credit card company(Visa/Mc/Discover/American Express), store brand (private label) credit cards.

2) Credit Reporting Companies- companies that prepare and distribute credit reports. Currently, there are only three such companies: Equifax, Transunion and Experian.

3) Credit Scores- a math formula used to calculate one numerical score that aims to measure the likelihood that an applicant will repay a loan. Two of the three credit reporting agencies, Equifax and Experian, both use the FICO scoring formula.

Credit Reporting- What information is collected and what's not collected?

Although the credit reporting companies collect regular data on your financial activities, there are still (at least for now) areas of your financial life for which they don't collect any data. A very incomplete list of what gets reported to them and what doesn't is set forth below:

Payment History

1. Virtually all credit card payment history is reported.
2. Virtually all loan payment history (except for private lenders) is reported (mortgages, home equity lines, and unsecured lines of credit).
3. Virtually all judgments obtained by a credit card company or a lender, including foreclosure judgments, are collected and reported.
4. Most tax lien information is collected and reported (state and federal), but information regarding the failure to pay municipal real estate taxes may not be reported.
5. Federal bankruptcy information, usually the filing date, the dollar amount of the liabilities, the case number, and the date of the discharge is collected and reported.
6. Medical and dental bills can also show up on your credit report if the provider turns the past due amount over to third party collections agencies that report to the credit reporting agencies (medical privacy laws require the credit reporting agencies to safeguard your medical privacy by redacting the medical office name but the amount of the past due claim will still be reported like any other overdue account).

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7. Utilities may or may not report payment history. Generally they have not in part because they have the ability to terminate vital services to encourage prompt payment. However, Verizon had not previously reported but began reporting to all three agencies in 2006 touting their new policy as a “gift “ to their customers to help their customers improve their credit scores. According to Boston.com when the Verizon spokesman was asked how late a payment had to be before Verizon would report it as late to the credit reporting agencies, he stated he could not provide that information because if that was disclosed many might delay payment until just before that date.

8. Information regarding disputes/claims with merchants, contractors and/or other third parties, so long as they don't involve use of credit cards or loans, are generally not reported. Also rent payment history is generally not reported. Information on late payment of rent is typically not reported by landlords because of the expense of reporting (sometimes even judgments for eviction and possession may not appear on credit reports). Be aware however that the credit reporting agencies solicit all companies to report their accounts and their marketing pitch is that you will collect more from your delinquent customers if those customers know that you will be reporting their past due account to the credit reporting agency. Therefore, it's difficult to be certain that a past due balance will never be reported. Also if a past due balance is turned over to a third party collection agency, it is much more likely that agency will report it. However, the expense of purchasing the required software and the employee time involved in managing the reporting data, disputes, compliance with the Fair Credit Reporting Act, etc., seems to deter most contractors and merchants from reporting. Although it would likely be viewed

as a negative inquiry by a merchant because it might suggest that you have had payment or credit problems, you can certainly inquire of the business in question if it reports payment history to the credit reporting agencies.

Personal Identity/Employment Information

Credit reporting companies also collect limited personal and employment data on you. That data includes:

1. Employment information for the applicant, but no salary/compensation data, just the name/address of the current and previous employers and does look back a number of years.
2. Social Security number (though partially redacted on credit report), current and previous address information, and possible alias name spellings.

Credit Inquiries

A credit inquiry is a request for a credit report and/or a credit score for a particular person. These inquiries are made by third parties and can be “soft” or “hard”. A “hard” inquiry” is one made by a credit card company or lender in connection with an application for credit that you have made to them. A “soft inquiry” is an inquiry made by a credit card company, a lender or a prospective employer or some other person/entity, that is not related to any new application for credit. Examples of soft inquiries include monitoring of credit data by an existing lender and review of the credit report by another

credit card company or lender that may be planning to offer you credit. When you request your own credit report or credit score, that is not treated as an inquiry at all.

Credit Utilization

The credit reporting companies also collect data not just on your payment history on debt you owe but they also collect data and report on the total amount of debt (loans and credit cards) that you owe and the total amount of additional availability that you have to draw down more debt, i.e. your credit limits. The credit report then measures the amount of the debt balances you owe vs. the total credit available to you and this is called your credit utilization.

Age/Condition of Applicant and Length of Credit History

The applicant's age has no direct impact on the FICO score, nor may the credit reporting companies divulge any medical information regarding the applicant. For example, law requires the credit reporting companies to conceal the name of a medical creditor on your credit report if that would reveal that you may have a certain medical condition such as cancer. Length of an applicant's credit history is collected and is considered in arriving at a FICO score.

Credit Scoring and the FICO Formula

The FICO score is the scoring formula used by two of the three Credit Reporting Agencies-Experian and Equifax. FICO is also the credit score used by most mortgage

lenders. The FICO formula was developed in the mid-1950s by an engineer named Bill Fair and a mathematician named Earl Isaac who formed a company named Fair and Issac Company and hence the FICO acronym (The Fair Issac Company remains very much in business today based in Minneapolis, MN). The precise formula is “top secret” but a common estimate of the weighting of different portions of the credit report breaks down as follows:

- 1) approx. 35% of your FICO is based on the payment history records of your credit report;
- 2) approx. 30% of your FICO is based on your credit utilization (how much debt you owe and the amount of additional availability you have, credit card debt counts most here);
- 3) approx. 15% of your FICO is based on how long you have had your credit- the older your credit history the better;
- 4) approx. 10% of your FICO is based on the diversity of your credit accounts- the more diverse the better- for example some credit card loans, car loans, and mortgages;
- 5) approx. 10% of your FICO is based on how often you apply for new credit-too many applications for credit (hard inquiries) will lower your FICO.

What is the range of FICO scores? They range from 300 to 850 with the higher score signifying that you are a better credit risk.

III. The Impact of the Great Collapse on the Availability of Consumer Credit

Three years ago when the securitization machine was still running three shifts seven days a week, the consumer credit world had never been so bright. Experts say that back then in the good 'ol days, a FICO of 650 or above would qualify you for the best interest rates available. Now if you want to qualify for the best rates out there, those available to only those that are deemed to be the lowest credit risks, you better get working on your FICO because it probably needs to be 750 or above (though others report 720 or above will still work). For those not familiar with the FICO world, that may not seem to be that dramatic a change but a rough analogy might be to that 20 question written test for your driver's license and it would be like changing that from 15 out of 20 to come out of the DMV smiling to 18 or 19 out of 20 to get your hands on the keys. That would be a lot of unhappy 16 year olds. We already have and are predicted to have many more very unhappy consumer credit applicants.

Another way of looking at this is from the other end, never mind the lowest interest rates, what FICO do I need to get a mortgage at all from a conventional lender. In 2004, it is reported that 560 would have been adequate, by early 2007 that number had increased to 620 and today it is probably above 650.

FICO Scorecard

Here is what was being reported as of March, 2009, regarding FICO scores and qualifying for mortgage loans:

800-850 excellent score qualifies you for the best deals

750-800 very good score qualifies you for most of the best deals

720-750 still a strong score and may qualify you for many of the best deals

700-720 good but may not qualify for lowest rates

650-700 fair credit and will qualify you for decent rates but not for the lowest rates

600-650 poor credit will have difficulty qualifying for any standard credit products

Less than 600 very poor credit, will likely not qualify without a co-signer or large down payment

When you factor into these numbers that the average FICO of Americans is approx. 680 and that many, many Americans have FICOs just below and just above the average, it sheds more light on why so many fewer people are buying houses and cars these days—many no longer qualify for credit.

For consumer bankruptcy attorneys and their clients the rising FICO bar to credit is potentially much more devastating. For these folks, it is not the difference between keeping the old car a few more years, it puts in doubt whether they can find reliable transportation, obtain a credit card, or secure quality rental housing for their families. As a consumer bankruptcy attorney, the days of your bankruptcy client refinancing her home the day after her bankruptcy is closed are probably long gone. Therefore, the discussion with that client regarding the impact the bankruptcy filing may have on the availability to obtain credit and possibly offering some suggestions as to how to rebuild credit history may be much more important today

IV. How to Repair (and Temporarily Live with) a Broken FICO

Like losing weight, there is no magic pill, so don't let your clients buy one. According to the experts, it should take about two years of excellent credit behavior to begin to restore your credit after a bankruptcy.

FICO Repair

Order and Study your Credit Reports

The credit score is not but the credit report is free (once per year). Order it and review it carefully. Correct wrong information. They do make mistakes and other "Mary Jones" information can end up on your report. If you have bad credit, and a bankruptcy filing will certainly put you in that category, the current score should not be the focus as much as reviewing that report and learning how to improve it as much as possible as soon as possible.

Secured Credit Card

Many recommend restarting with a credit card that is secured by a cash deposit. The fee to obtain the card and the rates will be high but it's an effective way to begin improving your credit score if you can keep it current month after month and can avoid carrying any significant balances on the card.

Make All Payments Timely

Generally, for a payment to be reported as late means that you let it go 30 days past due. Be diligent to not let that happen. However, if you can't help being late with a payment, still try to pay it before it's 90 days past due because that will do more harm to your FICO than a late payment that is 30 days past due.

Keep Credit Balances and Overall Debt Low

The credit industry circa 2009 will be a pretty strong governor on you as you emerge from bankruptcy but if there are creditors still throwing money around out there, avoid the temptation.

Avoid Excessive Applications for Credit

Remember you need to avoid those hard inquiries. The 10% off on the new Sears washer will probably cost you more in FICO, then it will save you on the one time discount.

Reporting Rental Payments

There are now companies that will charge you a fee to report your timely rental payments to the credit reporting agencies each month. Due to fraud concerns you can't report your own payment history. As noted above, few landlords report to the credit reporting agencies. These fees may range from \$50 to \$200 per year, typically with the first year being the most expensive. As a relatively new product, it's not clear how quickly such reporting will improve your FICO and by how much so buyer beware.

Time is on Your Side

FICO's rely most heavily on most recent data, particularly the last two years, and by law negative credit report information must be removed generally after 7 years (10 years for a bankruptcy). Every month and year you are moving toward a better FICO score.

Financial Life Without Credit

Debit Cards

Life without credit cards became a whole lot easier with the arrival of debit cards which can be used for many of the same on-line and over the phone purchases previously made with credit cards. Be aware that there is one to three day processing time before the money is withdrawn from your checking account after using the debit card and manage your account accordingly. Also, there are significant added risks with use of a debit card vs. a credit card because the various protections afforded the credit card customer like the thirty day period to dispute a charge are not available when a debit card is used.

Conclusion

Debtor/creditor life after the Great Collapse of 2008 will be more challenging for both debtors and creditors. For those who need to resort to bankruptcy to get their fresh start it will be more important that they be familiar with the basics of consumer credit to help

them turn their fresh start into a successful happily ever after end. The more bankruptcy counsel can do to guide them through these tight credit/no credit times, the better chance for happier financial times ahead.

