

115TH CONGRESS
2D SESSION

H. R. 5660

To amend the Truth in Lending Act to provide coverage under such Act for credit cards issued to small businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2018

Mrs. LOWEY introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to provide coverage under such Act for credit cards issued to small businesses, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Credit Card Act of 2018”.

6 (b) FINDINGS.—The Congress finds as follows:

7 (1) Economic growth has frequently been led by
8 the creation of millions of new, small businesses.

9 (2) Today, small business owners are severely
10 limited in their ability to finance new business ven-

1 tures because access to capital through traditional
2 resources has been restricted.

3 (3) In 2017, 27 percent of small businesses sur-
4 veyed cannot access adequate financing.

5 (4) Small businesses are being pushed into
6 using credit cards to meet capital needs.

7 (5) This use of credit cards is especially true
8 for innovative and rapidly growing businesses which
9 lack the assets necessary for a traditional loan.

10 (6) In 2017, 20 percent of small businesses say
11 they were forced to reduce their number of employ-
12 ees as a result of inability to access financing.

13 (7) In 2017, 31 percent of the small businesses
14 surveyed used credit cards to meet their capital
15 needs.

16 (8) In 1993, only 16 percent of small busi-
17 nesses used credit cards as a source of financing.

18 (9) One-half of small businesses using a credit
19 card carry a monthly balance, and one-quarter of
20 small businesses carry a monthly balance in excess
21 of \$10,000.

22 (10) The average interest rate charged on small
23 business credit cards is 14.16 percent.

24 (11) Nearly one-in-three small businesses with
25 credit cards have reported a worsening of terms, in-

1 including increased interest rates, fees, and payment
2 procedures, making it more difficult to expand oper-
3 ations or grow business.

4 (12) Small business credit cards contracts do
5 not include consumer protections provided to individ-
6 uals under the CARD Act.

7 **SEC. 2. EXTENDING CREDIT CARD PROTECTIONS UNDER**
8 **THE TRUTH IN LENDING ACT TO SMALL BUSI-**
9 **NESSES.**

10 (a) DEFINITION OF CONSUMER.—Section 103(i) of
11 the Truth in Lending Act (15 U.S.C. 1602(i)) is amend-
12 ed—

13 (1) by striking “The adjective ‘consumer’, used
14 with reference to a credit transaction, characterizes
15 the transaction as one in which the party to whom
16 credit is offered or extended is” and inserting “CON-
17 SUMER.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the term ‘consumer’, when used as an ad-
20 jective to describe or modify a credit transaction or
21 credit plan, means a transaction or credit plan under
22 which credit is offered or extended to”; and

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

1 “(2) SMALL BUSINESS INCLUDED UNDER CER-
2 TAIN CIRCUMSTANCES.—

3 “(A) IN GENERAL.—For purposes of any
4 provision of this title relating to a credit card
5 account under an open end credit plan, the
6 term ‘consumer’ includes any qualified small
7 business.

8 “(B) QUALIFIED SMALL BUSINESS.—For
9 purposes of subparagraph (A), the term ‘quali-
10 fied small business’ means, with respect to any
11 credit card account under an open end credit
12 plan, any business concern having 50 or fewer
13 employees, whether or not—

14 “(i) the credit card account is in the
15 name of an individual or a business entity;
16 and

17 “(ii) any credit transaction involving
18 such account is for business or personal
19 purposes.

20 “(C) EXCLUSION OF SMALL BUSINESS
21 AFTER ‘OPT OUT’ EFFECTIVE DATE.—The term
22 ‘qualified small business’ shall not include any
23 business concern described in subparagraph (A)
24 after the effective date of any election under
25 section 135(b) by the individual or business for

1 which the credit card account referred to in
2 such subparagraph has been established, so
3 long as such election remains in effect.”.

4 (b) AMENDMENTS TO EXEMPTIONS.—Section 104(1)
5 of the Truth in Lending Act (15 U.S.C. 1603(1)) is
6 amended—

7 (1) by inserting “other than a credit trans-
8 action under an open end consumer credit plan in
9 which the consumer is a qualified small business”
10 after “agricultural purposes”; and

11 (2) by inserting “other than qualified small
12 businesses” after “organizations”.

13 (c) BUSINESS CREDIT CARD AMENDMENTS.—Sec-
14 tion 135 of the Truth in Lending Act (15 U.S.C. 1645)
15 is amended—

16 (1) by striking “The exemption provided by”
17 and inserting “(a) IN GENERAL.—The exemption
18 provided by”; and

19 (2) by adding at the end the following new sub-
20 section:

21 “(b) QUALIFIED SMALL BUSINESS OPT OUT FROM
22 COVERAGE.—

23 “(1) NOTICE OF COVERAGE.—The disclosures
24 under section 127(a) before opening a credit card
25 account under an open end credit plan for a quali-

1 fied small business shall include a clear and con-
2 spicuous disclosure—

3 “(A) that the qualified small business is
4 treated as a consumer under this title and is
5 subject to the requirements of this title as a
6 consumer;

7 “(B) that the business may elect, in ac-
8 cordance with this subsection, to be exempt,
9 under section 104(1), from this title to the
10 same extent as any business other than a quali-
11 fied small business; and

12 “(C) of the procedures for making the elec-
13 tion and for subsequently revoking any such
14 election.

15 “(2) ELECTION.—The Board shall prescribe
16 procedures for making an effective election under
17 this subsection and for revoking any such election.

18 “(3) PROHIBITION ON DISCRIMINATION
19 AGAINST QUALIFIED SMALL BUSINESS.—No creditor
20 may—

21 “(A) discriminate against any business
22 concern having 50 or fewer employees in con-
23 nection with any credit card account of, or any
24 application for a credit card account by such

1 business, under an open end credit plan on any
2 basis; or

3 “(B) require any qualified small business
4 to make an election under this subsection as a
5 condition for opening a credit card account, or
6 for providing more advantageous terms for any
7 credit card account, under an open end credit
8 plan.”.

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