



Higher Education Law Information Memo

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Electronic Dispatch

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FEDERAL CREDIT CARD ACT REGULATES COLLEGE AND UNIVERSITY RELATIONSHIPS WITH CREDIT CARD ISSUERS

President Obama recently signed into law the Credit Card Accountability, Responsibility and Disclosure Act of 2009, commonly known as the Credit CARD Act (the "Act"). The Act is primarily designed to regulate credit card issuers and other issuers of consumer credit ("Issuers") by requiring additional consumer protections, many of which are particularly applicable to college and university students and others under the age of 21. In addition, however, the Act contains several provisions that will impact college and university relationships with Issuers. The provisions of the Act directly applicable to colleges and universities become effective as of February 22, 2010.

Most significantly, the Act requires institutions of higher education to disclose publicly all agreements with Issuers for the purpose of marketing credit cards, including but not limited to so-called "affinity cards" commonly offered to alumni, students and other constituencies affiliated with an institution. The Act does not specify the manner in which the disclosure must occur, nor does it state explicitly what information must be disclosed, but it appears to contemplate disclosure of the actual agreements themselves. Institutions will want to consider the potential impact of confidentiality provisions in their agreements with Issuers when preparing to comply with this requirement.

The Act also contains "sense of the Congress" provisions that suggest, but do not require, that colleges and universities adopt policies requiring Issuers to notify them of the locations at which on-campus marketing will take place, limiting the number of such locations, and providing for credit card and debt education and counseling sessions as a regular part of new student orientation programs. In terms of their non-binding nature and their suggested content, these provisions are similar to Section 6437 of New York's Education Law, which requires New York institutions to prohibit the marketing of credit cards on their campuses to students except pursuant to official institutional policies, and suggests potential aspects of such policies, but does not mandate particular content. Given the New York Attorney General's ongoing review of affinity card relationships as part of his scrutiny of college and university business practices, New York institutions, in particular, are well advised to consider the adoption of policies designed to demonstrate a sensitivity to the perils of student indebtedness (and must adopt at least some policy if they wish to permit on-campus marketing to students). Once again, institutions will want to ensure that any new policies are coordinated to avoid breach of existing contractual commitments.

Finally, the Act prohibits Issuers from offering students tangible items on or "near" (a concept to be defined by rule of the Board of Governors of the Federal Reserve System) college or university campuses, or at events sponsored by or related to colleges or universities, to induce them to apply for credit cards. Although these prohibitions do not apply directly to colleges and universities, they impact the practices which may occur on their campuses and, as such, should be considered for inclusion in institutional policies such as those described above.

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BS&K's 8th Annual Higher Education Briefing Series

Upcoming Webinar: *The FLSA for Colleges and Universities*

September 24, 2009 1:00 - 2:30 p.m.

This program will provide a brief overview of the general wage and hour rules applicable under the Fair Labor Standards Act, with an emphasis on qualifying a position for exempt status and understanding the impact of exempt status. In addition, the program will focus on those campus positions which constantly provide colleges and universities with the biggest challenges, including work study students; teaching and research assistants; coaches; admissions personnel; and residence life personnel (including resident assistants and similar positions).

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Date TBD ▪ *Implementation of the Higher Education Opportunity Act*

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