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POLICY & ACTION FROM CONSUMER REPORTS

February 19, 2013

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Docket No. CFPB-20120019; RIN 3170-AA22

Dear Ms. Jackson:

Consumers Union, the policy and advocacy arm of *Consumer Reports*®, appreciates this opportunity to comment on the Bureau's Request for Information Regarding the Credit Card Market. These comments focus on how the Credit Card Accountability Responsibility and Disclosure Act of 2009 (The CARD Act) has effected consumers and what remains to be done.

SUMMARY

The CARD Act's reforms protect consumers from some of the most egregious credit card practices. The revised disclosures have increased transparency and allowed consumers to better manage their debts. The Bureau's enforcement actions have furthered the purposes of the CARD Act by rooting out unfair and deceptive practices, and implementation of the CARD Act has benefitted consumers without increasing the cost of credit or limiting its access.

While the CARD Act has aided consumers in many ways, more protections are needed in two key areas:

- First, the Bureau should act to lower penalty fees, cap penalty interest rates, and provide an easier path for consumers to follow to escape penalty rate hikes.

- Second, while improved disclosures have made the cost of credit clearer to consumers, disclosures alone do not prevent the harm that can come from deferred interest credit cards. These programs should be banned; or, in the absence of that, the underwriting requirements should be changed to ensure that consumers are able to pay off these cards before the deferral period ends.

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I. THE CARD ACT HAS ENDED SOME OF THE MOST EGREGIOUS CREDIT CARD PRACTICES WITHOUT ADVERSE CONSEQUENCES.

A. REVISED DISCLOSURES HAVE INCREASED TRANSPARENCY AND ALLOWED CONSUMERS TO BETTER MANAGE THEIR DEBTS.

The improved disclosures mandated by the CARD Act are providing greater transparency to the cost of credit. As a result, consumers are managing debt better. For example, credit card statements now come with better disclosures that show consumers how much more money they'll spend and how long it will take to pay off their bills if they make just the minimum payment. A July 2010 *Consumer Reports*® survey found that this provision is working: 23% of respondents said they are now paying more than the minimum payment because of the improved disclosure.[1] At least one study shows that this trend has continued. In 2012, Demos found one third of survey respondents were inspired by the new information contained in their statements to pay-down balances faster.[2] While we appreciate these advances and recognize the value that they provide consumers, disclosures alone are not enough to arm consumers to fight back against complicated credit card practices.

B. CONSUMERS UNION APPLAUDS THE CFPB'S EFFORTS TO ROOT OUT UNFAIR OR DECEPTIVE ACTS OR PRACTICES AND URGES CONTINUED VIGILANCE.

Consumers Union was encouraged to see that the Bureau's first three enforcement actions ever were against credit card companies. As the Bureau's efforts and earlier work[3] by Consumers Union show, evasions and violations of the CARD Act persist. The Bureau's actions put banks on notice, as we said at the time of the Capital One action, that "there are consequences for bending the rules and not being upfront with your customers."[4] We support the Bureau's enforcement efforts and urge continued vigilance in ensuring that credit card companies are living up to their obligations under the CARD Act.

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[1] Press Release, Consumers Union, CARD Act Has Provided Significant Protections For Credit Card Consumers During Its First Year; Consumer Financial Protection Bureau Should Address Lingering Credit Card Abuses (Feb. 17, 2011), *available at* http://www.consumersunion.org/pub/core_financial_services/017426.html.

[2] AMY TRAUB & CATHERINE RUETSCHLIN, THE PLASTIC SAFETY NET: FINDINGS FROM THE 2012 NATIONAL SURVEY ON CREDIT CARD DEBT OF LOW - AND MIDDLE INCOME HOUSEHOLDS, 20 (2012), *available at* http://www.demos.org/sites/default/files/publications/PlasticSafetyNet-Demos.pdf.

[3] Letter from Consumers Union et al. to Hon. John E. Bowman, Acting Director, Office of Thrift Supervision (July 7, 2010), *available at* http://www.responsiblelending.org/credit-cards/policy-legislation/regulators/OTS-CARD-Act-enforcement-letter-07072010.pdf.

[4] Press Release, Consumers Union, CFPB Takes Action Against Capital One For Deceptive Marketing Practices (July 18, 2012), *available at* http://www.consumersunion.org/pub/core_financial_services/018454.html.

C. SEVERAL STUDIES SHOW THAT IMPLEMENTATION OF THE CARD ACT BENEFITS CONSUMERS AND HAS NOT INCREASED THE COST OR LIMITED THE AVAILABILITY OF CREDIT.

The strong consumer protections contained in the CARD Act have aided consumers, as the findings presented at the Bureau's conference on the credit card market in February 2011 demonstrate.[5] Some in industry have debated the effect,[6] but a number of studies from well-respected organizations and journalists show that the CARD Act has made credit cards safer[7] and more transparent[8] without increasing the cost[9] or availability of credit.

II. THE BUREAU SHOULD TAKE ADDITIONAL STEPS TO CLOSE GAPS IN THE PROTECTIONS PROVIDED BY THE CARD ACT.

A. THE TERMS AND CONDITIONS OF CREDIT CARD AGREEMENTS ARE FAIRER POST-CARD ACT, BUT PENALTY FEES SHOULD BE LOWERED.

The CARD Act's limits on retroactive interest rate hikes and restrictions on how long penalty interest rates can last for late payments are necessary and effective methods of protecting consumers.[10] Additional measures would carry forth this work. Specifically, the Bureau should lower allowable penalty fees, cap penalty rates, and make it easier for card holders to work their way back to lower rates once they have been subject to a penalty rate increase. Consumers Union specifically recommends the following:

- The safe harbor for a penalty fee[11] should be lowered from the $25 permitted by existing regulations to $10, and the penalty fee for a repeat incident should drop to $15 from its current $35.

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[5] CONSUMER FINANCIAL PROTECTION BUREAU, CARD ACT CONFERENCE: KEY FINDINGS, http://www.consumerfinance.gov/credit-cards/credit-card-act/card-act-conference-key-findings/.

[6] Kevin Wack, *CARD Act Fight to Offer Clues to Future CFPB Regs*, AM. BANKER, Jan. 22, 2013, *available at* http://www.americanbanker.com/issues/178_15/card-act-fight-to-offer-clues-to-future-cfpb-regs-1056034-1.html?zkPrintable=1&nopagination=1.

[7] PEW HEALTH GROUP, TWO STEPS FORWARD, AFTER THE CREDIT CARD ACT, CREDIT CARDS ARE SAFER AND MORE TRANSPARENT – BUT CHALLENGES REMAIN (2010), *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/PEW-CreditCard%20FINAL.PDF.

[8] JOSHUA. M. FRANK, CREDIT CARD CLARITY: CARD ACT REFORM WORKS (2011), *available at* http://www.responsiblelending.org/credit-cards/research-analysis/credit-card-clarity.html.

[9] Felix Solomon, *Don't Blame Regulation for Your Credit Card Bill*, REUTERS.COM, Jan. 14, 2013, http://blogs.reuters.com/felix-salmon/2013/01/14/dont-blame-regulation-for-your-credit-card-bill/.

[10] Press Release, Consumers Union, CARD Act Has Provided Significant Protections for Credit Card Consumers During Its First Year; Consumers Union: Consumer Financial Protection Bureau Should Address Lingering Credit Card Abuses (Feb. 17, 2011), *available at* http://www.consumersunion.org/pub/core_financial_services/017426.html.

[11] 12 C.F.R. § 1026.52.

- Penalty rates should be limited to an increase that is "reasonable and proportional" to the incident. The current regulation places no cap on penalty interest rate increases.[12]

- Card issuers should be required to allow all consumers who make six on-time payments after a penalty fee is imposed to "earn the way back to a good rate." Currently, consumers get this opportunity only if the first six consecutive payments after a penalty interest rate begins are all made on time.[13]

B. DEFERRED INTEREST CARDS ARE CONFUSING AND ABUSIVE TRAPS FOR CONSUMERS AND SHOULD BE BANNED.

A deferred interest credit card delays the payment of interest for a set period of time; during the deferral period the bank waives the requirement that the consumer pay interest, although interest on the debt continues to accrue.[14] If any amount, even a few dollars, is left to pay at the end of the deferral period, the entire amount of accrued interest – all the way back to the date of purchase - is added in a lump sum to the remaining principle. These costs often come as a shock to consumers.

Rates on deferred interest accounts can approach 30%.[15] With the addition of hefty sums of accumulated interest to remaining balances, minimum payments may unexpectedly spike after the deferral period ends. Financing costs on deferred interest accounts may increase more than 27 times as the result of paying off an account just one month behind schedule, a 2012 Card Hub® study found.[16]

The final rules implementing the CARD Act[17] improved deferred interest plan disclosures and reduced the number of ways the ads for deferred interest accounts can be misleading. However, the complexity of deferred interest plans makes it almost impossible to formulate a short, simple disclosure that will prevent consumers from

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[12] 12 C.F.R. § 1026.55.

[13] 12 C.F.R. § 1026.59.

[14] 12 C.F.R. § 1026.16 (h)(2).

[15] The following examples were found during Feb. 2013: Best Buy's Reward Zone Credit Card, issued by Capital One, carries a variable APR that, as of Feb. 1, 2013, is between 25.24% and 27.99%, "depending on your creditworthiness", *see* https://www.esnapw.com/rses/ESnapServlet?MerchantNumberSent=08881&LanguageIndicator=en&cmd_PopUp=Redesign_Terms; Care Credit's online disclosures list an APR of 26.99%, *see* http://www.carecredit.com/pdf/CC_App.pdf; Home Depot's online disclosures for one of its deferred interest plans lists rates ranging from 17.99% to 26.99%, "based on your creditworthiness", *see* https://www.accountonline.com/cards/acq/empty.do?download=pdf&value=fFEtdSvSbaeiMWpFKqfFIi&screenID=NoSCREENID.

[16] CARD HUB, CARD HUB CREDIT CARD DEFERRED INTEREST STUDY – 2012, http://www.cardhub.com/edu/deferred-interest-study/.

[17] 75 Fed. Reg. 7657 (Feb. 22, 2010), *available at* http://www.gpo.gov/fdsys/pkg/FR-2010-02-22/html/2010-624.htm.

being tricked and trapped by these plans. As the consumer stories[18] below – all collected in February 2013 - demonstrate, improved disclosures are not enough to prevent confusion and miscalculation, missteps that can leave consumers trapped by debt.

Chelle from Hilo, Hawaii wrote to us about the hardship she experienced after miscalculating the payoff of a television she had purchased from a major retailer:

> I made my payments regularly and thought I had one more month on the contract than I did due to the end of month timing of the purchase. I did not and had less than $100 owing on a $4,800 TV and got hit with over $2,000 in interest. When I called them they basically said tough luck. And I am still paying off the bill with additional interest added every month.

Chelle is not alone. Richard from Winter Haven, Florida, had a similar experience. He had paid-off 90% of the balance due on a refrigerator charged to the deferred interest card of a big box retailer when the recaptured interest was added to his account. He wrote, “We had about $65 left to pay in the last month which we thought we had paid but for some reason the payoff transaction did not go through. We got charged about $100 bucks in interest charges and were not happy.”

Others have been hit by much larger-than-anticipated bills. Janine from Denver, Colorado, told us how she and her husband were unexpectedly on the hook for more than $1000 in interest even though they thought they understood the terms of their deferred interest agreement:

> We knew that if it wasn't paid off in that time frame, we would have to pay the back interest. However, not only did we not realize how exorbitant the interest rate was (26.99%) but since our first payment was in October, we thought the final payment (most had already been paid down) would be the next October. There was never any statement of final balance due by "x" date to avoid interest charges, so my one month miscalculation ended up costing more than $1000, for that one month! It then took us an additional few months to pay it off--most of it interest.

In addition to retailers, doctors and dentists and other medical professionals frequently offer deferred interest cards. Ron, from Mesa, Arizona, told us that he needed dental work done in 2012. In order to pay for it, he took out two deferred interest cards, one with a 22.98% interest rate, and the other with a 26.99% rate. If Ron can’t pay off his balances within the deferral period, he will owe nearly $2000 in interest on top of the thousands he must pay for the dental work itself.

Many are in Ron’s shoes when it comes to medical expenses and credit card debt. In a 2012 survey, Demos found that nearly half of low and middle income households carry medical debt on their credit cards.[19]

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[18] The stories reprinted here appear unedited and as submitted via our story collection website, Stori.es.

[19] See AMY TRAUB & CATHERINE RUETSCHLIN, *supra* note 2.

Even when consumers have the best of intentions to pay off the debt before the deferral period ends, the unexpected - a job loss, large car repair bill or other financial shock – can keep them from paying off the balance in time. In those instances, deferred interest products add to the loads carried by those already overburdened with debt.

Consumers Union believes that the CARD Act implicitly bans deferred interest plans.[20] In particular, the prohibition on double-cycle billing[21] effectively prohibits the retroactive assessment of interest for the entire deferred interest amount for the entire period. We are calling on the Bureau to make this ban explicit.

If the CFPB does not interpret the CARD Act to ban deferred interest offers, the Bureau should make the following changes to the current law:

1. **Deferred Interest Card Disclosures Should Include More Information about Imposition of Interest Triggers.**

Consumers Union suggests that the model deferred interest periodic statement clause be expanded from its current construction[22] to include information about what triggers the imposition of accrued interest. We recommend the following language be added:

> You will be charged interest on your purchase starting back to the original purchase date if you do not pay off the entire balance by [deferred interest period/date], you make a late payment, go over your limit, or otherwise violate your account terms. Making only the minimum payment on your account will not pay off the purchase in time to avoid interest.

2. **When Credit with Deferred Interest Is Extended, Issuers Should Be Required to Evaluate Applicants' Ability to Pay the Entire Balance During the Deferral Period.**

Current law requires card issuers to consider "the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations."[23] This is not enough to ensure that deferred interest credit card holders can successfully repay the principal before the deferred interest period ends.

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[20] *See*: Consumers Union et al., Comments to the Board of the Governors of the Federal Reserve System Truth in Lending Federal Reserve System regarding 12 CFR Part 226 Docket No. R–1364 Interim Final Rule (Sept. 21, 2009), *available at* http://www.nclc.org/images/pdf/credit_cards/comments-reg-z-0909.pdf, and Comments Regarding Notice of Proposed Rulemaking Regulation Z Provisions Implementing the Credit Card Accountability, Responsibility and Disclosures Act of 2009 Federal Reserve System 12 CFR Part 226 Docket No. R-1370 (Nov. 20, 2009), *available at* http://www.nclc.org/images/pdf/credit_cards/card-regulationsto-fed1109.pdf.

[21] 12 C.F.R. § 1026.54(a)(1)(i).

[22] 12 C.F.R. § 1026.16(h)(4) and Sample G-18 (h): "You must pay your promotional balance in full by [date] to avoid paying accrued interest charges."

[23] 12 C.F.R. § 1026.51(a).

Consumers often do not realize that making only minimum payments on deferred interest accounts will not pay off the balance in time to prevent the assessment of heavy finance charges. Donald, an octogenarian retiree from Murfreesboro, Tennessee, told us that it wasn't until he had made several months' payments on his "interest free" hearing aid, purchased in late 2010, before he realized that the minimum payment would not pay-off his balance before the deferred interest period ended. Donald wonders how many older people catch-on to the minimum payment trap.

The ability to pay rules should be changed to require issuers considering applications for deferred interest programs to assess a consumer's ability to pay off the entire balance during the deferred interest period. This change would require a different calculation than that already required.[24] Consumers Union suggests that the following be added to the rule:

> (3) If the account carries deferred interest, the minimum payment formula applied when considering the consumer's ability to pay must result in monthly payment sufficient to pay off the balance before the end of the deferred interest period.

CONCLUSION

The CARD Act has ended some of the most abusive credit card practices. With the implementation of the reforms suggested above, that work will continue. We look forward to working with the Bureau in the future on these important issues.

Sincerely,

Christina Tetreault

Christina Tetreault
Staff Attorney

[24] 12 C.F.R. § 1026.51(a)(2)(ii)(B).