

CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2008

SEPTEMBER 16, 2008.—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. 5244]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5244) to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes, 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:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Credit Cardholders’ Bill of Rights Act of 2008”.

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

(a) 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 fourteenth 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 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 OR LOSS OF PROMOTIONAL RATE.—The increase is due solely to—

“(i) the expiration of a promotional rate; or

“(ii) the loss of a promotional rate for a reason specified in the account agreement (e.g., late payment).

“(C) PAYMENT NOT RECEIVED DURING 30-DAY GRACE PERIOD AFTER DUE DATE.—The increase is due solely to the fact that the 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 LOSS OF PROMOTIONAL RATE.—Notwithstanding paragraph (1)(B)(ii), the annual percentage rate in effect after the increase permitted under such subsection due to the loss of a promotional rate may not exceed the annual percentage rate that would have applied under the terms of the agreement after the expiration of the promotional rate.”.

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

“(c) ADVANCE NOTICE OF RATE INCREASES.—In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest 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.”.

(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 (c) (as added by section 2(c)) the following new subsection:

“(d) 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.

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

“(A) charging a consumer for deferred interest even though that interest may have accrued over multiple billing cycles; or

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

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

“(e) LIMITATIONS RELATING TO ACCOUNT BALANCES ATTRIBUTABLE ONLY TO ACCRUED INTEREST.—

“(1) IN GENERAL.—If the outstanding balance on a credit card account under an open end consumer credit plan 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 (e) (as added by subsection (b)) the following new subsection:

“(f) PAYOFF BALANCE INFORMATION.—Each periodic statement provided by a creditor to a consumer with respect to a credit card account under an open end consumer credit plan shall contain the telephone number, Internet address, and Worldwide Web site at which the consumer may request the payoff balance on the account.”.

(d) CONSUMER RIGHT TO REJECT CARD BEFORE NOTICE IS PROVIDED OF OPEN ACCOUNT.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (g) (as added by subsection (c)) the following new subsection:

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

“(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 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 (g) (as added by subsection (d)) the following new subsection:

“(h) USE OF TERMS.—The following requirements shall apply with respect to the terms of any credit card account under any open end consumer credit plan:

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

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

“(3) DUE DATE.—

“(A) IN GENERAL.—Each periodic statement for any such account shall contain a date by which the next periodic payment on the account must be made to avoid a late fee or be considered a late payment, and any payment received by 5 P.M., 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 on-line to the Web site 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) PRO RATA PAYMENT ALLOCATIONS.—Section 127B of the Truth in Lending Act is amended by inserting after subsection (h) (as added by subsection (e)) the following new subsection:

“(i) PRO RATA PAYMENT ALLOCATIONS.—

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

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

“(3) SPECIAL RULES FOR ACCOUNTS WITH PROMOTIONAL RATE BALANCES OR DEFERRED INTEREST BALANCES.—

“(A) IN GENERAL.—Notwithstanding paragraph (1) or (2), in the case of a credit card account under an open end consumer credit plan the current terms of which allow the consumer to receive the benefit of a promotional rate or deferred interest plan, amounts paid in excess of the required min-

imum payment shall be allocated to the promotional rate balance or the deferred interest balance only if other balances have been fully paid.

“(B) EXCEPTION FOR DEFERRED INTEREST BALANCES.—Notwithstanding subparagraph (A), 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.

“(4) PROHIBITION ON RESTRICTED GRACE PERIODS UNDER CERTAIN CIRCUMSTANCES.—If, with respect to any credit card account under an open end consumer credit, 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 (i) (as added by subsection (f)) the following new subsection:

“(j) TIMELY PROVISION OF PERIODIC STATEMENTS.—Each periodic statement with respect to a credit card account under an open end consumer credit plan shall be sent by the creditor to the consumer not less than 25 calendar days before the due date identified in such statement for the next payment on the outstanding balance on such account, and section 163(a) shall be applied with respect to any such account by substituting ‘25’ for ‘fourteen’.”.

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

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

“(k) OPT-OUT OF CREDITOR AUTHORIZATION OF OVER-THE-LIMIT TRANSACTIONS IF FEES ARE IMPOSED.—

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

“(2) NOTIFICATION BY CONSUMER.—A consumer shall notify a creditor under paragraph (1)—

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

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

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

“(4) NOTIFICATION SYSTEM.—Each creditor that maintains credit card accounts under an open end consumer credit plan shall establish and maintain a notification system, including a toll-free telephone number, Internet address, and Worldwide Web site, which permits any consumer whose credit card account is maintained by the creditor to notify the creditor of an election under this subsection in accordance with paragraph (2).

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

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

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

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

“(7) REGULATIONS.—

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

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

“(1) 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.

“(m) OVER-THE-LIMIT FEES PROHIBITED IN CONJUNCTION WITH CERTAIN CREDIT HOLDS.—Notwithstanding subsection (1), 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 (m) (as added by section 4) the following new subsection:

“(n) 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 fees (other than late fees or over-the-limit fees) by the consumer in the first year the account is opened in an amount in excess of 25 percent of the total amount of credit authorized under the account, no payment of any fees (other than late fees or over-the-limit fees) 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. EFFECTIVE DATE.**

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

(b) REGULATIONS.—The Board of Governors of the Federal Reserve System, in consultation with 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 end of the 6-month period beginning on the date of the enactment of this Act, except

that it is the sense of the Congress that no provision of this Act should impede the promulgation of regulations in final form under laws in effect on the day before such date of enactment and that such regulations should be prescribed in final form on or before December 31, 2008, and should apply to credit card transactions under any open end consumer credit plan after the end of the 30-day period beginning on the date such regulations are prescribed in final form.

#### PURPOSE AND SUMMARY

H.R. 5244, the “Credit Cardholders’ Bill of Rights Act of 2008”, 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 25 days before the due date. The bill prohibits double cycle billing and requires creditors to allocate payments among balances so as to allow consumers to take full advantage of promotional rates and to make payments towards balances with higher rates. The bill limits overlimit fees and bans fees on interest-only balances. It prohibits creditors from knowingly issuing a credit card to a minor who is not emancipated. For credit cards on which fees in the first year exceed 25 percent of the credit limit, the bill prohibits such fees from being paid from the credit available under the card account agreement (except late or overlimit fees). The bill also provides for additional data collection to enable better oversight and regulation.

#### BACKGROUND AND NEED FOR LEGISLATION

It is estimated that 145 million Americans (approximately half of the population) own credit cards. According to Cardweb.com, the average household carries more than \$8,000 in credit card debt (other estimates range from \$2,200 to more than \$9,000). The accumulation of large amounts of credit card debt can have profound implications on individual consumers and the economy more generally. Personal bankruptcies, which some analysts attribute in part to high consumer debt levels, jumped 40 percent in 2007, and the personal savings rate in the U.S. has hovered at or below 1 percent of disposable income for several years, down from 7 to 8 percent in the 1980s and early 1990s.

Credit card pricing and billing practices developed over the last twenty years appear to contribute to the large debt loads facing many consumers. Prior to 1990, credit cards were generally offered only to persons with high credit standing, carried standardized interest rates of around 20 percent, and charged few fees. 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, and that many cards have “teaser” rates which are unrealistically low and soon increase to a much higher maximum rate. 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 Cardweb.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 more than doubled to \$26 a month from \$11.

*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 given 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.* Under this practice, issuers charge consumers interest on the portion of balances repaid during a grace period, when the consumer pays some but not all of the outstanding balances. This is viewed as unfair because consumers are paying interest on portions of debt already repaid.

*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 May 2008, the Federal Reserve, Office of Thrift Supervision, and National Credit Union Administration proposed rules prohibiting unfair or deceptive practices regarding credit cards and overdraft services. The legal standard for declaring a practice unfair or deceptive requires that the practice represent a market failure that substantially adversely affects consumers. Among other provisions, the proposed rules include five key protections for consumers:

(1) Banks would be prohibited from increasing the rate on a pre-existing credit card balance (except under limited circumstances) and must allow the consumer to pay off that balance over a reasonable period of time.

(2) Banks would be prohibited from applying payments in excess of the minimum in a manner that maximizes interest charges.

(3) Banks would be required to give consumers the full benefit of discounted promotional rates on credit cards by applying payments in excess of the minimum to any higher-rate balances first, and by providing a grace period for purchases where the consumer is otherwise eligible.

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

(5) Banks would be required to provide consumers a reasonable amount of time to make payments.

## HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 13, 2008, entitled “The Credit Cardholders’ Bill of Rights: Providing New Protections for Consumers.” The following witnesses testified:

- Ms. Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School
- Mr. Greg Baer, Deputy General Counsel, Regulatory and Public Policy, Bank of America
- Mr. Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center
- Mr. John Finneran, General Counsel, Capital One
- Mr. Lawrence Ausubel, Professor, Department of Economics, University of Maryland
- Ms. Carter Franke, Marketing Executive, JPMorgan Chase
- Mr. Oliver I. Ireland, Partner, Morrison & Foerster
- Ms. Katherine M. Porter, Associate Professor, The University of Iowa College of Law

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on April 17, 2008, entitled “Legislative Hearing on H.R. 5244, The Credit Cardholders’ Bill of Rights: Providing New Protections for Consumers”. The following witnesses testified:

Panel One:

- The Honorable Carl Levin, United States Senator, State of Michigan
- The Honorable Ron Wyden, United States Senator, State of Oregon

Panel Two:

- Mr. Steven Autrey, Fredericksburg, VA

- Ms. Susan Wones, Denver, CO
- Mr. Stephen M. Strachan, York, PA

## Panel Three:

- Ms. Sandra Braunstein, Director, Consumer Affairs Division, Board of Governors of the Federal Reserve System
- Mr. Marty Gruenberg, Deputy Director, Federal Deposit Insurance Corporation
- Ms. Julie Williams, Deputy Director and General Counsel, Office of the Comptroller of the Currency
- Mr. John Bowman, General Counsel, Office of Thrift Supervision

## Panel Four:

- Mr. John P. Carey, Chief Administrative Officer and Executive Vice President, Citi Cards, Citigroup Inc.
- Mr. Larry Sharnak, Executive Vice President and General Manager, Consumer Cards, American Express Company
- Mr. Carlos Minetti, Executive Vice President, Cardmember Services and Banking, Discover Financial Services
- Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America
- Ms. Linda Sherry, Director, National Priorities, Consumer Action
- Mr. Ed Mierzewski, Consumer Program Director, U.S. Public Interest Research Group

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 31, 2008, and ordered H.R. 5244, the “Credit Cardholders’ Bill of Rights Act of 2008”, as amended, favorably reported by a record vote of 39 yeas and 27 nays.

## 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 39 yeas and 27 nays (Record vote no. FC–120). The names of Members voting for and against follow:

## RECORD VOTE NO.FC–120

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

## RECORD VOTE NO.FC-120—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. McCarthy .....	X			Mr. Feeney .....		X	
Mr. Baca .....	X			Mr. Hensarling .....		X	
Mr. Lynch .....	X			Mr. Garrett (NJ) .....		X	
Mr. Miller (NC) .....	X			Ms. Brown-Waite .....			
Mr. Scott .....	X			Mr. Barrett (SC) .....		X	
Mr. Green .....	X			Mr. Gerlach .....		X	
Mr. Cleaver .....	X			Mr. Pearce .....		X	
Ms. Bean .....	X			Mr. Neugebauer .....		X	
Ms. Moore (WI) .....	X			Mr. Price (GA) .....		X	
Mr. Davis (TN) .....	X			Mr. Davis (KY) .....		X	
Mr. Hodes .....	X			Mr. McHenry .....		X	
Mr. Ellison .....	X			Mr. Campbell .....		X	
Mr. Klein .....	X			Mr. Putnam .....		X	
Mr. Mahoney (FL) .....	X			Mrs. Bachmann .....		X	
Mr. Wilson .....	X			Mr. Roskam .....			
Mr. Perlmutter .....	X			Mr. Marchant .....		X	
Mr. Murphy .....	X			Mr. McCotter .....		X	
Mr. Donnelly .....	X			Mr. McCarthy .....		X	
Mr. Foster .....	X			Mr. Heller .....		X	
Mr. Carson .....	X						
Ms. Speier .....	X						
Mr. Cazayoux .....	X						
Mr. Childers .....	X						

The following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Ackerman, No. 1a, prohibiting fees for payment of credit card accounts by electronic fund transfers, to the Committee Print (Maloney amendment in the nature of a substitute), was not agreed to, by a roll call vote of 27 ayes and 39 nays (Record vote no. FC-115):

## RECORD VOTE NO.FC-115

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....	X			Mr. Bachus .....		X	
Mr. Kanjorski .....	X			Ms. Pryce (OH) .....		X	
Ms. Waters .....	X			Mr. Castle .....		X	
Mrs. Maloney .....	X			Mr. King (NY) .....		X	
Mr. Gutierrez .....	X			Mr. Royce .....		X	
Ms. Velázquez .....	X			Mr. Lucas .....		X	
Mr. Watt .....	X			Mr. Paul .....		X	
Mr. Ackerman .....	X			Mr. LaTourette .....		X	
Mr. Sherman .....	X			Mr. Manzullo .....		X	
Mr. Meeks .....	X			Mr. Jones .....	X		
Mr. Moore (KS) .....	X			Mrs. Biggert .....		X	
Mr. Capuano .....	X			Mr. Shays .....			
Mr. Hinojosa .....	X			Mr. Miller (CA) .....		X	
Mr. Clay .....	X			Mrs. Capito .....		X	
Mrs. McCarthy .....		X		Mr. Feeney .....		X	
Mr. Baca .....	X			Mr. Hensarling .....		X	
Mr. Lynch .....	X			Mr. Garrett (NJ) .....		X	
Mr. Miller (NC) .....	X			Ms. Brown-Waite .....			
Mr. Scott .....	X			Mr. Barrett (SC) .....		X	
Mr. Green .....	X			Mr. Gerlach .....		X	
Mr. Cleaver .....	X			Mr. Pearce .....		X	
Ms. Bean .....		X		Mr. Neugebauer .....		X	
Ms. Moore (WI) .....		X		Mr. Price (GA) .....		X	
Mr. Davis (TN) .....		X		Mr. Davis (KY) .....		X	
Mr. Hodes .....	X			Mr. McHenry .....		X	
Mr. Ellison .....	X			Mr. Campbell .....		X	
Mr. Klein .....	X			Mr. Putnam .....		X	

## RECORD VOTE NO.FC-115—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Mahoney (FL) .....		X		Mrs. Bachmann .....			
Mr. Wilson .....		X		Mr. Roskam .....		X	
Mr. Perlmutter .....	X			Mr. Marchant .....		X	
Mr. Murphy .....		X		Mr. McCotter .....			
Mr. Donnelly .....		X		Mr. McCarthy .....		X	
Mr. Foster .....		X		Mr. Heller .....		X	
Mr. Carson .....	X						
Ms. Speier .....	X						
Mr. Cazayoux .....		X					
Mr. Childers .....		X					

An amendment by Mr. Hensarling, No. 1c, regarding predatory borrowing, to the Committee Print, was not agreed to by a record vote of 30 yeas and 37 nays (Record vote no. FC-116):

## RECORD VOTE NO. FC-116

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....		X		Mr. Bachus .....	X		
Mr. Kanjorski .....		X		Ms. Pryce (OH) .....	X		
Ms. Waters .....		X		Mr. Castle .....	X		
Mrs. Maloney .....		X		Mr. King (NY) .....	X		
Mr. Gutierrez .....		X		Mr. Royce .....	X		
Ms. Velázquez .....		X		Mr. Lucas .....	X		
Mr. Watt .....		X		Mr. Paul .....	X		
Mr. Ackerman .....		X		Mr. LaTourette .....			
Mr. Sherman .....		X		Mr. Manzullo .....	X		
Mr. Meeks .....		X		Mr. Jones .....	X		
Mr. Moore (KS) .....		X		Mrs. Biggert .....	X		
Mr. Capuano .....		X		Mr. Shays .....	X		
Mr. Hinojosa .....		X		Mr. Miller (CA) .....	X		
Mr. Clay .....		X		Mrs. Capito .....	X		
Mrs. McCarthy .....		X		Mr. Feeney .....			
Mr. Baca .....		X		Mr. Hensarling .....	X		
Mr. Lynch .....		X		Mr. Garrett (NJ) .....	X		
Mr. Miller (NC) .....		X		Ms. Brown-Waite .....			
Mr. Scott .....		X		Mr. Barrett (SC) .....	X		
Mr. Green .....		X		Mr. Gerlach .....	X		
Mr. Cleaver .....		X		Mr. Pearce .....	X		
Ms. Bean .....		X		Mr. Neugebauer .....	X		
Ms. Moore (WI) .....		X		Mr. Price (GA) .....	X		
Mr. Davis (TN) .....		X		Mr. Davis (KY) .....	X		
Mr. Hodes .....		X		Mr. McHenry .....	X		
Mr. Ellison .....		X		Mr. Campbell .....	X		
Mr. Klein .....		X		Mr. Putnam .....	X		
Mr. Mahoney (FL) .....		X		Mrs. Bachmann .....	X		
Mr. Wilson .....		X		Mr. Roskam .....	X		
Mr. Perlmutter .....		X		Mr. Marchant .....	X		
Mr. Murphy .....		X		Mr. McCotter .....	X		
Mr. Donnelly .....		X		Mr. McCarthy .....	X		
Mr. Foster .....		X		Mr. Heller .....	X		
Mr. Carson .....		X					
Ms. Speier .....		X					
Mr. Cazayoux .....		X					
Mr. Childers .....		X					

A substitute amendment by Mr. Watt, No. 1d(2), regarding the effective date, for the Hodes amendment to the Committee Print, was agreed to by a record vote of 57 yeas, 10 nays, and 1 pass (Record vote no. FC-117):

## RECORD VOTE NO. FC-117

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....	X			Mr. Bachus .....	X		
Mr. Kanjorski .....	X			Ms. Pryce (OH) .....	X		
Ms. Waters .....			Pass	Mr. Castle .....	X		
Mrs. Maloney .....	X			Mr. King (NY) .....	X		
Mr. Gutierrez .....	X			Mr. Royce .....	X		
Ms. Velázquez .....		X		Mr. Lucas .....	X		
Mr. Watt .....	X			Mr. Paul .....	X		
Mr. Ackerman .....	X			Mr. LaTourette .....			
Mr. Sherman .....	X			Mr. Manzullo .....	X		
Mr. Meeks .....	X			Mr. Jones .....	X		
Mr. Moore (KS) .....		X		Mrs. Biggert .....	X		
Mr. Capuano .....	X			Mr. Shays .....	X		
Mr. Hinojosa .....	X			Mr. Miller (CA) .....	X		
Mr. Clay .....	X			Mrs. Capito .....	X		
Mrs. McCarthy .....		X		Mr. Feeney .....	X		
Mr. Baca .....	X			Mr. Hensarling .....	X		
Mr. Lynch .....	X			Mr. Garrett (NJ) .....	X		
Mr. Miller (NC) .....	X			Ms. Brown-Waite .....			
Mr. Scott .....	X			Mr. Barrett (SC) .....	X		
Mr. Green .....	X			Mr. Gerlach .....	X		
Mr. Cleaver .....	X			Mr. Pearce .....	X		
Ms. Bean .....	X			Mr. Neugebauer .....	X		
Ms. Moore (WI) .....	X			Mr. Price (GA) .....		X	
Mr. Davis (TN) .....	X			Mr. Davis (KY) .....	X		
Mr. Hodes .....		X		Mr. McHenry .....	X		
Mr. Ellison .....	X			Mr. Campbell .....		X	
Mr. Klein .....	X			Mr. Putnam .....	X		
Mr. Mahoney (FL) .....	X			Mrs. Bachmann .....	X		
Mr. Wilson .....		X		Mr. Roskam .....	X		
Mr. Perlmutter .....		X		Mr. Marchant .....	X		
Mr. Murphy .....	X			Mr. McCotter .....	X		
Mr. Donnelly .....	X			Mr. McCarthy .....	X		
Mr. Foster .....		X		Mr. Heller .....	X		
Mr. Carson .....	X						
Ms. Speier .....	X						
Mr. Cazayoux .....	X						
Mr. Childers .....		X					

An amendment by Mr. Price, No. 1i, regarding damages for violations limited to individual actions, to the Committee Print, was NOT AGREED TO by a record vote of 30 ayes and 37 nays (Record vote no. FC-118):

## RECORD VOTE NO. FC-118

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

## RECORD VOTE NO. FC-118—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Miller (NC) .....		X		Ms. Brown-Waite .....			
Mr. Scott .....		X		Mr. Barrett (SC) .....	X		
Mr. Green .....		X		Mr. Gerlach .....	X		
Mr. Cleaver .....		X		Mr. Pearce .....	X		
Ms. Bean .....		X		Mr. Neugebauer .....	X		
Ms. Moore (WI) .....		X		Mr. Price (GA) .....	X		
Mr. Davis (TN) .....		X		Mr. Davis (KY) .....	X		
Mr. Hodes .....		X		Mr. McHenry .....	X		
Mr. Ellison .....		X		Mr. Campbell .....	X		
Mr. Klein .....		X		Mr. Putnam .....	X		
Mr. Mahoney (FL) .....		X		Mrs. Bachmann .....	X		
Mr. Wilson .....		X		Mr. Roskam .....	X		
Mr. Perlmutter .....		X		Mr. Marchant .....	X		
Mr. Murphy .....		X		Mr. McCotter .....	X		
Mr. Donnelly .....		X		Mr. McCarthy .....	X		
Mr. Foster .....		X		Mr. Heller .....	X		
Mr. Carson .....		X					
Ms. Speier .....		X					
Mr. Cazayoux .....		X					
Mr. Childers .....		X					

A substitute amendment by Mr. Castle, No. 1h, expressing the sense of the Congress regarding proposed consumer protection regulations, for the Committee Print, was not agreed to by a record vote of 28 yeas and 39 nays (Record vote no. FC-119):

## RECORD VOTE NO. FC-119

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank .....		X		Mr. Bachus .....	X		
Mr. Kanjorski .....		X		Ms. Pryce (OH) .....	X		
Ms. Waters .....		X		Mr. Castle .....	X		
Mrs. Maloney .....		X		Mr. King (NY) .....	X		
Mr. Gutierrez .....		X		Mr. Royce .....	X		
Ms. Velázquez .....		X		Mr. Lucas .....	X		
Mr. Watt .....		X		Mr. Paul .....	X		
Mr. Ackerman .....		X		Mr. LaTourette .....			
Mr. Sherman .....		X		Mr. Manzullo .....	X		
Mr. Meeks .....		X		Mr. Jones .....		X	
Mr. Moore (KS) .....		X		Mrs. Biggert .....	X		
Mr. Capuano .....		X		Mr. Shays .....		X	
Mr. Hinojosa .....		X		Mr. Miller (CA) .....	X		
Mr. Clay .....		X		Mrs. Capito .....			
Mrs. McCarthy .....		X		Mr. Feeney .....	X		
Mr. Baca .....		X		Mr. Hensarling .....	X		
Mr. Lynch .....		X		Mr. Garrett (NJ) .....	X		
Mr. Miller (NC) .....		X		Ms. Brown-Waite .....			
Mr. Scott .....		X		Mr. Barrett (SC) .....	X		
Mr. Green .....		X		Mr. Gerlach .....	X		
Mr. Cleaver .....		X		Mr. Pearce .....	X		
Ms. Bean .....		X		Mr. Neugebauer .....	X		
Ms. Moore (WI) .....		X		Mr. Price (GA) .....	X		
Mr. Davis (TN) .....		X		Mr. Davis (KY) .....	X		
Mr. Hodes .....		X		Mr. McHenry .....	X		
Mr. Ellison .....		X		Mr. Campbell .....	X		
Mr. Klein .....		X		Mr. Putnam .....	X		
Mr. Mahoney (FL) .....		X		Mrs. Bachmann .....	X		
Mr. Wilson .....		X		Mr. Roskam .....	X		
Mr. Perlmutter .....		X		Mr. Marchant .....	X		
Mr. Murphy .....		X		Mr. McCotter .....	X		
Mr. Donnelly .....		X		Mr. McCarthy .....	X		
Mr. Foster .....		X		Mr. Heller .....	X		
Mr. Carson .....		X					

## RECORD VOTE NO. FC-119—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Speier .....		X					
Mr. Cazayoux .....		X					
Mr. Childers .....		X					

The following other amendments were considered:

An amendment in the nature of a substitute by Mrs. Maloney (Committee Print), No. 1, was agreed to, as amended, by voice vote.

An amendment by Mr. Hensarling, No. 1b, regarding reported history of irresponsible borrowing, was not agreed to by voice vote.

An amendment by Mr. Hodes, No. 1d, regarding the effective date, was agreed to, as amended by the Watt substitute, by voice vote.

An amendment by Mr. Castle, No. 1d(1), regarding a change of effective date, to the Hodes amendment, was agreed to by voice vote.

An amendment by Mr. Hensarling, No. 1e, striking failure to make timely payments, was offered and withdrawn.

An amendment by Mr. Ellison, No. 1f, limiting fees paid from subprime cards, was agreed to by voice vote.

An amendment by Mr. Hensarling, No. 1g, regarding extensions of credit to underage consumers, was agreed to by voice vote.

An amendment by Mrs. Maloney, No. 1j, regarding failure to make timely payments, was agreed to by voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings 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. 5244 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:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 8, 2008.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5244, the Credit Cardholders' Bill of Rights Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Booth.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 5244—Credit Cardholders' Bill of Rights Act of 2008*

Summary: H.R. 5244 would amend the Truth in Lending Act to restrict 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, and would require the Federal Reserve to report to the Congress on the sources of industry income from such operations.

Provisions in the legislation affecting the workload of the Federal Reserve and financial regulatory agencies would affect revenues and direct spending, respectively, but CBO estimates that those effects would not be significant.

H.R. 5244 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The bill would impose private-sector mandates, as defined in UMRA, on issuers of credit cards. The bill would require creditors to submit detailed information on a semiannual basis to the Board of Governors of the Federal Reserve and prohibit creditors from performing 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 (\$136 million in 2008, 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 this legislation will be enacted early in fiscal year 2009. CBO estimates that enacting H.R. 5244 would affect direct spending and revenues, but that those effects would not be significant.

Under this legislation, the Board of Governors of the Federal Reserve, in consultation with other financial regulatory agencies, would be required to issue regulations implementing the new credit card billing standards specified by the bill. In May 2008, the Federal Reserve (for banks), the Office of Thrift Supervision (for savings associations), and the National Credit Union Administration (for credit unions) proposed regulations covering some of the same practices addressed by H.R. 5244. The agencies proposed those regulations under authority granted by the Federal Trade Commission Act to prohibit unfair or deceptive practices. If finalized, such regulations would be enforced by those agencies along with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

According to the Federal Reserve and other agencies, the regulatory activities required by H.R. 5244 would have no significant effect on their workload or budgets. In addition, the additional data collection and reporting requirements on the Federal Reserve are not anticipated to have a significant effect on its workload. 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 insurance premiums. Thus, CBO estimates that enacting this bill would reduce revenues by less than \$500,000 over the 2009–2018 period and would have a negligible net effect on direct spending.

Estimated impact on state, local, and tribal governments: H.R. 5244 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: The bill 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 performing 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 (\$136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandates are in effect. The bill also includes several requirements that are contained in rules proposed by the Federal Reserve. The Federal Reserve expects that rulemaking process to be completed by the end of 2008.

#### *Information collection requirements*

Under current law, the Federal Reserve collects data semiannually from a large sample of creditors. Those data are readily compiled by creditors and the cost of submitting the data is minimal. The bill would require the Federal Reserve to collect additional data from the sample creditors on various transactions, fees imposed, finance charges, repayments of balances, and on the number of accounts affected by certain transactions. To comply with the mandate, creditors would need to start to compile data on individual accounts based on the categories defined in the bill. According to the Federal Reserve and industry representatives, creditors would need to develop and implement new software programs and systems to compile the required data. Based on information from the Federal Reserve and industry sources, the mandate would af-

fect a large number of creditors and the cost to set up those 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 for 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 a small percentage of cardholders elected to use this option, creditors could lose a significant amount of fees.

*Standards for issuing cards*

In addition, the bill would prohibit creditors from allowing individuals to pay any fees through the credit made available to them by the credit card 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 thus, those credit cards 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 inasmuch as the industry currently collects billions of dollars in interest and fees from such cards.

The bill also would prohibit creditors from issuing credit cards to individuals less than 18 years of age unless they are an emancipated minor. According to industry representatives and the Federal Reserve, individuals under 18 years old account for only a minuscule amount 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. 5244 would impose several new requirements on creditors regarding account pricing, terms, and disclosures. The bill would prohibit creditors from imposing a fee on credit cardholders that do not pay their trailing interest balance. In addition, the bill would require creditors to provide a service through which a cardholder can determine their payoff balance. The bill also would prohibit creditors from informing credit bureaus of a cardholder's line of credit until the cardholder has activated his or her card. Finally, the bill would prohibit creditors from using the term "prime rate"

unless its use is based on the definition provided in the bill. The cost for creditors to comply with those mandates would likely be minimal because compliance would involve only a small adjustment in current procedures, because certain fees prohibited generate a small portion of fee-income for the industry, and because creditors are unlikely to engage in the prohibited acts.

*Proposed regulations*

In addition to the mandates on creditors that would be imposed by the bill, H.R. 5244 includes several requirements that the Federal Reserve has already included in proposed regulations. According to the Federal Reserve, the agency plans to finalize those regulations by the end of 2008. In general, those regulations would impose requirements on how creditors collect interest charges and fees. The mandates contained in the bill that are not included in the Federal Reserve's regulations would become effective one year after the date of enactment of H.R. 5244. Because the Federal Reserve would likely issue final regulations before that date, CBO has not identified those provisions as new mandates.

Estimate prepared by: Federal Revenues: Mark Booth; Federal Spending: Kathleen Gramp; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Jacob Kuipers.

Estimate approved by: Frank Sammartino, Deputy Assistant Director for Tax Analysis and Peter H. Fontaine, 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. 5244 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 Act may be cited as the “Credit Card-holders” Bill of Rights Act of 2008”.

Section 2(a). Prohibits creditors from raising rates retroactively on existing balances, subject to exceptions in section 2(b), and specifies acceptable arrangements for the consumer to pay back the existing balance. Defines “existing balance” as the balance as of 14 days after notice of the rate increase under section 2(c). Requires creditors to allow the consumer to repay the existing balance using a method at least as beneficial to the consumer as a five-year amortization period or doubling of the percentage of the balance included in the minimum payment before the rate increase. Prohibits creditors from assessing a fee based on an existing balance that is protected from a rate increase.

Section 2(b). Creditors may increase the annual percentage rate (APR) on an existing balance only (1) if the rate is pegged to a variable index, (2) as a result of the expiration or loss of a promotional rate (as long as the APR is not increased to a penalty rate), or (3) if the minimum payment is not received within 30 days after the due date.

Section 2(c). For any rate increase, requires a 45-day notice to the consumer that fully describes the changes in the APR in a complete and conspicuous manner and the extent to which such increase would apply to an existing balance.

Section 3(a). Prohibits creditors from imposing finance charges based on balances for any days not included in the most recent billing cycle (double cycle billing). Provides exceptions for balances for deferred interest accrued over multiple cycles and for adjustment of finance charges following resolution of a billing error dispute.

Section 3(b). If the outstanding balance at the end of a billing cycle is only from interest accrued during the preceding billing period on an outstanding balance that was fully repaid during the preceding billing period, then no fees, such as late fees, may be imposed on such balance attributable only to interest before such end of the billing period, and any failure to pay such balance does not constitute a default on the account. Such balance remains a legally binding debt obligation.

Section 3(c). Requires creditors to provide on each statement a telephone number and Internet address for cardholders to request a payoff balance.

Section 3(d). Prohibits creditors from reporting the issuance of any credit card to a credit bureau until the cardholder uses or activates the card. The fact of the inquiry or application for the card can be reported.

Section 3(e). Prohibits any use of the term “fixed rate” except to refer to a rate that will not change for any reason over a set period of time. Prohibits any use of the term “prime rate” except to refer to the prime rate published by the Federal Reserve in the H.15 release. Provides that every statement shall display a “due date” for

payment and that payments received (by mail or electronic transfer) by 5 P.M. local time at the location specified by the creditor for the receipt of payment on that date shall be timely for all purposes. Evidence provided by a consumer in the form of a postal receipt that the 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.

Section 3(f). Where the cardholder has two or more balances on a card at different interest rates, requires a creditor to allocate the cardholder's payments on a pro rata basis, reflecting the proportion each balance comprises of the total outstanding balance on the account. Allows the creditor to credit a larger portion of the payment toward the balance with the higher rate than is proportional, at the creditor's election. Creates an exception for accounts with promotional rate balances: any payment above the required minimum payment on such accounts may only be allocated to the promotional rate balance if all other balances have been paid off. Creates a similar exception for deferred interest balances, except that a creditor may allocate the entire amount paid by the consumer in excess of the required minimum payment to a deferred interest balance in the two billing cycles before the deferred interest arrangement expires. Requires creditors to give the same grace period for promotional rate and deferred interest accounts that they do for other accounts.

Section 3(g). Requires periodic statements to be sent by the creditor to the consumer not less than 25 days before the due date.

Section 4. Provides that a consumer may elect to prohibit creditors from completing any transaction in excess of the consumer's credit limit (a "hard" credit limit). Creditors must notify cardholders of this option annually and on any statement that has an overlimit fee. Bars any overlimit fee for transactions that exceed the credit limit where the consumer has elected a hard credit limit. For consumers who have not elected a hard credit limit, an overlimit fee may be imposed once during a billing cycle if the credit limit is exceeded on the last day of such billing cycle, and an overlimit 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 obtains a higher credit limit during any such subsequent billing cycle or reduces the outstanding balance below the credit limit as of the end of such billing cycle. Prohibits overlimit fees due solely to credit holds, unless the actual amount of the transaction exceeds the credit limit.

Section 5. Requires the Federal Reserve to collect additional data regarding credit card transactions and fees and rates charged by creditors, and to submit an annual report to Congress.

Section 6. For any credit card account which has fees in the first year totaling over 25 percent of the credit limit, prohibits payment of any fees through the credit made available by the card except for late fees and over-the-limit-fees.

Section 7. Prohibits knowing issuance of credit cards to persons under 18 who are not emancipated minors. Provides that a signed application is adequate proof of age.

Section 8. Provides for a six-month period for the issuance of regulations by the Federal Reserve, and for a one-year period for the

bill's requirements to take effect. Sets forth a Sense of Congress that the bill should not impede the promulgation of final regulations under existing law by December 31, 2008, and such regulations should apply to credit card transactions after 30 days from the date of promulgation.

#### 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 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.

\* \* \* \* \*

#### § 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 fourteenth 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 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 OR LOSS OF PROMOTIONAL RATE.*—The increase is due solely to—

(i) the expiration of a promotional rate; or

(ii) the loss of a promotional rate for a reason specified in the account agreement (e.g., late payment).

(C) *PAYMENT NOT RECEIVED DURING 30-DAY GRACE PERIOD AFTER DUE DATE.*—The increase is due solely to the fact that the 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 LOSS OF PROMOTIONAL RATE.*—Notwithstanding paragraph (1)(B)(ii), the annual percentage rate in effect after the increase permitted under such subsection due to the loss of a promotional rate may not exceed the annual percentage rate that would have applied under the



*terms of the agreement after the expiration of the promotional rate.*

(c) **ADVANCE NOTICE OF RATE INCREASES.**—*In the case of any credit card account under an open end consumer credit plan, no increase in any annual percentage rate of interest 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.*

(d) **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.*

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

*(A) charging a consumer for deferred interest even though that interest may have accrued over multiple billing cycles; or*

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

(e) **LIMITATIONS RELATING TO ACCOUNT BALANCES ATTRIBUTABLE ONLY TO ACCRUED INTEREST.**—

(1) **IN GENERAL.**—*If the outstanding balance on a credit card account under an open end consumer credit plan 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.*

(f) **PAYOFF BALANCE INFORMATION.**—*Each periodic statement provided by a creditor to a consumer with respect to a credit card account under an open end consumer credit plan shall contain the telephone number, Internet address, and Worldwide Web site at which the consumer may request the payoff balance on the account.*

(g) **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) con-*

cerning 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 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).

(h) *USE OF TERMS.*—The following requirements shall apply with respect to the terms of any credit card account under any open end consumer credit plan:

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

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

(3) *DUE DATE.*—

(A) *IN GENERAL.*—Each periodic statement for any such account shall contain a date by which the next periodic payment on the account must be made to avoid a late fee or be considered a late payment, and any payment received by 5 P.M., 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 on-line to the Web site 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.

(i) *PRO RATA PAYMENT ALLOCATIONS.*—

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

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

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

(3) *SPECIAL RULES FOR ACCOUNTS WITH PROMOTIONAL RATE BALANCES OR DEFERRED INTEREST BALANCES.*—

(A) *IN GENERAL.*—Notwithstanding paragraph (1) or (2), in the case of a credit card account under an open end consumer credit plan the current terms of which allow the consumer to receive the benefit of a promotional rate or deferred interest plan, amounts paid in excess of the required minimum payment shall be allocated to the promotional rate balance or the deferred interest balance only if other balances have been fully paid.

(B) *EXCEPTION FOR DEFERRED INTEREST BALANCES.*—Notwithstanding subparagraph (A), 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.

(4) *PROHIBITION ON RESTRICTED GRACE PERIODS UNDER CERTAIN CIRCUMSTANCES.*—If, with respect to any credit card account under an open end consumer credit, 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.

(j) *TIMELY PROVISION OF PERIODIC STATEMENTS.*—Each periodic statement with respect to a credit card account under an open end consumer credit plan shall be sent by the creditor to the consumer not less than 25 calendar days before the due date identified in such statement for the next payment on the outstanding balance on such account, and section 163(a) shall be applied with respect to any such account by substituting “25” for “fourteen”.

(k) *OPT-OUT OF CREDITOR AUTHORIZATION OF OVER-THE-LIMIT TRANSACTIONS IF FEES ARE IMPOSED.*—

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

(2) *NOTIFICATION BY CONSUMER.*—A consumer shall notify a creditor under paragraph (1)—

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

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

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

(4) *NOTIFICATION SYSTEM.*—Each creditor that maintains credit card accounts under an open end consumer credit plan shall establish and maintain a notification system, including a toll-free telephone number, Internet address, and Worldwide Web site, which permits any consumer whose credit card account is maintained by the creditor to notify the creditor of an election under this subsection in accordance with paragraph (2).

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

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

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

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

(7) *REGULATIONS.*—

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

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

(l) *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.*

*(m) OVER-THE-LIMIT FEES PROHIBITED IN CONJUNCTION WITH CERTAIN CREDIT HOLDS.—Notwithstanding subsection (l), 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.*

*(n) 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 fees (other than late fees or over-the-limit fees) by the consumer in the first year the account is opened in an amount in excess of 25 percent of the total amount of credit authorized under the account, no payment of any fees (other than late fees or over-the-limit fees) 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.*

\* \* \* \* \*

### **§ 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 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.

\* \* \* \* \*

(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. Given the crucial role that credit cards have come to play for individual consumers and the economy, it is both timely and appropriate to consider new ways to protect consumers from unfair and deceptive credit card practices, and to ensure 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 significant costs on the U.S. economy, because such measures might both raise the costs of credit for some and unfairly limit access to credit to others.

To protect consumers who use credit cards, the Federal Reserve proposed new rules on May 2, 2008. Utilizing its statutory authority under the Federal Trade Commission (FTC) Act to prevent “unfair or deceptive acts or practices,” the Federal Reserve promulgated new rules that will address many of the practices that consumers find confusing. The Federal Reserve has also moved to require credit card issuers to make more effective and transparent disclosures so that cardholders will have a more complete understanding of their credit card terms. This extensive rule-writing process incorporates wide-ranging consumer testing conducted by the Federal Reserve staff to ensure that the new rules will be effective, and provides for a public comment period to evaluate the proposed rule. That comment period closed on August 4. But rather than await the results of the Federal Reserve’s work, the Committee instead chose to mark up H.R. 5244, “The Credit Cardholder’s Bill of Rights Act,” on July 31.

Rather than allowing the Federal Reserve to finish the job we gave them by statute—and before the comment period on the Federal Reserve’s proposed rules had even closed or the Federal Reserve had time to digest the more than 40,000 comment letters that it received from consumer advocates, industry representatives, and other regulators—this Committee interjected itself in the process. A far better course would have been the one suggested by the 14 Members of this Committee—seven Democrats and seven Republicans—who wrote to the Chairman to ask for hearings on the Federal Reserve’s proposed rules before deciding whether passing legislation limiting credit card practices was necessary or appropriate.

The Majority cannot credibly contend that the powers granted by the FTC Act are inadequate or that the regulators are stalling. Nothing in this ill-conceived legislation strengthens the Federal Reserve’s consumer protection mandate. The FTC Act is a sweeping statute that provides the Federal Reserve with the extensive authority to issue rules prohibiting banks from engaging in acts or practices that are unfair or deceptive. The FTC Act also provides



the same authority to the Office of Thrift Supervision (OTS) for thrifts and the National Credit Union Administration (NCUA) for credit unions. Working jointly with the OTS and NCUA, the Federal Reserve has identified credit card practices that it believes are problematic and has developed uniform rules to address them. And these rules will soon take effect: Federal Reserve Board Chairman Bernanke has promised to implement them before the end of the year.

Further, it is not as if the Committee and the regulators were addressing different issues. H.R. 5244 has been designed to address consumer concerns about card companies accruing finance charges because of two-cycle billing computation methods; increasing interest rates retroactively; allocating payments to maximize interest rate charges; and providing inadequate time to make payments. The proposed regulations cover these exact same concerns.

Because the regulators are so near the end of a careful, considered rulemaking process addressing the very same issues covered by this bill, passing H.R. 5244 was an unnecessary exercise in partisan political posturing. We can understand racing to beat the clock. We cannot understand racing to beat the Fed.

SPENCER BACHUS.  
JEB HENSARLING.  
DEAN HELLER.  
RANDY NEUGEBAUER.  
THADDEUS McCOTTER.  
JUDY BIGGERT.  
JOHN CAMPBELL.  
GEOFF DAVIS.  
ED ROYCE.  
KEVIN MCCARTHY.  
KENNY MARCHANT.  
MICHELE BACHMANN.  
MICHAEL N. CASTLE.  
GINNY BROWN-WAITE.  
THOMAS PRICE.