

CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2009

APRIL 27, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 627]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 627) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

### SEC. 1. SHORT TITLE.

This Act may be cited as the “Credit Cardholders’ Bill of Rights Act of 2009”.

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

(a) RETROACTIVE RATE INCREASES AND UNIVERSAL DEFAULT LIMITED.—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:

#### “§ 127B. Additional requirements for credit card accounts under an open end consumer credit plan

“(a) RETROACTIVE RATE INCREASES AND UNIVERSAL DEFAULT LIMITED.—

“(1) IN GENERAL.—Except as provided in subsection (b), no creditor may increase any annual percentage rate of interest applicable to the existing balance on a credit card account of the consumer under an open end consumer credit plan.

“(2) EXISTING BALANCE DEFINED.—For purposes of this subsection and subsections (b) and (c), the term ‘existing balance’ means the amount owed on a consumer credit card account as of the end of the 14th day after the creditor provides notice of an increase in the annual percentage rate in accordance with subsection (c).

“(3) TREATMENT OF EXISTING BALANCES FOLLOWING RATE INCREASE.—If a creditor increases any annual percentage rate of interest applicable to the credit card account of a consumer under an open end consumer credit plan and there is an existing balance in the account to which such increase may not apply, the creditor shall allow the consumer to repay the existing balance using a method provided by the creditor which is at least as beneficial to the consumer as 1 of the following methods:

“(A) An amortization period for the existing balance of at least 5 years starting from the date on which the increased annual percentage rate went into effect.

“(B) The percentage of the existing balance that was included in the required minimum periodic payment before the rate increase cannot be more than doubled.

“(4) LIMITATION ON CERTAIN FEES.—If—

“(A) a creditor increases any annual percentage rate of interest applicable on a credit card account of the consumer under an open end consumer credit plan; and

“(B) the creditor is prohibited by this section from applying the increased rate to an existing balance,

the creditor may not assess any fee or charge based solely on the existing balance.”.

(b) EXCEPTIONS TO THE AMENDMENT MADE BY SUBSECTION (a).—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) EXCEPTIONS.—

“(1) IN GENERAL.—A creditor may increase any annual percentage rate of interest applicable to the existing balance on a credit card account of the consumer under an open end consumer credit plan only under the following circumstances:

“(A) CHANGE IN INDEX.—The increase is due solely to the operation of an index that is not under the creditor’s control and is available to the general public.

“(B) EXPIRATION OF PROMOTIONAL RATE.—The increase is due solely to the expiration of a promotional rate.

“(C) FAILURE TO COMPLY WITH WORKOUT PLAN.—The increase is due solely to the fact the consumer failed to comply with a negotiated workout plan with the creditor.

“(D) PAYMENT NOT RECEIVED DURING 30-DAY GRACE PERIOD AFTER DUE DATE.—The increase is due solely to the fact that any consumer’s minimum payment has not been received within 30 days after the due date for such minimum payment.

“(2) LIMITATION ON INCREASES DUE TO FAILURE TO COMPLY WITH WORKOUT PLAN.—Notwithstanding paragraph (1)(C), the annual percentage rate in effect with respect to each category of transactions for a credit card account under an open end consumer credit plan after the increase permitted under such subsection due to the failure of a consumer to comply with a workout plan may not exceed the annual percentage applicable to such category of transactions on the day before the effective date of the workout plan.

“(3) STANDARDS REQUIRED.—The Board shall prescribe, by regulation, standards—

“(A) for entering into any workout plan applicable to any credit card account under an open end consumer credit plan; and

“(B) governing any such workout plan.”.

(c) ADVANCE NOTICE OF RATE INCREASES AND SIGNIFICANT CONTRACT CHANGES.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (b) (as added by subsection (b)) the following new subsections:

“(c) ADVANCE NOTICE OF RATE INCREASES.—

“(1) IN GENERAL.—In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest (other than an increase described in subsection (b)(1)(A)) may take effect unless the creditor provides a written notice to the consumer at least 45 days before the increase takes effect which fully describes the changes in the annual percentage rate, in a complete and conspicuous manner, and the extent to which such increase would apply to an existing balance.

“(2) LIMITATION ON RATE INCREASE NOTICES WITHIN FIRST YEAR.—Except in the case of an increase described in subparagraph (B), (C), or (D) of subsection (b)(1), no written notice under paragraph (1) of an increase in any annual percentage rate of interest on any credit card account under an open end consumer credit plan (for which notice is required under such paragraph) shall be effective before the end of the 1-year period beginning when the account is opened.

“(d) ADVANCE NOTICE OF SIGNIFICANT CONTRACT CHANGES.—In the case of any credit card account under an open end consumer credit plan, no significant change to the contract (such as any fee) may take effect unless the creditor provides a written notice of at least 45 days before the change takes effect which fully describes the changes in the contract, in a complete and conspicuous manner.”.

(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. ADDITIONAL PROVISIONS REGARDING ACCOUNT FEATURES, TERMS, AND PRICING.

(a) DOUBLE CYCLE BILLING PROHIBITED.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (d) (as added by section 2(c)) the following new subsection:

“(e) DOUBLE CYCLE BILLING.—

“(1) IN GENERAL.—No finance charge may be imposed by a creditor with respect to any balance on a credit card account under an open end consumer credit plan that is based on balances for days in billing cycles preceding the most recent billing cycle as a result of the loss of any grace period.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply so as to prohibit a creditor from—

“(A) adjusting finance charges following the return of a payment for insufficient funds; or

“(B) adjusting finance charges following resolution of a billing error dispute.

“(3) GRACE PERIOD.—For purposes of this subsection, the term ‘grace period’ means, with respect to any credit card account under an open end consumer credit plan, the time period, if any, provided by the creditor within which any credit extended under such credit plan for purchases of goods or services may be repaid by the consumer without incurring a finance charge.”.

(b) LIMITATIONS RELATING TO ACCOUNT BALANCES ATTRIBUTABLE ONLY TO ACCRUED INTEREST.—Section 127B is amended by inserting after subsection (e) (as added by subsection (a)) the following new subsection:

“(f) 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 at the end of a billing period represents an amount attributable only to interest accrued during the preceding billing period on an outstanding balance that was fully repaid during the preceding billing period—

“(A) no fee may be imposed or collected in connection with such balance attributable only to interest before such end of the billing period; and

“(B) any failure to make timely repayments of the balance attributable only to interest before such end of the billing period shall not constitute a default on the account.

Such balance remains a legally binding debt obligation.

“(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) ACCESS TO PAYOFF BALANCE INFORMATION.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (f) (as added by subsection (b)) the following new subsection:

“(g) PAYOFF BALANCE INFORMATION.—

“(1) IN GENERAL.—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 toll-free telephone number, Internet address, and website at which the consumer may request the payoff balance on the account.

“(2) SMALL ISSUERS.—Notwithstanding paragraph (1), in the case of any credit card issuer which issues fewer than 50,000 credit cards in conjunction with credit card accounts under open end consumer credit plans, each periodic statement provided by such a creditor to a consumer with respect to any such credit card account shall contain the toll-free telephone number, Internet address, or website 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:

“(h) CONSUMER RIGHT TO REJECT CARD BEFORE NOTICE OF NEW ACCOUNT IS PROVIDED TO CONSUMER REPORTING AGENCY.—

“(1) IN GENERAL.—A creditor may not furnish any information to a consumer reporting agency (as defined in section 603) concerning the establishment of 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.

“(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as prohibiting a creditor from furnishing information about any application for a credit card account under an open end consumer credit plan or any inquiry about any such account to a consumer reporting agency (as so defined).”.

(e) USE OF TERMS CLARIFIED.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (h) (as added by subsection (d)) the following new subsection:

“(i) 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., local time at the location specified by the creditor for the receipt of payment, 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 online to the website of the credit card issuer or by telephone directly to the credit card issuer before 5 p.m., local time at the location specified by the creditor for the receipt of payment, 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) PAYMENT ALLOCATIONS.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (i) (as added by subsection (e)) the following new subsection:

“(j) PAYMENT ALLOCATIONS.—

“(1) IN GENERAL.—If 2 or more different annual percentage rates apply to different portions of an outstanding balance on a credit card account under an open end consumer credit plan, the amount of any periodic payment in excess of the required minimum payment shall be applied using 1 of the following methods:

“(A) HIGH-TO-LOW METHOD.—The excess amount is allocated first to the balance with the highest annual percentage rate and any remaining portion is allocated to any other balance in descending order, based on the applicable annual percentage rate each portion of such balance bears, from the highest such rate to the lowest.

“(B) PRO RATA METHOD.—The excess amount is allocated among each of the portions of such balance which bear different rates of interest in the same proportion as each such portion of the outstanding balance bears to the total outstanding balance.

“(2) CLARIFICATION RELATING TO CERTAIN DEFERRED INTEREST ARRANGEMENTS.—A creditor may allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to a balance on which interest is deferred during the 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

“(3) PROHIBITION ON RESTRICTED GRACE PERIODS UNDER CERTAIN CIRCUMSTANCES.—If, with respect to any credit card account under an open end consumer credit plan, a creditor offers a time period in which to repay credit extended without incurring finance charges to cardholders who pay the balance in full, the creditor may not deny a consumer who takes advantage of a promotional rate balance or deferred interest rate balance offer with respect to such an account any such time period for repaying credit without incurring finance charges.”.

(g) TIMELY PROVISION OF PERIODIC STATEMENTS.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (j) (as added by subsection (f)) the following new subsection:

“(k) 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 21 calendar days before the due date identified in such statement for the next payment on the outstanding balance on such account, and section 163(a) shall be applied with respect to any such account by substituting ‘21’ for ‘fourteen’.”.

(h) DUE DATES.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (k) (as added by subsection (g)) the following new subsection:

“(l) DUE DATES.—If the date established by a creditor as the date on which a periodic payment on a credit card account under an open end consumer credit plan is due is a day on which mail is either not delivered to such creditor or is not accepted by the creditor for processing on such day, the creditor may not treat the receipt by the creditor of any such periodic payment by mail as of the next business day of the creditor as late for any purpose.”.

#### 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 (l) (as added by section 3(h)) the following new subsections:

“(m) 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 creditor receives notice from the consumer in accordance with paragraph (2) and shall remain effective until the consumer revokes the election.

“(4) NOTIFICATION SYSTEM.—

“(A) IN GENERAL.—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 website, 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).

“(B) SMALL ISSUERS.—Notwithstanding subparagraph (A), any credit card issuer which issues fewer than 50,000 credit cards in conjunction with credit card accounts under open end consumer credit plans shall establish and maintain a notification system, which shall include a toll-free telephone number, Internet address, or website, 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) on the periodic statement required under section 127(b) with respect to such account at least once each calendar year; and

“(B) on 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.

“(n) 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.

“(o) OVER-THE-LIMIT FEES PROHIBITED IN CONJUNCTION WITH CERTAIN CREDIT HOLDS.—Notwithstanding subsection (n), an over-the-limit fee may not be imposed if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit.”

#### 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, for the relevant semiannual period, the following information with respect each creditor in connection with any consumer credit card account:

“(i) A list of each type of transaction or event during the semiannual period for which 1 or more creditors has imposed a separate interest rate upon a consumer credit card accountholder, 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 consumer credit card accountholder during the semiannual period; and

“(II) the number of cardholders to whom each such interest rate was applied during the last calendar month of the semiannual period, and the total amount of interest charged to such accountholders at each such rate during such month.

“(iii) A list of each type of fee that 1 or more of the creditors has imposed upon a consumer credit card accountholder during the semiannual period, 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 accountholders upon whom the fee was imposed during each calendar month of the semiannual period, and the total amount of fees imposed upon cardholders during such month.

“(v) The total number of consumer credit card accountholders that incurred any finance charge or any other fee during the semiannual period.

“(vi) The total number of consumer credit card accounts maintained by each creditor as of the end of the semiannual period.

“(vii) The total number and value of cash advances made during the semiannual period under a consumer credit card account.

“(viii) The total number and value of purchases involving or constituting consumer credit card transactions during the semiannual period.

“(ix) The total number and amount of repayments on outstanding balances on consumer credit card accounts in each month of the semiannual period.

“(x) The percentage of all consumer credit card accountholders (with respect to any creditor) who—

“(I) incurred a finance charge in each month of the semiannual period on any portion of an outstanding balance on which a finance charge had not previously been incurred; and

“(II) incurred any such finance charge at any time during the semiannual period.

“(xi) The total number and amount of balances accruing finance charges during the semiannual period.

“(xii) The total number and amount of the outstanding balances on consumer credit card accounts as of the end of such semiannual period.

“(xiii) Total credit limits in effect on consumer credit card accounts as of the end of such semiannual period and the amount by which such credit limits exceed the credit limits in effect as of the beginning of such period.

“(xiv) 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 (o) (as added by section 4) the following new subsection:

“(p) STANDARDS APPLICABLE TO INITIAL ISSUANCE OF SUBPRIME OR ‘FEE HARVESTER’ CARDS.—

“(1) IN GENERAL.—In the case of any credit card account under an open end consumer credit plan the terms of which require the payment of any fee (other than any late fee, any over-the-limit fee, or any fee for a payment returned for insufficient funds) 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 when the account is opened, no payment of any fee (other than any late fee, any over-the-limit fee, or any fee for a payment returned for insufficient funds) may be made from the credit made available by the card.

“(2) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.”.

**SEC. 7. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.**

Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following new paragraph:

“(8) EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.—

“(A) IN GENERAL.—No credit card may be knowingly issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 18, unless the consumer is emancipated under applicable State law.

“(B) RULE OF CONSTRUCTION.—For the purposes of determining the age of an applicant, the submission of a signed application by a consumer stating that the consumer is over 18 shall be considered sufficient proof of age.”.

**SEC. 8. PROHIBIT FEES FOR PAYMENT ON CREDIT CARD ACCOUNTS BY ELECTRONIC FUND TRANSFERS.**

(a) IN GENERAL.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following new subsection:

“(i) PAYMENTS BY EFT.—In the case of a credit card account under an open end consumer credit plan, a creditor may not impose a fee based on the manner in which payment on the account is made, including a fee for making any such payment by electronic fund transfer (as defined in section 903).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to all payments made after the date of the enactment of this Act and any fee imposed after such date in contravention of the amendment shall be promptly credited to the consumer’s account.

**SEC. 9. REPORT TO CONGRESS ON REDUCTIONS OF CONSUMER CREDIT CARD LIMITS BASED ON CERTAIN INFORMATION AS TO EXPERIENCE OR TRANSACTIONS OF THE CONSUMER.**

(a) REPORT ON CREDITOR PRACTICES REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission, shall report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the extent to which, during the 3-year period ending on such date of enactment, creditors have reduced credit limits or raised interest rates applicable to credit card accounts under open end consumer credit plans based on—

(1) the geographical location where a credit transaction with the consumer takes place or the identity of the merchant involved in the transaction;

(2) the consumer’s credit transactions, including the type of credit transaction, the type of items purchased in such transaction, the price of items purchased in such transaction, any change in the type or price of items purchased in such transactions, and other data pertaining to the consumer’s use of such credit card account; and

(3) the identity of the mortgage creditor which extended or holds the mortgage loan secured by the consumer’s primary residence.

(b) OTHER INFORMATION.—The report required under subsection (a) shall also include—



- (1) the number and identity of creditors that have engaged in the practices described in subsection (a);
- (2) the extent to which the practices described in subsection (a) have an adverse impact on minority or low-income consumers;
- (3) any other relevant information regarding such practices; and
- (4) recommendations to the Congress on regulatory or statutory changes that may be needed to restrict or prevent such practices.

**SEC. 10. EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as provided in subsection (c) for the period described in such subsection, the amendments made by this Act shall apply to all credit card accounts under open end consumer credit plans after the earlier of—

- (1) the end of the 12-month period beginning on the date of the enactment of this Act; or
- (2) June 30, 2010.

(b) **REGULATIONS.**—Except as provided in subsection (c) for the period described in such subsection, the Board of Governors of the Federal Reserve System, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission, shall prescribe regulations, in final form, implementing the amendments made by this Act before the earlier of—

- (1) the end of the 5-month period beginning on the date of the enactment of this Act; or
- (2) June 1, 2010.

(c) **INTERIM EFFECTIVE PERIOD FOR ADVANCE NOTICES OF RATE INCREASES.**—

(1) **IN GENERAL.**—During the period beginning 90 days after the date of the enactment of this Act and ending on the effective date of all the amendments under this Act as determined pursuant to subsection (a), no increase in any annual percentage rate of interest on any credit card account under an open end consumer credit plan (as such terms are defined in the Truth in Lending Act) may take effect unless the creditor provides a written notice to the consumer at least 45 days before the increase would otherwise take effect which fully describes the changes in the annual percentage rate, in a complete and conspicuous manner, and the extent to which such increase would apply to an existing balance.

(2) **EXCEPTIONS.**—A notice shall not be required under paragraph (1) for an increase in an annual percentage rate described in subparagraph (A), (B), or (C) of section 127B(b)(1) (as added by section 2).

(3) **REGULATIONS.**—The Board of Governors of the Federal Reserve System shall prescribe regulations implementing the amendment referred to in paragraph (1), for purposes of this subsection, before the end of the 60-day period beginning on the date of the enactment of this Act.

**PURPOSE AND SUMMARY**

H.R. 627, the “Credit Cardholders’ Bill of Rights Act of 2009,” prohibits certain unfair and deceptive credit card practices and provides consumers with tools to manage their credit card debt responsibly. The bill prohibits retroactive rate increases on existing balances except under limited circumstances, including where the consumer is over 30 days late in making payment, and requires creditors to provide consumers with a reasonable time to pay off the balance. It requires creditors to provide a written notice of any rate increase at least 45 days before the increase takes effect, and to send periodic statements to consumers no less than 21 days before the due date. The bill prohibits double cycle billing and requires creditors to allocate payments in excess of the minimum to either the highest rate balance first or in a proportional manner. The bill limits overlimit fees and bans fees on interest-only balances. The bill requires creditors to offer cardholders the ability to prevent any overlimit transactions on their card. It prohibits creditors from knowingly issuing a credit card to a minor who is not emancipated. The bill prohibits creditors from reporting the issuance of any credit card to a credit bureau until the cardholder uses or activates the

card. For credit cards on which fees in the first year exceed 25 percent of the initial credit limit, the bill requires that such fees (except late, overlimit, and insufficient fund fees) be paid from a source other than the card. The bill also provides for additional data collection to enable better oversight and regulation.

#### BACKGROUND AND NEED FOR LEGISLATION

According to the Federal Reserve, more than 75 percent of all U.S. families have a credit card and 44 percent of families carry a balance. Credit card debt has increased by 25 percent in the last 10 years and reached \$963 billion in January 2009. The accumulation of large amounts of credit card debt can have profound implications on individual consumers and the economy more generally. According to the Federal Financial Institutions Examination Council, the number of accounts more than 30 days late has increased from 3.9 percent in the fourth quarter of 2006, to 5.6 percent in the fourth quarter of 2008. Similarly, the American Bankers Association's "Consumer Credit Delinquency Bulletin," consumer credit delinquencies in the fourth quarter of 2008 reached their highest level ever at 4.52 percent. Additionally, bankruptcy filings were up 31 percent in calendar year 2008 (following a 40 percent increase in 2007), a jump that many analysts attribute to high consumer debt levels.

Prior to 1990, credit cards had more or less standardized rates of around 20 percent, few fees, and they were generally offered to persons with high credit standing. In the early 1990s, credit card issuers began to adopt "risk-based" pricing, which was intended to employ a variety of factors to insure that cardholders were charged rates that reflected the default and other risks they pose to creditors. In addition, credit card issuers began to charge increased penalty fees for, among other things, late payment and over-the-limit transactions. Card issuers contend that the new pricing models enable them to offer cards to more individuals and charge lower interest rates to better credit risks. In contrast, consumer advocates allege that weakened underwriting standards are not necessarily in the best interest of cardholders, that many cards have "teaser" rates which are unrealistically low and soon increase to a much higher maximum rate, and that fee income has grown significantly.

The increased complexity and the variety of factors used in risk-based pricing has drawn growing scrutiny of the conditions under which issuers may change a cardholder's interest rate under the standardized agreement. Most, if not all, agreements allow the issuer to change the interest rate or other terms at any time for any reason. Also, many agreements set up a number of conditions that are considered "default" on the terms of the agreement and thus allow significant change to the interest rate. These provisions allow the card issuer, after a consumer has agreed to the terms of a credit card account and used the card to make purchases or obtain cash advances, to rewrite the agreement or demand a higher rate of interest, even on funds previously advanced. A study by the Pew Charitable Trusts that was released in March 2009 found that in the one-year period (between 2007 and 2008), credit card issuers used these powers to raise interest rates on nearly one quarter of cardholder accounts, or approximately 70 million accounts. These practices skew the marketplace because the added charges are not

reflected in the advertised interest rate, which, according to Pew, is the key price point consumers look to when selecting credit cards. Not only do these practices lead to a lack of transparency in the market, the ability to rewrite agreements has also allowed issuers to rapidly expand their businesses and bill cardholders tens of billions of dollars more per year. According to the Pew study, cardholders were assessed at least \$10 billion in additional interest charges on top of standard fees and rates in the one year period reviewed.

While credit card issuers describe these increases as “risk-based” pricing, consumer advocates argue that the increases are disproportionate to the risk represented. For example, cardholders who pay one day late can incur the same rate raises as cardholders who are months late. A late payment—even by one day—is a factor that can raise a cardholder’s interest rate, often over 30 percent, according to consumer studies. Even when the consumer poses an additional risk (i.e. frequent late payments), consumer advocates assert that accounts should only be “re-priced” prospectively. Although more than 6,000 companies issue credit cards, the 12 largest credit card companies control nearly 90 percent of the market and all of the major issuers engage in risk-based pricing practices developed over the last twenty years; the same twenty-year period over which the consumer debt load has dramatically increased.

Card issuers maintain that “risk-based” pricing allows more consumer choice and keeps interest rates lower. But a 2005 report by the Government Accountability Office and a 2006 report by the Board of Governors of the Federal Reserve both concluded that there was no empirical support for the proposition that “risk-based” pricing had led to lower rates. In addition, consumer advocates contend that some fees and penalty pricing are disproportionate to the risk posed by the consumer and are mainly intended to increase fee income. According to Cardtrak.com, the average late fee rose to \$35 in 2007, up from less than \$13 in 1994. Similarly, average fees charged for exceeding a credit limit also rose to \$35 a month.

*Retroactive Rate Increases on Pre-existing Balances.* One of the most controversial common practices is the retroactive application of increased interest rates to consumers’ pre-existing balances. According to a 2008 survey by Consumer Action, most card issuers (77 percent) reserve the right to increase a consumer’s interest rate on outstanding and prospective balances under “any time, any reason” clauses. Issuers contend that these clauses are necessary to insure they are able to price for risk. In contrast, consumer advocates argue that retroactive application is unfair and unjustified. Moreover, these advocates dispute whether this practice is truly risk-based, in light of the fact that individuals can be re-priced through no fault of their own. For instance, many consumers who are in good standing with their particular card issuer nonetheless can see their interest rates increase if there is a change in market conditions. Even when the consumer poses an additional risk (i.e. frequent late payments), consumer advocates assert that accounts should only be “re-priced” prospectively. Some economists argue that retroactive re-pricing on existing balances has an anticompetitive effect on the market since consumers can’t select cards on this basis or avoid the increases.

A number of other practices can have negative impacts on consumers, including, but not limited to:

*Double-Cycle Billing.* This practice occurs when a cardholder with no previous balance fails to pay the entire balance of new purchases by the payment due date, then—on the next periodic billing statement—the issuer computes interest on the original balance that had been subject to an interest-free period. For example if you make a \$1000 purchase and pay off \$900 in the first month, you would be charged interest calculating your average daily balance over two billing cycles, increasing the amount of interest charged to your account.

*Payment Allocation.* When a consumer's account consists of balances with two or more interest rates, typically all of the payments made to the account are applied first to the balance with the lowest interest rate, allowing the higher rate balance to grow more rapidly. This practice is viewed as unfair because it does not provide consumers with the full benefit of lower promotional interest rates.

*Late Payment.* Consumer advocates allege that many issuers fail to promptly credit consumer payments, arbitrarily change due dates, provide unreasonably short times for bill payment, and otherwise make timely payments by cardholders difficult. They argue that this practice is harmful to consumers given the often severe consequences for late payments (in the form of retroactive interest rate increases, penalty interest rates, finance charges, and late fees).

#### REGULATORY DEVELOPMENTS

In December 2008, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and the National Credit Union Administration approved a joint final rule prohibiting unfair or deceptive acts or practices relating to credit cards. The Board took the lead in drafting the rule, which is designed to protect consumers from unexpected interest charges, including increases in the rate during the first year after account opening and increases in the rate charged on pre-existing credit card balances. These rules become effective on July 1, 2010. Among other provisions, the rules include five key protections for consumers:

(1) Banks will be prohibited from increasing the rate on pre-existing credit card balances during the first year after an account opens and only in certain circumstances after the first year.

(2) Banks will be prohibited from imposing interest charges using the “two-cycle” billing method, which computes interest on balances on days in billing cycles preceding the most recent cycle.

(3) Banks will be prohibited from treating a payment as late unless they provide a consumer with a reasonable amount of time to make payment.

(4) Banks will be required to give consumers the benefit of discounted promotional rates on credit cards by applying payments in excess of the minimum either to the outstanding balance with the highest APR, or pro rata among the balances.

(5) Banks will be required to provide 45 days' advance notice for changes to significant contract terms, such as fees or interest rate increases.

Simultaneously, the Board adopted final rules to revise the disclosures consumers receive in connection with credit card accounts

and other revolving credit plans to ensure that information is provided in a timely manner and in a form that is readily understandable. These rules amend Regulation Z (Truth in Lending) and conclude a comprehensive review of the open-end credit rules. The final rules under Regulation Z require changes to the format, timing, and content requirements for credit card applications and solicitations and for the disclosures that consumers receive throughout the life of an open-end account. The effective date for the final rules adopted under Regulation Z is also July 1, 2010.

#### HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 19, 2009 entitled, "H.R. 627, the Credit Cardholders' Bill of Rights of 2009; and H.R. 1456, the Consumer Overdraft Protection Fair Practices Act of 2009." The following witnesses testified:

- Ms. Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System
- Ms. Montrice Yakimov, Managing Director, Compliance and Consumer Protection, Office of Thrift Supervision
- Ms. Sheila Albin, Associate General Counsel, National Credit Union Administration
- Mr. Kenneth J. Clayton, Senior Vice President/General Counsel, American Bankers Association Card Policy Council
- Ms. Linda Echard, President and CEO ICBA Bancard, on behalf of the Independent Community Bankers of America
- Mr. Douglas Fecher, President and CEO, Wright-Patt Credit Union, Inc., on behalf of the Credit Union National Association
- Mr. Oliver I. Ireland, Partner, Morrison & Foerster, LLP, Washington, DC
- Mr. Todd McCracken, President, National Small Business Association
- Mr. Ed Mierzewski, Senior Fellow, Consumer Program, U.S. PIRG
- Mr. Travis Plunkett, Legislative Director, Consumer Federation of America

#### COMMITTEE AND SUBCOMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 22, 2009, and ordered H.R. 627, the Credit Cardholders' Bill of Rights Act of 2009, as amended, favorably reported to the House by a record vote of 48 yeas and 19 nays. Previously, the Subcommittee on Financial Institutions and Consumer Credit met in open session on April 1, 2009, to consider H. R. 627 and on April 2, 2009, ordered the bill, as amended, forwarded to the Full Committee with a favorable recommendation by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 48 yeas and 19

nays (Record vote no. FC-16). The names of Members voting for and against follow.

RECORD VOTE NO. FC-16

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez				Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones	X		
Mr. Sherman	X			Mrs. Biggert	X		
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito	X		
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa				Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)		X	
Mrs. McCarthy	X			Mr. Gerlach	X		
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell			
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter	X		
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey	X		
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee	X		
Mr. Perlmutter	X			Mr. Paulsen	X		
Mr. Donnelly	X			Mr. Lance	X		
Mr. Foster	X						
Mr. Carson	X						
Mr. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas							
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During the consideration of the bill in the Full Committee, the following amendments (to the Committee Print showing the amendment recommended by the Subcommittee on Financial Institutions) were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mrs. Maloney (and Mr. Maffei), No. 1, relating to an interim effective period for advance notices of rate increases, was agreed to by a record vote of 40 yeas and 22 nays (Record vote no. FC-11):

RECORD VOTE NO. FC-11

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	

## RECORD VOTE NO. FC-11—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Waters				Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez				Mr. Paul			
Mr. Watt	X			Mr. Manzullo	X		
Mr. Ackerman	X			Mr. Jones	X		
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa				Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)		X	
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell			
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann			
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy			
Mr. Ellison	X			Mr. Posey	X		
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Mr. Speier							
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas							
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Hensarling, No. 2, relating to nonapplicability to certain creditors who make available alternative card options, was not agreed to by a record vote of 22 yeas and 43 nays (Record vote no. FC-12):

## RECORD VOTE NO. FC-12

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul			
Mr. Watt		X		Mr. Manzullo		X	
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		

RECORD VOTE NO. FC-12—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell			
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey		X	
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee		X	
Mr. Perlmutter		X		Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier							
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas							
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, No. 3a, including in the study the effects of the amendments made by this Act, to the amendment offered by Ms. Waters, No. 3, requiring a report to Congress on reductions of consumer credit card limits based on certain information as to experience or transactions of the consumer, was not agreed to by a record vote of 28 yeas and 38 nays (Record vote no. FC-13):

RECORD VOTE NO. FC-13

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell			
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		



RECORD VOTE NO. FC-13—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier							
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas							
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Price, No. 4, limiting actions for damages to individual actions, was not agreed to by a record vote of 24 yeas and 43 nays (Record vote no. FC-14):

RECORD VOTE NO. FC-14

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle		X	
Ms. Waters		X		Mr. King (NY)		X	
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones		X	
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach		X	
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell			
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Mr. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					

RECORD VOTE NO. FC-14—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Kilroy .....		X	.....				
Mr. Driehaus .....		X	.....				
Ms. Kosmas .....			.....				
Mr. Grayson .....		X	.....				
Mr. Himes .....		X	.....				
Mr. Peters .....		X	.....				
Mr. Maffei .....		X	.....				

An amendment by Mr. Hensarling, No. 6, regarding transparent advanced notice of a rate increase, was not agreed to by a record vote of 28 yeas and 39 nays (Record vote no. FC-15):

RECORD VOTE NO. FC-15

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....		X	.....	Mr. Bachus .....	X		.....
Mr. Kanjorski .....		X	.....	Mr. Castle .....	X		.....
Ms. Waters .....		X	.....	Mr. King (NY) .....	X		.....
Mrs. Maloney .....		X	.....	Mr. Royce .....	X		.....
Mr. Gutierrez .....		X	.....	Mr. Lucas .....	X		.....
Ms. Velázquez .....			.....	Mr. Paul .....	X		.....
Mr. Watt .....		X	.....	Mr. Manzullo .....	X		.....
Mr. Ackerman .....		X	.....	Mr. Jones .....	X		.....
Mr. Sherman .....		X	.....	Mrs. Biggert .....	X		.....
Mr. Meeks .....		X	.....	Mr. Miller (CA) .....	X		.....
Mr. Moore (KS) .....		X	.....	Mrs. Capito .....	X		.....
Mr. Capuano .....		X	.....	Mr. Hensarling .....	X		.....
Mr. Hinojosa .....			.....	Mr. Garrett (NJ) .....	X		.....
Mr. Clay .....		X	.....	Mr. Barrett (SC) .....	X		.....
Mrs. McCarthy .....		X	.....	Mr. Gerlach .....	X		.....
Mr. Baca .....		X	.....	Mr. Neugebauer .....	X		.....
Mr. Lynch .....		X	.....	Mr. Price (GA) .....	X		.....
Mr. Miller (NC) .....		X	.....	Mr. McHenry .....	X		.....
Mr. Scott .....		X	.....	Mr. Campbell .....			.....
Mr. Green .....		X	.....	Mr. Putnam .....	X		.....
Mr. Cleaver .....		X	.....	Mrs. Bachmann .....	X		.....
Ms. Bean .....		X	.....	Mr. Marchant .....	X		.....
Ms. Moore (WI) .....		X	.....	Mr. McCotter .....	X		.....
Mr. Hodes .....		X	.....	Mr. McCarthy .....	X		.....
Mr. Ellison .....		X	.....	Mr. Posey .....	X		.....
Mr. Klein .....		X	.....	Ms. Jenkins .....	X		.....
Mr. Wilson .....		X	.....	Mr. Lee .....	X		.....
Mr. Perlmutter .....		X	.....	Mr. Paulsen .....	X		.....
Mr. Donnelly .....		X	.....	Mr. Lance .....	X		.....
Mr. Foster .....		X	.....				
Mr. Carson .....		X	.....				
Mr. Speier .....		X	.....				
Mr. Childers .....		X	.....				
Mr. Minnick .....		X	.....				
Mr. Adler .....		X	.....				
Ms. Kilroy .....		X	.....				
Mr. Driehaus .....		X	.....				
Ms. Kosmas .....			.....				
Mr. Grayson .....		X	.....				
Mr. Himes .....		X	.....				
Mr. Peters .....		X	.....				
Mr. Maffei .....		X	.....				

The following other amendments were also considered by the Committee:

An amendment by Ms. Waters, No. 3, requiring a report to Congress on reductions of consumer credit card limits based on certain

information as to experience or transactions of the consumer, was agreed to by voice vote.

An amendment by Mrs. McCarthy (NY), No. 5, changing “in” to “on” regarding periodic statements, was agreed to by voice vote.

An amendment by Mr. Miller (NC), No. 7, regarding minimum payment advisory, was offered and withdrawn.

An amendment by Mr. Moore (KS) (and Mrs. McCarthy (NY), Mrs. Capito, and Mrs. Biggert), No. 8, regarding small issuers, was agreed to by voice vote.

During the Subcommittee on Financial Institutions and Consumer Credit markup, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Ackerman, No. 1, prohibiting fees for payment on credit card accounts by electronic fund transfers, was agreed to by a record vote of 18 yeas and 17 nays (Record vote no. FI-1):

RECORD VOTE NO. FI-1

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gutierrez .....	X	.....	.....	Mr. Hensarling .....	.....	X	.....
Mrs. Maloney .....	X	.....	.....	Mr. Barrett .....	.....	X	.....
Mr. Watt .....	X	.....	.....	Mr. Castle .....	.....	X	.....
Mr. Ackerman .....	X	.....	.....	Mr. King .....	.....	X	.....
Mr. Sherman .....	X	.....	.....	Mr. Royce .....	.....	X	.....
Mr. Moore .....	X	.....	.....	Mr. Jones .....	.....	.....	.....
Mr. Kanjorski .....	X	.....	.....	Mrs. Capito .....	.....	X	.....
Ms. Waters .....	X	.....	.....	Mr. Garrett .....	.....	.....	.....
Mr. Hinojosa .....	.....	.....	.....	Mr. Gerlach .....	.....	.....	.....
Mrs. McCarthy .....	X	.....	.....	Mr. Neugebauer .....	.....	X	.....
Mr. Baca .....	X	.....	.....	Mr. Price .....	.....	X	.....
Mr. Green .....	.....	.....	.....	Mr. McHenry .....	.....	X	.....
Mr. Clay .....	X	.....	.....	Mr. Campbell .....	.....	X	.....
Mr. Miller .....	X	.....	.....	Mr. McCarthy .....	.....	.....	.....
Mr. Scott .....	X	.....	.....	Mr. Marchant .....	.....	X	.....
Mr. Cleaver .....	X	.....	.....	Mr. Lee .....	.....	X	.....
Ms. Bean .....	.....	X	.....	Mr. Paulsen .....	.....	.....	.....
Mr. Hodes .....	.....	.....	.....	Mr. Lance .....	.....	X	.....
Mr. Ellison .....	.....	.....	.....	<i>Mr. Bachus (Ex Officio)</i> .....	.....	.....	.....
Mr. Klein .....	X	.....	.....				
Mr. Wilson .....	.....	X	.....				
Mr. Meeks .....	X	.....	.....				
Mr. Foster .....	X	.....	.....				
Mr. Perlmutter .....	X	.....	.....				
Ms. Speier .....	.....	.....	.....				
Mr. Childers .....	.....	X	.....				
Mr. Minnick .....	.....	X	.....				
<i>Mr. Frank (Ex Officio)</i> .....	.....	.....	.....				

An amendment by Mr. Hensarling, No. 4, regarding repeated history of irresponsible borrowing, was not agreed to by a record vote of 15 yeas and 24 nays (Record vote no. FI-2):

RECORD VOTE NO. FI-2

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gutierrez .....	.....	X	.....	Mr. Hensarling .....	X	.....	.....
Mrs. Maloney .....	.....	X	.....	Mr. Barrett .....	X	.....	.....
Mr. Watt .....	.....	X	.....	Mr. Castle .....	X	.....	.....
Mr. Ackerman .....	.....	X	.....	Mr. King .....	X	.....	.....
Mr. Sherman .....	.....	X	.....	Mr. Royce .....	X	.....	.....

## RECORD VOTE NO. FI-2—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Moore		X		Mr. Jones			
Mr. Kanjorski		X		Mrs. Capito	X		
Ms. Waters		X		Mr. Garrett	X		
Mr. Hinojosa				Mr. Gerlach	X		
Mrs. McCarthy		X		Mr. Neugebauer	X		
Mr. Baca		X		Mr. Price	X		
Mr. Green		X		Mr. McHenry	X		
Mr. Clay		X		Mr. Campbell	X		
Mr. Miller		X		Mr. McCarthy			
Mr. Scott		X		Mr. Marchant	X		
Mr. Cleaver		X		Mr. Lee	X		
Ms. Bean		X		Mr. Paulsen			
Mr. Hodes		X		Mr. Lance	X		
Mr. Ellison				<i>Mr. Bachus (Ex Officio)</i>			
Mr. Klein		X					
Mr. Wilson		X					
Mr. Meeks		X					
Mr. Foster		X					
Mr. Perlmutter		X					
Ms. Speier							
Mr. Childers		X					
Mr. Minnick		X					
<i>Mr. Frank (Ex Officio)</i>							

An amendment by Mr. Hensarling, No. 5, delaying the effective date pending certification by the Federal Reserve Board, was not agreed to by a record vote of 15 yeas and 25 nays (Record vote no. FI-3):

## RECORD VOTE NO. FI-3

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Gutierrez		X		Mr. Hensarling	X		
Mrs. Maloney		X		Mr. Barrett	X		
Mr. Watt		X		Mr. Castle	X		
Mr. Ackerman		X		Mr. King	X		
Mr. Sherman		X		Mr. Royce	X		
Mr. Moore		X		Mr. Jones			
Mr. Kanjorski		X		Mrs. Capito	X		
Ms. Waters		X		Mr. Garrett	X		
Mr. Hinojosa				Mr. Gerlach	X		
Mrs. McCarthy		X		Mr. Neugebauer	X		
Mr. Baca		X		Mr. Price	X		
Mr. Green		X		Mr. McHenry	X		
Mr. Clay		X		Mr. Campbell		X	
Mr. Miller		X		Mr. McCarthy			
Mr. Scott		X		Mr. Marchant	X		
Mr. Cleaver		X		Mr. Lee	X		
Ms. Bean		X		Mr. Paulsen	X		
Mr. Hodes		X		Mr. Lance	X		
Mr. Ellison				<i>Mr. Bachus (Ex Officio)</i>			
Mr. Klein		X					
Mr. Wilson		X					
Mr. Meeks		X					
Mr. Foster		X					
Mr. Perlmutter		X					
Ms. Speier							
Mr. Childers		X					
Mr. Minnick		X					
<i>Mr. Frank (Ex Officio)</i>							

The following other amendments were considered by the Subcommittee:

An amendment by Mr. Hensarling, No. 2, regarding nonapplicability to certain creditors who make available alternative card options, was not agreed to by a voice vote.

An amendment by Mr., Gutierrez (and Mr. Castle, Mrs. McCarthy (N.Y), Mr. Paulsen, Mr. Cleaver and Mr. Meeks), No. 3, regarding the effective date, was agreed to by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

#### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 627 prohibits certain unfair and deceptive credit card practices and provides consumers with tools to manage their credit card debt responsibly.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

APRIL 27, 2009.

Hon. BARNEY FRANK,  
*Chairman, Committee on the Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 627, the Credit Cardholders' Bill of Rights Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for federal revenues is Barbara Edwards; for federal spending, Susan Willie; and for the private-sector impact, Jacob Kuipers.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 627—Credit Cardholders’ Bill of Rights Act of 2009*

Summary: H.R. 627 would amend the Truth in Lending Act to restrict the use of a number of billing practices applied to consumer credit cards, including those related to changes in interest rates and calculations of balances to which interest rates are applied. It would direct the Board of Governors of the Federal Reserve System (Federal Reserve), in consultation with other financial regulatory agencies, to issue regulations implementing the new standards. It also would increase the information that the Federal Reserve is required to collect on the financial activities of credit card issuers. Finally, H.R. 627 would require the Federal Reserve to report to the Congress about certain practices of credit card issuers, the prevalence of those practices during the 3 years preceding enactment of the bill, and recommendations for regulations or statutes to prevent such practices.

CBO estimates that enacting H.R. 627 would have no significant impact on direct spending or revenues.

H.R. 627 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 627 would impose private-sector mandates, as defined in UMRA. The bill would require creditors to submit detailed information on a semiannual basis to the Federal Reserve and prohibit creditors from engaging in certain credit card billing and issuing practices. Based on information from the Federal Reserve and industry sources, CBO estimates that the aggregate cost of those requirements would likely exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2009. CBO estimates that enacting H.R. 627 would affect direct spending and revenues, but that those effects would not be significant.

According to the Federal Reserve and other federal financial regulatory agencies, the activities required by H.R. 627 would not have a significant effect on their workload or budgets. In May 2008, the Federal Reserve proposed a number of regulatory changes that covered some of the same issues addressed by H.R. 627, and issued those regulations in December 2008. The related changes are scheduled to take effect in July of 2010. CBO expects the additional requirements for the Federal Reserve to collect data and provide reports would not have a significant effect on its workload and we anticipate that existing resources would be used to comply with H.R. 627. The budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Costs incurred by the other financial regulatory agencies affect direct spending, but most of those expenses are offset by fees or income from deposit insurance premiums. Thus, CBO estimates that enacting this bill would not significantly affect revenues, and would have a negligible net effect on direct spending.

Estimated impact on state, local, and tribal governments: H.R. 627 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 627 contains several private-sector mandates as defined in UMRA because it would require creditors to submit detailed information to the Federal Reserve on a semiannual basis and prohibit creditors from engaging in certain billing and issuing practices. The aggregate cost for creditors to comply with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

The bill also would codify several requirements included in credit card regulations recently established by the Federal Reserve and other financial regulatory agencies. CBO believes that action would not constitute a new mandate.

#### *Reporting requirements*

The bill would require the Federal Reserve to collect additional data from creditors on the profitability of their credit card operations, the percentages of income derived from different sources, the level of fees on cardholders and merchants, certain changes made to credit limits and interest rates, and any other specified material sources of income. Under current law, the Federal Reserve collects financial data semiannually from a large sample of creditors. Those data are readily compiled by creditors, and the cost of submitting the data is minimal. However, according to the Federal Reserve and industry sources, in order to comply with the new requirements creditors would need to develop and implement new software programs and systems to compile the necessary data. Information from the Federal Reserve and industry sources indicates that the mandate would affect a large number of creditors and the cost to set up the systems could be significant.

#### *Over-the-limit fees*

The bill would require creditors to allow cardholders to establish a credit limit that cannot be exceeded. As such, creditors would be prevented from completing any transaction that would put the cardholder in excess of their credit limit. Under current practice, most cardholders are allowed to exceed their credit limit and are charged a fee for doing so. Under the bill, creditors would be prohibited from charging over-the-limit fees on accounts which the cardholder has requested a credit limit that cannot be exceeded. Because the bill also would require creditors to notify their cardholders of the option to establish a credit limit and provide the necessary tools for cardholders to do so, the Federal Reserve and industry representatives believe that many cardholders would elect to use the option. According to the Federal Reserve and industry sources, this requirement could significantly affect the amount that creditors collect in fees each year. The industry currently collects billions of dollars in such fees annually. Even if only a small percentage of cardholders elected to use this option, creditors could lose a significant amount of fees.

*Standards for issuing cards*

The bill also would prohibit creditors from allowing individuals to pay any fees as part of the credit made available to them when the terms of the credit card include fees in the first year totaling more than 25 percent of the credit limit. According to the Federal Reserve and industry experts, credit cards with such fees are typically issued to individuals who have low credit scores and they typically carry a higher-than-average interest rate. The Federal Reserve believes that demand for such cards would fall under the bill because some customers in this market would no longer be able to pay the fees. The loss in net income to creditors could be substantial because the industry currently collects billions of dollars annually in interest and fees from such cards.

The bill also would prohibit creditors from issuing credit cards to individuals under the age of 18, unless they meet the exceptions specified in the bill. According to industry representatives and the Federal Reserve, individuals under the age of 18 account for a very small percentage of credit cardholders. Therefore, CBO estimates that the cost to creditors to comply with this mandate would be small relative to the annual threshold established in UMRA.

*Credit account features*

H.R. 627 would impose several new requirements on creditors regarding account pricing, terms, and disclosures. The bill would prohibit creditors from charging interest on payments received between the end of the account period and the receipt of the payment. The bill also would impose new requirements on creditors regarding the disclosure of activation information and interest rate increases and would require creditors to provide a service through which cardholders can determine their payoff balance. Creditors would be prohibited from charging credit cardholders for making payments regardless of the manner in which the payment is made. Finally, the bill would prohibit creditors from using the term “prime rate” unless the term is based on the definition provided in the bill. The cost to creditors would likely be small because compliance would involve only a small adjustment in current procedures, because some of the fees prohibited do not generate much income for the industry, and because most creditors do not engage in the prohibited acts.

Previous CBO estimate: On April 24, 2009, CBO transmitted an estimate for S. 414, the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 31, 2009. Both H.R. 627 and S. 414 would require the Federal Reserve to develop regulations that restrict the use of certain billing practices applied to consumer credit cards. S. 414 also contains provisions, not included in H.R. 627, that would make changes to the funds administered by the Federal Deposit Insurance Corporation and the National Credit Union Administration (NCUA) including an increase in the amounts they could borrow from the U.S. Treasury. S. 414 also would lengthen the amount of time the NCUA would have to replenish its insurance fund after experiencing losses. CBO’s cost estimates for the two bills reflect those differences.

Estimate prepared by: Federal revenues: Barbara Edwards; Federal costs: Susan Willie; Impact on state, local, and tribal govern-



ments: Elizabeth Delisle; Impact on the private sector: Jacob Kuipers.

Estimate approved by: Frank J. Sammartino, Acting Assistant Director for Tax Analysis; Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 627 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section establishes the short title of the bill, the “Credit Cardholders’ Bill of Rights Act of 2009.”

##### *Section 2. Credit cards on terms consumers can repay*

###### *Retroactive rate increases and universal default limited*

Section 2(a). A creditor is prohibited from raising the annual percentage rate of interest (APR) on existing consumer credit card balances, except as provided in section 2(b). If a creditor raises an APR and there is an existing balance to which such rate increase may not apply, the creditor must allow the consumer to repay that existing balance through a method that is at least as beneficial to the consumer as one of the following: (1) a five-year amortization period or (2) the percentage of the existing balance included in the minimum payment before the rate increase cannot be more than doubled. “Existing balance” means the amount owed on a consumer credit card as of the end of the 14th day after the creditor provides

notice of the rate increase under section 2(c). A creditor is prohibited from assessing a fee or charge based solely on an existing balance to which an APR increase may not apply.

Section 2(b). A creditor may increase an APR on an existing balance on a consumer credit card only if the increase is due solely to (1) the operation of an index that is not under the creditor's control and is available to the general public; (2) the expiration of a promotional rate; (3) the consumer's failure to comply with a negotiated workout plan with the creditor (but the new APRs for each category of transactions cannot exceed the corresponding APRs on the day before the effective date of the workout plan); or (4) the consumer's failure to make minimum payment within 30 days of the minimum payment due date.

Section 2(c). No increase in any consumer credit card APR (other than an increase due solely to the operation of an index that is not under the creditor's control and is available to the general public) may take effect unless the creditor provides the consumer a written notice at least 45 days before the effective date that fully describes the changes in the APR and the extent to which such increase would apply to an existing balance. Except for the types of rate increases described in paragraph 2(b), no written notice of an APR increase for which notice is required by this paragraph may take effect until at least one year after the account was opened.

A creditor also must provide written notice to the consumer of all significant changes to a credit card contract at least 45 days before such changes take effect.

*Section 3. Additional provisions regarding account features, terms, and pricing*

*Double cycle billing prohibited*

Section 3(a). Some creditors provide a time within which any credit extended under the credit plan for purchases of goods and services may be repaid by the consumer without incurring a finance charge (a "grace period"). The bill prohibits a creditor from imposing a finance charge on a credit card balance that is based on balances for days in billing cycles preceding the most recent billing cycle as a result of a loss of any grace period, with exceptions that allow the creditor to adjust finance charges if a payment is returned for insufficient funds or following resolution of a billing dispute.

*Limitations relating to account balances attributable only to accrued interest*

Section 3(b). If the outstanding balance at the end of a billing period represents an amount attributable only to interest accrued during the preceding billing period on an outstanding balance that was fully repaid during that period, then the creditor may not impose a fee on such balance attributable only to interest before such end of the billing period and may not treat any failure to pay such balance before such end of the billing period as a default on the account. Such balance remains a legally binding debt obligation of the consumer, and interest may accrue on that balance in accordance with the account terms.

*Payoff balance information*

Section 3(c). This section generally requires a creditor to provide on each periodic statement a toll-free telephone number, Internet address, and web site at which a consumer may request a payoff balance. A creditor that issues fewer than 500,000 credit cards would be required to provide only one of these notification methods.

*Consumer right to reject card before notice is provided of open account*

Section 3(d). A creditor is prohibited from furnishing to a consumer reporting agency (as defined in section 603 of the Truth in Lending Act) information about the establishment of a newly-opened credit card account until the cardholder uses or activates the card. This does not, however, prohibit the creditor from furnishing information to a credit reporting agency about any application for a credit card account or any inquiry about any such account.

*Use of terms*

Section 3(e). The term “fixed rate,” when used with respect to an APR or interest rate for a credit card account, may be used to refer only to a rate that will not change for any reason over the period of time clearly specified in the account terms.

The term “prime rate” when used in an agreement or contract for a credit card account, may be used to refer only to the bank prime rate published by the Federal Reserve in the H.15 statistical release (or any successor publication).

To clarify the term “due date,” this section requires that each periodic statement contain a date by which the next periodic payment must be made to avoid a late fee or be considered a late payment. Any payment received by 5 P.M., local time at the location specified by the creditor for the receipt of payment, on the specified date shall be timely for all purposes. Online and telephone payments that are made directly to the creditor before 5 p.m., local time at the location specified by the creditor, on a business day must be credited to the consumer’s account that business day. A receipt from the U.S. Postal Service or a common carrier indicating that a payment was sent no less than 7 days before the due date creates a presumption of timely payment, which may be rebutted by the creditor for fraud or dishonesty with respect to the mailing date.

*Payment allocations*

Section 3(f). If two or more different APRs apply to different portions of an outstanding credit card balance and the consumer pays more than the minimum payment, the creditor must apply the excess payment either (1) to the portion with the highest APR (and then to additional portions, if any, in descending order of APR) or (2) in the same proportion as each such portion bears to the total outstanding balance. A creditor may allocate the entire amount of an excess payment to a balance on which interest is deferred for the two billing cycles preceding the expiration of the interest deferral period. A creditor that offers an interest-free period to a consumer who pays the balance in full may not deny a consumer who takes advantage of a promotional rate or deferred interest offer any

such time period for repaying credit without incurring finance charges.

*Timely provision of periodic statement*

Section 3(g). A creditor must send each periodic statement with respect to a credit card account to the consumer not less than 21 days before the due date.

*Due dates*

Section 3(h). If a due date falls on a day that mail is not delivered to, or accepted for processing by, the creditor, then the payment would be timely if received by mail the next business day.

*Section 4. Consumer choice with respect to Over-the-Limit transactions*

If a creditor imposes an over-the-limit (OTL) fee for an extension of credit that exceeds the consumer's credit limit, the consumer may elect to prohibit the creditor from completing any transaction that would involve extending credit in excess of the consumer's credit limit. Such an election becomes effective three business days after the creditor receives it and remains effective until the consumer revokes it.

A creditor generally must establish and maintain a notification system, including a toll-free telephone number, Internet address, and web site, through which consumers can opt out of OTL transactions. A creditor that maintains fewer than 500,000 credit card accounts would be required to maintain only one of these notification methods. A consumer may exercise the OTL transaction opt-out by notifying the creditor either through this notification system or by submitting a form issued by the creditor for this purpose.

A creditor must notify consumers of the availability of the OTL transaction opt-out at least annually on the periodic statement and on any periodic statement that reflects imposition of an OTL fee during the period covered by the statement.

If a consumer exercises the OTL opt-out right, then the creditor may not charge an OTL fee for any reason that caused the outstanding balance to exceed the consumer's credit limit. If a consumer does not exercise the right to opt out of OTL transactions, an OTL fee may be imposed only once during a billing cycle if the credit limit is exceeded on the last day of such billing cycle, and an OTL fee may be imposed only once in each of the two subsequent billing cycles with respect to such charges in excess of the credit limit (unless the consumer has obtained an additional extension of credit or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle). A creditor may not charge an OTL fee due solely to credit holds, unless the actual amount of the transaction subject to the hold exceeded the credit limit.

The Federal Reserve must issue rules allowing for the completion of OTL transactions that for operational reasons exceed the credit limit by a de minimis amount, even if the cardholder has opted out. These rules cannot, however, allow for the imposition of any fee or rate increase based on an OTL transaction permitted under these rules.

*Section 5. Strengthen credit card information collection*

This section amends an existing provision, which requires the FRB to collect credit card price and availability data on a semi-annual basis, to specify in detail information to be collected with respect to each creditor regarding the type and level of credit card rates and fees charged by issuers (including the number of consumers assessed such rates and fees), the total number and value of credit card accounts and transactions, and other information relating to consumer credit card accounts.

This section also requires the Federal Reserve annually to transmit to Congress and make public a report of estimates of the approximate relative percentage of income derived by the credit card operations of depository institutions from interest (including separate estimates for income derived from interest with an annual APR at/above and below 25 percent); fees on cardholders; fees on merchants; and other material sources.

*Section 6. Standards applicable to initial issuance of subprime or "Fee Harvester" cards*

If the terms of a credit card account require the payment of any fee (other than late fees, OTL fees, or fees for payments returned for insufficient funds) by the consumer in the first year the account is open in an amount that exceeds 25 percent of the credit limit at account opening, then the consumer cannot use credit made available by the card to pay any fee (other than late fees, OTL fees, or fees for payments returned for insufficient funds).

*Section 7. Extension of credit to underage consumers*

This section prohibits issuance of credit cards to a consumer who is under 18, unless the consumer is emancipated under applicable State law. A signed application by a consumer stating that (s)he is over 18 is sufficient proof of age.

*Section 8. Prohibit fees for payment on credit card accounts by electronic fund transfer*

This section prohibits the imposition of any fee based on the manner in which payment on any credit card account is made, including a fee for making a payment by electronic fund transfer. This section applies to all payments made after the date of enactment, and any fee imposed after such date in contravention of this provision shall be promptly recredited to the consumer's account.

*Section 9. Report to Congress on reductions of consumer credit card limits based on certain information as to experience or transactions of the consumer*

Within 6 months of enactment, this section requires the Federal Reserve Board, in consultation with the other Federal banking agencies and the Federal Trade Commission, to report to the House Financial Services Committee and the Senate Banking, Housing, and Urban Affairs Committee on the extent to which creditors have, during the previous 3 years, reduced credit limits or raised interest rates applicable to credit cards based on the geographical area in which a transaction occurs, the identity of the merchant involved in a transaction, the identity of the creditor that extended or holds the consumer's mortgage loan, or other characteristics of

the consumer’s credit transactions (such as transaction types or prices or the types of items purchased).

The report to the congressional committees must include the number and identity of creditors engaged in the above-mentioned practices, the extent to which such practices adversely affect minority and low-income consumers, any other relevant information regarding such practices, and recommendations on regulatory or statutory changes that may be needed to restrict or prevent such practices.

*Section 10. Effective date*

The bill generally takes effect after the earlier of the end of the 12-month period beginning on the date of enactment or after June 30, 2010. An interim effective period for notices regarding APR increases provides that, during the period beginning 90 days after the date of enactment and ending on the effective date of the Act, no increase in APR may take effect without a written notice being delivered at least 45 days before the increase takes effect, except that notice shall not be required during this period for increases due solely to operation of a publically available index not set by the creditor, expiration of a promotional rate, or the consumer’s failure to comply with a negotiated workout plan.

The Federal Reserve, in consultation with the other Federal banking agencies, must promulgate final implementing rules by the earlier of the end of the 5 month period beginning on the date of enactment or June 1, 2010.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TRUTH IN LENDING ACT**

\* \* \* \* \*

**TITLE I—CONSUMER CREDIT COST DISCLOSURE**

\* \* \* \* \*

**CHAPTER 1—GENERAL PROVISIONS**

\* \* \* \* \*

**§ 101. Short title**

This title may be cited as the Truth in Lending Act.

\* \* \* \* \*

**CHAPTER 2—CREDIT TRANSACTIONS**

Sec.  
121. General requirement of disclosure.

\* \* \* \* \*

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

\* \* \* \* \*

**§ 127. Open end consumer credit plans**

(a) \* \* \*

\* \* \* \* \*

(c) **DISCLOSURE IN CREDIT AND CHARGE CARD APPLICATIONS AND SOLICITATIONS.—**

(1) \* \* \*

\* \* \* \* \*

(8) **EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.—**

(A) **IN GENERAL.—***No credit card may be knowingly issued to, or open end credit plan established on behalf of, a consumer who has not attained the age of 18, unless the consumer is emancipated under applicable State law.*

(B) **RULE OF CONSTRUCTION.—***For the purposes of determining the age of an applicant, the submission of a signed application by a consumer stating that the consumer is over 18 shall be considered sufficient proof of age.*

\* \* \* \* \*

(i) **PAYMENTS BY EFT.—***In the case of a credit card account under an open end consumer credit plan, a creditor may not impose a fee based on the manner in which payment on the account is made, including a fee for making any such payment by electronic fund transfer (as defined in section 903).*

\* \* \* \* \*

**§ 127B. Additional requirements for credit card accounts under an open end consumer credit plan**

(a) **RETROACTIVE RATE INCREASES AND UNIVERSAL DEFAULT LIMITED.—**

(1) **IN GENERAL.—***Except as provided in subsection (b), no creditor may increase any annual percentage rate of interest applicable to the existing balance on a credit card account of the consumer under an open end consumer credit plan.*

(2) **EXISTING BALANCE DEFINED.—***For purposes of this subsection and subsections (b) and (c), the term “existing balance” means the amount owed on a consumer credit card account as of the end of the 14th day after the creditor provides notice of an increase in the annual percentage rate in accordance with subsection (c).*

(3) **TREATMENT OF EXISTING BALANCES FOLLOWING RATE INCREASE.—***If a creditor increases any annual percentage rate of interest applicable to the credit card account of a consumer under an open end consumer credit plan and there is an existing balance in the account to which such increase may not apply, the creditor shall allow the consumer to repay the existing balance using a method provided by the creditor which is at least as beneficial to the consumer as 1 of the following methods:*

(A) An amortization period for the existing balance of at least 5 years starting from the date on which the increased annual percentage rate went into effect.

(B) The percentage of the existing balance that was included in the required minimum periodic payment before the rate increase cannot be more than doubled.

(4) *LIMITATION ON CERTAIN FEES.—If—*

(A) a creditor increases any annual percentage rate of interest applicable on a credit card account of the consumer under an open end consumer credit plan; and

(B) the creditor is prohibited by this section from applying the increased rate to an existing balance, the creditor may not assess any fee or charge based solely on the existing balance.

(b) *EXCEPTIONS.—*

(1) *IN GENERAL.—*A creditor may increase any annual percentage rate of interest applicable to the existing balance on a credit card account of the consumer under an open end consumer credit plan only under the following circumstances:

(A) *CHANGE IN INDEX.—*The increase is due solely to the operation of an index that is not under the creditor's control and is available to the general public.

(B) *EXPIRATION OF PROMOTIONAL RATE.—*The increase is due solely to the expiration of a promotional rate.

(C) *FAILURE TO COMPLY WITH WORKOUT PLAN.—*The increase is due solely to the fact the consumer failed to comply with a negotiated workout plan with the creditor.

(D) *PAYMENT NOT RECEIVED DURING 30-DAY GRACE PERIOD AFTER DUE DATE.—*The increase is due solely to the fact that any consumer's minimum payment has not been received within 30 days after the due date for such minimum payment.

(2) *LIMITATION ON INCREASES DUE TO FAILURE TO COMPLY WITH WORKOUT PLAN.—*Notwithstanding paragraph (1)(C), the annual percentage rate in effect with respect to each category of transactions for a credit card account under an open end consumer credit plan after the increase permitted under such subsection due to the failure of a consumer to comply with a workout plan may not exceed the annual percentage applicable to such category of transactions on the day before the effective date of the workout plan.

(3) *STANDARDS REQUIRED.—*The Board shall prescribe, by regulation, standards—

(A) for entering into any workout plan applicable to any credit card account under an open end consumer credit plan; and

(B) governing any such workout plan.

(c) *ADVANCE NOTICE OF RATE INCREASES.—*

(1) *IN GENERAL.—*In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest (other than an increase described in subsection (b)(1)(A)) may take effect unless the creditor provides a written notice to the consumer at least 45 days before the increase takes effect which fully describes the changes in the annual percentage rate, in a complete and conspicuous manner,



and the extent to which such increase would apply to an existing balance.

(2) *LIMITATION ON RATE INCREASE NOTICES WITHIN FIRST YEAR.*—Except in the case of an increase described in subparagraph (B), (C), or (D) of subsection (b)(1), no written notice under paragraph (1) of an increase in any annual percentage rate of interest on any credit card account under an open end consumer credit plan (for which notice is required under such paragraph) shall be effective before the end of the 1-year period beginning when the account is opened.

(d) *ADVANCE NOTICE OF SIGNIFICANT CONTRACT CHANGES.*—In the case of any credit card account under an open end consumer credit plan, no significant change to the contract (such as any fee) may take effect unless the creditor provides a written notice of at least 45 days before the change takes effect which fully describes the changes in the contract, in a complete and conspicuous manner.

(e) *DOUBLE CYCLE BILLING.*—

(1) *IN GENERAL.*—No finance charge may be imposed by a creditor with respect to any balance on a credit card account under an open end consumer credit plan that is based on balances for days in billing cycles preceding the most recent billing cycle as a result of the loss of any grace period.

(2) *EXCEPTIONS.*—Paragraph (1) shall not apply so as to prohibit a creditor from—

(A) adjusting finance charges following the return of a payment for insufficient funds; or

(B) adjusting finance charges following resolution of a billing error dispute.

(3) *GRACE PERIOD.*—For purposes of this subsection, the term “grace period” means, with respect to any credit card account under an open end consumer credit plan, the time period, if any, provided by the creditor within which any credit extended under such credit plan for purchases of goods or services may be repaid by the consumer without incurring a finance charge.

(f) *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 at the end of a billing period represents an amount attributable only to interest accrued during the preceding billing period on an outstanding balance that was fully repaid during the preceding billing period—

(A) no fee may be imposed or collected in connection with such balance attributable only to interest before such end of the billing period; and

(B) any failure to make timely repayments of the balance attributable only to interest before such end of the billing period shall not constitute a default on the account.

Such balance remains a legally binding debt obligation.

(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.

(g) PAYOFF BALANCE INFORMATION.—

(1) IN GENERAL.—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 toll-free telephone number, Internet address, and website at which the consumer may request the payoff balance on the account.

(2) SMALL ISSUERS.—Notwithstanding paragraph (1), in the case of any credit card issuer which issues fewer than 50,000 credit cards in conjunction with credit card accounts under open end consumer credit plans, each periodic statement provided by such a creditor to a consumer with respect to any such credit card account shall contain the toll-free telephone number, Internet address, or website at which the consumer may request the payoff balance on the account.

(h) CONSUMER RIGHT TO REJECT CARD BEFORE NOTICE OF NEW ACCOUNT IS PROVIDED TO CONSUMER REPORTING AGENCY.—

(1) IN GENERAL.—A creditor may not furnish any information to a consumer reporting agency (as defined in section 603) concerning the establishment of 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.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as prohibiting a creditor from furnishing information about any application for a credit card account under an open end consumer credit plan or any inquiry about any such account to a consumer reporting agency (as so defined).

(i) 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., local time at the location specified by the creditor for the receipt of payment, 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 online to the website of the credit card issuer or by tele-

phone directly to the credit card issuer before 5 p.m., local time at the location specified by the creditor for the receipt of payment, 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.

(j) *PAYMENT ALLOCATIONS.*—

(1) *IN GENERAL.*—If 2 or more different annual percentage rates apply to different portions of an outstanding balance on a credit card account under an open end consumer credit plan, the amount of any periodic payment in excess of the required minimum payment shall be applied using 1 of the following methods:

(A) *HIGH-TO-LOW METHOD.*—The excess amount is allocated first to the balance with the highest annual percentage rate and any remaining portion is allocated to any other balance in descending order, based on the applicable annual percentage rate each portion of such balance bears, from the highest such rate to the lowest.

(B) *PRO RATA METHOD.*—The excess amount is allocated among each of the portions of such balance which bear different rates of interest in the same proportion as each such portion of the outstanding balance bears to the total outstanding balance.

(2) *CLARIFICATION RELATING TO CERTAIN DEFERRED INTEREST ARRANGEMENTS.*—A creditor may allocate the entire amount paid by the consumer in excess of the required minimum periodic payment to a balance on which interest is deferred during the 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

(3) *PROHIBITION ON RESTRICTED GRACE PERIODS UNDER CERTAIN CIRCUMSTANCES.*—If, with respect to any credit card account under an open end consumer credit plan, a creditor offers a time period in which to repay credit extended without incurring finance charges to cardholders who pay the balance in full, the creditor may not deny a consumer who takes advantage of a promotional rate balance or deferred interest rate balance offer with respect to such an account any such time period for repaying credit without incurring finance charges.

(k) *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 21 calendar days before the due date identified in such statement for the next payment on the outstanding balance on such account, and section 163(a) shall be applied with respect to any such account by substituting “21” for “fourteen”.

(l) *DUE DATES.*—If the date established by a creditor as the date on which a periodic payment on a credit card account under an open end consumer credit plan is due is a day on which mail is either not delivered to such creditor or is not accepted by the creditor for processing on such day, the creditor may not treat the receipt by the creditor of any such periodic payment by mail as of the next business day of the creditor as late for any purpose.

(m) *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 creditor receives notice from the consumer in accordance with paragraph (2) and shall remain effective until the consumer revokes the election.

(4) *NOTIFICATION SYSTEM.*—

(A) *IN GENERAL.*—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 website, 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).

(B) *SMALL ISSUERS.*—Notwithstanding subparagraph (A), any credit card issuer which issues fewer than 50,000 credit cards in conjunction with credit card accounts under open end consumer credit plans shall establish and maintain a notification system, which shall include a toll-free telephone number, Internet address, or website, 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) on the periodic statement required under section 127(b) with respect to such account at least once each calendar year; and

(B) on 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.

(n) *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.

(o) *OVER-THE-LIMIT FEES PROHIBITED IN CONJUNCTION WITH CERTAIN CREDIT HOLDS.*—Notwithstanding subsection (n), an over-the-limit fee may not be imposed if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit.

(p) *STANDARDS APPLICABLE TO INITIAL ISSUANCE OF SUBPRIME OR “FEE HARVESTER” CARDS.*—

(1) *IN GENERAL.*—In the case of any credit card account under an open end consumer credit plan the terms of which require the payment of any fee (other than any late fee, any over-the-limit fee, or any fee for a payment returned for insufficient funds) 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 when the account is opened, no payment of any fee (other than any late fee, any over-the-limit fee, or any fee for a payment returned for insufficient funds) may be made from the credit made available by the card.

(2) *RULE OF CONSTRUCTION.*—No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.

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### § 136. Dissemination of annual percentage rates

(a) \* \* \*

(b) CREDIT CARD PRICE AND AVAILABILITY INFORMATION.—

(1) **COLLECTION REQUIRED.**—The Board shall *COLLECTION REQUIRED.*—

(A) *IN GENERAL.*—The Board shall collect, on a semi-annual basis, credit card price and availability information, including the information required to be disclosed under section 127(c) of this chapter, from a broad sample of financial institutions which offer credit card services.

(B) *INFORMATION TO BE INCLUDED.*—The information under subparagraph (A) shall include, for the relevant semiannual period, the following information with respect each creditor in connection with any consumer credit card account:

(i) A list of each type of transaction or event during the semiannual period for which 1 or more creditors has imposed a separate interest rate upon a consumer credit card accountholder, 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 consumer credit card accountholder during the semiannual period; and

(II) the number of cardholders to whom each such interest rate was applied during the last calendar month of the semiannual period, and the total amount of interest charged to such accountholders at each such rate during such month.

(iii) A list of each type of fee that 1 or more of the creditors has imposed upon a consumer credit card accountholder during the semiannual period, 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 accountholders upon whom the fee was imposed during each calendar month of the semi-annual period, and the total amount of fees imposed upon cardholders during such month.

(v) The total number of consumer credit card accountholders that incurred any finance charge or any other fee during the semiannual period.

(vi) The total number of consumer credit card accounts maintained by each creditor as of the end of the semiannual period.

(vii) *The total number and value of cash advances made during the semiannual period under a consumer credit card account.*

(viii) *The total number and value of purchases involving or constituting consumer credit card transactions during the semiannual period.*

(ix) *The total number and amount of repayments on outstanding balances on consumer credit card accounts in each month of the semiannual period.*

(x) *The percentage of all consumer credit card accountholders (with respect to any creditor) who—*

*(I) incurred a finance charge in each month of the semiannual period on any portion of an outstanding balance on which a finance charge had not previously been incurred; and*

*(II) incurred any such finance charge at any time during the semiannual period.*

(xi) *The total number and amount of balances accruing finance charges during the semiannual period.*

(xii) *The total number and amount of the outstanding balances on consumer credit card accounts as of the end of such semiannual period.*

(xiii) *Total credit limits in effect on consumer credit card accounts as of the end of such semiannual period and the amount by which such credit limits exceed the credit limits in effect as of the beginning of such period.*

(xiv) *Any other information related to interest rates, fees, or other charges that the Board deems of interest.*

\* \* \* \* \*

(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.*

\* \* \* \* \*

## DISSENTING VIEWS

The way that consumers pay for products and services is dramatically changing, with electronic payments (credit and debit cards) now accounting for more than half of all transactions. Credit cards provide quick, easy and convenient ways for consumers to conduct their daily financial transactions. And given the crucial role that credit cards have come to play for individual consumers and the economy, it may be appropriate to consider new ways to protect consumers from unfair and deceptive credit card practices, ensuring that they receive useful and complete disclosures about the terms and conditions governing their cards. But policymakers must realize that in endeavoring to protect consumers, they may end up imposing considerable costs on the U.S. economy, because even the best policy cannot substitute for personal responsibility and may end up both raising the price of credit for some and unfairly limiting access to credit to others. It is our view that the Credit Cardholders' Bill of Rights Act of 2009 (H.R. 627) is likely to impose such costs.

In limiting credit card issuers' ability to price for risk, Congress needs to avoid overreacting by forcing responsible card-holders to subsidize irresponsible ones through higher fees and fewer rewards. Moreover, in the midst of an economic downturn, we should not be restricting options for success, especially for small businesses, which are the economic engine and America's number one jobs creator. The Small Business Administration has testified that small businesses rely on credit cards as a tool for their day-to-day operations and often shut down or lay off employees when banks will not provide the necessary credit.

And the Federal Reserve (Fed) has already proffered new rules—due to be implemented on July 1, 2010—to protect consumers who use credit cards. Utilizing its statutory authority under the Federal Trade Commission Act to limit unfair or deceptive acts or practices and its power under the Truth in Lending Act (Regulation Z) to regulate account disclosures, the Fed has issued 1,200 pages of regulations that fully address many of the practices that consumers find offensive and that H.R. 627 purports to remedy. Given the complexity of credit card products and cardholder agreements, the Fed engaged in an extensive rule-writing process and conducted wide-ranging consumer testing to ensure that the new rules could be effective.

Even as it spent more than three years drafting rules, reacting to the concerns that more than 60,000 individuals shared in comment letters and studying the ways that individuals process card disclosures, the Fed acknowledged that its regulations may increase the costs of credit and limit its availability. As former Fed Governor Randall Kroszner said when announcing the new rules, “Unfair practices can impose significant costs on consumers. Like-



wise, the new rules will have a cost, too. . . . Although consumers might see some costs decline as new business models emerge, consumers might see other costs increase.” The strong possibility that responsible credit cardholders will face higher costs from limitations on issuers’ ability to price for risk is all the more reason why layering potentially conflicting statutory directives on top of the comprehensive regulatory regime established by the Federal Reserve is unwise.

Implementing sweeping reforms that might work takes time. In a December 2008 meeting to finalize the rules, the Federal Reserve System’s Director of Consumer Affairs explained to Chairman Ben Bernanke that because card issuers will need to rethink their entire business models, reprogram their systems, and redesign their marketing materials, solicitations, periodic statements and contracts, no earlier implementation date than July 2010 would be feasible. Fed representatives have also testified previously that speeding up implementation could be counter-productive if issuers passed higher expenses on to customers or eliminated some product offerings that consumers depend on. The Majority seems to disagree.

Yet the Majority cannot credibly contend that the regulators are stalling or that its solutions are inadequate. H.R. 627 has been designed to address identical consumer concerns. Like the Fed rules, H.R. 627 seeks to prevent card companies from accruing finance charges because of two-cycle billing computation methods; increasing interest rates retroactively; allocating payments to maximize interest rate charges; and providing consumers insufficient time to make payments. Heeding the Fed’s warnings that H.R. 627’s three-month implementation period was unreasonably short and potentially harmful to consumers, the Financial Institutions and Consumer Credit Subcommittee accepted an amendment to delay H.R. 627’s implementation date. But the Full Committee undid the Subcommittee’s work, over the regulators’ objections, and accepted an amendment offered by Mrs. Maloney and Mr. Maffei to re-accelerate the implementation of certain disclosure rules.

The Committee Majority also defeated—on a straight party-line vote—a second-degree amendment that Mr. Hensarling offered to a provision added by Mrs. Waters requiring the Federal banking regulators to study the ways creditors make credit decisions based on geography and consumer spending patterns. The Hensarling amendment would have simply required the study to also encompass the impact of the legislation on the costs and availability of credit for consumers, yet Democrats voted in lock-step to block it. This suggests that the Majority either does not care about the consequences of the legislation it passes, or fears that the findings of an independent study of such consequences would validate the concerns of those who believe that H.R. 627 threatens to do more harm than good.

Economic anxiety is widespread and Americans do not feel secure. Yet H.R. 627, a bill whose proponents claim will address one of the sources of that anxiety, may only make matters worse, by driving up the costs of credit and significantly curtailing its availability. It is the wrong bill at the wrong time.

MICHELE BACHMANN.  
SCOTT GARRETT.  
THOMAS PRICE.  
SPENCER BACHUS.  
JEB HENSARLING.  
RANDY NEUGEBAUER.  
FRANK D. LUCAS.

