June 8, 2017

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

Re: Docket No. CFPB-2017-0006

Consumer Action[1] is pleased to respond to your request for information about a number of aspects of the consumer credit card market.

The CARD Act continues to keep credit card issuers in check – for the most part – however there are some practices that Consumer Action has observed that have worsened over time.

Overall, disclosures have improved, tempting teaser rates and rewards have remained, fees have risen, grace periods have been somewhat reduced and annual percentage rates are high.

While annual percentage rates vary by type of card, such as student vs. premium, we feel that APRs on variable rate cards are too high given that the prime rate is at its highest level in nine years, now at a modest 4.0%. (Non-introductory rates range from 13.24% to 26.24%.) The various "buckets" of rates that consumers can encounter (promo, purchase, cash advance, penalty, etc.) are confusing.

The CARD Act required that additional payments above the required minimum payment be directed to the highest-interest bucket, with an exception for consumers in a deferred interest deal who have the right to direct the additional payment toward the deferred interest balance as the deferred interest payment nears its end, if they so choose. But this is insufficient in most cases to fend off retroactive interest allowed under deferred interest plans.

If the balance is not paid in full by the end of that period, consumers get hit with accumulated interest. Some cards will also charge you a daily periodic interest rate, even during deferred interest periods.

We suggest that retailers and cards that offer deferred interest not be allowed to apply interest until the end of the deferral period, and that retroactive interest be prohibited, and that the interest charged when a deferred interest period ends be on a going forward basis only. Walmart, which issues its retail card through Synchrony Bank, recently

[1] Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A non-

announced that it would not apply retroactive interest to its deferred interest promotions when the promo period ends.

Disclosures

Based on a review of dozens of credit card offers, overall current terms and conditions are often—but not always—expressed more clearly than they used to be. For example, American Express states "We review your account every 6 months after a penalty rate is applied. The penalty rate will continue to apply until you have made timely payments with no return payments during the 6 months being reviewed." That's clear.

However Citi's explanation of its penalty rate (at 29.99%) makes no mention of reconsideration for a rate reduction every six months as required by the CARD Act, and misleads consumers in its explanation of when the penalty rate is applied. It vaguely notes "the Penalty rate may be applied to your account if you make a late payment or make a payment that is returned." There is no mention of how late the payment would have to be before the punitive rate would kick in, misleading consumers into assuming that a penalty rate might apply if one was a few days late with a credit card payment, even though the CARD Act prohibits that. Citi also says, "The Penalty APR may apply indefinitely"—also misleading since there is no mention of the six-month required review and rate reduction when payments are made in a timely manner for six months. Another Citi offer also vaguely states: "we may end your introductory APR and apply the Penalty APR if you make a late payment." We also found no notice that the penalty rate applies only to new credit card charges.

While PNC also vaguely notes that its 29.24% penalty APR "may be applied to your account if you make a late payment," it does clearly state "the penalty APR will apply until you make six consecutive minimum payments when due."

Wells Fargo clearly discloses, in bold print, that consumers "may not qualify for the lowest rates" offered in the disclosure box. (Rates ranged from 17.74% to 25.74% tied to a 3.75% prime rate.) We oppose the use of vast rate ranges—they are not helpful when consumers are comparison shopping for a card.

Wells also offers applicants under age 21 the opportunity to include "*accessible income."* This is defined as "not earned or owned by you but regularly accessed or used to pay expenses." Presumably this is a way for affluent families to provide separate credit card accounts for their children while committing to be responsible for the credit card bill. At a minimum, this appears to evade the spirit of the CARD Act, which requires under-aged applicants to prove they have an *independent* ability to pay the credit card bill (through their own income or savings).

The clause alerting applicants that the terms, rates, and fees "are subject to change at any time for any reason" remains in some card notices (e.g. PNC's Cashbuilder card). While technically legal, this one-sided contract that penalizes consumers who not perfectly abide by account terms and conditions yet gives card issuers a pass on committing to its end of the contract remains an unfair business practice and should be prohibited by the Bureau.

Fees

Transfer fees for using a credit card for overdraft protection are in need of scrutiny. *Each day* that money is advanced from its card to pay overdrafts on overdrawn checking accounts, Wells Fargo charges a $20 fee for transfers of $50 and more (and $12.50 per day for amounts less than $50). Meanwhile, interest also accrues each day when a customer links the credit card to a Wells checking account.

PNC's Cashbuilder account charges the greater of a $10 fee or 4% of the advance when a customer links their PNC credit card to their checking account. Plus, this expensive arrangement "may also include a separate checking account overdraft fee." Of course, customers can't use line-of-credit overdraft services without agreeing to such terms, but this double dipping gouges consumers and should be limited.

Cash advance fees are typically 5% of the advance (minimum $10), which is higher than the 3% or 4% more common in previous years. Balance transfer fees, after some initial 0% offers, are often 3% (minimum $5) of the balance transfer. While these fees are clearly disclosed, we believe they should be capped and that minimum fees should be disallowed.

Marketing

Some newer marketing approaches include offering $20 cash back each school year to students who achieve a 3.0 grade point average (Discover) and a 5% rebate on gas and groceries that is automatically applied to your mortgage balance each time a customer earns $25 in rebates (Wells Fargo).

We hope that the Bureau is carefully reviewing these offers for signs of disparate impact and to see if issuers are complying with the requirement to notify cardholders of their right to a free credit report when they receive a less advantageous rate.

Consumer complaints

While credit card complaints to Consumer Action's hotline have diminished considerably since the CARD Act, consumer continue to complain about:

Trailing interest. "I had a credit card with Bank of America, they on more than one occasion waited until 3 days before the bill was due to post the bill so that it would be late and they would then be able to bill me a late charge. The last time they tried this, I paid the entire bill in full, all $8000 + and wrote a letter to inform the account is closed and no additional payment would be issued and no late fee would be paid. They continue to inform me they are going to charge me additional interest until I pay them the interest they feel entitled to AFTER I paid the account in full and I am not going to pay them another penny. I have written multiple letters and requested to be contacted by a manager and they keep sending me form letters. Please help."

Recurring charges. "Tried cancelling recurring charges for 3 months and they continue to bill my account! Telling me they can't find my information. I called customer service and emailed the several times. This company is a SCAM!!! I never even used the site or signed up. I did a free trial and they are telling me they can't find me unless I send the account #. I don't have one. They also told me there are no free trials and it's on there web site! I'm very frustrated…"

Collections. For Comenty Bank, which offers numerous retail cards, customers say that the bank calls them when they are even a day late with a minimum payment. This should not be allowed until a customer is seriously delinquent.

Closing accounts. We hear from others who report accounts being closed without their consent. Often they get no explanation from the card company as to why their account was closed, even when they follow up to ask.

Auto-pay delays. One woman told Consumer Action that she logged in and changed the auto-pay settings to pay the entire balance about 10 days before next payment due date. However, she discovered that the new auto payment didn't pay the current billing statement balance and she called to ask why. "They explained that the AmEx system doesn't pay your upcoming payment, it begins auto pay for 2nd payment. How is this a customer service? Why is AmEx not doing everything they can to protect the customers who are trying to protect their credit by using auto pay?"

We found an AmEx disclosure about this but it was not easy to see and consumers could easily miss it: *With AutoPay, you can choose to have all or part of your bill paid automatically from your bank account each month. Your "Due Date" or "Please Pay By Date" won't be affected if you sign up for AutoPay. ….* ***Please know that your first AutoPay payment may not be applied to your current billing cycle. Please make payments as you usually would until your AutoPay begins.*** Terms that have the potential impact to cause late payments should not charge consumers late fees if their first auto payment is late.

Foreign-transaction fees. Consumer Action continues to advocate for ending these fees. They are confusing for consumers who travel, and while many high-end "signature" and "world" cards don't have them, many others still do. These are costs best left to card networks as a cost of doing business and not passed on to customers. Many banks charge foreign transaction fees for withdrawing cash at foreign ATMs even if foreign credit card purchase transactions are free. If you use a credit card overseas that carries foreign transaction fees, and you request a dynamic currency conversion, you could wind up paying an additional 10 percent (3% in foreign exchange fees and 7% for dynamic currency conversion) on top of the purchase price. This is double dipping and should be prohibited.

Convenience fees allowed on certain transactions. Cards charge convenience fees for some transactions, including taxes and tuition. And, many card customers are charged more when they pay by phone. Consumer Action believes that consumers should NOT have to pay a fee to pay with their credit cards (or debit cards for that matter).

Annual fees. Consumers often find out there is an annual fee when it is billed after the promotional period ends. This appears to be a disclosure problem because of the way many card solicitations boldly state promotional 0% annual fees and reveal the long-term annual fee in the fine print or as a range ("annual fee will be between $0 and [higher amount]"). If the annual fee is waived during the promotion (hence, $0 for a specific period), consumers probably don't recall getting the initial account opening disclosures at that point.

Third-party comparison sites

In 2012 Consumer Action reviewed third-party comparison sites. While some of the specific information may be out of date, the general information we present is still pertinent today. See our 2012 Credit Card Comparison Site Survey (https://www.consumer-action.org/news/articles/2012_fall_issue_canews).

Our research found that, typically, the same cards are recommended in searches from site-to-site, but they can vary in ranking from site-to-site. We found that sometimes offers on the same cards vary somewhat as to the length of an introductory rate, the balance transfer terms or the purchase interest rate. To get a comprehensive idea of the cards that are out there, we recommend consumers conduct searches on several of the sites, and focus on the site's editorial content where some of the greatest variety of credit deals appear.

We found that many of the sites we looked at disclosed the financial relationships they have with card issuers. These disclosures ranged from fairly prominent to tucked away in the fine print. Not disclosing financial arrangements runs afoul of the Federal Trade Commission's rules on endorsements, which require disclosures of financial or other beneficial connections between advertisers and endorsers. In 2012 Richard Cleland, assistant director of the FTC's Division of Advertising Practices, told Consumer Action, "If they're making a [credit card] recommendation and getting a commission they should make clear and conspicuous disclosures that they receive compensation...and hiding it at the bottom of a [Web] page is not enough."

We suggest that the CFPB consider requiring more prominent disclosure of a financial link between comparison sites and card issuers.

Secured Credit Cards

A secured card is a bank credit card backed by money that you deposit and keep in a bank account. That account serves as security for the card. If you don't pay your bill, your deposit may be used to cover that debt. We hear frequently from consumers who want to find such cards. Almost all major banks and credit unions offer them, but they are widely misunderstood. For one, the security deposit is not used to cover a user's transaction, but only if consumers eventually default. Annual fees are common on these cards and, if not waived in the first year, are applied to the balance, eating up what is in many cases a significant portion of the available line of credit until they are paid.

Companies like First Premier Bankcard, which evaded the CARD Act's "fee harvester rules," still offer high-interest unsecured credit cards that target people with damaged credit. Most of these cards do not require a security deposit - but this is not always a good thing. Such cards tend to have low lines of credit (less than $300), very high APRs, high annual (or per-month) fees and lots of nuisance fees. Useless and expensive credit protection products are pushed on customers.

Here is an example of a high-priced ("unsecured") First Premier Bankcard (https://www.mypremiercreditcard.com/viewpdf.aspx?type=S8Y9upH+hm+xQrgeDnHrFM4K635VeOKLr30dlDV3Mf0=&id=7QZzQLmIRqE=) that has a $175 annual fee in the first year, $49 per year after that, AND a monthly servicing fee of $14.50 per month ($174 annually).

We believe that true secured cards are remarkably risk-free. One danger is when the issuer does not report payment history to credit bureaus. Most consumers want a secured card to build credit and failure on the part of the issuer to report to credit bureaus means the customer is captive to the secured issuer. Users should be educated beforehand as to the proper use of a secured card so they can see it as a tool to help them graduate to an unsecured card eventually. For example, they should be aware that cash advances carry very high interest rates and start accruing interest on transactions immediately.

Arbitration

One issuer we found, Discover, allows new customers to reject its binding arbitration provision within 30 days of receiving the credit card. We wish more companies would allow opt outs, but we would recommend requiring that a customer's brief opportunity to opt-out of an arbitration clause should be disclosed clearly and conspicuously. We would support requiring a longer timeframe for consumers to opt-out.

We also strongly support the Bureau's planned prohibition on class-action bans in arbitration clauses and hope to see the Bureau release a final rule shortly.

We are available to discuss these comments if you have additional questions.

Sincerely

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