

111TH CONGRESS
1ST SESSION

H. R. 3457

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

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. ABERCROMBIE (for himself, Mrs. LOWEY, Mr. MICHAUD, and Mr. PERRIELLO) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Credit Card Act of 2009”.

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

7 (1) In past recessions, economic recovery has
8 frequently been led by the creation of millions of
9 new, small businesses.

1 (2) Today, however, small business owners are
2 severely limited in their ability to finance new busi-
3 ness ventures because their access to capital through
4 their usual resources has dried up, and the lack of
5 access continues to grow.

6 (3) Small businesses are being pushed into
7 using credit cards as their primary source of work-
8 ing capital.

9 (4) This use of credit card credit is especially
10 true for rapidly growing businesses that are not tra-
11 ditional brick and mortar operations, and lack the
12 assets necessary for a traditional loan.

13 (5) Yet, 28 percent of businesses surveyed re-
14 cently said they had been subject to a decrease in
15 their line of credit or a credit card limit in the past
16 6 months.

17 (6) And, this decrease in credit card limits oc-
18 curred despite the fact that 69 percent of the small
19 businesses in the survey cited worsening credit card
20 terms.

21 (7) In 2008, 44 percent of the small businesses
22 surveyed used credit cards to finance their business.

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

1 (9) One-third of small businesses using credit
2 cards carry a monthly balance in excess of \$10,000.

3 **SEC. 2. EXTENDING CREDIT CARD PROTECTIONS UNDER**
4 **THE TRUTH IN LENDING ACT TO SMALL BUSI-**
5 **NESSES.**

6 (a) DEFINITION OF CONSUMER.—Section 103(h) of
7 the Truth in Lending Act (15 U.S.C. 1602(h)) is amend-
8 ed—

9 (1) by striking “(h) The adjective ‘consumer’,
10 used with reference to a credit transaction, charac-
11 terizes the transaction as one in which the party to
12 whom credit is offered or extended is” and inserting
13 “(h) CONSUMER.—

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

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

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

23 “(A) IN GENERAL.—For purposes of any
24 provision of this title relating to a credit card
25 account under an open end credit plan, the

1 term ‘consumer’ includes any qualified small
2 business.

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

9 “(i) the credit card account is in the
10 name of an individual or a business entity;
11 and

12 “(ii) any credit transaction involving
13 such account is for business or personal
14 purposes.

15 “(C) EXCLUSION OF SMALL BUSINESS
16 AFTER ‘OPT OUT’ EFFECTIVE DATE.—The term
17 ‘qualified small business’ shall not include any
18 business concern described in subparagraph (A)
19 after the effective date of any election under
20 section 135(b) by the individual or business for
21 which the credit card account referred to in
22 such subparagraph has been established, so
23 long as such election remains in effect.”.

24 (b) AMENDMENTS TO EXEMPTIONS.—Section 104 of
25 the Truth in Lending Act (15 U.S.C. 1603) is amended—

1 (1) in paragraph (1)—

2 (A) by inserting “other than a credit
3 transaction under an open end consumer credit
4 plan in which the consumer is a qualified small
5 business” after “agricultural purposes”; and

6 (B) by inserting “other than qualified
7 small businesses” after “organizations”; and

8 (2) in paragraph (3), by striking “\$25,000”
9 and inserting “\$50,000”.

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

13 (1) by striking “The exemption provided by”
14 and inserting “(a) IN GENERAL.—The exemption
15 provided by”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(b) QUALIFIED SMALL BUSINESS OPT OUT FROM
19 COVERAGE.—

20 “(1) NOTICE OF COVERAGE.—The disclosures
21 under section 127(a) before opening a credit card
22 account under an open end credit plan for a quali-
23 fied small business shall include a clear and con-
24 spicuous disclosure—

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

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

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

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

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

19 “(A) discriminate against any business
20 concern having 50 or fewer employees in con-
21 nection with any credit card account of, or any
22 application for a credit card account by such
23 business, under an open end credit plan on any
24 basis; or

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

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