

# the Paper



A PUBLICATION OF ACA INTERNATIONAL'S ASSET BUYERS DIVISION

## [Credit Card Sector Update](#)

### the Paper - January 2010

By Emily Grace, Communications Specialist

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The credit card industry has seen considerable market changes with the onset of the recession. Starting in the second half of 2007, these changes have resulted in declining liquidation performance, portfolio pricing and asset buying activity.

Mark Russell, director of Kaulkin Ginsberg Company in Rockville, Md., provided an overview of pricing and liquidation rate changes for the credit card sector through Q3 2009 at ACA International's Fall Forum held in November.

In early 2009, Russell made predictions for liquidation performance and portfolio pricing for the remainder of the year. After Q3 2009 numbers had been compiled, he compared his original predictions to the outcomes experienced through the third quarter. His analysis focused on the five major stages of delinquency: fresh, primary, secondary, tertiary and quads.

#### Liquidation Performance

"Liquidation performance has changed dramatically from what I call the peak period of Q1/Q2 of 2007 through the third quarter of 2009," Russell said.

Many factors contributed to declining liquidation rates. Unemployment and underemployment rose significantly with fewer consumers being able to make payments. When consumers were able to make payments, the average payment amounts were smaller due to reductions in disposable income and concerns over job security.

"The whole issue surrounding payments in full and settlements in full became more pronounced in the end of 2008," said Russell. "The world basically stood still on liquidations."

According to Russell, overall liquidation declined 60 percent between Q1 2007 and Q1 2009, or from peak to trough. His original 2009 prediction had liquidations declining further after Q2 2009. This was not the case. During the third quarter of 2009, liquidation rates actually started to stabilize.

Contributing factors for the stabilization in liquidation performance:

- More consumers are making payments, although slightly smaller payments.
- Credit issuers and debt buyers are being more aggressive with their settlement policies which created short-term bumps in performance.
- Improved economic performance results and market rallies have increased consumer confidence.

[Liquidation Performance Comparison through Q3 2009](#)

Stage of Delinquency	9 Months Liquidation Performance			
	Q1' 07 to Q1'09 Average Delinquency	2007 to 2008 Average Decline	2008 to 2009 Average Decline	2007 to 2009 Average Decline
Fresh	55% - 65%	25% - 30%	30% - 40%	50% - 60%
Primary	55% - 65%	25% - 30%	25% - 40%	45% - 60%
Secondary	50% - 60%	25% - 30%	25% - 40%	45% - 60%
Tertiary	40% - 50%	20% - 25%	20% - 30%	35% - 45%
Quads	40% - 50%	20% - 25%	20% - 30%	35% - 45%

Source: Kaulkin Ginsberg © 2009

## Portfolio Pricing

Declining liquidation performance directly impacted the price of credit card portfolios. Through Q1 2009, increased uncertainty surrounded future liquidation performance with financing becoming less available and more expensive. These factors combined with the higher costs associated with liquidating portfolios factored into the pricing declines.

"There was a disparity between what issuers wanted to sell in terms of pricing and what buyers were willing to pay," Russell said.

Creditors became more aggressive with their pre-charge off liquidation strategies. They hired more first-party collection agencies and started investing more in their internal collection departments.

"It caused their agency networks and legal networks to almost reach the point of inability to service those accounts," Russell said. "They were excited about the business, but were unable to liquidate it."

Starting in April/May of 2009, portfolio pricing began to stabilize. Although Russell's 2009 price predictions were relatively accurate, the range in pricing had expanded. He believes this is a direct result from a combination of private transactions and public transactions.

"Fewer portfolios sold via public auctions in 2009 than in prior years as a result of the substantial price reductions," Russell said. "However, there was an increase in the number of private transactions. Some of these portfolios sold at prices below market value while others were customized to better meet the needs of the asset buyers."

According to Russell, credit issuers were adamant about maintaining confidentiality regarding these private transactions as they could re-set the expectations of asset buyers participating in the public auctions. Private transactions started to decline in Q3 as liquidations were stabilizing and demand from debt buyers increased.

### Q3 Portfolio Pricing by Stage of Delinquency

Stage of Delinquency	Price Range Q1 2007	Price Range Q1 2008	Price Range Q1 2009	2009 Price Predictions	Price Range Q3 2009
Fresh	\$.12 - .17	\$.09 - .12	\$.05 - .07	\$.04 - .06	\$.035 - .07
Primary	\$.08 - .12	\$.05 - .08	\$.03 - .05	\$.025 - .04	\$.03 - .05
Secondary	\$.055 - .09	\$.03 - .05	\$.02 - .03	\$.015 - .025	\$.02 - .03
Tertiary	\$.03 - .05	\$.0125 - .03	\$.01 - .02	\$.0075 - .015	\$.01 - .03
Quads	\$.01 - .025	\$.005 - .0125	\$.004 - .01	\$.003 - .0075	\$.002 - .0075

Source: Kaulkin Ginsberg © 2009

## 2010 Predictions

Russell's predictions for 2010 vary based on how the U.S. economy recovers. If the recession is coming out of a V shaped recovery, he sees delinquency and charge-off volumes stabilizing throughout the rest of 2010.

"Though there may be some ups and downs throughout the year, delinquencies and charge-offs will start to decrease by the end of 2010," Russell said.

He also predicts liquidation rates will stabilize through Q1 2010 as compared to prior year results and remain flat for the rest of 2010 with the possibility of an increase.

"More consumers might be willing to pay more because they have been saving more," Russell said.

With a V shaped recovery, Russell also expects debt portfolio pricing may increase slightly along with sales volumes, but warns substantial increases will not occur until there are substantial increases in liquidation.

If a double dip recession occurs and recovery becomes W shaped instead of V shaped, his predictions shift.

"We should know if a double dip is going to happen by the end of Q1 2010," Russell said. "A key indicator will be the commercial real estate market."

If a double dip recovery occurs, Russell believes additional government stimulus programs will be created to minimize the impact of recession. Unemployment and consumer bankruptcy rates will increase, causing delinquency and charge-off volumes to rise.

According to Russell, a double-dip will cause liquidation rates to drop, causing pricing and portfolio sales to decline as well. If that occurs, he predicts another 20 - 30 percent drop in liquidation rates, which may cause more service providers and asset buyers to go out of business.

*Russell compiled the price ranges based on confirmed transactions as well as anecdotal discussions with debt buyers and credit issuers. The liquidation rate decline ranges have been gathered from collection agencies, law firms, asset buyers and credit issuers.*

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## **FDCPA Does Not Require Itemization of Accrued Interest in Collection Notices**

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In a recent case from the Southern District of California, the court ruled a collection letter that listed the consumer's outstanding balance, but failed to include accruing interest, did not violate the Fair Debt Collection Practices Act (FDCPA).

In this case, the debt collector sent the consumer a collection letter in an attempt to collect an alleged credit card debt. The letter listed the consumer's outstanding balance and stated the balance may not include accruing interest. The letter also stated the outstanding balance listed did not account for changing exchange rates after the date of the letter and the consumer should call the debt collector's office to verify the current balance. The consumer alleged the debt collector failed to state the amount of the debt in a clear manner, in violation of the FDCPA.

The debt collector claimed the debt was not subject to the FDCPA because it arose from a business card agreement; therefore, the credit extended was for business purposes and not for personal, family, or household purposes. The court concluded the debt collector's argument lacked merit because the business card agreement was illegible and lacked authenticity.

However, the court held the debt collector's letter did not violate the FDCPA reasoning § 809(a)(1) does not state how a collection letter must itemize the debt or whether portions of the amount owed can be left for subsequent verification. The court held the letter's reference to an "outstanding balance" implied the amount listed was the entire balance owed and noted since accruing interest accumulates in the future, it cannot be specified in a collection letter because the collector has no way of knowing when the consumer will pay. The court found the language contained in the debt collector's letter was equivalent to the safe harbor language drafted by the Seventh Circuit for satisfying the collector's duty to state the amount of the debt. Thus, the court concluded the debt collector's letter stated the amount of the debt

in accordance with § 809(a)(1) and granted the debt collector's motion to dismiss.

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## [Credit CARD Act: Are You Ready?](#)

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The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act) was signed into law by President Obama on May 22, 2009. The Act imposes stringent restrictions on credit card interest rates, disclosures that must be provided to cardholders, billing practices, credit limits, transaction fees, gift card expiration requirements and the ability for underage consumers to obtain credit cards.

Although various provisions of the Credit CARD Act go into effect at different times, ranging from 90 days to fifteen months from the date the bill was signed, the majority of the provisions are effective Feb. 22, 2010.

The following provides a list of provisions effective Feb. 22, 2010.

#### *Interest*

- A card issuer cannot raise interest rates in the first year after an account is opened.
- Retroactive increases to interest rates on existing balances are prohibited, unless (A) the minimum payment is not received within 60 days of when it is due; (B) the rate increase is under a variable interest rate; or (C) it is the end of a promotional rate period (promotional rates need to be in effect for at least six months for the exception to apply).

#### *Enhanced Disclosures*

- A written "Minimum Payment Warning" must be displayed informing cardholders making only the minimum payment will increase the amount of interest they pay and the time it takes to repay their balance.
- Card issuers are required to inform cardholders the number of months (rounded to the nearest month) it would take to pay the entire amount of their balance if the cardholder pays only the minimum payment.
- Card issuers must inform cardholders how much they would need to pay each month in order to pay off the balance in full in 36 months.
- Card issuers must provide a toll-free number cardholders can call to obtain information regarding credit counseling and debt management services.

#### *Billing Practices*

- Card issuers are prohibited from assessing a finance charge based on the double billing cycle method. This means card companies cannot charge interest on debt a cardholder has already paid.
- Card issuers cannot charge a fee on an outstanding credit card balance at the end of the billing period if the fee is from interest accrued on an outstanding balance that was fully repaid in the last billing period.
- Any excess amount of payment received that is over the minimum monthly payment must be allocated to the card balance bearing the highest interest rate first, before it can be applied to other balances with lower interest rates.

#### *Credit Limit*


- Card issuers must afford cardholders the option to have a fixed credit limit.
- No over-the-limit fee may be imposed by the creditor, without the express consent of the cardholder, if the cardholder exceeds that limit.
- Card issuers may only charge a maximum of three over-the-limit fees for the same transaction.

### *Transaction fees*

- A card issuer may not charge the cardholder a separate fee related to the method of payment used to make a payment on a credit card account. The requirement applies whether the cardholder's payment is made by mail, electronic transfer, telephone authorization, or any other means, unless the payment involves an expedited service by a service representative of the creditor.
- Note the requirement only applies to payments made on a credit account; it does not prohibit transaction fees for payments on other types of accounts.

### *Underage Consumers*

- Card issuers cannot market credit cards to anyone under the age of 21.
- Card issuers cannot provide credit to anyone under the age of 21 without a parent or legal guardian cosigning on the account, or unless the underage consumer can show independent financial means to repay the credit obligation.

Additional information about the Credit CARD Act is available to ACA members in [Fastfax Document # 3018](#) .

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## [Licensing Bills Introduced in South Carolina](#)

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The licensure of debt collectors will be a priority for the South Carolina Collectors Association in 2010. Legislation introduced this month, and driven by the South Carolina Department of Consumer Affairs, places a host of onerous restrictions on debt collectors operating in South Carolina, including:

- Licensing of debt collectors and active asset buyers;
- Continuing legal education for officers, directors, and other key management staff;
- Requiring agencies to maintain a surety bond; and
- New special text requirements and restrictions on collection of time-barred debt.

If passed, [South Carolina House Bill 4228](#) will go into effect September 1, 2010.

The South Carolina Collectors Association has already undertaken vigorous advocacy efforts to proactively fight this legislation, including introducing its own [standalone measure](#) which would create a study group to consider the licensure of debt collectors.

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## [Engaging All Employees Politically](#)

### **the Paper - January 2010**

**By Mike Varrichio, ABD Committee Chair**

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We are a trade association of hundreds of companies, but even better and more importantly, we are a trade association of thousands of individuals. The vast majority of the thousands are collectors who are on the front lines of our businesses, whether they are your employees or outsourced resources. Almost without exception, it is the business owners and industry leaders that manage the burden of communicating with our legislators. While this can be productive, imagine if we were able to fully engage the thousands the individuals that make up our trade association and our industry.

In order for us to do this we must motivate and educate our employees on the issues that affect our industry and ultimately their ability to make a living. So what can we do to engage our collector and other employee population in assisting us in this process?

### **Help your employees feel good about what they do**

The collection business is difficult. Every day collectors deal with many unhappy and sometime difficult consumers and after hundreds of transactions a day this can become emotionally draining. Collectors need motivational support from their leaders. They need to know that what they do is noble and has a meaningful purpose. If you ask any collection company executive they will tell you there are motivational techniques to keep collectors engaged. Our company has some of these as well, but we also have taken the opportunity to mesh some "feel good" into our Collector's Pledge. Our pledge is said in unison by all employees in our "all hands" Wednesday staff meeting. Below is our Collector's Pledge:

I am a collector. We are the good guys.

Our industry returns billions of dollars annually to the U.S. economy. Without us, consumers would pay more for goods and services and interest rates would be much higher.

I will be professional and ethical in my activities, as I believe every person should be treated with dignity and respect. And, in doing so, will help consumers find ways to pay their just debts.

I am a collector. We are the good guys.

I can tell you first hand that after doing this weekly for a couple of years we have engrained a positive feeling among our employees about our occupation and it offers them a continued reminder that consumers need to be treated with dignity and respect.

### **Communicate the issues that directly affect the company's ability to perform its mission**

Collectors should be kept abreast of changes in laws that affect the company's ability to do business and how those laws affect them at the collector level. Probably like most collection companies, we have very specific scripts collectors must follow in certain situations, such as leaving a message, mini-Miranda, call recording notification and several others. It is one thing to hand employees the script and say follow it, but it is another thing to specifically explain to them why the script must be followed and what laws we are complying with.

It is also meaningful to explain to them the conflicts that exist in the law that create the "gray" such as *Foti* and cell phone communication in which we must delicately maneuver. Explain why they must follow the law in their activities; don't just tell them to. The more they know about "why" they must do something, the more they will accept company policy and procedure. But even more importantly, they will begin to understand why it is important to voice their concerns to their legislators.

### **Illustrate the company's costs of managing compliance**

Educate your collectors on the cost of complying with the myriad of laws that affect the industry, both at the federal and state levels. These costs include technology, state licensing and bonding, employee training and attorney and legal fees. Show them how these costs negatively affect the company's ability to hire new employees, grow the organization and provide more benefits to employees.

### **Show how they can help**

Having been sufficiently educated and motivated, the next step is to show employees how they can make a personal impact within the industry. Create a list of your employees' U.S. Representative and Senators. With the assistance of the ACA Legislative Action Center, create personalized letters for each of your employees to send to their specific U.S. Representative and Senators. Make sure your employees understand the issues and are in agreement with the company's and ACA's position on these issues, and ask them to sign and mail the letters.

By engaging our collectors and employees on the front line of the business we can have a louder voice with our legislators. I know several companies who have and are already doing this. Let's make this happen across the entire industry.

Remember, we are the good guys.

ABD Chair Mike Varrichio

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