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AMENDING THE CONSUMER CREDIT PROTECTION ACT, TO BAN ABUSIVE CREDIT PRACTICES, ENHANCE CONSUMER DISCLOSURES, PROTECT UNDERAGE CONSUMERS, AND FOR OTHER PURPOSES

MAY 4, 2009.—Ordered to be printed

Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 414]

The Committee on Banking, Housing, and Urban Affairs, to which was referred the bill (S. 414) to amend the Consumer Credit Protection Act, to ban abusive credit practices, enhance consumer disclosures, protect underage consumers, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

INTRODUCTION

The Committee on Banking, Housing, and Urban Affairs met in open session on March 31, 2009, and ordered S. 414, the "Credit Card Accountability Responsibility and Disclosure Act of 2009," as amended, favorably reported to the Senate for consideration.

HEARING RECORD AND WITNESSES

On Thursday, January 25, 2007, the Committee held a hearing entitled "Examining the Billing, Marketing and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers." At that hearing, the Committee heard testimony from Elizabeth Warren, Leo Gottleib Professor of Law, Harvard Law School; Michael Donovan, Esq., Donovan & Searles; Carter Franke, Executive Vice President of Marketing, JP Morgan Chase & Co.; Robert Manning, Professor of Finance, Rochester Institute of Technology; John Finneran, President of Corporate Reputation and Governance, CapitalOne Financial; Tamara Draut, Director, Economic Opportunity Programs, Demos; Richard Vague, CEO, Barclaycard USA; and Travis Plunkett, Legislative Director, Consumer Federation of America.

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On February 12, 2009, the Committee heard testimony from Travis Plunkett, Legislative Director, Consumer Federation of America; James Sturdevant, Esq., The Sturdevant Law Firm; Ken Clayton, Sr. VP & General Counsel, Card Policy Council, American Bankers Association; Lawrence Ausubel, Professor of Economics, University of Maryland; Todd Zywicki, Professor, George Mason University School of Law; and Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center, at its hearing on "Modernizing Consumer Protection in the U.S. Financial Regulatory System: Strengthening Credit Card Protections."

PURPOSE AND SUMMARY OF THE LEGISLATION

The "Credit Card Accountability Responsibility and Disclosure Act of 2009" was developed to implement needed reforms and help protect consumers by prohibiting various unfair, misleading and deceptive practices in the credit card market.

The bill contains numerous provisions which provide protection to consumers from unreasonable interest rate increases. The bill prohibits retroactive rate increases on existing balances, and requires creditors to provide a written notice of any rate increase at least 45 days before the increase takes effect. The bill protects consumers from rate increases based on information not related to the consumer's behavior with regard to the credit card account. The bill prevents interminable penalty rates by requiring issuers to lower penalty rates that have been imposed on a cardholder after 6 months if the cardholder commits no further violations. The bill also extends to consumers the right to cancel an account with the opportunity to repay the balance under existing terms.

The bill also provides a number of protections from unreasonable credit card fees. The bill restricts over-limit fees, and permits consumers to request a fixed credit limit in order to prevent such fees. The bill also limits currency exchange fees, and bans fees on interest-only balances. The bill ensures that interest on credit card balances is computed in a fair manner, and requires creditors to allocate payments towards balances with higher rates first.

The legislation enhances the supervision of credit card issuers and the transparency of their practices and includes measures that seek to protect consumers against misleading use of terms in credit card statements and solicitations. Among other provisions, the bill establishes a single definition of the terms "fixed" and "prime" with regard to interest rates, and requires additional disclosure of minimum payment information, including the total interest incurred if only minimum payments were made. The bill also gives consumers more time to make their payments by requiring creditors to provide consumers with a reasonable time to pay off the balance and to send periodic statements to consumers no less than 25 days before the due date.

The bill provides that no gift cards or prepaid general-use cards be sold with an expiration date of less than five years, and generally prohibits dormancy, inactivity, and service charges and fees on any such card.

The bill also limits the marketing of credit cards to individuals under age 21. Under this legislation, credit card issuers would be unable to make pre-screened credit card solicitations to individuals under age 21 unless the consumer expressly opted into receiving these solicitations. Extension of credit to consumers under 21 would be limited to those circumstances where the consumer could demonstrate an independent means to repay obligations under the card agreement, the consumer had the signature of a parent or guardian indicating joint liability for the consumer's debts on the account, or the consumer had completed an approved financial literacy course.

The legislation further strengthens protections for consumers by increasing existing penalties for credit card companies that violate the Truth in Lending Act.

Additionally, the bill will provide for additional data collection from credit card issuers to enhance oversight and regulation. The bill also amends the Federal Trade Commission Act to provide each federal banking agency the authority to prescribe regulations governing unfair or deceptive practices with respect to the depository institutions it supervises.

The bill requires that the GAO conduct a study of credit card interchange fees and a study of the advisability of establishing a Credit Card Safety Rating Commission.

BACKGROUND AND NEED FOR LEGISLATION

Revolving consumer credit in the United States has more than quadrupled over the past two decades, from $238.6 billion in December 1990 to a peak of $977 billion in September 2008.[1] Over the same period, households' credit card debt also increased significantly. Today, nearly 75 percent of American households have a general-purpose credit card, compared to only 16 percent of households in 1970.[2] In the current economic downturn, households are increasingly using credit cards for routine expenses.

As usage of credit cards has grown, the variety of fees and practices has also increased. As the GAO mentioned in its 2006 report on credit card disclosures, "After 1990, card issuers began to introduce cards with a greater variety of interest rates and fees, and the amounts that cardholders can be charged have been growing."[3] GAO's analysis found that some issuers charged up to three different interest rates for different types of transactions; penalty fees that more than doubled since 1990; penalty rates above 30 percent; and various new fees for foreign currency exchange, bill payment by telephone, cash advances, and balance transfers that were not necessarily incorporated in written disclosures. The six largest credit card issuers, who represent above three-quarters of the credit card market, earned approximately $7.4 billion in revenue in 2005 from over-limit and late payment fees alone.[4] In 2008, penalty rates averaged 16.9 percentage points above the standard rate, more than doubling from an 8.1 percentage point difference be-

[1] Federal Reserve Statistical Release G.19: Consumer Credit Outstanding (Historical). Available at: *http://www.federalreserve.gov/releases/g19/hist/cc*__hist__sa.html

[2] Thomas A. Durkin. "Credit Cards: Use and Consumer Attitudes, 1970–2000." Federal Reserve Bulletin, September 2000 (Vol. 86 Issue 9); Brian K. Bucks et al., "Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances." Federal Reserve Bulletin, February 2009 (Vol. 95).

[3] Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers. GAO–06–929, at 5.

[4] Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers. GAO–06–929, at 72.

tween standard and penalty rates in 2000.[5] Among 28 popular credit cards, the average late fee rose to $34 in 2005, up from about $13 in 1995, and average fees charged for exceeding a credit limit more than doubled to $31 a month from $13.[6]

These penalties are contributing to the significant credit card debt under which American consumers increasingly find themselves buried. Evidence shows that consumers are struggling under the large amounts of credit card debt they have amassed. The average household that carries a credit card balance owes close to $10,000 in revolving debt on their credit cards.[7] The amount of credit card debt paid off by Americans monthly, is now at one of the lowest levels ever recorded.[8] Thirty-day credit card delinquencies are now at their highest point in six years, since the last economic recession ended.[9] Personal bankruptcies have increased while the average savings rate is going down.

The increase in fees and rates and increase in consumer debt load have come at a time when credit card issuers are increasingly engaging in "risk-based" pricing, where issuers charge certain consumers more to cover potential losses, usually in the form of higher interest rates. Issuers have argued that risk-based pricing is beneficial to consumers by allowing issuers to provide greater access to credit as the decision to grant credit has expanded significantly beyond a simple "yes or no" decision for lenders. Card issuers contend that the new pricing models enable them to offer cards to more individuals and charge lower interest rates to those with better credit scores. In response, consumer advocates have questioned whether pricing is truly based on the risk posed by the consumer. They have argued that the fees and penalty pricing that have evolved from the risk-based pricing environment are intended primarily to increase fee income, and contend that risk-based pricing generally works to consumers' detriment. As issuers' usage of fees and penalty pricing has increased, they have come under more scrutiny for engaging in the following practices:

Universal default

One of the most common consumer credit card complaints involves the practice by which card issuers increase the rate on a credit card account not because of the cardholder's payment history with the card, but because of unrelated information, a practice known as universal default. Under universal default, consumers can make their credit card payment on time every month, but see their interest rate increase because the issuer has determined that their risk profile has increased. Issuers may apply universal default rate increases as a result of a consumer's late payment on another account, such as a different credit card, a mortgage or car

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[5] Joshua M. Frank. "Priceless or Just Expensive? The Use of Penalty Rates in the Credit Card Industry." Center for Responsible Lending, December 16, 2008.

[6] Government Accountability Office, Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers. GAO–06–929, at 5.

[7] *http://www.cardtrak.com/questions/Average*__Family__Debt, visited April 29, 2009.

[8] Chu, Kathy, "November Credit-Card Payoff Rate Fell Sharply," *USA Today*, February 8, 2009. The monthly payment rate fell by 2.5 percentage points to 16.1 percent in November 2008, according to CardTrak.com.

[9] 30-day credit card delinquencies during first three quarters of 2008 were between 4.79 and 4.88 percent, the highest levels since 2002. Federal Reserve Board, "Charge-Off and Delinquency Rates on Loans and Leases at 100 Largest Commercial Banks" "U.S. Credit Card Delinquencies at Record Highs—Fitch," *Reuters*, February 4, 2009.

payment, or a utility bill.[10] Further, under current law issuers may apply universal default rate increases when a consumer doesn't pay late at all, but rather when the issuer has determined that there has been a change in the consumer's risk profile because he or she has taken out a new loan or utilized more of his or her available credit.

Issuers argue that this practice is necessary to allow issuers to price consumers' accounts according to the consumer's overall risk profile. Consumer advocates contend that this practice is unfair because it allows issuers to raise rates even on cardholders who have always paid on time and have consistently met the terms of their contract, for reasons unrelated to the consumer's behavior, such as changes in market conditions. They further note that when a penalty rate is triggered by the cardholder's behavior, there is no limit on how long the increased rate will last.

The Credit CARD Act prohibits this practice by permitting issuers to raise interest rates on cardholders only in response to a specific, material violation of the card agreement by the issuer. In addition, the bill would require issuers to lower penalty rates that have been imposed on a cardholder after 6 months if the cardholder meets the obligations of the credit card terms.

Unilateral change in terms/"Any Time, Any Reason" Provisions

In addition to the rate increases based on universal default, many credit card issuers include clauses in their contracts allowing credit card issuers to raise rates and change terms on their credit card customers at any time for any reason. According to a 2008 survey by Consumer Action, 77 percent of credit card issuers reserve the right to increase a consumer's interest rate on both prospective balances and on consumers' pre-existing balances under "any time, any reason" clauses. This practice is prohibited by the Credit CARD Act, which prevents issuers from changing the terms of a credit card contract for the length of the card agreement, with limited exceptions.

Retroactive interest rate increases

Currently, when a credit card issuer raises a cardholder's interest rate, this increased rate is applied not only to the purchases that the consumer will make in the future, but also to the balances that the consumer has already incurred at a lower rate, with the effect that an existing credit card debt which the consumer may have been paying on time costs significantly more to repay. Issuers contend that the ability to raise interest rates on cardholders is necessary to ensure that they are able to price for increased risk by the cardholder. Consumer advocates argue that this retroactive application of rate increase is unfair, and is not justified by the risk to the issuer since cardholders' rates can be raised even when they have consistently met their obligations under the card contract. The CARD Act will prohibit retroactive interest rate increases, and require that interest rate increases apply only to future debt.

[10] Bennish, Steve, "Credit Reporting Policy Helps Most Customers, DP&L Says," *Dayton Daily News*, February 26, 2009.

Allocation of payments

Card companies impose multiple interest rates for various types of transactions (e.g., balance transfers, ordinary purchases, and cash advances). When the cardholder makes a payment, industry practice is to apply the monthly payment first to the balance with the lowest APR, while letting the higher interest balance collect more interest and more debt. Under this method of payment allocation, the cardholder is prevented from paying off his or her higher rate balance until the balance with the least expensive rate is paid off, maximizing the amount of interest that the consumer pays. One result of this method of allocation is that consumers do not receive the full benefit of lower promotional interest rates because a consumer can never take full advantage of lower promotional rates while still using the card.[11] The CARD Act requires payments to be credited to the highest balance first, and to be applied in a way that minimizes finance charges.

Misleading prescreened offers of credit

Prescreened credit card solicitations often target people with blemished or no credit card histories with offers for credit cards that have low interest rates and high "up to" credit limits that exceed what the consumer is likely to qualify for and receive. Consumers who receive these solicitations that prominently advertise very low interest rates and high credit limits believe that when they apply, they will receive a credit card reflecting these advertised rates and limits. Ultimately, however, these consumers receive cards that have less attractive terms and features than the card for which they applied, including higher interest rates and lower credit limits. A consumer who is offered one rate or a range of rates, and receives a card at the high end of that range effectively cannot decline the card and start the process over with another card company without penalty, because multiple credit requests can depress the consumer's credit score, thereby affecting the consumer's ability to obtain another card at a competitive rate. The CARD Act would allow cardholders to reject a card until they activate it without having their credit adversely affected.

Unreasonable and excessive fees

An analysis by the United States Government Accountability Office (GAO) found that "typical cards today now include higher and more complex fees than they did in the past for making late payments, exceeding credit limits, and processing returned payments."[12] For example, credit card issuers in the past rejected transactions that exceeded a cardholder's credit limit, but it has now become common practice for issuers to accept the transaction and then apply an overlimit fee on cardholders who exceed their credit limits. In addition, the GAO found that late fees have been steadily rising over the past decade, averaging $34 per incident in 2005.

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[11] For example: A consumer uses a convenience check sent in the mail, promising 0% for 12 months, to purchase a $9000 car. She also makes $300 in purchases, which carry a 12% APR. There is no way for the consumer to make payment on the $300 since any payment would first be applied to the $9000 carrying a 0% rate.

[12] "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," U.S. Government Accountability Office, September 2006, p. 18.

The Credit Card Act will help put an end to unreasonable penalty fees. For example, the Act prohibits issuers from charging a fee to allow a consumer to pay a credit card debt, whether payment is by mail, telephone, electronic transfer, or otherwise. With respect to overlimit fees, the Act prevents issuers from charging multiple overlimit fees for exceeding a card limit, and allows such fees only when a cardholder's action, rather than a fee or finance charge, causes the limit to be exceeded. The Act also permits overlimit charges to be applied only once during a billing cycle. The CARD Act further addresses fees by requiring that the penalty fees charged to cardholders be reasonably related to the issuers' costs, and by requiring that currency exchange fees be reasonable. The Committee understands that the Federal Reserve Board, in determining reasonable relation to cost, will take into account a number of factors, including; costs associated with individual transactions; costs of managing the portfolio; credit risk associated with both the portfolio and the individual; the conduct of the cardholder; and circumstances leading to such omission or violation; and such other factors as the Board may deem appropriate.

Unfair methods of computing finance charges

Issuers use different methods for computing finance charges on balances that have already been paid on time. These methods are difficult for consumers to understand and can result in substantial additional finance charges on a cardholder over the course of a year. Under the double cycle billing method of computing finance charges, an issuer considers not only the current balance on the credit card, but also the balance from previous billing periods in assessing interest on a consumer's balance. This method results in a consumer paying more interest on the current outstanding balance on the card. In addition to double cycle billing, issuers use interest computation practices to 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. Using this method, a consumer who begins with no balance from the previous billing cycle (month 1) and then pays off a portion of the current balance (month 2), would be charged interest (in month 3) for the entire amount of the balance, even the portion that was paid (in month 2) .

The Card Act would address these practices by preventing issuers from requiring consumers to pay interest on portions of debt already repaid, helping to ensure a fair billing process that only results in an interest charge on the amount of the unpaid balance. The Act would require finance charges on outstanding credit card balances to be computed based on purchases made in the current cycle rather than going back to the previous billing cycle to calculate interest charges.

Minimal notice and lack of disclosure

The large volume of the card industry's solicitations is exacerbated by the confusing complexity of those solicitations. It is common industry practice to use promotional interest rates to attract customers and to induce new and existing customers to transfer balances from other credit cards. Direct mail solicitations prominently display low interest rates to lure consumers but often fail to fully or prominently disclose the fact that the low rate is for a limited period of time, that circumstances exist that could shorten the promotional period or cause the promotional interest rate to increase, or that there may be fees associated with transferring balances to lower interest rate cards. In addition, credit card issuers are currently required to mail notices only 15 days in advance of a proposed increase in interest rate, with the result that consumers have very little opportunity to avoid the increased interest rate and thus face significant additional interest payments without advance notice.

The Act makes a number of changes to enhance consumer disclosures. It requires issuers to provide 45 days advance notice of interest rate increases, and grants cardholders the right to cancel the card and pay it off under the old terms.

Aggressive marketing to students

Credit card issuers engage in extensive marketing on college campuses with offers of easy credit to students and encourage them to obtain and use credit cards without verifying the student's ability to repay the resultant debt. In contrast, if any other adult applies for a credit card, an issuer generally verifies the consumer's ability to pay by checking their credit history and obtaining information about the applicant's income. A consumer with a less positive credit history or lack of income either gets a lower limit, higher interest rate card or is required to have a co-signer. An even less creditworthy consumer would be denied, or required to obtain a secured credit card.

The CARD Act requires credit card issuers to consider ability to repay when issuing credit cards to students and other young consumers. The Act requires that credit card issuers, when extending credit to persons under the age of 21, obtain an application that contains: (1) the signature of a parent, guardian, or other qualified individual willing to take financial responsibility for the debt; (2) information indicating an independent means of repaying any credit extended; or (3) proof that the applicant has completed a certified financial literacy or financial education course.

CREDIT CARD FINAL RULES

In the face of evidence that disclosure was insufficient to protect consumers from many abusive practices,[13] the Federal Reserve Board, Office of Thrift Supervision and the National Credit Union Administration finalized rules to prohibit unfair or deceptive practices regarding credit cards and overdraft services in December of 2008. The Agencies exercised their authority under the Federal Trade Commission Act to prescribe regulations to end certain unfair or deceptive credit card practices under Regulation AA (Unfair Acts and Practices). During the comment period, the public responded to the proposed rules with an unprecedented number of comments—over 66,000—submitted to the agencies.

[13] In 2006, the Government Accountability Office (GAO) found that current "disclosures have serious weaknesses that likely reduced consumers' ability to understand the costs of using credit cards" because they were too complicated for many consumers to understand. Government Accountability Office, Credit Cards; Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers 6 (2006).

Among other provisions, the rules include the following credit card protections for consumers:

(1) Credit card issuers will be prohibited from increasing the rate on a preexisting credit card balance. Exceptions to this provision are provided for: rate increases linked to an increase in an underlying index on a variable-rate card; the expiration of a specified promotional period provided that the higher rate was disclosed at account opening; the cardholder's failure to comply with the terms of a workout or temporary hardship arrangement; and 30–day delinquency by the cardholder.

(2) Issuers will be prohibited from allocating payments in excess of the minimum in a manner that maximizes interest charges.

(3) Issuers will be prohibited from imposing interest charges using the "double-cycle" method, which computes interest on balances on days in billing cycles preceding the most recent billing cycle.

(4) Issuers will be required to provide consumers a reasonable amount of time to make payments, with statement mailing or delivery 21 days prior to the due date considered a "safe harbor."

(5) Issuers would be prohibited from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if charges assessed during the first 12 months would exceed 50 percent of the initial credit limit.

The Agencies also exercised their authority under the Truth in Lending Act to prescribe regulations on consumer disclosures in credit card solicitations, applications, and statements under Regulation Z. These regulations were proposed after consumer testing which included a series of focus groups as well as interviews with 1,022 participants in seven cities. Final rules under Regulation Z include the following requirements:

(1) Application and solicitation disclosures will be required to include the actions that would trigger a "penalty APR" along with the resulting penalty rate and the possibility of that rate to expire. The potentially confusing terms "default rate" and "grace period" will not be permitted.

(2) Account opening disclosures will be required to include interest fees, minimum charges, transaction fees, annual fees, and penalty fees.

(3) Periodic statement disclosures will be required to group together interest charges and fees, itemized by transaction type, with year-to-date totals. Payment due dates and the consequences of a late payment would be required on the front of each statement.

(4) Advance notice for interest rate increases or other changes in terms will increase to a minimum of 45 days. Currently, the rules permit either immediate increases, or a minimum of 15 days advance notice, depending on actions triggering the change.

(5) Cut-offs for accepting payments will be established at a "reasonable time," no earlier than 5 p.m., with Sunday/holiday due dates postponed to the next business day for payments made by mail.

It is the view of the Committee that these rules are an important first step in curbing some of the most abusive practices engaged in by credit card issuers. But there are a number of additional areas described in this report where Congress needs to act to ensure that consumers are adequately protected in the credit card marketplace.

In addition, the rules do not take effect and thus leave consumers unprotected until July 1, 2010.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section establishes the short title of the bill, the "Credit Card Accountability Responsibility and Disclosure Act," and provides a table of contents.

Section 2. Regulatory authority

This section authorizes the Board of Governors of the Federal Reserve System (the Board) to issue rules and publish model forms as it considers necessary to carry out the Act and the amendments made by the Act.

Section 3. Effective date

This section provides an effective date of 9 months after passage of the Act.

TITLE I—CONSUMER PROTECTION

Section 101. Prior notice of rate increases required

This section prevents issuers from increasing interest rates on cardholders without 45 days' notice, and prohibits issuers from applying rate increases retroactively to existing balances. This section also requires issuers to provide cardholders with a clear notice of the cardholders' right to cancel the credit card when the interest rate is raised.

Section 102. Freeze on interest rate terms and fees on canceled cards

This section prevents issuers from increasing the interest rate on a cardholder, or changing the terms of a credit card, if a cardholder cancels a card.

Section 103. Limits on fees and interest charges

This section prohibits credit card issuers from imposing interest charges on any portion of a balance that is paid by the due date.

Under this section, cardholders must be given the option of having a fixed credit limit that cannot be exceeded, and card companies are prohibited from charging overlimit fees on cardholders with fixed limits. Cardholders may elect to prohibit their issuers from completing overlimit transactions that will result in a fee or constitute a default under the credit agreement. Overlimit charges can only be charged when an extension of credit, rather than a fee or interest charge, causes the credit limit to be exceeded, and can only be applied once during a billing cycle.

This section prohibits issuers from charging interest on credit card transaction fees, such as late fees and overlimit fees.

This section prohibits credit card issuers from charging a fee to allow a credit card holder to pay a credit card debt, whether payment is by mail, telephone, electronic transfer, or otherwise. This section requires that penalty fees assessed to cardholders be reasonably related to the cost incurred by the issuer. Under this section, foreign currency exchange fees may only be imposed in an account transaction if the fee reasonably reflects costs incurred by the creditor and the creditor publicly discloses its method for calculating the fee.

Section 104. Consumer right to reject card before notice is provided of open account

This section prohibits creditors from reporting the issuance of any credit card to a credit reporting agency until the cardholder uses or activates the card.

Section 105. Use of terms clarified

This section prevents card companies from using the terms "fixed rate" and "prime rate" in a misleading way by establishing a single definition.

Section 106. Application of card payments

This section prohibits credit card companies from setting early deadlines for credit card payments. The section requires payments to be applied first to the credit card balance with the highest rate of interest, and to minimize finance charges. The section prohibits late fees if the card issuer delayed crediting the payment. In addition, this section prohibits card companies from charging late fees when a cardholder presents proof of mailing payment within 7 days of the due date.

Section 107. Length of billing period

This section requires credit card statements to be mailed 21 days before the bill is due.

Section 108. Prohibition on universal default and unilateral changes to cardholder agreements

This section prevents credit card issuers from increasing interest rates on cardholders for reasons unrelated to the cardholder's behavior with respect to that card. In addition, it prevents credit card issuers from changing the terms of a credit card contract for the length of the card agreement. The section allows penalty rate increases only for specific, material actions or omissions of the consumer specified in the card agreement. Lastly, this section requires issuers to lower penalty rates that have been imposed on a cardholder after 6 months if the cardholder commits no further violations.

Section 109. Enhanced penalties

This section increases existing penalties for companies that violate the Truth in Lending Act with respect to credit card customers.

Section 110. Enhanced oversight

This section requires a credit card issuer's primary regulator to evaluate the credit card policies and procedures of card issuers to ensure compliance with credit card requirements and prohibitions. Improves existing data collection efforts related to credit card interest rates, fees, and profits.

Section 111. Clerical amendments

This section makes clerical corrections to the Truth in Lending Act.

TITLE II—ENHANCED CONSUMER DISCLOSURES

Section 201. Payoff timing disclosures

This section requires credit card issuers to provide individual consumer account information and to disclose the period of time it will take the cardholder to pay off the card balance if only minimum monthly payments are made. Under this section, issuers are required to disclose the total amount of interest the cardholder will pay in order to pay off the card balance if only minimum monthly payments are made. This section also requires issuers to provide a toll-free number for use by the consumer to receive information about accessing credit counseling and debt management services.

Section 202. Requirements relating to late payment deadlines and penalties

This section requires full disclosure in billing statements of required payment due dates and applicable late payment penalties. It further requires that cardholders be given a reasonable period to make payment, and that payment at local branches be credited same-day.

Section 203. Renewal disclosures

This section requires card issuers to provide a full set of account disclosures to cardholders upon card renewal when the terms of the card have changed.

TITLE III—PROTECTION OF YOUNG CONSUMERS

Section 301. Extensions of credit to underage consumers

This section requires that credit card issuers, when extending credit to persons under the age of 21, obtain an application that contains either: (1) the signature of a parent, guardian, other qualified individual willing to take financial responsibility for the debt; (2) information indicating an independent means of repaying any credit extended; or (3) proof that the applicant has completed a certified financial literacy or financial education course.

Section 302. Restrictions on certain affinity cards

This section mandates that credit card issuers, as a condition for entering into commission-based affinity cards with higher education institutions, require that all affinity card customers under the age of 21, comply with the requirements listed above.

Section 303. Protection of young consumers from prescreened offers of credit

This section prohibits consumer reporting agencies from furnishing reports in connection with firm offers of credit or insurance that are not initiated by consumers under age 21. This section also allows consumers who are at least 18, but not yet 21, to elect, in writing, to have their names and addresses included in any list of names provided by such agencies in connection with such transactions.

Section 304. Issuance of credit cards to certain college students

This section requires parental approval to increase credit lines on accounts where the parent is jointly liable.

TITLE IV—FEDERAL AGENCY COORDINATION

Section 401. Inclusion of all Federal banking agencies

This section amends the Federal Trade Commission Act to authorize each federal banking agency to prescribe regulations governing unfair or deceptive practices with respect to the institutions they supervise. Existing authority is limited to the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration. This section would extend this authority to the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

The section requires the federal banking agencies to prescribe such regulations: (1) jointly to the extent practicable; and (2) in consultation with the Federal Trade Commission (FTC). Under this section, the Comptroller General is instructed to report to Congress on the status of regulations by the federal banking agencies and the NCUA regarding unfair and deceptive acts or practices by depository institutions.

Nothing in this section is intended to affect the scope of the authority granted to the financial regulators under the FTC Act, nor is the section intended to affect in any way the authority of the FTC. Nothing in this section is intended to affect the applicability of state unfair and deceptive practices laws to federally chartered institutions.

TITLE V—GIFT CARDS

Section 501. Definitions

This section defines terms including "gift card," "gift certificate" and "general-use prepaid card."

Section 502. Unfair or deceptive acts or practices regarding gift cards

This section makes it unlawful for any person to impose a dormancy fee, inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card. This section further provides that it is unlawful to sell or issue a gift certificate, gift card or general-use prepaid card that is subject to an expiration date of less than 5 years. An exception is provided allowing fees of not more than $1 for reloadable cards or certificates with less than $5 in value that have been inactive for over 24 months.

Section 503. Relation to state laws

This section states that this title shall not supersede any provisions of State law with respect to dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards.

Section 504. Enforcement

This section makes this title enforceable under section 18(a)(1)(B) of the Federal Trade Commission Act.

TITLE VI—MISCELLANEOUS PROVISIONS

Section 601. Study and report on interchange fees

This section requires the Comptroller General of the GAO to conduct a study on interchange fees and their effects on merchants and consumers, and to report the findings to Congress in 180 days.

Section 602. Study and report on credit card rating system

This section requires the Comptroller General of the GAO to establish a Credit Card Safety Rating Commission that will determine whether a rating system to allow cardholders to quickly assess the level of safety of credit card agreements would be beneficial to consumers, and to make recommendations to Congress concerning how such a system should be devised.

Section 603. Increased borrowing authority of the FDIC and the NCUA

This section increases the maximum borrowing authority of the Federal Deposit Insurance Corporation from $30 billion to $100 billion and of the National Credit Union Administration from $100,000,000 to $6 billion.

This section further authorizes a temporary increase in borrowing authority through calendar year 2010 up to a maximum of $500 billion for the FDIC and $18 billion for the NCUA, if the Secretary of the Treasury, in consultation with the President, determines that additional amounts are necessary, pursuant to the written recommendation of the Federal Reserve Board and either the FDIC Board or the NCUA Board, respectively.

Additionally, this section requires that the NCUA Board establish a restoration plan for the Share Insurance Fund when the Board determines that the equity ratio of the Fund will fall below 1.2%, the minimum equity level required by statute.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the bill.

The "Credit Card Accountability Responsibility and Disclosure Act of 2009" modifies the Truth in Lending Act to prohibit certain practices by credit card issuers, and to require that they provide additional disclosures to borrowers. The bill requires the Federal Reserve Board to issue regulations to implement the Act.

The bill modifies the Federal Trade Commission Act to give each federal banking agency, with respect to the depository institutions it supervises, the authority to prescribe regulations governing unfair or deceptive practices.

The bill also modifies the Federal Deposit Insurance Act and the Federal Credit Union Act.

The bill has no discernible impact on personal privacy. The bill is not expected to result in substantial additional paperwork.

COST OF THE LEGISLATION

April 24, 2009.

Hon. CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 414, the Credit Card Accountability Responsibility and Disclosure Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Leigh Angres (federal deposit insurance), Barbara Edwards (revenues), and Jacob Kuipers (private-sector mandates).

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 414—Credit Card Accountability Responsibility and Disclosure Act of 2009

Summary: S. 414 would amend the Truth in Lending Act to restrict the use of a number of billing practices applied to consumer credit cards. S. 414 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. The Federal Reserve also would be required to annually report to the Congress about certain profitability measures on the credit card operations of depository institutions. Finally, the bill would establish a commission to study the feasibility of instituting a rating system to reflect the riskiness of credit card agreements.

S. 414 also would make changes to the insurance funds administered by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA). The bill would increase the amounts that the FDIC and NCUA can borrow from the Treasury for their deposit insurance funds. S. 414 also would allow NCUA to lengthen the amount of time available to impose industry assessments for the purpose of replenishing its insurance fund.

CBO estimates that enacting S. 414 would increase direct spending by $1.4 billion over the 2010–2014 period and reduce direct spending by $500 million over the 2010–2019 period. We estimate that implementing S. 414 would increase discretionary spending by $9 million over the 2010–2014 period, assuming appropriation of the estimated amounts. CBO estimates that enacting the bill would not have a significant effect on revenues.

The effects on direct spending over the 2009–2013 and 2009–2018 periods are relevant for enforcing the Senate's pay-as-you-go rule under the current budget resolution. CBO estimates that enacting S. 414 would increase direct spending by $2.5 billion over the 2009–2013 period and reduce direct spending by $500 million over the 2009–2018 period. Enacting S. 414 would not have a significant effect on revenues over those time periods. Pursuant to Section 311 of S. Con. Res. 70, CBO estimates that S. 414 would not cause a net increase in deficits in excess of $5 billion in any of the four 10–year periods beginning after fiscal year 2018.

S. 414 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 414 contains several private-sector mandates, as defined in UMRA. The bill would require creditors to submit detailed information on a semiannual basis to the Federal Reserve and prohibit them from engaging in certain credit card billing and issuing practices. The bill also would prohibit issuers of gift cards from collecting certain fees or establishing expiration dates. Based on information from the Federal Reserve and industry sources, CBO estimates that the aggregate cost of those requirements would likely exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated impact of enacting S. 414 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 800 (general government).

Basis of estimate: For this estimate, CBO assumes that S. 414 will be enacted near the end of fiscal year 2009.

Direct spending

CBO estimates that enacting S. 414 would increase direct spending by $1.4 billion over the 2010–2014 period, but would reduce direct spending by $500 million over the 2010–2019 period as a result of changes related to federal deposit insurance programs.

	By fiscal year, in millions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN DIRECT SPENDING[1]												
Increase FDIC Borrowing Authority:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	7,700	−2,160	−2,310	−1,330	−860	−820	−630	−30	0	0	1,040	−440
Lengthening Time to Restore the SIF:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	1,460	−260	−280	−290	−310	−290	−90	0	0	0	320	−60
Total Changes:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	9,160	−2,420	−2,590	−1,620	−1,170	−1,110	−720	−30	0	0	1,360	−500
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	2	2	2	2	2	2	2	2	2	2	10	20
Estimated Outlays	1	2	2	2	2	2	2	2	2	2	9	19

[1] CBO estimates that enacting S. 414 would have an insignificant effect on revenues over the 2010–2019 period.
Note: FDIC = Federal Deposit Insurance Corporation; SIF = Share Insurance Fund.

Higher Borrowing Limit for FDIC. The bill would provide a permanent increase in the FDIC's authority to borrow from $30 billion to $100 billion and would provide a temporary increase of up to $500 billion under certain conditions. Raising the FDIC's borrowing authority would give the agency more flexibility in setting the insurance premiums it charges depository institutions, managing the resolution of failed institutions, and providing alternative forms of assistance to financial institutions (for example, guaranteeing debt issued by banks). CBO estimates that such changes would increase net outlays by about $1 billion over the next five years, but would result in savings of $440 million over the 2010–2019 period. We assume that, if this bill is enacted, the FDIC would reduce certain special assessments on the financial industry that otherwise would take effect within the next 12 months, resolve certain cases more quickly, and reduce its reliance on loss-sharing methods to resolve failed institutions in some situations.

Changes to National Credit Union Share Insurance Fund (SIF). The SIF normally provides insurance for deposits of $100,000 in individual credit unions. (Under Public Law 110–43, the SIF currently provides insurance up to $250,000 through December 31, 2009.) SIF is structured to be entirely self-supporting through the biannual premiums paid by credit unions.

Current law requires that, over the course of the year, the SIF balance total between 1.2 percent and 1.3 percent of insured deposits (including amounts credited to the fund from interest earned on its unspent balances). If the fund balance (including interest) falls below 1.2 percent of insured deposits, the NCUA must assess a premium on credit unions. As of March 2009, the SIF has about $8 billion in fund balances (1.3 percent of insured deposits).

CBO estimates that the SIF will incur losses totaling about $7 billion over the next three years. The majority of those losses will stem from an NCUA program created in January 2009 that provides a temporary guarantee of uninsured deposits at most corporate credit unions through December 31, 2010. The remaining losses will result from payments to a corporate credit union in January 2009 and from other anticipated credit union failures.

Lengthening the Time to Restore the SIF. S. 414 would lengthen the amount of time available to restore the fund balances of the SIF to at least 1.2 percent of insured deposits. Agency regulations state that the SIF balance must be restored to at least 1.2 percent of insured deposits within one year. Under the bill, the SIF balance would have to be at 1 percent within a year, but the restoration from 1 percent to at least 1.2 percent of insured deposits could be spread out for a period of up to five years (or longer under extraordinary circumstances as determined by NCUA).

Under the bill, CBO expects that future SIF premiums would be paid over seven years given the extraordinary losses the SIF is expected to incur. Accordingly, CBO estimates that the agency's net outlays would increase by $320 million over the 2010–2014 period, as losses would exceed premium collections, but would decrease by about $60 million over the 2010–2019 period, as the remaining premiums would be collected.

Higher Borrowing Limit for NCUA. The legislation also would increase the SIF's borrowing authority from $100 million to $6 billion and allow for additional borrowing of up to $18 billion under certain circumstances. Currently, NCUA is using its borrowing authority through the Central Liquidity Facility (CLF) to address certain liquidity needs. Based on information provided by the NCUA, the agency would likely substitute borrowing from the CLF with borrowing under the bill's authority. CBO therefore estimates that the increased borrowing authority would have no net effect on direct spending.

Revenues

The bill would provide more consumer protection for credit card holders through a number of requirements on credit card issuers. For example, the bill would require advance notification to consumers of any rate increases, limits on fees and interest charges on credit card accounts, longer time between the mailing of bills and the payment due dates, and enhanced disclosures regarding payoff timings and penalties. The bill also would provide more stringent requirements for the issuance of credit cards to individuals below age 21. The bill would impose some restrictions on fees charged for gift cards. The bill would require the Federal Reserve to issue any rules and model forms, as needed, to implement the requirements of the bill. To ensure the requirements are uniform for all financial institutions, the Federal Reserve would need to coordinate with other financial regulatory agencies.

According to the Federal Reserve and other agencies, the regulatory activities required by S. 414 would not have a significant effect on their workload or budgets. In May 2008, the Federal Reserve proposed a number of regulatory changes that covered some of the same issues addressed by S. 414 and issued those regulations in December 2008. The related changes are scheduled to become effective July 2010. CBO does not expect the additional data collection and reporting requirements of the Federal Reserve to have a significant effect on its workload, and we anticipate that existing resources would be used to comply with S. 414. 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 not significantly affect revenues, and that the regulatory requirements would have a negligible net effect on direct spending.

Spending subject to appropriation

S. 414 would establish a commission to determine whether a rating system for credit card agreements would benefit consumers, and if so, to recommend ways such a rating system could be devised. Based on historical spending for similar activities, CBO estimates that creating the commission would cost about $9 million over the 2010–2014 period and $19 million over the 2010–2019 period, assuming appropriation of the necessary amounts.

Other provisions of S. 414 would require the Federal Reserve and other financial regulatory agencies to consult with the Federal Trade Commission when developing regulations to implement the new standards and require the Government Accountability Office to undertake two studies and prepare reports of its findings. The first study, due six months after enactment of S. 414, would review interchange fees and their effects on consumers and merchants. The second, due 18 months after enactment of the bill, would report on the status of regulations adopted by the financial regulatory agencies regarding unfair and deceptive acts by depository institutions and federal credit unions. Taken together, CBO estimates that those consultation and reporting requirements would cost less than $1 million per year, assuming the availability of appropriated funds.

Estimated impact on state, local, and tribal governments: S. 414 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, principally affecting creditors and institutions that issue gift cards. Mandates on creditors would:

- Impose additional reporting requirements;
- Place limits on fees and interest charges;
- Set standards for issuing credit cards to individuals under the age of 21; and
- Impose requirements on several features of credit accounts.

The bill also would impose private-sector mandates on issuers of gift cards by prohibiting them from collecting certain fees or establishing expiration dates, except as directed in the bill.

The aggregate costs to comply with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

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

Mandates on creditors

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

Limits on Credit Card Fees and Interest Charges. The bill would place limits on fees and interest charges creditors could collect. This includes over-the-limit fees, interest charges, and other fees. The industry currently collects billions of dollars in such fees and interest charges annually. According to the Federal Reserve and industry sources, the limits imposed by the bill could significantly affect the amount that creditors collect each year.

Over-the-Limit Fees. The bill would require creditors to allow cardholders to establish a credit limit that cannot be exceeded, which is known as a hard credit limit. 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 hard credit limit. In addition, the bill would limit the situations when creditors could charge over-the-limit fees. 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.

Credit Card Interest Charges. The bill would impose several new requirements regarding a creditor's ability to collect interest charges from credit cards that have been cancelled and from certain credit card transaction fees. The bill also would require creditors to apply a cardholder's payment to the balance with the highest rate of interest to minimize finance charges.

Credit Card Fees. The bill also would impose limits on the fees charged to cardholders and when creditors could charge certain fees.

Standards for Issuing Credit Cards to Individuals Under the Age of 21. The bill also would require creditors, when soliciting to persons under the age of 21, to obtain a credit card application that contains either a guardian's signature, information indicating an independent income, or proof that the applicant has completed a certified financial education course. In addition, a creditor would be prohibited from increasing such a cardholder's line of credit unless a guardian approves in writing and assumes joint liability of such increase. A creditor also would be prohibited from soliciting prescreened credit offers to individuals under the age of 21. Similarly, credit-reporting agencies would be prohibited from furnishing credit-related information to creditors unless explicitly authorized by the individual. Even though only a small percentage of cardholders are under the age of 21, creditors collect hundreds of millions of dollars each year from cardholders between the ages of 18 and 21. CBO is uncertain whether the mandates would affect the number of persons under 21 who would acquire credit cards. Therefore, we cannot determine if the cost of complying with this mandate would be significant to creditors.

Requirements on Credit Account Features. S. 414 would impose several new requirements on creditors related to providing account disclosures, using certain terms, and activating credit cards. The bill would require creditors to disclose payment and interest information as well as termination procedures prominently as described in the bill. In addition, the bill would prohibit creditors from using the term "prime rate" unless its use is based on the definition provided in the bill and would prohibit creditors from informing credit bureaus of a cardholder's line of credit until the cardholder has activated his or her card. The cost for creditors to comply with those mandates would likely be minimal because compliance would involve only a small adjustment in current procedures.

Mandates on issuers of gift cards

S. 414 would prohibit issuers of gift cards from collecting certain fees and establishing expiration dates for gift certificates, store gift cards, or general-use prepaid cards except as allowed by the bill. According to industry sources, those requirements could significantly affect the amount that issuers of gift cards collect in fees each year. Currently, those issuers collect more than $6 billion each year from fees and expired cards. Even if this provision affected only a small portion of those fees, the amount of forgone collections by card issuers could be substantial.

Estimate prepared by: Federal costs: Federal Banking—Kathleen Gramp and Leigh Angres; Revenues—Barbara Edwards; Impact on state, local, and tribal governments: Leo Lex; Impact on the private sector: Jacob Kuipers.

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

CHANGES IN EXISTING LAW (CORDON RULE)

On March 31, 2009 the Committee unanimously approved a motion by Senator Dodd to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with the requirement of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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