

HR 5244 IH

110th CONGRESS
2d Session
H. R. 5244

To amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 7, 2008

Mrs. MALONEY of New York (for herself, Mr. FRANK of Massachusetts, Ms. WATERS, Mr. GUTIERREZ, Mr. LYNCH, Mr. ELLISON, Mr. COHEN, Mr. FATTAH, Mr. HINCHEY, Mr. LANGEVIN, Mr. NADLER, Ms. SHEA-PORTER, Ms. SOLIS, Mr. WELCH of Vermont, Mr. WYNN, Mr. GONZALEZ, Mr. DEFAZIO, Mr. TAYLOR, Mr. OBEY, Ms. HIRONO, Mrs. BOYDA of Kansas, Ms. WASSERMAN SCHULTZ, Mr. UDALL of Colorado, Mr. DINGELL, Ms. CORRINE BROWN of Florida, Mr. THOMPSON of Mississippi, Mr. HASTINGS of Florida, Ms. CLARKE, Mr. JACKSON of Illinois, Mr. DAVIS of Illinois, Mrs. GILLIBRAND, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. WATSON, Mr. ARCURI, Mr. ENGEL, Mr. TIERNEY, Mr. VAN HOLLEN, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. WEINER, Mr. ABERCROMBIE, Ms. SCHAKOWSKY, Mr. SHAYS, Mr. SERRANO, Mr. DOGGETT, and Mr. LINCOLN DAVIS of Tennessee) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Credit Cardholders' Bill of Rights Act of 2008'.

SEC. 2. CREDIT CARDS ON TERMS CONSUMERS CAN REPAY.

(a) Universal Default Eliminated- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 127A the following new section:

`Sec. 127B. Additional requirements for credit card accounts under an open end consumer credit plan

`(a) Universal Default Eliminated for Credit Already Outstanding- No creditor may use any adverse information concerning any consumer, including any information in any consumer report (as defined in section 603) or any change in the credit score of the consumer, as the basis for increasing any annual percentage rate of interest applicable to the outstanding balance on a credit card account of the consumer under an open end consumer credit plan at the time of any such increase, other than actions or omissions of the consumer that are directly related to such account.'

(b) Any-Time Any-Reason Changes in Terms Eliminated- Section 127B of the Truth in Lending Act is amended by inserting after subsection (a) (as added by subsection (a)) the following new subsection:

`(b) Any-Time Any-Reason Changes in Terms Eliminated-

`(1) IN GENERAL- No creditor may change any term of the contract or agreement applicable with respect to any credit card account of the consumer under an open end consumer credit plan until renewal of the contract or agreement except for the specific material reasons, and subject to specific limitations, that are contained in the contract or agreement with respect to such term at the time the account is opened.

`(2) EXCEPTION FOR INCREASES IN CREDIT LIMIT- Paragraph (1) shall not apply with respect to any increase in the amount of credit authorized to be extended under an account described in such paragraph.'

(c) Advance Notice of Credit Card Account Rate Increases and Right to Cancel Account- Section 127B of the Truth in Lending Act is amended by inserting after subsection (b) (as added by subsection (b)) the following new subsection:

`(c) Advance Notice of Credit Card Account Rate Increases and Right To Cancel Account-

`(1) ADVANCE NOTICE OF CREDIT CARD ACCOUNT RATE INCREASES REQUIRED- In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest, for any reason other than an increase due to the expiration of any introductory percentage rate of interest, or due solely to a change in another rate of interest to which such rate is indexed, may take effect before the end of the 45-day period beginning on the date notice of such increase is sent to the cardholder.

`(2) RIGHT TO CANCEL WITHOUT INCREASE IN APR ON OUTSTANDING BALANCE- Any consumer who receives a notice from a creditor pursuant to paragraph (1) with respect to a credit card account under an open end consumer credit plan shall have the right--

`(A) to cancel the credit card, by mail, telephone, or electronic communication and without penalty or the imposition of any fee with respect to such cancellation, at any time during the period beginning on the date the consumer receives the notice pursuant to paragraph (1) and ending on the date the consumer receives the

third periodic statement with respect to such account after the effective date of the increase; and

`(B) to pay any outstanding balance on the credit card account that accrued before the effective date of the increase at the annual percentage rate and repayment period in effect before the notice was received.

`(3) NOTICE REQUIREMENTS-

`(A) INITIAL NOTICE REQUIREMENT- The notice required under paragraph (1) with respect to an increase in any annual percentage rate of interest shall--

`(i) be made in a clear and conspicuous manner; and

`(ii) contain a brief statement of the right of the consumer to cancel the account and pay the balance at the annual percentage rate in effect before the increase in accordance with paragraph (2) and the mailing address, telephone number, and Internet address and Worldwide Web site at which the consumer may make any such cancellation.

`(B) SUBSEQUENT NOTICES REQUIRED IN PERIODIC STATEMENTS- Each periodic statement provided to the consumer with respect to the credit card account after a notice is provided under paragraph (1) until the third periodic statement with respect to such account after the effective date of the increase shall also contain the information required in such notice.

`(C) PRO FORMA NOTICES DO NOT MEET NOTICE REQUIREMENT- A notice that terms may change, or will change, for any or no reason does not constitute a notice for purposes of this subsection.

`(4) PAYMENT OF POST-INCREASE EXTENSIONS OF CREDIT- If any consumer obtains an extension of credit on a credit card account on or after the effective date of the increase in the annual percentage rate for which a notice was provided in accordance with paragraph (1) and subsequently cancels the account under paragraph (2), the outstanding balance of such credit that was extended on or after the effective date of the increase shall be subject to repayment at the increased rate in effect at the time of the extension of credit.'

(d) Clerical Amendment- The table of sections for chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after the item relating to section 127A the following new item:

`127B. Additional requirements for credit card accounts under an open end consumer credit plan.'

SEC. 3. CLEAR EXPLANATION OF ACCOUNT FEATURES, TERMS, AND PRICING REQUIRED AT RELEVANT TIMES.

(a) Double Cycle Billing Prohibited- Section 127B of the Truth in Lending Act is amended by inserting after subsection (c) (as added by section 2(c)) the following new subsection:

`(d) Double Cycle Billing Prohibited- If an open end consumer credit plan provides a time period within which a consumer may repay the credit extended without incurring an interest charge, and the consumer repays all or a portion of such credit that is subject to such time period within the specified time period, the creditor may not impose or collect an interest charge on the portion of the credit that was repaid within such specified time period.'

(b) Limitations Relating to Account Balances Attributable Only to Accrued Interest- Section 127B is amended by inserting after subsection (d) (as added by subsection (a)) the following new subsection:

`(e) Limitations Relating to Account Balances Attributable Only to Accrued Interest-

`(1) IN GENERAL- If the outstanding balance on a credit card account under an open end consumer credit plan represents an amount attributable only to accrued interest on previously repaid credit extended under the plan--

`(A) no fee may be imposed or collected in connection with such balance; and

`(B) any failure to make timely repayments of such balance shall not constitute a default on the account.

`(2) RULE OF CONSTRUCTION- Paragraph (1) shall not be construed as affecting--

`(A) the consumer's obligation to pay any accrued interest on a credit card account under an open end consumer credit plan; or

`(B) the accrual of interest on the outstanding balance on any such account in accordance with the terms of the account and this title.'

(c) Payoff Balance Required on Each Periodic Statement of Account- Section 127B of the Truth in Lending Act is amended by inserting after subsection (e) (as added by subsection (b)) the following new subsection:

`(f) Each Periodic Statement of Account Required To Provide Notice for Obtaining Payoff Balance- Each periodic statement provided by a creditor to a consumer with respect to a credit card account under an open end consumer credit plan shall contain the telephone number, Internet address, and Worldwide Web site at which the consumer may request the payoff balance on the account.'

(d) Consumer Right To Reject Card Before Notice Is Provided of Open Account- Section 127B of the Truth in Lending Act is amended by inserting after subsection (g) (as added by subsection (c)) the following new subsection:

`(g) Consumer Right to Reject Card Before Notice of New Account Is Provided To Consumer Reporting Agency- A creditor may not furnish any information to a consumer reporting agency (as defined in section 603) concerning a newly opened credit card account under an open end consumer credit plan until the credit card has been used or activated by the consumer.'

(e) Use of Terms Clarified- Section 127B of the Truth in Lending Act is amended by inserting after subsection (g) (as added by subsection (d)) the following new subsection:

`(h) Use of Terms- The following requirements shall apply with respect to the terms of any credit card account under any open end consumer credit plan:

`(1) `FIXED' RATE- The term `fixed', when appearing in conjunction with a reference to the annual percentage rate or interest rate applicable with respect to such account, may only be used to refer to an annual percentage rate or interest rate that will not change or vary for any reason over the period clearly and conspicuously specified in the terms of the account.

`(2) PRIME RATE- The term `prime rate', when appearing in any agreement or contract for any such account, may only be used to refer to the bank prime rate published in the Federal Reserve Statistical Release on selected interest rates (daily or weekly), and commonly referred to as the H.15 release (or any successor publication).

`(3) DUE DATE-

`(A) IN GENERAL- Each periodic statement for any such account shall contain a date by which the next periodic payment on the account must be made to avoid a late fee or be considered a late payment, and any payment received by 5 P.M., Eastern Standard Time, on such date shall be treated as a timely payment for all purposes.

`(B) CERTAIN ELECTRONIC FUND TRANSFERS- Any payment with respect to any such account made by a consumer on-line to the Web site of the credit card issuer or by telephone directly to the credit card issuer before 5 P.M., Eastern Standard Time, on any business day shall be credited to the consumer's account that business day.

`(C) PRESUMPTION OF TIMELY PAYMENT- Any evidence provided by a consumer in the form of a receipt from the United States Postal Service or other common carrier indicating that a payment on a credit card account was sent to the issuer not less than 7 days before the due date contained in the periodic statement under subparagraph (A) for such payment shall create a presumption that such payment was made by the due date, which may be rebutted by the creditor for fraud or dishonesty on the part of the consumer with respect to the mailing date.'

(f) Pro Rata Payment Allocations- Section 127B of the Truth in Lending Act is amended by inserting after subsection (h) (as added by subsection (e)) the following new subsection:

`(i) Pro Rata Payment Allocations-

`(1) IN GENERAL- Except as permitted under paragraph (2), if the outstanding balance on a credit card account under an open end consumer credit plan accrues interest at 2 or more different annual percentage rates, the total amount of each periodic payment made on such account shall be allocated by the creditor between or among the outstanding balances at

each such annual percentage rate in the same proportion as each such balance bears to the total outstanding balance on the account.

`(2) ALLOCATION TO HIGHER RATE- Notwithstanding paragraph (1), a creditor may elect, in any case described in such paragraph, to allocate more than a pro rata share of any payment to a portion of the outstanding balance that bears a higher annual percentage rate than another portion of such outstanding balance.'

(g) Timely Provision of Periodic Statements- Section 127B of the Truth in Lending Act is amended by inserting after subsection (i) (as added by subsection (f)) the following new subsection:

`(j) Timely Provision of Periodic Statements- Each periodic statement with respect to a credit card account under an open end consumer credit plan shall be sent by the creditor to the consumer not less than 25 calendar days before the due date identified in such statement for the next payment on the outstanding balance on such account.'

SEC. 4. CONSUMER CHOICE WITH RESPECT TO OVER-THE-LIMIT TRANSACTIONS.

Section 127B of the Truth in Lending Act is amended by inserting after subsection (j) (as added by section 3(g)) the following new subsections:

`(k) Opt-Out of Creditor Authorization of Over-the-Limit Transactions if Fees Are Imposed-

`(1) IN GENERAL- In the case of any credit card account under an open end consumer credit plan under which an over-the-limit-fee may be imposed by the creditor for any extension of credit in excess of the amount of credit authorized to be extended under such account, the consumer may elect to prohibit the creditor, with respect to such account, from completing any transaction involving the extension of credit, with respect to such account, in excess of the amount of credit authorized by notifying the creditor of such election in accordance with paragraph (2).

`(2) NOTIFICATION BY CONSUMER- A consumer shall notify a creditor under paragraph (1)--

`(A) through the notification system maintained by the creditor under paragraph (4); or

`(B) by submitting to the creditor a signed notice of election, by mail or electronic communication, on a form issued by the creditor for purposes of this subparagraph.

`(3) EFFECTIVENESS OF ELECTION- An election by a consumer under paragraph (1) shall be effective beginning 3 business days after the consumer notifies the creditor in accordance with paragraph (2) and shall remain effective until the consumer revokes the election.

`(4) NOTIFICATION SYSTEM- Each creditor that maintains credit card accounts under an open end consumer credit plan shall establish and maintain a notification system, including a toll-free telephone number, Internet address, and Worldwide Web site, which permits any consumer

whose credit card account is maintained by the creditor to notify the creditor of an election under this subsection in accordance with paragraph (2).

`(5) ANNUAL NOTICE TO CONSUMERS OF AVAILABILITY OF ELECTION- In the case of any credit card account under an open end consumer credit plan, the creditor shall include a notice, in clear and conspicuous language, of the availability of an election by the consumer under this paragraph as a means of avoiding over-the limit fees and a higher amount of indebtedness, and the method for providing such notice--

`(A) in the periodic statement required under subsection (b) with respect to such account at least once each calendar year; and

`(B) in any such periodic statement which includes a notice of the imposition of an over-the-limit fee during the period covered by the statement.

`(6) NO FEES IF CONSUMER HAS MADE AN ELECTION- If a consumer has made an election under paragraph (1), no over-the-limit fee may be imposed on the account for any reason that has caused the outstanding balance in the account to exceed the credit limit.

`(7) REGULATIONS-

`(A) IN GENERAL- The Board shall issue regulations allowing for the completion of over-the-limit transactions that for operational reasons exceed the credit limit by a de minimis amount, even where the cardholder has made an election under paragraph (1).

`(B) SUBJECT TO NO FEE LIMITATION- The regulations prescribed under subparagraph (A) shall not allow for the imposition of any fee or any rate increase based on the permitted over-the-limit transactions.

`(I) Over-the-Limit Fee Restrictions- With respect to a credit card account under an open end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if, on the last day of such billing cycle, the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the 2 subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.'.

SEC. 5. STRENGTHEN CREDIT CARD INFORMATION COLLECTION.

Section 136(b) of the Truth in Lending Act (15 U.S.C. 1646(b)) is amended--
(1) in paragraph (1)--

(A) by striking `COLLECTION REQUIRED- The Board shall' and inserting `COLLECTION REQUIRED-

`(A) IN GENERAL- The Board shall'.

(B) by adding at the end the following new subparagraph:

`(B) INFORMATION TO BE INCLUDED- The information under subparagraph (A) shall include, as of a date designated by the Board--

`(i) a list of each type of transaction or event for which one or more of the card issuers has imposed a separate interest rate upon a cardholder, including purchases, cash advances, and balance transfers;

`(ii) for each type of transaction or event identified under clause (i)--

`(I) each distinct interest rate charged by the card issuer to a cardholder, as of the designated date; and

`(II) the number of cardholders to whom each such interest rate was applied during the calendar month immediately preceding the designated date, and the total amount of interest charged to such cardholders at each such rate during such month;

`(iii) a list of each type of fee that one or more of the card issuers has imposed upon a cardholder as of the designated date, including any fee imposed for obtaining a cash advance, making a late payment, exceeding the credit limit on an account, making a balance transfer, or exchanging United States dollars for foreign currency;

`(iv) for each type of fee identified under clause (iii), the number of cardholders upon whom the fee was imposed during the calendar month immediately preceding the designated date, and the total amount of fees imposed upon cardholders during such month;

`(v) the total number of cardholders that incurred any interest charge or any fee during the calendar month immediately preceding the designated date; and

`(vi) any other information related to interest rates, fees, or other charges that the Board deems of interest.'; and

(2) by adding at the end the following new paragraph:

`(5) REPORT TO CONGRESS- The Board shall, on an annual basis, transmit to Congress and make public a report containing estimates by the Board of the approximate, relative percentage of income derived by the credit card operations of depository institutions from--

`(A) the imposition of interest rates on cardholders, including separate estimates for--

`(i) interest with an annual percentage rate of less than 25 percent; and

`(ii) interest with an annual percentage rate equal to or greater than 25 percent;

`(B) the imposition of fees on cardholders;

`(C) the imposition of fees on merchants; and

`(D) any other material source of income, while specifying the nature of that income.'.

SEC. 6. STANDARDS APPLICABLE TO INITIAL ISSUANCE OF SUBPRIME OR `FEE HARVESTER' CARDS.

Section 127B of the Truth in Lending Act is amended by inserting after subsection (l) (as added by section 4) the following new subsection:

`(m) Standards Applicable to Initial Issuance of Subprime or `Fee Harvester' Cards- In the case of any credit card account under an open end consumer credit plan the terms of which require the payment of fees (other than late fees or over-the-limit fees) by the consumer in the first year the account is opened in an amount in excess of 25 percent of the total amount of credit authorized under the account, the credit card may not be issued to the consumer and the opening of the account may not be reported to any consumer reporting agency (as defined in section 603) until the creditor receives payment in full of all such fees, and such payment may not be made from the credit made available by the card.'.

SEC. 7. EFFECTIVE DATE.

(a) In General- The amendments made by this Act shall apply to all credit card accounts under open end consumer credit plans as of the end of the 1-year period beginning on the date of the enactment of this Act.

(b) Regulations- The Board of Governors of the Federal Reserve System, in consultation with all Federal agencies referred to in any provision of section 108 of the Truth in Lending Act, shall prescribe regulations, in final form, implementing the amendments made by this Act before the end of the 6-month period beginning on the date of the enactment of this Act.

END