

110TH CONGRESS
2D SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2008

Mrs. MALONEY of New York (for herself, Mr. FRANK of Massachusetts, Ms. WATERS, Mr. GUTIERREZ, Mr. LYNCH, Mr. ELLISON, Mr. COHEN, Mr. FATTAH, Mr. HINCHEY, Mr. LANGEVIN, Mr. NADLER, Ms. SHEA-PORTER, Ms. SOLIS, Mr. WELCH of Vermont, Mr. WYNN, Mr. GONZALEZ, Mr. DEFazio, Mr. TAYLOR, Mr. OBEY, Ms. HIRONO, Mrs. BOYDA of Kansas, Ms. WASSERMAN SCHULTZ, Mr. UDALL of Colorado, Mr. DINGELL, Ms. CORRINE BROWN of Florida, Mr. THOMPSON of Mississippi, Mr. HASTINGS of Florida, Ms. CLARKE, Mr. JACKSON of Illinois, Mr. DAVIS of Illinois, Mrs. GILLIBRAND, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. WATSON, Mr. ARCURI, Mr. ENGEL, Mr. TIERNEY, Mr. VAN HOLLEN, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. WEINER, Mr. ABERCROMBIE, Ms. SCHAKOWSKY, Mr. SHAYS, Mr. SERRANO, Mr. DOGGETT, and Mr. LINCOLN DAVIS of Tennessee) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. CREDIT CARDS ON TERMS CONSUMERS CAN REPAY.**

5 (a) **UNIVERSAL DEFAULT ELIMINATED.**—Chapter 2
6 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is
7 amended by inserting after section 127A the following new
8 section:

9 **“§ 127B. Additional requirements for credit card ac-**
10 **counts under an open end consumer**
11 **credit plan**

12 “(a) **UNIVERSAL DEFAULT ELIMINATED FOR CRED-**
13 **IT ALREADY OUTSTANDING.**—No creditor may use any
14 adverse information concerning any consumer, including
15 any information in any consumer report (as defined in sec-
16 tion 603) or any change in the credit score of the con-
17 sumer, as the basis for increasing any annual percentage
18 rate of interest applicable to the outstanding balance on
19 a credit card account of the consumer under an open end
20 consumer credit plan at the time of any such increase,
21 other than actions or omissions of the consumer that are
22 directly related to such account.”.

23 (b) **ANY-TIME ANY-REASON CHANGES IN TERMS**
24 **ELIMINATED.**—Section 127B of the Truth in Lending Act
25 is amended by inserting after subsection (a) (as added by
26 subsection (a)) the following new subsection:

1 “(b) ANY-TIME ANY-REASON CHANGES IN TERMS
2 ELIMINATED.—

3 “(1) IN GENERAL.—No creditor may change
4 any term of the contract or agreement applicable
5 with respect to any credit card account of the con-
6 sumer under an open end consumer credit plan until
7 renewal of the contract or agreement except for the
8 specific material reasons, and subject to specific lim-
9 itations, that are contained in the contract or agree-
10 ment with respect to such term at the time the ac-
11 count is opened.

12 “(2) EXCEPTION FOR INCREASES IN CREDIT
13 LIMIT.—Paragraph (1) shall not apply with respect
14 to any increase in the amount of credit authorized
15 to be extended under an account described in such
16 paragraph.”.

17 (c) ADVANCE NOTICE OF CREDIT CARD ACCOUNT
18 RATE INCREASES AND RIGHT TO CANCEL ACCOUNT.—
19 Section 127B of the Truth in Lending Act is amended
20 by inserting after subsection (b) (as added by subsection
21 (b)) the following new subsection:

22 “(c) ADVANCE NOTICE OF CREDIT CARD ACCOUNT
23 RATE INCREASES AND RIGHT TO CANCEL ACCOUNT.—

24 “(1) ADVANCE NOTICE OF CREDIT CARD AC-
25 COUNT RATE INCREASES REQUIRED.—In the case of

1 any credit card account under an open end consumer
2 credit plan, no increase in any annual percentage
3 rate of interest, for any reason other than an in-
4 crease due to the expiration of any introductory per-
5 centage rate of interest, or due solely to a change in
6 another rate of interest to which such rate is in-
7 dexed, may take effect before the end of the 45-day
8 period beginning on the date notice of such increase
9 is sent to the cardholder.

10 “(2) RIGHT TO CANCEL WITHOUT INCREASE IN
11 APR ON OUTSTANDING BALANCE.—Any consumer
12 who receives a notice from a creditor pursuant to
13 paragraph (1) with respect to a credit card account
14 under an open end consumer credit plan shall have
15 the right—

16 “(A) to cancel the credit card, by mail,
17 telephone, or electronic communication and
18 without penalty or the imposition of any fee
19 with respect to such cancellation, at any time
20 during the period beginning on the date the
21 consumer receives the notice pursuant to para-
22 graph (1) and ending on the date the consumer
23 receives the third periodic statement with re-
24 spect to such account after the effective date of
25 the increase; and

1 “(B) to pay any outstanding balance on
2 the credit card account that accrued before the
3 effective date of the increase at the annual per-
4 centage rate and repayment period in effect be-
5 fore the notice was received.

6 “(3) NOTICE REQUIREMENTS.—

7 “(A) INITIAL NOTICE REQUIREMENT.—
8 The notice required under paragraph (1) with
9 respect to an increase in any annual percentage
10 rate of interest shall—

11 “(i) be made in a clear and con-
12 spicuous manner; and

13 “(ii) contain a brief statement of the
14 right of the consumer to cancel the account
15 and pay the balance at the annual percent-
16 age rate in effect before the increase in ac-
17 cordance with paragraph (2) and the mail-
18 ing address, telephone number, and Inter-
19 net address and Worldwide Web site at
20 which the consumer may make any such
21 cancellation.

22 “(B) SUBSEQUENT NOTICES REQUIRED IN
23 PERIODIC STATEMENTS.—Each periodic state-
24 ment provided to the consumer with respect to
25 the credit card account after a notice is pro-

1 vided under paragraph (1) until the third peri-
2 odic statement with respect to such account
3 after the effective date of the increase shall also
4 contain the information required in such notice.

5 “(C) PRO FORMA NOTICES DO NOT MEET
6 NOTICE REQUIREMENT.—A notice that terms
7 may change, or will change, for any or no rea-
8 son does not constitute a notice for purposes of
9 this subsection.

10 “(4) PAYMENT OF POST-INCREASE EXTENSIONS
11 OF CREDIT.—If any consumer obtains an extension
12 of credit on a credit card account on or after the ef-
13 fective date of the increase in the annual percentage
14 rate for which a notice was provided in accordance
15 with paragraph (1) and subsequently cancels the ac-
16 count under paragraph (2), the outstanding balance
17 of such credit that was extended on or after the ef-
18 fective date of the increase shall be subject to repay-
19 ment at the increased rate in effect at the time of
20 the extension of credit.”.

21 (d) CLERICAL AMENDMENT.—The table of sections
22 for chapter 2 of the Truth in Lending Act (15 U.S.C.
23 1631 et seq.) is amended by inserting after the item relat-
24 ing to section 127A the following new item:

“127B. Additional requirements for credit card accounts under an open end con-
sumer credit plan.”.

1 **SEC. 3. CLEAR EXPLANATION OF ACCOUNT FEATURES,**
2 **TERMS, AND PRICING REQUIRED AT REL-**
3 **EVANT TIMES.**

4 (a) **DOUBLE CYCLE BILLING PROHIBITED.**—Section
5 127B of the Truth in Lending Act is amended by inserting
6 after subsection (c) (as added by section 2(c)) the fol-
7 lowing new subsection:

8 “(d) **DOUBLE CYCLE BILLING PROHIBITED.**—If an
9 open end consumer credit plan provides a time period
10 within which a consumer may repay the credit extended
11 without incurring an interest charge, and the consumer
12 repays all or a portion of such credit that is subject to
13 such time period within the specified time period, the cred-
14 itor may not impose or collect an interest charge on the
15 portion of the credit that was repaid within such specified
16 time period.”.

17 (b) **LIMITATIONS RELATING TO ACCOUNT BALANCES**
18 **ATTRIBUTABLE ONLY TO ACCRUED INTEREST.**—Section
19 127B is amended by inserting after subsection (d) (as
20 added by subsection (a)) the following new subsection:

21 “(e) **LIMITATIONS RELATING TO ACCOUNT BAL-**
22 **ANCES ATTRIBUTABLE ONLY TO ACCRUED INTEREST.**—

23 “(1) **IN GENERAL.**—If the outstanding balance
24 on a credit card account under an open end con-
25 sumer credit plan represents an amount attributable

1 only to accrued interest on previously repaid credit
2 extended under the plan—

3 “(A) no fee may be imposed or collected in
4 connection with such balance; and

5 “(B) any failure to make timely repay-
6 ments of such balance shall not constitute a de-
7 fault on the account.

8 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
9 shall not be construed as affecting—

10 “(A) the consumer’s obligation to pay any
11 accrued interest on a credit card account under
12 an open end consumer credit plan; or

13 “(B) the accrual of interest on the out-
14 standing balance on any such account in ac-
15 cordance with the terms of the account and this
16 title.”.

17 (c) PAYOFF BALANCE REQUIRED ON EACH PERI-
18 ODIC STATEMENT OF ACCOUNT.—Section 127B of the
19 Truth in Lending Act is amended by inserting after sub-
20 section (e) (as added by subsection (b)) the following new
21 subsection:

22 “(f) EACH PERIODIC STATEMENT OF ACCOUNT RE-
23 QUIRED TO PROVIDE NOTICE FOR OBTAINING PAYOFF
24 BALANCE.—Each periodic statement provided by a cred-
25 itor to a consumer with respect to a credit card account

1 under an open end consumer credit plan shall contain the
2 telephone number, Internet address, and Worldwide Web
3 site at which the consumer may request the payoff balance
4 on the account.”.

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

10 “(g) CONSUMER RIGHT TO REJECT CARD BEFORE
11 NOTICE OF NEW ACCOUNT IS PROVIDED TO CONSUMER
12 REPORTING AGENCY.—A creditor may not furnish any in-
13 formation to a consumer reporting agency (as defined in
14 section 603) concerning a newly opened credit card ac-
15 count under an open end consumer credit plan until the
16 credit card has been used or activated by the consumer.”.

17 (e) USE OF TERMS CLARIFIED.—Section 127B of the
18 Truth in Lending Act is amended by inserting after sub-
19 section (g) (as added by subsection (d)) the following new
20 subsection:

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

24 “(1) ‘FIXED’ RATE.—The term ‘fixed’, when
25 appearing in conjunction with a reference to the an-

1 nual percentage rate or interest rate applicable with
2 respect to such account, may only be used to refer
3 to an annual percentage rate or interest rate that
4 will not change or vary for any reason over the pe-
5 riod clearly and conspicuously specified in the terms
6 of the account.

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

14 “(3) DUE DATE.—

15 “(A) IN GENERAL.—Each periodic state-
16 ment for any such account shall contain a date
17 by which the next periodic payment on the ac-
18 count must be made to avoid a late fee or be
19 considered a late payment, and any payment re-
20 ceived by 5 P.M., Eastern Standard Time, on
21 such date shall be treated as a timely payment
22 for all purposes.

23 “(B) CERTAIN ELECTRONIC FUND TRANS-
24 FERS.—Any payment with respect to any such
25 account made by a consumer on-line to the Web

1 site of the credit card issuer or by telephone di-
2 rectly to the credit card issuer before 5 P.M.,
3 Eastern Standard Time, on any business day
4 shall be credited to the consumer's account that
5 business day.

6 “(C) PRESUMPTION OF TIMELY PAY-
7 MENT.—Any evidence provided by a consumer
8 in the form of a receipt from the United States
9 Postal Service or other common carrier indi-
10 cating that a payment on a credit card account
11 was sent to the issuer not less than 7 days be-
12 fore the due date contained in the periodic
13 statement under subparagraph (A) for such
14 payment shall create a presumption that such
15 payment was made by the due date, which may
16 be rebutted by the creditor for fraud or dishon-
17 esty on the part of the consumer with respect
18 to the mailing date.”.

19 (f) PRO RATA PAYMENT ALLOCATIONS.—Section
20 127B of the Truth in Lending Act is amended by inserting
21 after subsection (h) (as added by subsection (e)) the fol-
22 lowing new subsection:

23 “(i) PRO RATA PAYMENT ALLOCATIONS.—

24 “(1) IN GENERAL.—Except as permitted under
25 paragraph (2), if the outstanding balance on a credit

1 card account under an open end consumer credit
2 plan accrues interest at 2 or more different annual
3 percentage rates, the total amount of each periodic
4 payment made on such account shall be allocated by
5 the creditor between or among the outstanding bal-
6 ances at each such annual percentage rate in the
7 same proportion as each such balance bears to the
8 total outstanding balance on the account.

9 “(2) ALLOCATION TO HIGHER RATE.—Notwith-
10 standing paragraph (1), a creditor may elect, in any
11 case described in such paragraph, to allocate more
12 than a pro rata share of any payment to a portion
13 of the outstanding balance that bears a higher an-
14 nual percentage rate than another portion of such
15 outstanding balance.”.

16 (g) TIMELY PROVISION OF PERIODIC STATE-
17 MENTS.—Section 127B of the Truth in Lending Act is
18 amended by inserting after subsection (i) (as added by
19 subsection (f)) the following new subsection:

20 “(j) TIMELY PROVISION OF PERIODIC STATE-
21 MENTS.—Each periodic statement with respect to a credit
22 card account under an open end consumer credit plan
23 shall be sent by the creditor to the consumer not less than
24 25 calendar days before the due date identified in such

1 statement for the next payment on the outstanding bal-
2 ance on such account.”.

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

5 Section 127B of the Truth in Lending Act is amend-
6 ed by inserting after subsection (j) (as added by section
7 3(g)) the following new subsections:

8 “(k) OPT-OUT OF CREDITOR AUTHORIZATION OF
9 OVER-THE-LIMIT TRANSACTIONS IF FEES ARE IM-
10 POSED.—

11 “(1) IN GENERAL.—In the case of any credit
12 card account under an open end consumer credit
13 plan under which an over-the-limit-fee may be im-
14 posed by the creditor for any extension of credit in
15 excess of the amount of credit authorized to be ex-
16 tended under such account, the consumer may elect
17 to prohibit the creditor, with respect to such ac-
18 count, from completing any transaction involving the
19 extension of credit, with respect to such account, in
20 excess of the amount of credit authorized by noti-
21 fying the creditor of such election in accordance with
22 paragraph (2).

23 “(2) NOTIFICATION BY CONSUMER.—A con-
24 sumer shall notify a creditor under paragraph (1)—

1 “(A) through the notification system main-
2 tained by the creditor under paragraph (4); or

3 “(B) by submitting to the creditor a signed
4 notice of election, by mail or electronic commu-
5 nication, on a form issued by the creditor for
6 purposes of this subparagraph.

7 “(3) EFFECTIVENESS OF ELECTION.—An elec-
8 tion by a consumer under paragraph (1) shall be ef-
9 fective beginning 3 business days after the consumer
10 notifies the creditor in accordance with paragraph
11 (2) and shall remain effective until the consumer re-
12 vokes the election.

13 “(4) NOTIFICATION SYSTEM.—Each creditor
14 that maintains credit card accounts under an open
15 end consumer credit plan shall establish and main-
16 tain a notification system, including a toll-free tele-
17 phone number, Internet address, and Worldwide
18 Web site, which permits any consumer whose credit
19 card account is maintained by the creditor to notify
20 the creditor of an election under this subsection in
21 accordance with paragraph (2).

22 “(5) ANNUAL NOTICE TO CONSUMERS OF
23 AVAILABILITY OF ELECTION.—In the case of any
24 credit card account under an open end consumer
25 credit plan, the creditor shall include a notice, in

1 clear and conspicuous language, of the availability of
2 an election by the consumer under this paragraph as
3 a means of avoiding over-the limit fees and a higher
4 amount of indebtedness, and the method for pro-
5 viding such notice—

6 “(A) in the periodic statement required
7 under subsection (b) with respect to such ac-
8 count at least once each calendar year; and

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

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

19 “(7) REGULATIONS.—

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

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

6 “(1) OVER-THE-LIMIT FEE RESTRICTIONS.—With re-
7 spect to a credit card account under an open end consumer
8 credit plan, an over-the-limit fee may be imposed only once
9 during a billing cycle if, on the last day of such billing
10 cycle, the credit limit on the account is exceeded, and an
11 over-the-limit fee, with respect to such excess credit, may
12 be imposed only once in each of the 2 subsequent billing
13 cycles, unless the consumer has obtained an additional ex-
14 tension of credit in excess of such credit limit during any
15 such subsequent cycle or the consumer reduces the out-
16 standing balance below the credit limit as of the end of
17 such billing cycle.”.

18 **SEC. 5. STRENGTHEN CREDIT CARD INFORMATION COL-**
19 **LECTION.**

20 Section 136(b) of the Truth in Lending Act (15
21 U.S.C. 1646(b)) is amended—

22 (1) in paragraph (1)—

23 (A) by striking “COLLECTION RE-
24 QUIRED.—The Board shall” and inserting
25 “COLLECTION REQUIRED.—

1 “(A) IN GENERAL.—The Board shall”.

2 (B) by adding at the end the following new
3 subparagraph:

4 “(B) INFORMATION TO BE INCLUDED.—
5 The information under subparagraph (A) shall
6 include, as of a date designated by the Board—

7 “(i) a list of each type of transaction
8 or event for which one or more of the card
9 issuers has imposed a separate interest
10 rate upon a cardholder, including pur-
11 chases, cash advances, and balance trans-
12 fers;

13 “(ii) for each type of transaction or
14 event identified under clause (i)—

15 “(I) each distinct interest rate
16 charged by the card issuer to a card-
17 holder, as of the designated date; and

18 “(II) the number of cardholders
19 to whom each such interest rate was
20 applied during the calendar month im-
21 mediately preceding the designated
22 date, and the total amount of interest
23 charged to such cardholders at each
24 such rate during such month;

1 “(iii) a list of each type of fee that
2 one or more of the card issuers has im-
3 posed upon a cardholder as of the des-
4 ignated date, including any fee imposed for
5 obtaining a cash advance, making a late
6 payment, exceeding the credit limit on an
7 account, making a balance transfer, or ex-
8 changing United States dollars for foreign
9 currency;

10 “(iv) for each type of fee identified
11 under clause (iii), the number of card-
12 holders upon whom the fee was imposed
13 during the calendar month immediately
14 preceding the designated date, and the
15 total amount of fees imposed upon card-
16 holders during such month;

17 “(v) the total number of cardholders
18 that incurred any interest charge or any
19 fee during the calendar month immediately
20 preceding the designated date; and

21 “(vi) any other information related to
22 interest rates, fees, or other charges that
23 the Board deems of interest.”; and

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

1 “(5) REPORT TO CONGRESS.—The Board shall,
2 on an annual basis, transmit to Congress and make
3 public a report containing estimates by the Board of
4 the approximate, relative percentage of income de-
5 rived by the credit card operations of depository in-
6 stitutions from—

7 “(A) the imposition of interest rates on
8 cardholders, including separate estimates for—

9 “(i) interest with an annual percent-
10 age rate of less than 25 percent; and

11 “(ii) interest with an annual percent-
12 age rate equal to or greater than 25 per-
13 cent;

14 “(B) the imposition of fees on cardholders;

15 “(C) the imposition of fees on merchants;

16 and

17 “(D) any other material source of income,
18 while specifying the nature of that income.”.

19 **SEC. 6. STANDARDS APPLICABLE TO INITIAL ISSUANCE OF**
20 **SUBPRIME OR “FEE HARVESTER” CARDS.**

21 Section 127B of the Truth in Lending Act is amend-
22 ed by inserting after subsection (l) (as added by section
23 4) the following new subsection:

24 “(m) STANDARDS APPLICABLE TO INITIAL ISSUANCE
25 OF SUBPRIME OR ‘FEE HARVESTER’ CARDS.—In the case

1 of any credit card account under an open end consumer
2 credit plan the terms of which require the payment of fees
3 (other than late fees or over-the-limit fees) by the con-
4 sumer in the first year the account is opened in an amount
5 in excess of 25 percent of the total amount of credit au-
6 thorized under the account, the credit card may not be
7 issued to the consumer and the opening of the account
8 may not be reported to any consumer reporting agency
9 (as defined in section 603) until the creditor receives pay-
10 ment in full of all such fees, and such payment may not
11 be made from the credit made available by the card.”.

12 **SEC. 7. EFFECTIVE DATE.**

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

17 (b) **REGULATIONS.**—The Board of Governors of the
18 Federal Reserve System, in consultation with all Federal
19 agencies referred to in any provision of section 108 of the
20 Truth in Lending Act, shall prescribe regulations, in final
21 form, implementing the amendments made by this Act be-
22 fore the end of the 6-month period beginning on the date
23 of the enactment of this Act.

○