

Consumer Action

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Testimony of

Consumer Action

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Regarding

Expedited CARD Reform for Consumers Act of 2009

H.R. 3639

Before

The Committee on Financial Services

U.S. House of Representatives

The Honorable Barney Frank, Chair

October 8, 2009

Thank you for the invitation to testify on behalf of Consumer Action to discuss some of the reasons consumers need the protection that the Credit CARD Act contains sooner than currently scheduled.

Consumer Action (www.consumer-action.org), founded in 1971, is a San Francisco based nonprofit education and advocacy organization with offices in Los Angeles, CA and Washington, DC. For more than two decades, Consumer Action has regularly examined credit card rates and fees in order to track industry trends and assist consumers in comparing cards.

We appreciate the Chairman's leadership on consumer protection issues particularly in understanding the need for a Consumer Financial Protection Agency to set strong rules for all financial institutions and whose sole purpose is to protect the consumer. We are also grateful for the Chairman's foresight, along with Congresswoman Maloney, to act when the spirit of the impending credit card law continues to be violated by many industry players. We are grateful that with so many important matters on his plate these days that the Chairman felt compelled to return to the issue of credit card tricks and traps.

We strongly support H.R. 3639, the Expedited CARD Reform for Consumers Act of 2009, to establish an earlier effective date for the Credit CARD Act. We will focus our testimony on the expensive, exploitive practices card issuers have engaged in, in some cases, since the Credit CARD Act was signed into law by President Obama this May.

Consumer Action has been conducting annual credit card surveys since the mid 1980's. We analyze the online solicitations of all major credit card issuers, as well as conduct a 108-question survey of the practices of each of the top issuers of bankcards, credit union credit cards and six low rate issuers.¹

In Consumer Action's 2009 survey we discovered that between March 2009 when we stopped surveying and June when we confirmed the data we had collected, that major credit card issuers had arbitrarily increased rates, spiked fees and hiked minimum payments.

There appeared to be no rational reason for the rate increases. There was no jump in the prime rate, nor other reason to explain rates rising by as much as three percentage points between March and June of this year... other than issuers making good on threats that credit would dry up and cardholders would see costs rise with the passage of the Credit CARD Act.

Consumer Actions' 2009 Credit Card Survey showed some card issuers boosted purchase and cash advance rates by up to three percentage points within just three months this spring.

- Bank of America Platinum Plus Visa Card had an increase of up to 46% in the purchase rate.

¹ 2009 Credit Card Survey (http://www.consumer-action.org/news/articles/2009_credit_card_survey)

- Citigroup hiked the purchase rate on three of its cards by 26% to 42%.²
- Capital One increased its penalty (default) rate by 6.25%, bringing the rate to 29.4% on its Standard Platinum and No Hassle Miles cards.
- Chase's penalty rate jumped almost three points to (29.99%) on its Perfect MasterCard.

Consumer Action's credit card survey also found fees spiked between March and June of 2009, long before the new law would take effect. Balance transfer fees jumped to as high as 5% in recent months.

- Bank of America's balance transfer fee went from 3% to 4% (Platinum Plus Cash Rewards & Platinum Plus Visa)
- Chase's balance transfer fee hit 5% in August
- HSBC charges some customers a \$49 'processing' fee *and* a \$79 annual fee, depending on creditworthiness, in addition to charging some card holders as much as 31.99% for a penalty rate.

In August, *American Banker* reported that Citigroup has started adding annual fees if the cardholder doesn't spend enough. The report said that the fee is between \$30 to \$90, unless the cardholder spends a specific amount – usually \$2400.

With credit card reform slated for implementation, Consumer Action found that nearly all surveyed issuers had at least one practice that will be prohibited or limited by the new law including "anytime/any reason" changes in terms, payment allocation inequities, early payment cut-off times on the due dates, costly penalty rates and penalty fees imposition, and universal default.

Consumer Action also assists consumers through our complaint hotline where we regularly hear complaints about unanticipated minimum payment hikes, abrupt account closures, and spikes in interest rates.

Here is just a sample of what we hear regularly:

John DeCotret from California (a Chase customer for 19 years) says he never pays his bill late. The recent hike in minimum payments from 2 to 5% will increase his minimum monthly payment from about \$250 /month to over \$600 a month. He says, "We have excellent credit, we have done a terrific job managing under severe economic conditions. A \$350 a month increase could put us in serious trouble. This is a terrible way to treat good customers."

One Maryland cardholder recently contacted Consumer Action in desperation after her interest rate more than doubled. Kelly saw her rate jump from 12.49% to a whopping 29.99%. (Kelly wants to maintain her anonymity since she works in the financial services industry). Kelly's monthly minimum payment had gone from an affordable \$151 to \$471

² *Citibank AT&T Universal Card, Citi Diamond Preferred Rewards Card, Citi Platinum Select Mastercard.*

and she could not pay it. When she contacted the issuer to try to arrange for an affordable payment plan she was denied assistance. Kelly acknowledged that she had been late with a payment, after her due date was moved back a week (from the 4th of the month to the 30th). She understood being hit with a \$39 late fee but could not comprehend, nor afford, a 140% rate hike.

We intervened on Kelly's behalf and put her in touch with some people at the bank who were ultimately able to help her. But the average cardholder may not be so fortunate.

Had the Credit CARD Act been in effect already, Kelly's late payment would not have caused her rate to more than double (because she was not more than 60 days late) and this entire ordeal would have been avoided.

We've heard from scores of cardholders in recent months who have paid on time each month, yet have seen their rates rise, often for no reason at all.

Lori (Davis) from Florence, Massachusetts says her Capitol One card went from 7.9% fixed to 17.9% variable rate. When she called to complain she was told it was "a business decision".

Virginia Simpson of Greenville S. Carolina who never paid late and always made more than the minimum payment, yet her Bank of America interest rate jumped from 9.9% to 25.9% because, according to her issuer, she was now carrying 'too big a balance'.

Lillie Durbin from Houston Texas saw her (B of A) limits slashed and rates rise from 13.9% to 26%. She too, always paid more than the minimum and never paid late. The arbitrary changes hurt her credit score and in turn hurt her chances of transferring that balance to a more affordable rate.

Joe Prager, a Florida small business man with excellent credit, says his Capital One cards went from 5.9% to 15.9% and 6.9% to 16.9%, according to his issuer, due to "economic uncertain times".

Consumer Action's survey shows that card companies continue to include "market conditions", "economic conditions" and "competitive factors" as reasons to raise rates & fees. Still others complain of "too many inquiries in a credit report," or "increased use of a credit line" as reason enough to raise an interest rate.

If the Credit CARD law was effective today issuers would still have the freedom to raise rates for arbitrary reasons but they would not be able to apply that increase to a cardholder's balance (except in limited circumstances).

Lenders insist that they do not practice universal default, but language in cardholder agreements seems to clearly say they do. In this year's Credit Card survey, Consumer Action found fine print online for US Bank that states that the APR may increase "if you fail to make timely payments to another creditor as reflected in your credit report."

However, US Bank maintains that they “do not have and have never had universal default.”

HSBC’s fine print reads “we have the right to change your APR, fees, other terms anytime for any reason including... use of your credit line with us or any creditor, or our financial return.”

But HSBC says it “does not increase rates on a customer’s account solely because a customer has defaulted with another creditor.”³

Under the new credit card law, limitations will be placed on the practice of raising a cardholder’s rate based on one’s payment history with *another* lender – but it will only apply to existing balances. (Card issuers will remain free to increase cardholders’ future interest rates for this reason.)

As lenders look for ways to reduce financial risk, consumers who have done nothing wrong can find that their credit lines have been closed or reduced. They may be hit with another costly surprise - their credit score may have suffered. Approximately one-third of a consumer’s credit score is based on the amount of credit they have compared to the amount of credit they use (utilization ratio). A card issuer can close an account or sharply reduce a credit line, thus reducing the total amount of the cardholder’s available credit, and raise the percentage of credit used, leaving the impression that the cardholder now has a higher proportion of debt - even if the debt load in actual dollars may not have budged at all.

For cardholders who have been responsible customers this can have serious ramifications -- from reducing the opportunity to make a major purchase if credit lines have been drastically cut or disappear, to ruining dreams of buying a home.

We do not accept the notion that card issuers must find ways to replenish their coffers on the backs of cardholders. Credit card companies start with the premise that they must now compensate for the funds that they stand to lose once the most valuable elements of the Credit Card Act take effect – once unjustified rate hikes will not be allowed to apply to a cardholder balances (w/ certain exceptions), and payments will no longer automatically be wholly allocated to a consumers’ lowest rate balance. We don’t believe that it should be assumed that limits on how penalty rates and fees are applied must promptly be replaced for the benefit of shareholders.

Card issuers have been fortunate enough to make handsome profits over the years. For the industry to assume that as the economy changes and unfair, exploitive practices are limited - or prohibited, that in time gluttonous profits should continue is the height of hubris.

Just as cardholders, in some cases, are expected to accept the harsh reality that credit is

³ US Bank & HSBC universal default language attached.

far less available today and that it may cost more to receive a loan, it is time for card issuers to face the fact that reasonable levels of profit may have to suffice, as well.

Lenders have been arguing lately that greater risk means higher rates for consumers, but extreme rate hikes only help to make a cardholder far more risky, endangering both the family and the firm's financial health. We would argue that there is a direct link between some of these indefensible practices and today's high default rates, hovering around 10%.

There is no logic in taking a responsible cardholder who is meeting his monthly bills and paying interest to boot, and hiking his rates, and fees or spiking his minimum payment to such a level that he is transformed into an unhealthy customer who can no longer meet his obligations.

This is the result of some of these practices. No one defends an irresponsible cardholder, but the practices of arbitrary rates increases, unreasonable minimum payment spikes - sometimes without notice, and unjustifiable fees are unfair and unaffordable.

For years, cardholders have cried out to Congress to add some fairness and some limits to this lopsided lending system. Congress has responded with the Credit CARD Act.

Congress carefully crafted the credit card law to afford lenders the freedom to continue to raise rates and fees as they see fit—while at the same time putting in place some common sense, reasonable limits as to how those increases may apply.

Quite frankly, from the consumer's perspective, lenders have taken advantage of Congress's generous time frame in which to implement the law. After lawmakers accommodated card issuers who claimed that they needed time to reprogram computer systems, issuers have used this time to use consumers as pawns in their game to maximize profits. It's an insult to Congress, and unfair to cardholders.

If card issuers allocate payments right now from your lowest rate up to highest rate why do they need 9 months to reverse it?

As you know, the bulk of the new credit card law does not take effect until February 22, 2010, with some parts not applying until August 22, a full 15 months after passage.⁴ As

4 CARD Act: SEC. 149. REASONABLE PENALTY FEES ON OPEN END CONSUMER CREDIT PLANS.

"(a) INGENERAL.-The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

"(b) RULEMAKING REQUIRED.-The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after the date of enactment of this section, to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after the date of enactment of this section.

we've seen, that is enough time for card issuers to inflict an extraordinary amount of damage.

We strongly support the solution spelled out in H.R. 3639 – to expedite the implementation date of the law that would help protect cardholders from many of these abusive tactics. Card issuers' actions have ensured that the need for the Credit CARD Act is greater today than ever. Thank you Chairman Frank, and Congresswoman Maloney for recognizing that need and for working diligently to address it.

We also firmly support the recommendations outlined this week by Chairman Frank, Congresswoman Maloney, Senators Levin and McCaskill, to define precisely what detailed rate and fee information the Federal Reserve should require issuers to collect and report on, as part of their mandate under the new law. Requiring lenders to regularly account for the rates and fees they charge and the income they earn will help to make the credit card market a more responsible and transparent system. Consumers continue to count on you to ensure that the system works for all of us.

Thank you for the opportunity to share a consumer perspective on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Ruth Susswein".

Ruth Susswein
Deputy Director, National Priorities
Consumer Action