



Credit Union National Association

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July 29, 2008

The Honorable Carolyn Maloney  
Chairwoman  
Subcommittee on Financial Institutions and Consumer Credit  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairwoman Maloney,

On behalf of the Credit Union National Association (CUNA), I am writing regarding the committee print consisting of an amendment in the nature of a substitute to H.R. 5244 (the committee print), the Credit Cardholders' Bill of Rights Act. CUNA is the nation's largest credit union advocacy organization, representing nearly 90% of our nation's 8,300 state and federally chartered credit unions, their state credit union leagues, and their more than 90 million credit union members.

Innovations in the financial services sector, such as the credit card, have made credit more available, less expensive, and more convenient than at any time in history. When used properly, the credit card is an important purchasing tool for consumers. Credit cards are rarely collateralized, which means the risks associated with this convenient form of credit is generally higher than other lending products; and, financial institutions, including credit unions, which offer credit cards to their members need to be able to price that risk appropriately.

CUNA recognizes that there are legitimate concerns about abusive credit card practices. We applaud efforts to end discriminatory, predatory, deceptive and abusive lending practices, noting that these efforts should be balanced to avoid unintended consequences which would ultimately be adverse to consumers, including making credit more expensive for consumers.

In addition to the committee print, we note that Senate Banking Committee Chairman Christopher Dodd has introduced similar legislation (S. 3252), and the Federal Reserve Board of Governors, the Office of Thrift Supervision and the National Credit Union Administration (NCUA) have published a joint



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proposed rule that addresses several of the concerns raised in your legislation. The joint proposed rule is presently open for public comment and we will be submitting our comments in the near future.

Inasmuch as the regulators currently have the statutory authority to promulgate regulation in this area, they have jointly proposed rules which are expected to be finalized before the end of the year. The proposal seeks to address many of the issues identified in the committee print, and it may be more prudent to let the regulatory process run its course prior to legislating a remedy. However, given the fact that the Committee on Financial Services is scheduled to consider the committee print this week, we would like to share our views regarding the provisions of the committee print.

#### **Double Cycle Billing**

Both the joint proposed rule as well as the committee print prohibit a practice known as "double cycle billing," which occurs when a creditor calculates interest charges based on balances in a billing cycle that precedes the most recent cycle. Credit unions do not generally engage in this type of interest calculation. We agree that this is an unfair practice and support its prohibition either through regulation or legislation.

#### **Universal Default**

Each of the aforementioned proposals seeks to limit the practice of "universal default," by prohibiting creditors from using adverse information concerning a consumer, other than actions directly related to the credit card account, as the basis for increasing the annual percentage rate of interest on outstanding credit card balances. The committee print would prohibit creditors from increasing the interest rate on an existing balance unless the increase is due to the expiration of a promotion rate; the increase is due to changes in an index; or the increase results from the cardholder's failure to make a payment during the 30-day grace period after the due date.

CUNA is supportive of the concept of prohibiting universal default on outstanding balances. A consumer's action which is unrelated to the card should not affect the interest rate of a previously incurred debt. However,

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the implementation of this provision would likely raise asset/liability management issues, possibly resulting in an increase in the initial pricing of credit and other rates and fees. We will raise this concern with the Federal Reserve Board as well.

#### **Advance Notice of Rate Increases**

The committee print would entitle a cardholder to a 45-day notice of the rate increase and offered the opportunity to close the account and pay off the existing balance at the current rate. The joint proposed rule includes a similar 45-day notice requirement. Currently, creditors are required to provide 15-day notice. We suggest that a 30-day notice requirement would make more sense operationally and still provide adequate consumer protection. A 30-day notice requirement would be more compatible to a 30-day billing cycle. In practice, many credit unions already provide their members with 30 days notice and usually send these notifications with their periodic statements.

#### **Limitations Relating to Account Balances Attributable Only to Accrued Interest**

The committee print would prohibit creditors from imposing or collecting any fee on an outstanding balance the amount of which is attributable only to accrued interest on previously repaid credit extended under the plan. CUNA generally supports this provision.

#### **Access to Payoff Balance Information**

The committee print would require creditors to provide cardholders, in each periodic statement, a telephone number, Internet address, and website address at which the cardholder may request the payoff balance on the account. Most credit unions already provide a telephone number but should not be required to also provide an Internet address and website since not all credit unions have interactive Internet capabilities.

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**Consumer Right to Reject Card Before Notice Is Provided of Open Account**

The committee print also prohibits creditors from reporting any information to a consumer reporting agency concerning the establishment of a newly opened credit card account until the credit cards has been used or activated by the consumer. We appreciate the clarification in the committee print that this language should not be construed as prohibiting creditors from furnishing information about applications for credit card accounts to consumer reporting agencies. With this clarification, CUNA supports this provision.

**Payment Allocations**

Each of the proposals contains language relating to the allocations of payments in excess of the minimum payment for a credit card that includes balances subject to different interest rates. The committee print would require lenders to allocate payments on a pro rata basis, except under certain circumstances. CUNA supports prohibiting creditors from applying payments to balances with the lowest interest rate before applying it to those subject to higher rates.

**Statement Dates**

The proposals under consideration would prohibit creditors from considering a payment as late unless the consumer is provided with reasonable time to make payments. Specifically, the committee print would require these statements to be mailed at least 25 days before the bill is due. It is worth noting that S. 3252 and the joint proposed rule would require lenders to mail periodic statements to cardholders at least 21 days before the bill is due. CUNA supports a requirement that periodic statements be mailed 21 days before the bill is due, but we are concerned that a 25-day requirement is too close to the end of the billing cycle and could create logistical problems.

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### **Over-the-Limit Transactions**

The committee print includes language regarding fees which are triggered when a cardholder exceeds the credit limit on the account. Specifically, the committee print permits the cardholder to opt-out of receiving an extension of credit in excess of the consumer's credit limit and would prohibit over-the-limit fees when the consumer opts-out; requires creditors to disclose

annually the right to opt-out of this card feature, and provide cardholders with multiple methods of opting-out of the feature; places additional restrictions on the number of times an over-the-limit fee may be charged and under what conditions it may be charged in excess of the limit; and prohibits the imposition of an over-the-limit fee if the credit limit was exceeded due to a hold unless the actual amount of the transaction for which the hold was placed would have resulted in the consumer exceeding the credit limit.

CUNA agrees with the concept that an over-the-limit fee should not be imposed if it results from holds placed by merchants that exceed the amount of the transaction. However, such a standard may create processing issues for creditors since they have little control over the holds that are placed by merchants.

### **Subprime Credit Card Accounts**

The committee print requires that all fees associated with opening credit card account that exceed 25 percent of the credit extended to the consumer must be paid in full before the card may be issued to the consumer and the opening of the account be reported to a consumer reporting agency. We do not believe that credit unions offer cards under these circumstances and support the limitations of the committee print.

### **Extensions of Credit to Underage Consumers**

The committee print prohibits the issuing of a credit card to a consumer under the age of 18 unless the consumer has been legally emancipated under State law. However, there may be legitimate reasons for underage

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consumers to have a credit card, including one that is co-signed by an adult. Rather than prohibit such cards, the regulators should be required to develop guidelines for institutions specifically designed to protect younger consumers from abusive practices.

### **Reports to Congress**

In addition to the report to Congress already in the Committee Report, we encourage you to consider requesting the Government Accountability Office conduct a study on the impact of merchant data breaches on consumers and financial institutions. When merchants lose consumers' personal data,

including credit card information, as a result of criminal intent or negligence, the cost of the breach is bourn almost entirely on the consumer and his financial institution. Anecdotally, several of our member credit unions report that the cost per member of a merchant data breach is around \$20 per member. Financial institutions are rarely made whole when breaches occur and this imbalance deserves additional scrutiny and study.

### **Conclusion**

On behalf of CUNA, our state leagues, member credit unions and their credit union members, I appreciate the opportunity to share our views on this legislation. The committee print improves on the good intention of H.R. 5244. While the regulatory process on these issues may be completed before legislation is enacted, we look forward to continuing to work with on these issues going forward.

Sincerely,



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