

The Consumer Finance Podcast x Payments Pros – Point-of-Sale Finance Series: Innovations, Regulations, and Future Trends of Modern Credit Cards

Host: Jason Cover

Guests: Mark Furletti, Taylor Gess, Jeremy Sairsingh

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Jason Cover:

Welcome to a special crossover edition of [Payments Pros](#) and [The Consumer Finance Podcast](#), continuing our special series on point-of-sale finance. I'm Jason Cover, one of the hosts of the *Payments Pros* podcast, and today I'm joined by Mark Furletti, Taylor Gess, and Jeremy Sairsingh to discuss the world of credit cards.

Before we jump into today's episode, let me remind you to visit and subscribe to our blog, TroutmanFinancialServices.com, and don't forget to check out other podcasts on troutman.com/podcasts. We have episodes that focus on trends that drive enforcement activity, digital assets, consumer financial services, and more. Make sure to subscribe to hear the latest episodes.

With that said, thank you, Mark, Taylor, and Jeremy, for joining today.

Mark Furletti:

Thanks, Jason.

Jeremy Sairsingh:

Thanks, Jason.

Taylor Gess:

Thanks, Jason. It's good to be here.

Jason Cover:

Jeremy, I think most of us have an idea of what a credit card is, and it's that little piece of plastic or, I guess, now metal that resides in our wallets or purses or pockets or what have you. But could you explain a little bit more what a credit card is today in the modern world?

Jeremy Sairsingh:

Sure. Credit cards are the most common way to access consumer credit in the U.S. So, the answer to what is a credit card might seem obvious. But I think once you scratch the surface, it gets surprisingly complex, especially if you consider how popular your standings can differ for more technical legal definitions. Like you said, most of us think of that piece of plastic or maybe

metal in your wallet that you dip or tap or swipe, or maybe manually enter a number to make a purchase on credit at a physical or virtual point of sale. I'd venture that is the most common association with using a credit card is with open-ended or revolving credit.

Basically, you take the card, you use it, money moves behind the scenes, allowing you to make your purchase, you get a monthly bill, you pay it off, or maybe you don't, and then you repeat. I think that's what most of us think of when credit cards come to mind. But technically speaking, not all credit cards work that way. And not all products that we might call credit cards are necessarily treated that way under the law.

Jason Cover:

Jeremy, that all makes a lot of sense. But could you tell us a little bit about the history of where credit cards came from and how we got to this point today, where there's such a variety out there?

Jeremy Sairsingh:

Sure. Before credit cards, most American consumer borrowing consisted of either closed-end loans with fixed amounts and fixed terms, or essentially credit sales, where credit was extended by a single store for either one-time purchases or maybe repeat purchases on a merchant account. But then, in the middle of the 20th century, the credit card was introduced and really changed that. It essentially created a tool that allowed for reusable access to credit across multiple unaffiliated merchants.

So, you weren't just limited to making purchases at that one store or where you had an account. And the credit increasingly took the form of revolving credit. So, the consumer could draw funds, repay all or part of the balance, and then draw again with the line replenishing continuously as long as prior purchases were repaid. This process now feels routine, but the introduction to credit cards was a major shift in terms of how consumers interact with lenders and how credit was extended at scale.

Jason Cover:

Jeremy, so it sounds to me like one of the original distinctions, or maybe one of the original varieties in types of credit cards, was what something like a store credit card that was a credit sale versus what most credit cards are today, which involve loans. And for those listeners that joined us for the original podcast in this series, we talked about the distinction between a credit sale and a loan. But is that kind of a safe basis to start from of starting to understand how there are various cards out there that may just be a different type of extension of credit entirely?

Jeremy Sairsingh:

Yes, absolutely. The widespread adoption of credit cards is really fueled by the ability to make purchases at unaffiliated merchants. So, you weren't just limited to, as in the case with a credit sale, the merchant initially extending the credit. So, credit cards enabled much wider use of the same device to access credit.

Jason Cover:

That makes a lot of sense, Jeremy. Tell us a bit more than in the modern world, as the Internet and digital methods of purchases and tokens have taken place, how that's continued to evolve.

Jeremy Sairsingh:

Sure. We now find ourselves in a legal environment that still bears the structure of a lot of those early innovations that we talked about. But this legal structure has for some time now been stretched by a lot of emerging tech and business models like virtual wallets and new point-of-sale finance products like buy now, pay later. So, specifically under Reg Z which implements the Truth in Lending Act, a credit card is defined to mean any card plate or other single credit device that may be used from time to time to obtain credit. And that's it. The law doesn't require the credit to be revolving. It doesn't even require the consumer to carry a balance. The card doesn't have to look or feel like a traditional credit card. Basically, it's an access mechanism for repeat-use consumer credit.

Jason Cover:

So, Jeremy, just to recap real quick, that original thought of, well, we have to have a piece of plastic or metal that safely fits in our pocket is not what a credit card is. It's a much broader definition.

Jeremy Sairsingh:

Definitely. Now, Reg Z does draw distinctions between credit cards generally and different types of credit cards. So, charge cards, credit card accounts under an open-end consumer credit plan, hybrid prepaid cards, and Taylor will discuss some of the ways these distinctions matter. You can also have secured cards, which can be backed by a deposit, but operate more like a standard credit card.

But the main takeaway is that any number of devices for accessing credit could be credit cards under Reg Z, even though no revolving credit is involved. For example, you could have a product where the underlying credit transactions are clearly closed-end. Because of repeat credit transactions that are initiated with the same piece of plastic or metal, you end up with a credit card.

Mark Furletti:

Jeremy, if I could just append to that, I think it also could apply to a variety of form factors. So, not only could credit cards encompass, could there be products that don't function like what most people think about as a standard kind of credit card that accesses open and revolving credit, it could be accessing other types of credit. But beyond that, you also have the form factor could be different. So, in some cases, an account number and expiration date standing by itself could be a credit card in certain instances, as could an iPhone or an Android device, if an account number and expiration date are loaded onto it.

So, there's like a variety of two levels, both in the form factor level and then in the type of credit it accesses level. Do you agree with that?

Jeremy Sairsingh:

Absolutely, that's a great point. And we could spend multiple podcasts discussing what is a card plate or other single-access credit device, especially with the rise in mobile wallets. But for industry regulators and courts, the understanding of this term is definitely in flux, especially with the rise with mobile wallets.

As one example, last year, the CFPB under the Biden administration issued an interpretive rule that interpreted a credit card as including the buy now, pay later digital user account. So, you've got no card, no plate, no physical access device, just credentials, but the CFPB interpreted that as a credit card. Now, the CFPB under the Trump administration announced its intent to rescind that rule and deprioritize enforcement of the rule, but the rule highlights how widely interpretations of what is a credit card can vary. In short, a product status as a credit card first flows from the access mechanism reform factor and not the underlying type of credit access.

Jason Cover:

Thanks, Jeremy. I think that's a great segue. Taylor, with all of that in mind about what actually is a credit card, could you tell us how credit cards are regulated at both the federal and state level?

Taylor Gess:

Sure, Jason. So, at the federal level, one of the main laws regulating consumer-purposed credit cards is the Truth in Lending Act and its implementing regulation, Reg Z. So, we've talked about this a bit before on other podcasts in this series, but historically the heart of TILA and Reg Z has been about protecting consumers through disclosing the cost of credit in a uniform manner that allows consumers to compare prices across various credit options. For open-end credit, like credit cards and other open-end credit, relevant provisions of Reg Z are in subparts B and G for credit cards.

So, the CARD Act amended TILA and was signed into law in 2009. That legislation was partly in response to consumers just being confused about the increasingly complex credit card landscape and fees and interest calculation methods and when payment due dates were, and changing payment due dates, and consumers being subject to penalty pricing immediately upon a relatively small default, maybe like a single day late, or exceeding the credit limit by just a few dollars. The CARD Act kind of took the regulation of credit cards beyond just those cost of credit disclosures into more substantive regulation and fee limits.

Jason Cover:

Taylor, could you tell us a little bit about what the Truth in Lending Act and Reg Z, in particular, require for cards?

Taylor Gess:

Sure, Jason. I'm not going to get into the fine point details of all the TILA and Reg Z provisions applicable to credit cards here today, but I'll run through a couple at a high level just to give you the idea of some types of requirements that exist. So, issuers need to assess the consumer's ability to make minimum monthly payments based on the consumer's income or assets and current financial obligations. Before an account is opened or credit limit is increased, there are limitations on certain fees and rate increases, especially in the first 12 months of having a card account open. There are requirements on the timing and disclosures on periodic statements, including when statements must be sent and when closing dates on billing cycles must be, and minimum payment warnings related to how long it'll take the consumer to pay off the debt if only the minimum payment is made each month.

There are often requirements for fees associated with exceeding the credit limit or over-the-limit fees, marketing restrictions for cards targeted at college students, or other more generally applicable advertising requirements. There's change in terms requirements for APR increases or other significant changes like the amount of a fee. There's also provisions for consumers to seek remedy of unauthorized use or fraud, or other billing errors. Of course, we have those cost of credit and other disclosures about consumer rights that are given at the time of solicitation and account opening.

Mark Furletti:

If I could just add, what Taylor just described is kind of the full array of protection that apply to what we would typically call a CARD Act credit card. And I just want to flag for our audience that there are other types of credit cards, as Jeremy was alluding to earlier, and that those other types of credit cards would have different and generally lower burdens in terms of compliance. So, I would say if you think about the CARD Act credit card as being subject to the full array, like a lot of protection, and a lot of those are in subpart G of Reg Z.

And then on the other end of the spectrum could be a non-CARD Act credit card, just a plain old credit card that does not access open-end credit. And that kind of card would be subject to a much narrower range of protections. Most of the subpart G stuff would not apply to that kind of credit card. So just to be clear, you kind of have to figure out, you start with Jeremy's analysis of what kind of card do we have, and then flowing from that is what are the obligations under federal law with respect to that card, and there can be differences.

For a long time, I'd say most of what we were seeing in the marketplace were CARD Act credit cards, but I'd say recently we've seen the emergence of products that are hybrid products that can kind of fall somewhere else in this spectrum.

Jason Cover:

Just to piggyback onto that, Mark, for those of you that listened to the buy now, pay later episode with Taylor, me, and Jeremy, some of the consternation about the interpretive rule that Jeremy just mentioned again was that most buy now, pay later, we call a closed-end card, right? It's not open-ended. Therefore, it is not a CARD Act card, even if you buy the original interpretation by the CFPB. But as they continued to develop the FAQ, they kept bringing other

pieces in that only applied to CARD Act cards. I think I mentioned that the FAQ also made the BNPL charge cards, which then made them subject to subpart G that Mark mentioned. So, it started somewhat controversial and then just kept expanding and expanding as they made it more fully part of the general universe of regulations under TILA and Reg Z that Taylor mentioned.

Mark Furletti:

And Jason, as you probably mentioned on that podcast, I feel strongly about this, so I want to note it. I think the CFPB was operating completely outside its congressional authority on that point, and that Congress actually specified what provisions could apply, and they went well beyond what Congress permitted. I think that interpretive rule was completely without statutory support and probably was illegal.

Jason Cover:

Yes, we noted our strong agreement with the industry litigation and the arguments they asserted. With all of that said, Taylor, one of the other hot topics in credit cards last year was the cap on late fees. Is that still a thing? Do we need to still worry about that or not?

Taylor Gess:

Well, in March of 2024, the CFPB issued that final rule on credit card late fees that reduced the safe harbor amount for the maximum dollar amount of a late fee from \$30 for the first missed payment and \$41 for subsequent missed payments to and across the board, \$8 for any missed payment and eliminated the inflation adjustments to the safe harbor late fee amounts. But in April of this year, the CFPB agreed to vacate that late fee rule after much industry pushback and litigation.

Jason Cover:

Definitely a positive development. How about state laws? I think we've kind of outlined the federal overlay, but do we need to worry about state laws?

Taylor Gess:

Nearly every state has a core consumer credit statute that applies to open on credit and could also apply to credit cards. Some states have standalone credit card-specific laws. I know California has a pretty comprehensive credit card law that sets forth maximum fee amounts and procedures for activating cards, regulating cash discounts, and disclosures for secured credit cards. And states also frequently have surcharge laws.

So, a surcharge on a credit card transaction is a fee, and it's usually a percentage-based fee that's added to a purchase by a merchant that applies only to a credit card transaction to cover the cost of processing the credit card payment. There are state laws regulating surcharges. It could be limiting the amount of a surcharge or requiring certain disclosures before a surcharge

may be imposed, or may be banning surcharges altogether. Surcharges are also regulated by the card network industry rules. I'll talk more about those in just a second.

But also, on the state law front, I'd like to mention that for a commercial credit card, there could be relevant state commercial financing laws imposing TILA-like disclosures or other operational considerations.

Mark Furletti:

If I could just chime in, Taylor is right that there are a number of state laws that may apply to credit cards. Practically speaking, a lot of the provisions of those laws could be preempted based on who is the issuer of the credit card. So, if you have a bank, for example, issuing the credit card, and in fact, all credit cards have to be issued by banks, a lot of the laws would be preempted, not the ones of the bank's home state, but oftentimes the ones of the out-of-state bank under either the Federal Deposit Insurance Act or under the National Bank Act.

Specifically, there'd be broad preemption of any state laws that would regulate the rates or fees charged on these cards. And then whether there's preemption of other types of protections would be kind of a case-by-case analysis, it would depend on the burden that the state law imposes on the bank, and also the type of bank we're talking about, the national bank versus a state-chartered bank.

Jeremy Sairsingh:

Then, I'd also adds that a number of states have more broadly applicable consumer credit codes that distinguish between via a credit card versus other types of consumer credits. And often the credit card-related provisions are more generous than as to other types of credit.

Jason Cover:

I think, Jeremy, another thing you'll find is that a lot of the substantive provisions or substantive protections mirror the CARD Act or TILA provisions. So, like, unauthorized use, some of the limitations on who you can solicit to, like, students. We did a fairly in-depth survey last year and found that while there are outliers, a lot of those line up fairly closely to what's already on the books on the federal level.

Mark Furletti:

One other point on the state regulation is that it is possible to issue a credit card under state law under the Retail Installment Sales Act. So, a number of state Retail Installment Sales Acts have provisions applicable to charge cards. And historically, issuers operated under those statutes; today, with mostly banks issuing the cards, they're operating under their home state statutes. But if you were a non-bank, you could potentially issue, probably not a Visa, MasterCard-branded product, but another type of card product under the state Retail Installment Sales Act. So, that's one other place you should be aware of that could have applicable law.

Jason Cover:

Taylor, speaking of Visa and MasterCard, are there rules applicable to Visa or Mastercard, or other card networks that we should be aware of?

Taylor Gess:

Yes, Jason, we shouldn't forget about the network rules imposed by card networks. These card payments run over payment rails that facilitate the secure transfer of funds from one financial institution to another. These network rules are not binding law in the same way as TILA or Reg Z or the state laws we just discussed, but the card network rules they do set forth industry standards and requirements that should be followed for payments to flow on the network's payments rails.

So, the network rules, they cover a broad range of issues from security and fraud protections to information to include on payment receipts to limits about reinitiating failed payments. There's just a lot of different venues for regulating credit cards, Jason.

Jason Cover:

Definitely agree. The other fun thing with the network rules is I feel like they change on a quarterly basis. So, definitely something to keep on top of.

Mark, I think we've overlaid the history of cards, tried to define what a card is, the current regulatory overlay. But where do you see things going, or what do you think the future of card regulation is, or the future of the industry?

Mark Furletti:

Jason, one thing that folks should keep their eye on is a bill that keeps getting introduced in Congress called the Credit Card Competition Act. I don't want to delve into detail on the bill. I think it's controversial. There's strong opinions on the side of merchants and strong opinions on the side of bank issuers as to exactly what impact this law will have. But practically speaking, what it will do or would do is require that there'd be two networks over which a credit card transaction could be processed, one of which is not one of the largest networks.

So, people expect that this could reduce the cost, the so-called swipe fee or interchange. As folks may know that when a consumer uses a credit card at a merchant and let's say spends \$100, the merchant would typically not receive the full hundred from the issuer. They would receive, let's say, \$98.50. There would be some type of discount or \$97.50, some type of discount would be applied to that transaction, and that discount is called interchange.

So, merchants have complained that the interchange fees are high, and so this bill is a reaction to that. By introducing a second network, people think it could reduce those fees. But I think there's conflicting evidence on that. Anyway, that's something I think that's kind of on the horizon that people should keep their eye on. I would say what we've seen is a lot of innovation in this area. So, I think for a very long time, you just saw plain Vanilla credit cards, like the

consumer would just like the ones that they've been around for decades. You build up a balance, you pay a certain percentage of that balance each month, an interest accrues on that balance.

I think the newer products that we're seeing, they function differently than that. They might look more like an old-school charge card where a consumer charges an amount and then pays it in full the next month. Or maybe they charge an amount and pay it in full over four months, or they get to split payments into a fixed number of installments. So, a lot of creativity around, I'd say, the minimum payment, and I think the goal is to have much shorter periods of time during which a consumer is repaying, as opposed to a product where the repayment period could be very long. That's the minimum payment warning that Taylor mentioned earlier exists because, under a standard agreement, it could take a very long time for a consumer to repay the full amount. A lot of newer products, I think, are more in the nature of a buy now, pay later transaction that's dividing something into four over a short period of time. It's kind of a movement toward that, but with a credit card front end.

I guess, finally, another thing that we're seeing that I think is a troubling trend is just a dramatic increase in fraud. I think that fraud takes two forms, not just people trying, bad guys trying to defraud consumers by stealing their credit card information and making charges using it, but also people who are taking out card seeking to defraud the issuer, no intention of paying back the balance and taking advantage of, I think, CFPB guidance that was not very forgiving of issuers who wanted to deny Fair Credit Billing Act claims.

I think that pressure is gone, but I think issuers have been exposed to these types of situations where a consumer gets a card, has no intent of repaying, charges up a balance, says none of its mine, does it again, does it again, that kind of thing, seeking to basically defraud the issuer kind of on a first-party basis. We've just seen an increase in that. That's, of course, very bad for everyone. It increases – I mean, it's good for the bad guy, but it increases the cost of credit, increases the cost of the program, which has to be spread out over the law-abiding non-fraudulent folks. That's something that I think folks are grappling with, and it would be trying to find solutions for that and ways of dealing with that problem, I think, is something that issuers are pretty concerned about.

Jason Cover:

Very interesting. On the ways to make the minimum payment, I think interestingly enough, the major issuers, I think you and I are responding to what some of the fintechs and folks pushing innovation, where I know on my credit card, they're always trying to get me to pay over installments with a fixed fee. So, it's interesting that everyone is sort of trying to mimic those payment schedules on some level, whether it's the innovators or the traditional issuers. But with that said, Mark, Taylor, Jeremy, thank you for joining us today.

Mark Furletti:

Thanks, Jason.

Jason Cover:

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