

## MEMORANDUM

To: Our Valued Customer  
From: A.S. Pratt & Sons  
Subject: Highlights

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This **Update** to your *Federal Advertising and Marketing Law Guide* both transmits new and revised pages to be inserted into the guide and discusses the following developments.

### **Regulation DD (Truth in Savings)**

On December 18, 2008, the Federal Reserve Board adopted final amendments to Regulation DD to address depository institutions' disclosure practices related to overdraft services. The revisions, which were published in the *Federal Register* on January 29, 2009, have a January 1, 2010 effective date. (See ¶ 2-1.18.)

### **Regulation Z Rules for Open-End (Not Home-Secured) Credit Rules**

Following a comprehensive review of the Truth in Lending Act's rules for open-end (revolving) credit that is not home-secured, the Federal Reserve Board (Fed) amended a number of Regulation Z provisions in order to improve the effectiveness of the disclosures that creditors provide to consumers at application and throughout the life of an open-end (not home-secured) account. The Fed adopted changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) advertising provisions; (2) credit and charge card application and solicitation disclosures; (3) account-opening disclosures; (4) periodic statement disclosures; and (5) change-in-terms notices. The Fed amended the rules governing advertising of open-end credit to help ensure consumers better understand the credit terms offered. These revisions include the periodic payment amount, use of advertisements that refer to a rate as "fixed," affirmative or negative statements, triggering terms, and promotional rates. (See ¶ 4-1.10.)

The Fed also made format and content changes to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. (See ¶ 4-1.10.)

### **Credit Card Accountability Responsibility and Disclosure Act of 2009**

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit CARD Act ) signed by President Obama on May 22, 2009, includes several provisions that modify the marketing ground rules under the Truth-in-Lending Act (TILA), the Fair Credit Reporting Act (FCRA), and the Electronic Fund Transfer Act (EFT Act). These changes include:

- Credit card protections for college students and underage consumers. (See TILA sections 127(p), 127(r), and 140(f) and ¶ 4-1.11.)

- Limits on promotional interest rate increases during the first six months. Under this section, no increase in any promotional APR may be effective before the end of the six-month period beginning on the date on which the promotional rate takes effect. (See TILA section 172(b) and ¶ 4-1.11.)
- Limits on the use of the term “fixed rate.” (See TILA section 127(m) and ¶ 4-1.11.)
- FCRA changes. The Credit CARD Act of 2009 included two Fair Credit Reporting Act (FCRA) revisions relevant to bank marketing practices. One requires any advertisement for a free credit report to disclose that free credit reports are available under Federal law at AnnualCreditReport.com. The other prohibits the furnishing of a credit report on a minor for prescreening purposes without the minor’s consent. (See ¶ 4-1.11.)

### **Regulation AA—Consumer Credit Card Account Practices Services Rule.**

On December 18, 2008, the Federal Reserve Board adopted final rules intended to better protect credit card users by prohibiting certain unfair acts or practices in connection with credit card accounts and other revolving credit plans. The revisions, which were published in the *Federal Register* on January 29, 2009, with a July 1, 2010 effective date, were adopted under the Federal Trade Commission Act. The rules were issued concurrently with substantially similar final rules by the Office of Thrift Supervision and the National Credit Union Administration. (See ¶ 22-1.11 and ¶ 22-3.21 through ¶ 22-3.26. Also see ¶ 8-1.04.)

The Regulation AA amendments:

- Prohibit 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.
- Require banks to allocate payments exceeding the minimum payment to the balance with the highest rate first or pro rata among all of the balances when different annual percentage rates (APRs) apply to different balances on a credit card account (for example, purchases, balance transfers, cash advances).
- Require 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.
- Prohibit 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.
- Address concerns regarding subprime credit cards with high fees and low credit limits by prohibiting banks 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.

### **Telemarketing Sales Rule**

On August 19, 2008, the Federal Trade Commission announced two amendments to the Telemarketing Sales Rule (TSR). One expressly bars telemarketing calls that deliver prerecorded messages, unless a consumer previously has agreed to accept such calls from the seller. The other related technical amendment modifies the TSR's method of calculating the maximum permissible level of "call abandonment." The amendments were published in the *Federal Register* on August 29, 2008. (See ¶ 12-1.01f and ¶ 12-2.04.)