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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510–6250

November 5, 2007

VIA EMAIL (www.regulations.gov)

Mr. Glenn Gimble
Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

RE: OTS advance notice of proposed rulemaking related to unfair or deceptive acts or practices in consumer lending (OTS-2007-0015)

Dear Mr. Gimble:

On August 6, 2007, the Office of Thrift Supervision (OTS) requested public comment on an advance notice of proposed rulemaking related to strengthening its rules to prohibit unfair or deceptive acts or practices in the consumer lending field. The purpose of this letter is to support the OTS rulemaking effort and to recommend specific matters for consideration in connection with unfair and deceptive acts or practices related to consumer credit cards.

General Comments

Consumer lending is a widespread, competitive business among U.S. financial institutions today. Mortgages, home equity financing, personal loans, automobile loans, gift cards, and credit cards involve hundreds of millions of Americans who are saving less and accumulating greater household debt than ever before. In the last few years, this industry has been tainted by predatory lending practices that take advantage of consumers, hurt American families, and even threaten the safety and soundness of U.S. financial institutions and credit markets. Increased regulation and oversight are essential to stop unfair lending practices and rebuild confidence in U.S. credit markets.

For these reasons, the OTS advance notice of proposed rulemaking (ANPR) to strengthen prohibitions against unfair or deceptive acts or practices in consumer lending is a welcome development. Stronger consumer protections and clearer prohibitions against predatory lending practices are overdue and much needed.

The ANPR requests comment on whether, under the authority granted to the agency by the Federal Trade Commission Act and the Home Owners' Loan Act, OTS should propose principles-based rules for identifying and preventing unfair or deceptive acts or practices, or instead establish prohibitions against specific practices. In light of the many problems besetting the consumer lending field in recent years, a rule that combines both approaches would seem to be essential, not only to stop specific unfair or deceptive practices that have become widespread, but also to provide OTS with the tools needed to prevent future problems as consumer lending practices evolve. In addition, given the prevalence of predatory lending practices in many areas of the country, enforceable regulations are preferable to guidance on best practices.

Unfair or Deceptive Credit Card Practices

In light of the wide range of consumer lending abuses that have surfaced in recent years, from predatory mortgages to abusive payday loans, to outrageous subprime credit card fees, the ANPR's proposal to address a wide range of unfair or deceptive consumer lending practices in its upcoming rulemaking is both appropriate and necessary. The proposed broad scope for the future OTS rulemaking is essential to counter a host of troubling practices.

In this letter, however, I would like to focus my comments on one particular area of consumer lending, involving credit cards. These comments are derived from my work as Chairman of the U.S. Senate Permanent Subcommittee on Investigations, which is conducting an ongoing, extensive inquiry into unfair credit card practices. The Subcommittee initiated this investigation in October 2006, when I released a report by the Government Accountability Office (GAO) analyzing the credit card fees, interest rates, and disclosure practices of 28 popular credit cards from the six largest credit card issuers (available at http://www.gao.gov/new.items/d06929.pdf). Following the GAO report, the Subcommittee began a series of detailed interviews with participants in the credit card industry to identify and understand a variety of credit card practices, including interviews with credit card issuers, credit card associations, federal regulators, credit bureaus, debt collectors, legal counsel, public interest groups, and consumers.

In March 2007, the Subcommittee held a hearing which took testimony from the chief executive officers of the three largest credit card issuers in the country – Bank of America, Chase Credit Card Services, and Citigroup – and from Wes Wannemacher, an Ohio consumer whose personal credit card experiences exemplified a number of troubling practices. The March hearing focused on three fundamental issues: grace periods, interest rates, and fees.

Grace Periods. Although many consumers think that all credit cards provide them with a grace period before interest is charged, the investigation disclosed that, in fact, most credit card issuers do not provide a grace period to cardholders unless they pay their credit card balances in full each month. If a consumer owes any balance on a card from the prior month, there is no grace period on new purchases, and every purchase incurs immediate interest charges.

Interest Rates. Credit card issuers typically apply multiple interest rates to the same card, depending on the circumstances. For example, the credit card industry typically uses one interest rate for cash advances, another for regular purchases, a third for balance transfers, and if a cardholder pays late or exceeds a credit limit, the company may substitute a so-called penalty

interest rate that can exceed 30 percent. In addition, these interest rates often vary, rising and falling with the prime rate. Multiple interest rates that change over time make it nearly impossible for consumers to track their finance charges. In addition, when a consumer pays off a portion – or even the majority – of a monthly balance, the investigation disclosed that credit card issuers charge interest on the entire amount previously owed, including the portion that was paid on time. These interest rate practices are little understood, shrouded in confusing disclosures, and in some cases are inherently unfair.

Fees. The need for pro-consumer fee protections is illustrated by the story of Mr. Wannemacher. In 2001 and 2002, Mr. Wannemacher charged about $3,200 on a new Chase credit card to pay for expenses mostly related to his wedding. Over the next six years, he paid about $6,300 toward that debt, yet in February 2007, Chase said that he still owed about $4,400.

How could Mr. Wannemacher pay nearly double his original credit card debt and still owe $4,400? As he explained in his testimony, in addition to repaying the original debt of $3,200, Mr. Wannemacher was socked with $4,900 in interest charges, $1,100 in late fees, and 47 over-limit fees totaling $1,500, despite going over his $3,000 credit limit by a total of only $200. These facts show that Mr. Wannemacher paid $2,600 in fees on a $3,200 debt. In addition, those fees were added to his outstanding credit card balance, and he was charged interest on the fee amounts, increasing his debt by hundreds if not thousands of additional dollars. There's something so wrong with this picture, that Chase didn't even defend its treatment of the account at the Subcommittee hearing; instead, Chase forgave the $4,400 debt that it said was still owed on the credit card.

Mr. Wannemacher is far from alone in his credit card experience. The Subcommittee has received over one thousand letters in response to its March hearing – far more letters than any other Subcommittee hearing I've chaired during my 28 years in the Senate – and they tell a troubling story about the state of the credit card industry, and the many, perhaps millions of Americans, that suffer as a result of unfair and abusive credit card practices. My staff has followed up with scores of consumers and contacted the major issuers to discuss dozens of noteworthy letters, and time and time again apologies have been offered, and debt has been forgiven. A consumer should not have to contact the U.S. Senate in order to get fair treatment from a credit card issuer. Clearly the current regulatory scheme is insufficient to prevent ongoing credit card abuses.

ANPR Credit Card Lending Practices. The ANPR identifies five unfair or deceptive credit card practices which OTS may prohibit or restrict in a future rulemaking. The identified practices are: (a) increasing the interest rate applicable to credit card purchases based upon adverse information unrelated to the affected credit card account, a practice also known as "universal default"; (b) imposing an over-the-limit fee on a credit card account where the limit was exceeded because of a penalty fee imposed by the credit card issuer; (c) charging multiple penalty fees for a single transaction that was late or over the limit; (d) requiring cardholders to waive their right to judicial review and consent instead to binding, mandatory arbitration of all disputes; and (e) requiring credit card payments to be applied first to the balances with the lowest rates of interest instead of those with the highest interest rates, and requiring payments to be applied first to fees and penalties before principal and interest.

Each of these practices is unfair or deceptive, places the interest of the credit card issuer ahead of the interest of the consumer, and should be prohibited. I strongly support the efforts of OTS to restrict these credit card practices. In addition, several of the practices identified in the ANPR were examined during the course of the Subcommittee's credit card investigation, and I invite the OTS to examine and utilize the legislative record that has been compiled with respect to those practices.

Additional Unfair or Deceptive Credit Card Practices. I would also like to identify several other unfair or deceptive credit card practices that merit OTS attention. These additional practices were identified during the course of the Subcommittee's investigation and could also be addressed in a future OTS rulemaking.

Each of these practices is currently addressed in the Stop Unfair Practices in Credit Cards Act, S. 1395, a bill which I introduced earlier this year and which is cosponsored by Senators McCaskill, Durbin, Leahy, Bingaman, Cantwell and Whitehouse. Among other provisions, this bill would forbid interest charges on debt that is paid on time; bar unilateral interest rate hikes for consumers who meet their credit card obligations; stop the retroactive application of interest rate increases; prevent interest charges from being applied to transaction fees; permit only one penalty fee per violation of a credit card agreement; eliminate the practice of charging consumers a fee to pay their bills; require reasonable currency exchange fees; require credit card companies that reference the "prime rate" to use the prime rate published by the Federal Reserve; and require card issuers to apply consumer payments in the most effective manner to minimize fees and interest changes. I respectfully ask OTS to review this legislation, a copy of which is enclosed, and to consider including similar provisions in its future rulemaking. The bill's key provisions can be summarized as follows.

No Interest Charges for Debt Paid on Time

The first section of the bill would put an end to an indefensible practice that imposes little known and unfair interest charges on many unsuspecting, responsible consumers. Most credit cards today offer a grace period. Cardholders are told that, if they pay their monthly credit card bill during this grace period, they will not be charged interest on the debt for which they are being billed. Many cardholders do not realize that this grace period typically provides protection against interest charges only if their monthly credit card bill is paid in full. If the cardholder pays less than one hundred percent of the monthly bill – even if the cardholder pays on time – he or she will be charged interest on the entire billed amount, including the portion that was paid by the specified due date. Cardholders should not have to pay interest on debt which was repaid on time under the terms of the credit card. This billing practice is unfair and should be stopped. In its rulemaking, OTS should prohibit the imposition of interest charges on any portion of a credit card debt that is repaid on time.

No Trailing Interest on Debt Paid on Time and In Full

The second section of S. 1395 would address a related unfair billing practice, which I call "trailing interest." Charging trailing interest on credit card debt is another widespread, but little known industry practice that squeezes responsible and largely unsuspecting consumers for

additional interest charges on balances from the time from when the bill is sent to the consumer until the day it is paid. Disclosures alerting consumers to trailing interest charges are complex and difficult to understand. In addition, trailing interest typically adds a seemingly minimal amount of money to a monthly debt, which may be why many consumers don't notice this extra interest charge or bother to fight it. Even if someone had questions about the amount of interest on a bill, most consumers would be hard pressed to understand how the amount was calculated, much less whether it was correct. But by nickel and diming tens of millions of consumer accounts with trailing interest charges, credit card issuers reap large profits.

This little known billing practice targets responsible cardholders who pay their bills on time and in full. If a consumer pays a credit card bill on time and in full – paying one hundred percent of the amount specified by the date specified in the billing statement – it is unfair to charge that consumer still more interest on the debt that was just paid. OTS should prohibit credit card issuers from adding interest charges to a credit card debt which the consumer has paid on time and in full in response to a billing statement.

Unilateral Interest Rate Hikes

A third problem examined by the Subcommittee involves a widespread industry practice in which credit card issuers claim the right to unilaterally increase the interest rate applicable to a credit card at any time for any reason with only a 15-day notice to the consumer under the Truth In Lending Act.

As the National Consumer Law Center testified at the Subcommittee's hearing, this practice means that smart shoppers who choose a credit card after comparing a variety of card options are continually vulnerable to a change-in-terms notice that alters the favorable terms they selected, and provides them with only 15 days to accept the change or find an alternative. By asserting the right to make unilateral interest rate increases on short notice, credit card issuers undermine not only the bargaining power of individual consumers, but also principles of fair market competition.

That's why S. 1395 would impose two types of limits on credit card interest rate hikes. First, for consumers who comply with the terms of their credit card agreements, the bill would prohibit a credit card issuer from unilaterally hiking an interest rate that was represented to, and included in the disclosures provided to, a consumer under the Truth in Lending Act, unless the consumer affirmatively agreed in writing to the increase at the time it is proposed. This prohibition is intended to protect responsible consumers who play by the rules from a sudden hike in their interest rate – a complaint that the Subcommittee has heard all too often. Under S. 1395, issuers would no longer be able to unilaterally hike the interest rates of cardholders who meet their contractual obligations.

The bill's second limit would apply to consumers who, for whatever reason, failed to comply with the terms of their credit card agreement, perhaps by paying late or exceeding the credit limit. In that circumstance, credit card issuers would be permitted to impose a penalty interest rate on the account, but the bill would place a cap on how high that penalty interest rate could go.

Specifically, the bill would limit any such penalty rate hike to no more than a 7% increase above the interest rate in effect before the penalty rate was imposed. That means a 10% rate could rise no higher than 17%, and a 15% rate could not exceed 22%. This type of interest rate limit is comparable to the caps that today operate in many adjustable rate mortgages. The effect of the credit card cap would be to prohibit penalty interest rates from dramatically increasing the interest rate imposed on the cardholder, as happened in cases examined by the Subcommittee where credit card interest rates jumped from 10% or 15% to as much as 32%. Penalty interest rate hikes that double or triple existing interest rates are simply unreasonable and unfair.

If a credit card account were opened with a low introductory interest rate followed by a higher interest rate after a specified period of time, it is intended that the penalty rate cap proposed in the bill would apply to each of those disclosed rates individually. For example, suppose the credit card account had a 0% introductory rate for six months and a 12% rate after that. Suppose further that, during the six-month introductory period, the cardholder exceeded the credit limit. The bill would allow the card issuer to impose a penalty interest rate of up to 7% for the rest of the six month period. Once the six month period ended, it is intended that the 12% rate would take effect. If the consumer were to again exceed the limit, it is intended that any penalty rate imposed upon the account be no greater than 19%.

If a card issuer were to analyze an account and conclude that a penalty rate increase of up to 7% would be insufficient to protect against the risk of default on the account, the issuer could choose to reduce the credit limit on the account or cancel the account altogether. If the card issuer chose to cancel the account, it is intended that the consumer would retain the right to pay off any debt on the account using the interest rate that was in effect when the debt was incurred. The point of the bill's penalty interest rate cap is to stop penalty interest rate hikes which are disproportional; which too often stick families with sky-high interest rates of 25%, 30%, and even 32%; and which too often make it virtually impossible for working American families to climb out of debt.

OTS should consider including these same restrictions in its future rulemaking.

Apply Interest Rate Increases Only to Future Debt

Still another troubling, industry-wide practice involving credit card interest rate hikes is the problem of retroactive application. Industry practice today is to apply an increased interest rate not only to new debt incurred by the cardholder, but also to previously incurred debt. Retroactive application of a higher interest rate means that pre-existing credit card debt suddenly costs a consumer much more to repay.

Take, for example, a $3,000 credit card debt that a consumer was paying down each month with timely payments. Suddenly, the cardholder falls ill, misses a payment or pays it late, and the card issuer increases the interest rate from 15% to 32%. If applied to the existing $3,000 debt, that higher rate would require the cardholder to make a much steeper minimum monthly payment and pay much more interest than originally planned. That is often enough to sink a working family into a deepening spiral of debt from which the family cannot recover.

By making it a common practice to institute after-the-fact interest rate hikes for existing credit card debt – in effect unilaterally changing the terms of an existing loan – the credit card industry has unfairly positioned itself to reap greater profits at consumers' expense. S. 1395 would stop the retroactive application of interest rate hikes to lessen the financial impact on American households. Specifically, the bill would provide that interest rate hikes could be applied only to future credit card debt and not to any credit card debt incurred prior to the rate increase. Instead, any earlier debt would continue to accrue interest at the rate previously in effect. OTS should include similar provisions in its upcoming rulemaking.

No Interest Charges on Fees

It is no secret that credit card companies are making a great deal of money off the fees they are imposing on consumers. According to GAO, fee income now produces about 10 percent of all income obtained by credit card issuers. The GAO report that I commissioned on this subject identified a host of different fees that have become common practice, including fees for transferring balances, making a late payment, exceeding a credit limit, paying a bill by telephone, and exchanging foreign currency. According to GAO, late fees now average $34 per month and over-limit fees average $31 per month, with some of these fees climbing as high as $39 per month. As Mr. Wannemacher discovered, these hefty fees are not only added to the credit card's outstanding balance, they also incur interest. The higher the fees climb, the higher the balances owed, and the higher the interest charges on top of that.

Charging interest on money borrowed is certainly justified, but squeezing additional dollars from consumers by charging interest on transaction fees goes too far. Steep fees already deepen household debt from credit cards; those fees should not also generate interest income for the credit card issuer. After all, when a credit card issuer imposes a fee on a consumer, the issuer has not lent additional funds to the cardholder – just the opposite -- and the issuer has no justification to charge interest on those fee amounts as well. The bill would ban this industry-wide practice by prohibiting credit card issuers from collecting interest on transaction fees imposed on consumers; the OTS rulemaking should do the same.

Over-the-Limit Fee Restrictions

Mr. Wannemacher exceeded the $3,000 limit on his credit card on three occasions in 2001 and 2002 for a total of $200. Over the following six years, he was charged over-the-limit fees on 47 occasions totaling about $1,500. In other words, Chase tried to collect over-the-limit fees from Mr. Wannemacher that were seven times larger than the amount he went over the limit.

At the Subcommittee's March hearing, Chase did not attempt to defend the 47 over-the-limit fees it imposed; instead, it announced that it was changing its policy and would join with others in the industry in imposing no more than three over-limit fees in a row on a credit card account with an outstanding balance that exceeded the credit limit. While Chase's voluntary change in policy is welcome, it doesn't go far enough in curbing abusive practices related to over-the-limit fees.

First, if a credit card issuer approves the extension of credit that allows the cardholder to exceed the account's established credit limit, the issuer should be allowed to impose only one over-the-limit fee for that credit extension. Card issuers should be allowed one fee for one violation; after all, the card issuer facilitated the violation by approving the excess credit charge.

Second, the fee should be imposed only if the account balance is over the credit limit at the end of the billing cycle. If a cardholder exceeds the limit in the middle of the billing cycle and then takes prompt action to reduce the balance below the limit, perhaps by making a payment or obtaining a credit for returning a purchase, there is no injury to the creditor and no justification for an over-the-limit fee.

Third, as indicated in the ANPR, a credit card issuer should impose an over-limit fee only when an action taken by the cardholder causes the credit limit to be exceeded, and not when a penalty imposed by the card issuer causes the excess charge. The card issuer should not be able to pile penalty upon penalty, such as by assessing a late fee on an account and then, if the late fee pushes the credit card balance over the credit limit, also imposing an over-the-limit fee.

In addition, the bill would require credit card issuers to offer consumers the option of establishing a true credit limit on their account – a credit limit that could not be exceeded, because the account would be programmed to refuse approval of any extension of credit over the established limit. In too many cases, credit card issuers no longer provide consumers with the option of having a fixed credit limit, preferring instead to enable all of their cardholders to exceed their credit limits only to be penalized by a hefty fee, added interest, and, possibly, a penalty interest rate.

The upcoming OTS rulemaking should also include provisions ending each of these unfair practices related to credit card over-the-limit fees.

Pay-to-Pay and Currency Exchange Fees

Another unfair but common fee is the "pay-to-pay fee," which is the $5 to $15 fee that many issuers charge consumers to pay their credit card bill on time by using the telephone. Charging consumers a fee to pay their bills is a travesty. S. 1395 would prohibit a credit card issuer from charging a separate fee to allow a cardholder to pay all or part of a credit card balance; the OTS rulemaking should include the same prohibition.

Another fee that has raised concerns is one charged by credit card issuers to exchange dollars into or from a foreign currency. A number of issuers today charge an amount equal to two percent of the amount of currency being exchanged in addition to a one-percent "conversion fee" charged by Visa or Master Card, for a total of three percent. S. 1395 responds by requiring foreign currency exchange fees to reasonably reflect the actual costs incurred by the creditor to perform the currency exchange, and requiring regulators to ensure compliance with that standard. The OTS rulemaking should also address this issue.

Prime Rate Reference

Today, many credit card issuers no longer use fixed interest rates for their credit cards; instead they use variable interest rates which are often pegged to the "prime rate." Litigation has arisen between cardholders and card issuers over what is meant by the term "prime rate." See, for example, Lum v. Bank of America, 361 F.3d 217 (3d Cir. 2004). Some credit card issuers have stated that the prime rate used in credit card agreements does not necessarily match the lowest interest rates they provide to their most credit worthy borrowers, which is the common meaning of the term "prime rate." Some cardholders assert that issuers which reference the "prime rate" but use a different interest rate to establish the variable rates on their credit cards are misleading cardholders. To resolve this problem, the bill would require credit card interest rates that claim to be linked to a "prime rate" to use only the bank prime loan rate published by the Federal Reserve. The OTS rulemaking should include the same requirement.

Fair Treatment of Cardholder Payments

The Subcommittee investigation has also uncovered several unfair industry practices involving how credit cardholder payments are applied to satisfy finance charges and other credit card debt.

The ANPR has already raised the issue of whether the industry-wide practice of applying consumer credit card payments first to the balances with the lowest interest rates is an unfair or deceptive practice. Currently, when a consumer payment is made, credit card issuers have complete discretion on how to apply that payment to various balances bearing different interest rates. Consumers are typically given no option to direct where their payments are applied. Today, virtually all credit card issuers apply a consumer payment first to the balance with the lowest interest rate. After that balance is paid off, card issuers apply the payment to the balance with the next lowest interest rate, and so on.

This payment practice clearly favors creditors over consumers. It allows the card issuers to direct payments first to the balances that provide them with the lowest returns, and minimize payments to the balances bearing the highest interest rates so those balances can accumulate more interest for a longer period. Consumers who want to pay off a cash advance bearing a 20% interest rate, for example, are told that they cannot make that payment until they first pay off all other balances with a lower interest rate.

S. 1395 would replace this unfair industry-wide practice with a pro-consumer approach. Reversing current industry practice, the bill would require cardholder payments to be applied first to the balance bearing the highest interest rate, and then to each successive balance bearing the next highest rate, until the payment is used up. The bill would also require credit card issuers to apply cardholder payments in the most effective way to minimize the imposition of any fees or interest charges to the account, which is another problem identified in the ANPR.

In addition, the bill would prohibit credit card issuers from imposing late fees on consumers if the issuer was itself responsible for the delay in crediting the payment. For example, if a card issuer changed the mailing address for payments, had to shut down its mail

sorting equipment for repairs, or mistakenly routed a consumer payment to the wrong department, the issuer would not be allowed to assess a late fee on the cardholder for the resulting late payment. Instead, if the card issuer caused the late payment, it would be barred from assessing a late fee on the consumer.

The upcoming OTS rulemaking should include similar provisions.

Other Unfair or Deceptive Practices

The unfair credit card practices addressed in S. 1395 do not represent a comprehensive list of all the unfair or deceptive practices in the credit card field. For example, a recent report by the National Consumer Law Center, "Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers," identifies a host of outrageous practices involving subprime credit card issuers that appear to give consumers a credit card with a credit limit of $250, but then assess multiple start-up fees that consume all but $50-75 of the supposedly available credit. Another example, discussed the Federal Reserve's recent proposal to amend credit card disclosure requirements in Regulation Z, involves merchant-sponsored credit cards that include illusory discounts, hidden fees, and financing charges that substantially increase the cost to purchase specified merchandise. The upcoming ANPR rulemaking may wish to address these problems as well.

Credit Card Issuers and Their Agents

Finally, in developing its rulemaking to prohibit unfair or deceptive acts and practices in the credit card field, OTS should consider the application of its rules not only to the credit card issuers it regulates, but also to thrifts that act as agents for credit card issuers regulated by other federal and state agencies. Today, less than a dozen financial institutions issue the majority of credit cards used in the United States, one of which is American Express, a financial institution subject to OTS oversight. Another estimated 6,000 financial institutions, including many thrifts, act as agents for the larger credit card issuers. These financial institutions typically supply the names of their customers to the credit card issuer who then provides the actual credit card services. The OTS rulemaking ought to make it clear that its prohibitions against unfair or deceptive credit card practices are intended to apply not only to the credit card issuers it regulates, but also to the thrifts acting as credit card agents, so that all consumers using OTS-regulated thrifts are protected from predatory lending practices.

Conclusion

OTS is obligated by the Federal Trade Commission Act to stop unfair or deceptive acts and practices. It has proposed meeting this legal obligation, in part, by strengthening existing OTS prohibitions against unfair or deceptive credit card practices. The ANPR identifies five credit card practices that are unfair or deceptive to consumers who use credit cards; this letter identifies several more that should be prohibited. Without such prohibitions, the Subcommittee's work indicates that the identified practices are too entrenched, too profitable, and too immune to consumer pressure for the practices to stop on their own.

Thank you for the opportunity to comment.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

Enclosure
(Stop Unfair Practices in Credit Cards Act, S. 1395)

110TH CONGRESS
1ST SESSION

S. 1395

To prevent unfair practices in credit card accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2007

Mr. LEVIN (for himself and Mrs. MCCASKILL) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To prevent unfair practices in credit card accounts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ‘‘Stop Unfair Practices
5 in Credit Cards Act of 2007’’.

6 **SEC. 2. STOP UNFAIR INTEREST RATES AND FEES.**

7 Section 163 of the Truth in Lending Act (15 U.S.C.
8 1666b) is amended—

1 (1) by striking the section title and all that fol-
2 lows through ''If an open'' and inserting the fol-
3 lowing:

4 **''§ 163. Billing period and finance charges**

5 ''(a) BILLING PERIOD.—

6 ''(1) FOURTEEN-DAY MINIMUM.—If an open'';

7 (2) by striking ''(B) Subsection (a)'' and insert-
8 ing the following:

9 ''(2) EXCUSABLE CAUSE.—Subsection (a)''; and

10 (3) by adding at the end the following:

11 ''(b) NO INTEREST CHARGE ON DEBT THAT IS PAID
12 ON TIME.—If an open end consumer credit plan provides
13 a time period within which an obligor may repay any por-
14 tion of the credit extended without incurring an interest
15 charge, and the obligor repays all or a portion of such
16 credit within the specified time period, the creditor may
17 not impose or collect an interest charge on the portion of
18 the credit that was repaid within the specified time period.

19 ''(c) NO INTEREST ON DEBT THAT IS PAID ON TIME
20 AND IN FULL.—In an open end consumer credit plan, if
21 a billing statement requests an obligor to repay within a
22 specified time period all of the credit extended under the
23 plan and related finance charges, and the obligor pays all
24 of the specified amount within the specified time period,
25 the creditor may not impose or collect an additional inter-

1 est charge on the amount that was paid in full and within
2 the specified time period.

3 "(d) LIMITS ON INTEREST RATE INCREASES.—

4 "(1) IN GENERAL.—With respect to a credit
5 card account under an open end consumer credit
6 plan, the creditor shall not increase the periodic rate
7 of interest applicable to extensions of credit while
8 such account remains open, unless—

9 "(A) such increase is pursuant to the expi-
10 ration of an introductory rate which was dis-
11 closed under section 127(c)(6);

12 "(B) such increase is pursuant to the ap-
13 plication of a variable rate which was disclosed
14 under section 127(c)(1)(A)(i)(II);

15 "(C) such increase is pursuant to the ap-
16 plication of a penalty rate which was disclosed
17 under subsections (a)(4) and (c)(1)(A)(i) of sec-
18 tion 127; or

19 "(D) the obligor has provided specific writ-
20 ten consent to such increase at the time such
21 increase was proposed.

22 "(2) LIMIT ON PENALTY INTEREST RATE.—If
23 an obligor fails to repay an extension of credit in ac-
24 cordance with the terms of a credit card account
25 under an open end consumer credit plan, and the

1 creditor determines to apply a penalty rate, as de-
2 scribed in paragraph (1)(C), notwithstanding para-
3 graph (1)(D), such penalty rate may not, while such
4 account is open, exceed 7 percentage points above
5 the interest rate that was in effect with respect to
6 such account on the date immediately preceding the
7 first such penalty increase for such account.

8 "(e) INTEREST RATE INCREASES LIMITED TO FU-
9 TURE CREDIT EXTENSIONS.—With respect to a credit
10 card account under an open end consumer credit plan, if
11 the creditor increases the periodic interest rate applicable
12 to an extension of credit under the account, such increased
13 rate shall apply only to extensions of credit made on and
14 after the date of such increase under the account, and any
15 extension of credit under such account made before the
16 date of such increase shall continue to incur interest at
17 the rate that was in effect on the date prior to the date
18 of the increase.

19 "(f) NO INTEREST CHARGES ON FEES.—With re-
20 spect to a credit card account under an open end consumer
21 credit plan, if the creditor imposes a transaction fee on
22 the obligor, including a cash advance fee, late fee, over-
23 the-limit fee, or balance transfer fee, the creditor may not
24 impose or collect interest with respect to such fee amount.

1 "(g) FIXED CREDIT LIMIT.—With respect to each
2 credit card account under an open end consumer credit
3 plan, the creditor shall offer to the obligor the option of
4 obtaining a fixed credit limit that cannot be exceeded, and
5 with respect to which any request for credit in excess of
6 such fixed limit must be refused, without exception and
7 without imposing an over-the-limit fee or other penalty on
8 such obligor.

9 "(h) OVER-THE-LIMIT FEE RESTRICTIONS.—With
10 respect to a credit card account under an open end con-
11 sumer credit plan, an over-the-limit fee, as described in
12 section 127(c)(1)(B)(iii)—

13 "(1) may be imposed on the account only when
14 an extension of credit obtained by the obligor causes
15 the credit limit on such account to be exceeded, and
16 may not be imposed when such credit limit is ex-
17 ceeded due to a penalty fee, such as a late fee or
18 over-the-limit fee, that was added to the account bal-
19 ance by the creditor; and

20 "(2) may be imposed only once during a billing
21 cycle if, on the last day of such billing cycle, the
22 credit limit on the account is exceeded, and no addi-
23 tional over-the-limit fee shall be imposed in a subse-
24 quent billing cycle with respect to such excess credit,
25 unless the obligor has obtained an additional exten-

1 sion of credit in excess of such credit limit during
2 such subsequent cycle.
3 "(i) OTHER FEES.—
4 "(1) NO FEE TO PAY A BILLING STATEMENT.—
5 With respect to a credit card account under an open
6 end consumer credit plan, the creditor may not im-
7 pose a separate fee to allow the obligor to repay an
8 extension of credit or finance charge, whether such
9 repayment is made by mail, electronic transfer, tele-
10 phone authorization, or other means.
11 "(2) REASONABLE CURRENCY EXCHANGE
12 FEE.—With respect to a credit card account under
13 an open end consumer credit plan, the creditor may
14 impose a fee for exchanging United States currency
15 with foreign currency in an account transaction, only
16 if—
17 "(A) such fee reasonably reflects the actual
18 costs incurred by the creditor to perform such
19 currency exchange;
20 "(B) the creditor discloses publicly its
21 method for calculating such fee; and
22 "(C) the primary Federal regulator of such
23 creditor determines that the method for calcu-
24 lating such fee complies with this paragraph.

1 "(j) ANNUAL AUDIT.—The primary Federal regu-
2 lator of a card issuer shall audit, on at least an annual
3 basis, the credit card operations and procedures used by
4 such issuer to ensure compliance with this section and sec-
5 tion 164, including by reviewing a sample of billing state-
6 ments to determine when they were mailed and received,
7 and by reviewing a sample of credit card accounts to deter-
8 mine when and how payments and finance charges were
9 applied. Such regulator shall promptly require the card
10 issuer to take any corrective action needed to comply with
11 this section.".

12 **SEC. 3. STOP UNFAIR APPLICATION OF CARD PAYMENTS.**

13 Section 164 of the Truth in Lending Act (15 U.S.C.
14 1666c) is amended—

15 (1) by striking the section heading and all that
16 follows through "Payments" and inserting the fol-
17 lowing:

18 **"§ 164. Prompt and fair crediting of payments**

19 "(a) IN GENERAL.—Payments"; and

20 (2) by adding at the end the following:

21 "(b) APPLICATION OF PAYMENT.—Upon receipt of a
22 payment from a cardholder, the card issuer shall—

23 "(1) apply the payment first to the card bal-
24 ance bearing the highest rate of interest, and then

1 to each successive balance bearing the next highest
2 rate of interest, until the payment is exhausted; and
3 "(2) after complying with paragraph (1), apply
4 the payment in the most effective way to minimize
5 the imposition of any finance charge to the account.
6 "(c) CHANGES BY CARD ISSUER.—If a card issuer
7 makes a material change in the mailing address, office,
8 or procedures for handling cardholder payments, and such
9 change causes a material delay in the crediting of a card-
10 holder payment made during the 60-day period following
11 the date on which such change took effect, the card issuer
12 may not impose any late fee or finance charge for a late
13 payment on the credit card account to which such payment
14 was credited.".

15 **SEC. 4. STOP DECEPTIVE DISCLOSURE.**

16 Section 127(e) of the Truth in Lending Act (15
17 U.S.C. 1637(e)) is amended by adding at the end the fol-
18 lowing:
19 "(3) INTEREST RATE LINKED TO PRIME
20 RATE.—If a credit card solicitation, application,
21 agreement, or plan specifies use of a variable inter-
22 est rate established by reference to a 'prime rate',
23 'prime interest rate', or similar rate or index, the
24 referenced rate shall be disclosed and defined as the
25 bank prime loan rate posted by a majority of the top

25 (by assets in domestic offices) United States chartered commercial banks, as published by the Board of Governors of the Federal Reserve System. To avoid an unfair or deceptive act or practice, a card issuer may not use the term 'prime rate' to refer to any other type of interest rate.''.

SEC. 5. DEFINITIONS.

Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following:

''(cc) PRIMARY FEDERAL REGULATOR.—

''(1) IN GENERAL.—The term 'primary Federal regulator', when used with respect to a card issuer that is a depository institution, has the same meaning as the term 'appropriate Federal banking agency', under section 3 of the Federal Deposit Insurance Act.

''(2) AREAS OF RESPONSIBILITY.—For each card issuer within its regulatory jurisdiction, the primary Federal regulator shall be responsible for overseeing the credit card operations of the card issuer, ensuring compliance with the requirements of this title, and enforcing the prohibition against unfair or deceptive acts or practices.''.

1 **SEC. 6. STRENGTHEN CREDIT CARD INFORMATION COL-**
2 **LECTION.**

3 Section 136(b) of the Truth in Lending Act (15
4 U.S.C. 1646(b)) is amended—
5 (1) in paragraph (1)—
6 (A) by striking "The Board shall" and in-
7 serting the following:
8 "(A) IN GENERAL.—The Board shall"; and
9 (B) by adding at the end the following:
10 "(B) INFORMATION TO BE INCLUDED.—
11 The information under subparagraph (A) shall
12 include, as of a date designated by the Board—
13 "(i) a list of each type of transaction
14 or event for which one or more of the card
15 issuers has imposed a separate interest
16 rate upon a cardholder, including pur-
17 chases, cash advances, and balance trans-
18 fers;
19 "(ii) for each type of transaction or
20 event identified under clause (i)—
21 "(I) each distinct interest rate
22 charged by the card issuer to a card-
23 holder, as of the designated date; and
24 "(II) the number of cardholders
25 to whom each such interest rate was
26 applied during the calendar month im-

1 mediately preceding the designated
2 date, and the total amount of interest
3 charged to such cardholders at each
4 such rate during such month;
5 "(iii) a list of each type of fee that
6 one or more of the card issuers has im-
7 posed upon a cardholder as of the des-
8 ignated date, including any fee imposed for
9 obtaining a cash advance, making a late
10 payment, exceeding the credit limit on an
11 account, making a balance transfer, or ex-
12 changing United States dollars for foreign
13 currency;
14 "(iv) for each type of fee identified
15 under clause (iii), the number of card-
16 holders upon whom the fee was imposed
17 during the calendar month immediately
18 preceding the designated date, and the
19 total amount of fees imposed upon card-
20 holders during such month;
21 "(v) the total number of cardholders
22 that incurred any interest charge or any
23 fee during the calendar month immediately
24 preceding the designated date; and

1 "(vi) any other information related to
2 interest rates, fees, or other charges that
3 the Board deems of interest."; and
4 (2) by adding at the end the following:
5 "(5) REPORT TO CONGRESS.—The Board shall,
6 on an annual basis, transmit to Congress and make
7 public a report containing an assessment by the
8 Board of the profitability of credit card operations
9 of depository institutions. Such report shall include
10 estimates by the Board of the approximate, relative
11 percentage of income derived by such operations
12 from—
13 "(A) the imposition of interest rates on
14 cardholders, including separate estimates for—
15 "(i) interest with an annual percent-
16 age rate of less than 25 percent; and
17 "(ii) interest with an annual percent-
18 age rate equal to or greater than 25 per-
19 cent;
20 "(B) the imposition of fees on cardholders;
21 "(C) the imposition of fees on merchants;
22 and
23 "(D) any other material source of income,
24 while specifying the nature of that income.".

1 **SEC. 7. CONFORMING AMENDMENT.**

2 Section 8 of the Fair Credit and Charge Card Disclo-
3 sure Act of 1988 (15 U.S.C. 1637 note) is repealed.

4 **SEC. 8. EFFECTIVE DATE.**

5 This Act and the amendments made by this Act shall
6 become effective 180 days after the date of enactment of
7 this Act.

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