

COMMENTS
to the
Consumer Financial Protection Bureau
regarding
Fee Harvester Credit Cards
Docket No. CFPB-2012-0015
77 Fed. Reg. 21,875 (April 12, 2012)
by the
National Consumer Law Center (on behalf of its low-income clients)
and
U.S. PIRG

June 11, 2012

The National Consumer Law Center thanks the Consumer Financial Protection Bureau (CFPB) for the opportunity to submit the following comments on behalf of its low-income clients.¹ These comments respond to the CFPB's proposal to modify Regulation Z, 12 C.F.R. 1026.52(a), which limits fees on credit card accounts to 25% of the credit limit. This cap was set by Section 1637(n) of TILA, 15 U.S.C. § 1637(n), as added by the Credit Card Accountability, Responsibility, and Disclosures (CARD) Act of 2009.

The CFPB has proposed withdrawing the rule that requires pre-account opening fees to be included in the calculation of fees for purposes of the 25% cap. We oppose this proposed withdrawal. Our low-income clients will be the very population that will be harmed by the proposed withdrawal.

We recognize that the CFPB is in a difficult position after the decision of the federal district court for the District of South Dakota in *First Premier Bank v. United States Consumer Fin. Prot. Bureau*, 819 F.Supp.2d 906 (D.S.D. 2011). However, we believe the CFPB should find a way to protect low-income consumers from being exploited by these exorbitant, deceptive and abusive fees and other practices of subprime card issuers. The CFPB should retain the current rule as issued by the Federal Reserve Board (FRB). In the alternative, the CFPB should re-issue the rule that includes pre-account opening fees in the 25% cap by using its expanded authority under TILA or its authority under Dodd-Frank to prohibit unfair, deceptive or abusive practices.

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

These comments were written by Chi Chi Wu and Lauren Saunders, with editorial review by Carolyn Carter.

At a minimum, if pre-account opening fees are not included in the 25% cap, the CFPB should take a number of additional steps to protect the consumers targeted for these cards. Changes to Regulation Z should:

- Include fees that the creditor can anticipate will be charged in the calculation of the Annual Percentage Rate (APR) for advertisements and the application/solicitations disclosure to mitigate the harm caused by withdrawing the current rule and to prevent consumers from being deceived about the cost of these cards.
- Limit the categories of fees that are exempted from the 25% cap to those exempted by statute and those not connected with the ordinary use of a credit card account; add additional examples to the Official Staff Commentary of fees that are not exempted.
- Add pre-account opening fees to TILA advertising disclosure requirements and add credit limit as a trigger term.

Rules that the CFPB could write under its authority to prevent unfair, deceptive or abusive acts or practices (UDAAP), include:

- Cards targeted at consumers with poor credit records that harm credit worthiness or do not live up to implications that they will improve credit should be considered unfair, deceptive and abusive.
- Credit card fees should be reasonable and proportional to their purpose.
- Pre-account opening fees should be fully refundable if the card is cancelled.

We also urge the CFPB, in conjunction with the FRB, to closely examine First Premier Bank and other issuers of cards targeted at consumers with poor credit records, and to bring any appropriate enforcement actions. In particular, the high default rates of the First Premier card, which is deliberately targeted at consumers with poor credit records, show that it is violating the ability to repay rule. A review of complaint reports posted online also indicates numerous other problems and high consumer dissatisfaction. It appears likely that First Premier is exceeding the 25% cap on first year fees, is engaged in unfair and abusive debt collection practices, and may be violating a number of other provisions of the Truth in Lending Act and other statutes.

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I. The Proposed Rule Jeopardizes Vulnerable Consumer and Sends the Wrong Signal to Industry

A. Fee Harvester Cards Harm Vulnerable Consumers

The fee harvester rule was enacted to prevent vulnerable consumers with impaired or no credit histories from being unfairly exploited by high fees for limited credit. These cards imposed great costs on consumers who can least afford it. They also led to defaults because the consumer had difficulty paying these fees.

NCLC first documented the many abuses posed by fee harvester credit cards in our November 2007 report on these products.² The high fees imposed by creditors, combined with low credit limits, left the consumer with little real credit at a high price. Some of the examples of fee harvester cards noted in our report include:

² Rick Jurgens and Chi Chi Wu, *Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers*, National Consumer Law Center, Nov. 2007.

First Premier Bank	
Credit Limit	\$250
Program Fee	-\$95
Account Set-Up Fee	-\$29
Participation Fee	-\$6 (per month)
Annual Fee	-\$48
Total Credit Actually Extended	\$72

Aspire Card (CompuCredit)	
Credit Limit	\$300
Account Opening	-\$29
Annual fee	-\$150
Total Credit Actually Extended	\$121

Capital One	
Credit Limit	\$200
Annual Fee	-\$50
Diner Club Membership	-\$99
Total Credit Actually Extended	\$51

Legacy Visa	
Credit Limit	\$250
Acceptance Fee	-\$119
Annual Fee	-\$50
Participation Fee	-\$6 (per month)
Total Credit Actually Extended	\$75

Continental Finance	
Credit Limit	\$300
Account Set-Up Fee	-\$99
Participation Fee	-\$89
Annual Fee	-\$49
Account Maintenance Fee	-\$10 (per month)
Total Credit Actually Extended	\$53

CorTrust MasterCard	
Credit Limit	\$250
Acceptance Fee	-\$119
Annual Fee	-\$50
Participation Fee	-\$6 (per month)
Total Credit Actually Extended	\$75

The onerous fees, imposed on consumers who were already vulnerable because of limited incomes or impaired credit histories, led to unmanageable debt consisting mostly of the creditor's own self-imposed fees. At best, the consumers paid off these unconscionably expensive fees, depleting their already limited resources, and in return receive nothing more than puny amounts of real credit. At worst, the consumers walked away from the accounts and ended up with more damage to their credit histories.

The very nature of these cards made them deceptive in addition to being unfair. Creditors deliberately structured the pricing on these cards to understate the APR – the price tag that consumers look at – and to move the cost of the credit to fees that are excluded from the APR in the application disclosure. Pre-Credit CARD Act, the typical fee harvester card advertised an APR of 9.9% -- clearly an artificially low price tag – but

the fees amounted to 50% to 80% of the credit line. Thus, even if the consumer used the full credit line 365 days a year (a near impossibility, without going over the credit limit), the fees far exceeded the finance charges generated by the periodic interest represented by the APR.

In response to NCLC's fee harvester report, Congress included a provision specifically addressing these credit cards in the Credit CARD Act. The fee harvester provision limited these abusive fees, restricting them to 25% of the amount of the credit limit. Consumers finally obtained some sort of protection against fee-gouging by subprime card issuers

However, as the next section describes, the most prominent subprime issuer – First Premier – quickly figured out an evasion and circumvention of the 25% cap by charging fees that are ostensibly charged before the account is opened. These pre-account opening fees are exorbitant and onerous and render First Premier cards similar in costs and abusiveness to those banned by the Credit CARD Act.

B. With the Pre-Account Opening Fee, the Current First Premier Card is Similar in Price Structure to the Card Before the Credit CARD Act Reforms

First Premier is one of the largest issuers of fee harvester cards in the country. One of the most notorious cases of credit card abuse, cited in the hearings leading up to the Credit CARD Act,³ involved a sailor who sought relief from the Navy-Marine Corp Relief Society after she was issued a First Premier card with credit limit of \$250 that featured a \$95 program fee, a \$29 account set-up fee, a \$6 monthly participation fee, and a \$48 annual fee – an instant debt of \$178 for available credit of only \$72.

First Premier was the subject of enforcement actions by the New York Attorney General's Office in August 2007 for deceptive marketing of its fee harvester cards.⁴ The New York Attorney General alleged that that the bank had advertised cards “with no processing fee” but charged \$178 in initial fees to open an account with a \$300 credit limit. The New York Attorney General also alleged that the bank violated New York law by billing cardholders for the initial fees before they had even used their cards, deceiving consumers by offering them credit limits “up to \$2,000,” and labeling cards gold or platinum to give them “the cache (sic) traditionally associated with elite credit cards.” The Federal Reserve Board also took enforcement action against First Premier on safety and soundness grounds, obtaining a consent agreement in 2003.⁵

³ Credit Card Practices: Fees, Interest Rates, and Grace Periods: Hearing Before the Permanent Subcomm. on Investigations of the Comm. On Homeland Security And Governmental Affairs, 110th Congr. (2007) (testimony of Alys Cohen, National Consumer Law Center).

⁴ Assurance of Discontinuance, *In the Matter of First Premier Bank*, New York Attorney General's Office, July 23, 2007, at 1-3, available at <http://www.ag.ny.gov/sites/default/files/press-releases/archived/First%20Premier%20Bank%20Settlement.pdf>

⁵ *Written Agreement by and among United National Corporation, Sioux Falls, South Dakota; First PREMIER Bank, Sioux Falls, South Dakota; PREMIER Bankcard, Inc., Sioux Falls, South Dakota; and the*

The First Premier credit card at issue in the South Dakota litigation is probably the most expensive in the United States. First Premier charges a \$95 “processing fee” prior to account opening, as well as a \$75 annual fee, for a credit limit of \$300 – in other words, a price of \$170 for \$130 of real credit.⁶ As one can see, the price structure for the current First Premier card is similar to the structure before the Credit CARD Act, despite the reforms established by the fee harvester provision.

	Credit Limit	Up Front Fees	Advertised APR	Credit Actually Extended
Before the Credit CARD Act	\$250	\$178	9.9%	\$72
Present	\$300	\$170	36%	\$130

Not only is the First Premier card tremendously expensive, its burdensome fee structure results in the card being unaffordable for most of its cardholders. As discussed in Section V.C below, First Premier has a 40% or 50% default rate on its card.

C. The Proposed Rule Encourages Evasions and Not Compliance with the Spirit of the Fee Harvester Provision

As the previous section shows, excluding pre-account opening fees from the 25% cap permits a fee structure that is very similar to pre-CARD Act fee harvester card. The proposed withdrawal of the pre-account opening provision will create an enormous loophole – an evasion or circumvention – unless the CFPB stands firm in defending the provision at issue.

Fee harvester issuers are very adept at exploiting loopholes. We fully expect other issuers, such as Applied Card Bank, to begin charging pre-account opening fees if they have not already done so. The proposed withdrawal will create a gigantic opportunity for these issuers to gouge consumers. We are concerned that subprime issuers will structure their credit cards to exploit the ability to charge pre-account opening fees.

Moreover, we are concerned about the precedent set by the proposed withdrawal and the message it sends to credit card industry and other industries regulated by the CFPB. Credit card issuers may feel that they can get the CFPB to back down on rules, or

Federal Reserve Bank of Minneapolis, Federal Reserve Board, September 25, 2003, available at <http://www.federalreserve.gov/Boarddocs/Press/enforcement/2003/20030925/attachment.pdf>

⁶ As discussed below, even though the \$95 fee is paid before account opening and there is \$225 in initial credit available, the net credit actually extended is only \$130.

even withdraw requirements previously established by the FRB, by initiating a lawsuit in a federal district court that is sympathetic, i.e., in the issuer's home state or other favorable venue. Note that the District of South Dakota is home to many of the nation's largest credit card issuers.

If First Premier gets away with this evasion, other bad actors in other industries will be encouraged to look for loopholes that evade the spirit of a rule. The CFPB will only succeed in its mission if it changes the culture of compliance and sends a clear and strong message that abusive practices will not be tolerated.

As shown in the list of cases at the Addendum, the Supreme Court has repeatedly affirmed that the FRB has broad authority to issue regulations under TILA, and was entitled to substantial deference in so doing. The Dodd-Frank Act transferred this same broad authority to the CFPB. The CFPB should be entitled to the same deference as the FRB was in all these decisions. It is critical, in the CFPB's infancy, to establish caselaw that confirms this deference and to stop the whack-a-mole culture of evasions

II. The Current Rule is Consistent with the Statute and the Proposed Rule is Not

A. The Legislative History of the Fee Harvester Provision Supports Including Pre-Account Opening Fees

Contrary to the South Dakota Court's opinion, extending the 25% cap to pre-account opening fees is not contrary to the plain language of TILA. Furthermore, the legislative history of the fee harvester provision of the Credit CARD Act demonstrates that it is completely consistent with the fee harvester provision to encompass pre-account opening fees within the 25% cap.

Currently, the fee harvester provision states:

(1) In general

If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

(2) Rule of construction

No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.

15 U.S.C. § 1637(n) (emphasis added)

The South Dakota district court found that the phrase “in the first year during which the account is opened” included only fees charged after account opening. But the language refers to the account being opened “during” the first year, not necessarily on day one. It does not violate the plain language of the statute to start the year with the payment of the first fee. The language is ambiguous and it was well within the authority of the FRB (and now the CFPB) to resolve the ambiguity.

If Congress had intended the meaning that the district court found – solely to protect the credit line once the account was opened – the provision would have been written much more simply. Congress could have simply said: “Fees during the first year of the account may not consume in the aggregate more than 25 percent of the credit line.” Instead, the provision refers to payment of “any fees,” not simply those that reduce the credit line.

The legislative history is consistent with the FRB’s interpretation. Originally, the very first version of the fee harvester provision *did* explicitly permit card issuers to charge fees above the 25% cap before the account was opened. This was the language in the original House version of the bill in 2008:

(m) Standards Applicable to Initial Issuance of Subprime or `Fee Harvester' Cards- In the case of any credit card account under an open end consumer credit plan the terms of which require the payment of fees (other than late fees or over-the-limit fees) by the consumer in the first year the account is opened in an amount in excess of 25 percent of the total amount of credit authorized under the account, the credit card may not be issued to the consumer and the opening of the account may not be reported to any consumer reporting agency (as defined in section 603) until the creditor receives payment in full of all such fees, and such payment may not be made from the credit made available by the card.⁷

Note that this earlier version of the fee harvester, like the current version, also refers to fees “in the first year the account is opened” yet requires the creditor “receive[] payment in full of all such fees” before the card is issued or an open account is reported. Clearly, the phrase “in the first year the account is opened” must refer to fees paid before the account is opened.

In several written and telephone conversations, consumer groups expressed strong opposition to the provision requiring advance payment of fees. Several state Attorneys General also voiced concerns about the provision.

As a result, Representative Keith Ellison subsequently offered an amendment to the House bill to remove this explicit language allowing fees to be charged prior to account opening (see Attachment A - Amendment). It was approved unanimously by the House in July 2008. The amendment eliminated the requirement that fees “in the first year the account is opened” must be paid before the account is opened. It also included a

⁷ From HR 5244 as introduced in the 110th Congress, attached as Attachment B.

savings clause indicating that the provision did not override any existing bans on advance fees.

Thus, the explicit provision permitting fees charged before account opening in excess of the 25% cap was removed by Congress early on in the history of the fee harvester rule. This is a clear expression of Congressional intent that the Board did not violate the plain language of the Credit CARD Act by extending the 25% cap to pre-account opening fees.

B. Including Pre-Account Opening Fees Furthers the Purpose of the Fee Harvester Provision and of TILA

The South Dakota District Court held that current rule was not within the CFPB's rulemaking authority because the rule did not effectuate the purpose of the fee harvester provision. The court viewed Congress's intent narrowly as only regulating fees that reduce the credit line, which would not include pre-account opening fees. The court had an overly narrow view of the purpose of the fee harvester provision, and failed to even consider the overall purpose of TILA.

Even the South Dakota district court recognized that one of Congress's clear purposes was to prevent deception in the amount of credit that the consumer receives.⁸ Whether a fee is charged before or after an account is open makes no difference in the impact of that fee on the amount of credit. If a consumer gives a lender \$100 and then the lender immediately turns around and loans the consumer \$200, the consumer has received \$100 in net credit. The result is the same if the lender gives the consumer a \$200 credit line with an initial \$100 fee charged against it.

Indeed, TILA itself recognizes this concept in the closed-end credit context by calculating APRs based on the "amount financed," which is the net amount of credit received after deducting finance charges that reduce the amount of available credit.⁹ The "amount financed" is not the same as the loan amount; it is a lower figure that is net of finance charges. The purpose is to calculate an APR that reflects costs as measured against the actual usable credit received.

Therefore, even viewing the purpose of the fee harvester provision narrowly as protecting the amount of credit available, the net credit provided is no different whether the fee is paid before or deducted from the credit line. Protecting that amount of net credit by counting all initial fees towards the 25% cap is consistent with the purpose of the fee harvester provision and with longstanding TILA authority on how to calculate the amount of truly available credit.

⁸ First Premier Bank v. United States Consumer Fin. Prot. Bureau, 819 F.Supp.2d 906, 915 (D.S.D. 2011)

⁹ 15 U.S.C. § 1638(a)(2)(A); Reg. Z § 1026.18(b).

Moreover, the fee harvester provision was also intended to ensure that fees do not amount to more than 25% of the credit extended. The court ignored that purpose, which is furthered by the current rule.

The purpose of the fee harvester provision is also broader than protecting the amount of credit extended. It was to protect consumers from the onerous burden that high fees impose.¹⁰ It was intended to stop the harm of a card designed more to put the consumer into debt and incur fees and not to provide actual credit.

The fee harvester provision also prevents deception in the cost of the credit. The history of the First Premier card is instructive.

First Premier originally claimed at 9.9% APR, but charged \$178 in fees against \$250 in credit. After the CARD Act was passed, it raised its APR to 79.9% and lowered its fees to \$75. The APR thus more honestly reflected the cost of credit.

However, when First Premier first reacted to the fee harvester limit by offering a 79.9% APR, it likely found few takers, with the high APR deterring consumers, including presumably even its usual customer base of consumers with low credit scores. That is presumably why the bank abandoned that approach and went instead with a deceptively low APR of 36% and the new pre-account opening fee.

	Up Front Fees	Advertised APR
Before the Credit CARD Act	\$178	9.9%
December 2009	\$75	79.9%
Present	\$170	36%

Preventing this type of deception was a purpose of the fee harvester provision that the court did not consider.

The South Dakota District Court found that the FRB's rule was not within the latter's authority to issue regulations that make "adjustments and exceptions ... necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof" 15 U.S.C. §1604(a). The court viewed the "purposes" that the FRB could consider narrowly, only considering the fee harvester provision itself and viewing it with a cramped and constrained interpretation.

However, the FRB's (and now CFPB's) authority is to issue regulations that effectuate the purposes of "*this subchapter*" – all of TILA. The court failed to consider that the rule is fully consistent with the overall purpose of TILA.

¹⁰ See 154 Cong. Rec. H8610 (daily ed. Sept. 23, 2008) (statement of Rep. Langevin that "legislation also protects vulnerable consumers from fee-heavy subprime cards"). See also 154 Cong. Rec. H8603 (daily ed. Sept. 23, 2008) (statement of Rep. Maloney stating that Act "prevents subprime cards from trapping the most vulnerable cardholders in a cycle of debt")

The calculation and disclosure of an APR that enables consumers to compare different credit offers, including different offers that have different price structures, is one of the most central purposes of TILA.¹¹ As stated in the preamble, “It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him” 15 U.S.C. §1601(a).

The fee harvester provision is part of TILA and fulfills the broader purposes of enabling consumers to compare the cost of credit on an apples-to-apples basis by limiting the impact of fees, and thus ensuring that primary cost of credit is reflected in the Annual Percentage Rate (APR). The rule furthers the purpose of a more honest, comparable APR.

III. The CFPB Has Broader Authority than the FRB Had Under TILA, and Should Use This Authority

If the CFPB is not willing to retain the current rule as issued by the FRB, we urge the Bureau to re-issue it using the CFPB’s own authority under TILA and, if necessary, its UDAAP authority. A re-promulgated rule should be more resistant to legal challenge given that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) actually expanded the CFPB’s authority to issue TILA regulations.

Section 1100A(4) of Dodd-Frank added the words “additional requirements” to the authority in Section 105(a) of TILA, i.e., the revised text reads:

The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 that apply to a mortgage referred to in section 1602(aa), such regulations may contain such *additional requirements*, classifications, differentiations, or other provisions,...

15 U.S.C. § 1604(a)(emphasis added)

Thus, Dodd-Frank added even greater authority for the CFPB to issue regulations, in that they could do so by creating new requirements not explicitly provided for in TILA. This new authority should entitle the CFPB to even greater deference than the FRB in issuing TILA regulations that establish new mandates on creditors. The CFPB should re-promulgate the provision applying the 25% cap to pre-account opening fees using this new, greater TILA authority to establish “additional requirements.”

Another avenue is to re-promulgate the current rule using the CFPB’s authority under Section 1031 of Dodd-Frank, 12 U.S.C. § 5531, which permits the CFPB to write rules to prevent unfair, deceptive, or abusive acts or practices (UDAAP authority) in connection with a consumer financial product or service. The CFPB could decree it to

¹¹See Elizabeth Renuart and Diane Thompson, *The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending*, 25 *Yale J. on Reg.* 181 (Summer 2008).

be an unfair or abusive practice to attempt to evade the fee harvester provision's 25% cap, and to distort the APR and the amount of net credit provided, by charging fees prior to account opening.

Indeed, there is ample precedent for the use of such authority to reign in abusive fees. In January 2009, the FRB and other bank regulators banned fees that exceeded 50% of the credit limit using their authority under the Federal Trade Commission Act, 15 U.S.C. § 57a(f), to prohibit unfair or deceptive acts or practices.

The CFPB could justify using its UDAAP authority to require pre-account opening fees to be included in the 25% cap as a method to prevent the unfair or abusive practice of using them to circumvent the limit.

The CFPB could even justify prohibiting pre-account opening fees. For instance, the Federal Trade Commission Telemarketing Sales Rule prohibits telemarketers from receiving an advance fee before credit is obtained for the consumer. 16 C.F.R. § 310.4(a)(4). The FTC Telemarketing Sales Rule does not apply to banks because the FTC does not have authority over banks, but the CFPB does not have the same limitation in its authority, and also does not need to tie the rule to telemarketing.

Furthermore, limitations on the charging of pre-account opening fee could prevent unfair or abusive practices by preventing steering of a consumer from a more affordable secured card to the high-fee First Premier Card. Consider that a consumer who is solicited to pay a \$95 pre-account opening fee could have used those funds to obtain a secured credit card. This would have been a much more affordable and safer option because the consumer would have been able to retain the value of the \$95. As the FRB and bank regulators noted, secured cards are "a more beneficial product than a high-fee subprime credit card." 74 Fed. Reg. 5498, 5539, n. 148 (January 29, 2009).

IV. The CFPB Must Protect Vulnerable Consumers and End a Culture of Industry Evasions

If the CFPB feels that it must finalize the proposed rule as written, it must take other steps to protect consumers who are victimized by these abusive cards. If it does not, it will send a message that encourages providers to look for loopholes that violate the spirit of rules and to challenge the CFPB's authority.

A. Changes Needed to Regulation Z

1. Fees that the Creditor Can Anticipate Should be Included in the APR Disclosed in Advertising and the Application/Solicitation Disclosures

The CFPB should require fees that the creditor knows will be imposed during the first year of the account to be included in the APR listed in advertisements and

solicitations.¹² The APR could be listed as “APR with fees” to avoid confusion with the periodic rate listed in the tabular chart. Such fees would include pre-account opening, account opening, or monthly participation fees – those types of fees typically imposed by subprime issuers. These “known” fees should be reflected in the APR disclosed in advertisements and the application/solicitation table.

We would be open to a minimum threshold before a card triggers a requirement that known fees be included in the APR. We suggest that the threshold be set at 5% - *i.e.* known fees would not need to be included in the APR if they totaled less than 5% of the credit limit. So, for example, a mainstream prime credit card that has an \$85 annual fee but a minimum credit limit of \$2,000 would not need to include the annual fee in the APR, since the fee is only 4.25% of the credit limit.

TILA already requires disclosure of an APR that reflects all fees, the effective APR required by Section 127(b)(6) of TILA, 15 U.S.C. § 1637(b)(6), which the FRB eliminated several years ago over the objection of consumer advocates. Reinstating an APR that reflects fees would be consistent with the purpose of this statutory requirement and would help to reverse the damage caused by the decision to ignore it.

Indeed, the CFPB has even wider latitude to establish requirements for credit card solicitations. Section 127(c)(5) of TILA, 15 U.S.C. § 1637(c)(5) provides:

(5) Regulatory authority of the Bureau

The Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d) of this section, and modify any disclosure of information required by this subsection or subsection (d) of this section, in any application to open a credit card account for any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

Though the FRB eliminated the effective APR because it found that consumers did not understand it, there are important differences between our proposal and the effective APR. First, this would be the APR disclosed up front and before account opening in advertising and the applications/solicitations disclosure table. The effective APR was only disclosed after-the-fact in periodic statements. Our proposal provides for more honesty in the APR that consumers actually uses to shop and to make comparisons on whether to apply for a credit product.

¹² Better yet, we believe that the CFPB should require the advertised APR to reflect all fees that the average consumer paid in the previous year, based on the issuer’s actual experience and practice. This would enable consumers to distinguish between bait and switch tactics involve rate increases and other fee abuses. This average APR with fees should apply to all credit card issuers. Such a rule would involve more study, however, so we suggest starting with the narrower “known fees” rule we propose above.

Second, one of the features of the effective APR most criticized by industry was that it was based on a one month repayment period. Thus, a single fee that month could result in a very high spike in the APR because it assumed repayment in one month. We propose that known fees should be included in the APR based on a one-year repayment period. The CFPB would be justified in basing the calculation on a one-year repayment period, because the fee harvester rule itself is based on fees incurred in the the first year of the account.

Third, there were issues with the effective APR because of uncertainty of whether or when the fees would be incurred. Our proposal would only include fees that the creditor knows will be imposed at the outset, which is of course one of the characteristics of subprime credit cards. Thus, this proposal would be simpler to calculate.

Indeed, we already know that under this proposal, First Premier would be required to disclose an APR of **214%** -- *i.e.*, \$95 pre-account opening fee plus \$75 annual fee plus \$108 in periodic interest divided by \$130 in net credit. Though there would be \$225 available on the credit line, the true, net amount of credit should be used in calculating the APR, just as it would be in determining the “amount financed” for APR calculations in the closed-end credit context.

Requiring this disclosure of an APR with fees will benefit consumers by giving them a more accurate understanding of the full cost of the card and a basis to compare it to other cards that do not pad their interest rate with fees. As discussed above, First Premier most likely abandoned its 79.9% APR in favor of the current structure because the more honest, higher rate was deterring customers. If the advertised APR starts to realistically and honestly reflect the true cost of credit for a credit card, it serves the purpose for which TILA disclosures were intended. Thus, if the CFPB is unwilling to substantively regulate pre-account opening fees, it should at least include them in the APR.

2. Narrow the Categories of Fees that are Excluded from the 25% Cap

The CFB should amend Regulation Z to prevent evasion of the fee harvester provision by narrowing the categories of fees exempted from the 25% cap. As a review of complaints posted to the website Ripoff Reports and other websites shows (discussed below), First Premier is clearly using a variety of unusual fees to add to the hidden costs of the card.

The statutory language of the fee harvester provision excludes only late payment, over-the-limit, and insufficient funds fees from the fees that cannot exceed 25% of the credit line. 15 U.S.C. §1637(n)(1). But Regulation Z adds another vague exclusion, not provided for in the statute, for “fees that the consumer is not required to pay with respect to the account.” 12 C.F.R. §1026.52(a)(2)(ii). First Premier may be relying on that exclusion to justify other fees that further consume the credit line and add to the cost of the card.

For example, consumers who have posted complaints to Ripoff Reports have reported being charged a \$29 fee for a card for an additional user; a \$4.95 fee to access statements online; \$60 to get a year's worth of written statements (\$5 per month); and charges from a 900 telephone number to close an account.

The CFPB should amend Regulation Z to eliminate or narrow the “fees not required to pay” exclusion. The exemption should *not* cover ordinary expenses associated with normal use of the card, such as:

- Fees for the initial card, or any replacement card for a defective card, for any cardholder or authorized user.
- Fees to add an authorized user to the account.
- Fees for accessing account information, such as to access statements online or to receive regular or back written statements.
- Fees or charges for customer service.

Even if fees such as fees to access back written statements can be justified on a mainstream credit card, they should not be permitted on an abusive fee harvester card that is already consuming 25% of the credit line – plus 36% APR and any pre-account opening fees.

These fees should be considered within the 25% cap already and card issuers should be examined to determine if they are violating the limit. But to avoid any uncertainty, the CFPB should revise Regulation Z to exclude only “fees that the consumer is not required to pay and which are not in connection with ordinary use of the account.” The Official Staff Commentary should also be revised to add the categories listed above and other examples of fees that fall within the 25% cap.

3. Add Pre-Account Opening Fees to the TILA Advertising Requirements and Add Credit Limit as a Trigger Term

Regulation Z requires that all finance charges and membership or participation fees be clearly and conspicuously disclosed in advertising if certain trigger terms, such as finance charges, are set forth in an advertisement. 12 C.F.R. § 1026.16(b)(1). First Premier's \$95 pre-account opening “processing” should be considered a finance charge and a participation fee that requires disclosure in advertising. First Premier should not be permitted to advertise a deceptively low APR without noting significant fees. The CFPB should specifically add pre-account opening fees to the advertising disclosure requirements in Regulation Z.

The CFPB should also add credit limit as a term that triggers the advertising disclosure rules. First Premier sometimes advertises based on the \$300 credit limit without using a trigger term.¹³ That results in deceptive advertising because, as discussed

¹³ For example on the CreditCards.com site, First Premier advertises “Apply today and if approved, simply pay a Processing Fee and you could begin enjoying a \$300 credit limit (subject to available credit).” See <http://www.creditcards.com/credit-cards/First-Premier-Bank-Credit-Card.php#ixzz1xORGxqRk>. None of the fees are disclosed in that advertisement.

above, the \$170 in fees results in only \$130 net credit.¹⁴ Thus, any advertisement that promotes the \$300 credit limit should display the total of first year fees.¹⁵

The CFPB should also require that these known, required fees be disclosed **prominently**, not just clearly and conspicuously. The disclosures should be segregated or otherwise formatted to draw attention, such as having a high degree of contrast or printed in a distinct type style (such as bold). The fees should be disclosed on the first page of the principal promotional document. They should be in the same font that is as the disclosure of the APR or credit limit or any other trigger terms.

The CFPB should also promulgate model forms to illustrate the advertising requirements.

As discussed below, the FRB and CFPB should also examine First Premier's advertising disclosures to ensure that they meet the current advertising rules.

4. Limit Fees after the First Year

The fee harvester provision only covers fees in the first year that the account is opened. But abuses do not stop there. With no limits on fees after the first year, fees in the second year can be substantially more than 25% of the credit line, leading to further deception about the cost of the card and the amount of credit available and further unfairness and abusiveness.

Prior to the enactment of the Credit CARD Act, the FRB adopted a rule under its FTC Act authority to limit fees to 50% of the credit line. The rationale was that it was unfair to have fees consume more than half of the credit line, so that more of the credit line went to fees than to available credit.

The CFPB should use its UDAAP authority to regulate fees after the first year. But it can go do better than a 50% limit. Congress has now set the standard at 25%. The 25% level is also justified because consumers are likely to be deceived and trapped if a card that they have already taken out and incurred a debt on (a large debt, including the fees and high interest rate) becomes dramatically more expensive after the first year. Consumers do not understand how the multiplicity of smaller fees that First Premier and other fee harvester cards charge will add up, and why they will add up to more than they did in the first year. Notably, these extra costs may not require any change of terms disclosures to put the consumer on notice.

According to a recent media article, First Premier begins charging in the second year a monthly fee that totals \$174 per year plus a "credit limit increase fee" that equals 25% of the increase in the credit line (*e.g.*, a \$50 fee for a \$200 increase in the credit

Compare credit cards here - CreditCards.com <http://www.creditcards.com/credit-cards/First-Premier-Bank-Credit-Card.php>.

¹⁴ See section II.B above.

¹⁵ We do not believe that mainstream credit cards advertise based on the credit limit and thus should be unaffected by this proposed rule. If necessary, the CFPB could adopt an exemption for cards for which the fees are a minimal proportion of the credit line.

line).¹⁶ We expect that an examination of consumer experiences under these fee harvester cards would also reveal widespread dissatisfaction, deception and unfairness in the second year that would justify further regulation.

B. The CFPB Should Use its UDAAP Rulewriting Authority to Address Other Abuses of Fee Harvester Cards

1. Cards That Harm Credit Worthiness are Unfair, Deceptive and Abusive

Subprime issuers often promote fee harvester cards to consumers as a means to improve their credit reports. Yet the exorbitant costs on fee harvester cards often result in harming the credit records of a high proportion of these cardholders through eventual defaults that lead to lower credit scores. In a study that actually supported the subprime issuers, almost two-thirds of consumers who had fee harvester cards experienced no change in score or a worse score.¹⁷ Even those whose scores are already so bad that they do not get any worse undoubtedly are in a worse position if their debt and number of accounts in default increases.

It should be considered an unfair, deceptive or abusive practice to market a card to those with impaired credit records, or to imply that a credit card will improve a credit record, if the card harms more often than it helps.¹⁸ Whether through a rule, guidance, supervision or an enforcement action, the CFPB should send the message that these practices must be stopped.

2. Credit Card Fees Should be Reasonable and Proportional to Their Purpose

One of the fundamental problems of fee harvester cards is the outsize proportion of these fees in relationship to the price tag of a credit card, the APR. Simply put, paying \$170 in fees in order to obtain \$130 of credit is both unfair and abusive. Fee harvester cards come up with a long list of frivolous fees like “processing” that have nothing to do with any actual service. We urge the CFPB to set limits in general on the size of credit card fees to ensure they are reasonable and proportional to the cost, service, or purpose that they serve and that they are not used to circumvent the APR disclosure.

As the CFPB knows, Section 149(a) of TILA, 15 U.S.C. § 1665d(a), as added by the Credit CARD Act, includes a requirement that all penalty fees be reasonable and proportional to the omission or violation to which it relates. The FRB implemented this

¹⁶ Blake Ellis, First Premier's \$400-a-year credit card, CNNMoney, Feb. 9, 2012, at http://money.cnn.com/2012/02/09/pf/first_premier_credit_card/index.htm.

¹⁷ TransUnion, Summary of Results for CEAC Coalition: Supporting Analysis, July 2008, at 6, available at http://www.federalreserve.gov/SECRS/2008/October/20081003/R-1314/R-1314_25797_1.pdf.

¹⁸ As discussed below, such cards also violate the rule that cards can only be issued to those with an ability to pay.

requirement in Regulation Z by, *inter alia*, establishing a safe harbor amount of a \$25 fee for the first violation (\$35 for the second violation), and limiting fees to no more than the amount associated with the violation.

The CFPB should set a similar rule under its UDAAP authority that all credit card fees, with an exception only for the basic price tag – the interest rate and the annual fee – be reasonable and proportional to their purpose. Such a rule will prevent deception in that it will prevent subprime issuers from using high fees and a deceptively low APR to disguise the true cost of credit for a card account. It will prevent issuers from misleading consumers about the amount of credit, the cost of the credit, or prospects for improving credit.

3. Establish a Rule that the Pre-Account Opening Fees Are Fully Refundable

The CFPB should require that any pre-account opening fees be fully refundable. This appears already to be First Premier's practice. In an affidavit in support of First Premier's motion for preliminary injunction, the bank's CEO claims that the bank gives consumers 85 days to pay the initial fee, and refunds any partial fees if the consumer decides to change his or her mind.¹⁹ However, this practice is currently not required by Regulation Z. The CFPB should establish a rule that requires such refunds to protect consumers who are deceived by card solicitations.

When the card is sent to the consumer, the consumer should receive a bold, clear and conspicuous statement (following a model form) summarizing the first year fees (including any fees already paid) and showing what fees will appear on the first monthly bill. A similar summary should accompany the first statement. The consumer should be given clear instructions permitting them to close the account and return the card for a full refund of any fees paid *and* no liability for any other fees billed on the first statement but not yet paid.

V. The CFPB Should Join the Federal Reserve Board in Vigorously Examining First Premier and Other High Fee Subprime Card Issuers

Any bank that targets vulnerable consumers with deceptive, exorbitantly expensive, and dangerous products requires close scrutiny. The history of fee harvester cards leading up to the enactment of the CARD Act provision shows that, until somewhat restrained by Congress, certain banks were happy to deceive consumers and offer products that turned out to work very differently, and cost a lot more, than consumers believed.

For banks under \$10 billion, like First Premier, the CFPB has the authority to join the other bank supervisors on a sampling basis to assess compliance with Federal

¹⁹ Affidavit of Miles K. Beacom, CEO of Premier Bankcard, First Premier Bank v. United States Consumer Fin. Prot. Bureau, Case No. 4:11-cv-04103 (D.S.D. Aug 4, 2011), attached as Attachment C.

consumer financial law. 12 U.S.C. § 5516(c)(1). It should use that authority to participate in the examination of First Premier and other issuers of cards aimed at consumers with poor credit records, even if the CFPB is not the primary supervisor.

The CFPB should also examine closely Capital One (issuer of the Orchard Bank and other high fee cards) and any other bank that targets consumers with poor credit records over which the Bureau does have consumer protection authority. The issues described below may not be unique to First Premier.

Below are merely some of the issues the CFPB and other bank regulators should be examine that have shown up in numerous complaints posted to the websites Ripoff Reports and Pissed Customer.²⁰

A. Compliance with the 25% Fee Cap

Even assuming that pre-account opening fees are outside the 25% cap, First Premier and other fee harvester issuers should be examined closely to ensure that they are not violating the limit after the account is open. As the CFPB knows, First Premier charges the maximum 25% of fees in the first year: a \$75 annual fee on a \$300 credit line. Any other fees in that first year, other than those specifically excluded by statute and regulation, would violate TILA. Yet a skim of complaints posted to Ripoff Reports for First Premier indicates many potential violations.

A Ripoff Report complaint submitted on December 15, 2011 shows likely violations of the fee harvester rule.²¹ The report says that in the one month the consumer has had the card, on top of the \$95 and \$75 fees, he was charged a \$29 and a \$26.50 additional card fee, and a \$4.95 internet account access fee *per month* (or \$59.40 per year).

The internet account access fee should count towards the 25%. In this day and age, access to an account online should not be considered an “optional” service. The report makes clear that this consumer is not receiving paper statements. In addition, it appears that First Premier is also charging for paper statements, so that any access to account information – certainly something necessary – incurs fees. The Ripoff Report complains that, even after paying the internet access fee, the consumer had to pay \$5 per monthly statement (\$60 for the year he was seeking) to see the statements beyond the three months visible on the website. As discussed below, these internet and statement fees also likely violate TILA’s requirement that issuers provide periodic statements. 15 U.S.C. § 1637(b).

The “additional card” fees are arguably within the exclusion for fees the consumer is not required to pay, unless of course the consumer is actually required to pay them – something that the FRB and CFPB should examine. As discussed above the CFPB should also consider removing these fees from the type of fees exempted from the 25% cap, as they reduce the credit line, are clearly exorbitant, and are not within the spirit of

²⁰See <http://www.ripoffreport.com/directory/first-premier-bank.aspx>; <http://first-premier-bank.pissedconsumer.com/>.

²¹ See <http://www.ripoffreport.com/credit-debt-services/first-premier-bank/first-premier-bank-first-premi-0dc59.htm> (Attachment D).

the exclusion for optional fees. It is one thing to charge a fee for a replacement card that the consumer lost. It is another thing to charge a huge fee just to have a second user on the account.

Another Ripoff Report complaint appears to claim that the consumer was charged a \$65 fee to access the account on top of the \$95 and \$75 fees.²² The consumer was also required to call a 900 number – an expensive toll phone number – in order to close the account. Using a 900 number for any aspect of customer service should be an unfair practice, and the cost should also be found to violate the 25% cap. Again, it would help to amend the Official Staff Commentary to include any customer service charges among the covered fees.

A March 5, 2012 Ripoff Report claims that First Premier is claiming that a consumer owes \$207 on a \$300 credit limit card that was never used.²³

B. Ensure Pre-Account Fees Really Are Paid Before Account Opening and Not Paid From Another Credit Account

Assuming that the CFPB finalizes the rule as proposed, the CFPB and other bank regulators should scrutinize fee harvester card issuers to ensure that any fees that are purportedly charged before account opening in fact are paid as represented. Any credit lines or other devices to defer payment of those fees until after the account is opened should bring the fees within the 25% cap.

C. Examine Whether First Premier is Properly Assessing Ability to Repay

As the CFPB knows, Section 150 of TILA, 15 U.S.C. § 1665e, as added by the Credit CARD Act, requires issuers to assess the consumer's ability to repay before opening an account. We believe that First Premier and other fee harvester card issuers may be in gross violation of this provision.

Any card aimed at consumers with “bad credit” or “no credit” deserves especially close scrutiny standards for whether consumers are able to repay the credit. One sign of inability to repay are high default rates. First Premier certainly has an abnormally high default rate.

According to its filings in the South Dakota litigation, the CEO of First Premier disclosed under oath that 40% of the fees, charges, and interest owed to First Premier are never paid.²⁴ An industry commenter – Andrew Kahr, founder of Providian Financial

²² See <http://www.ripoffreport.com/credit-card-fraud/first-premier-bank/first-premier-bank-kept-incre-9d0b7.htm> (Attachment D).

²³ See <http://www.ripoffreport.com/credit-card-fraud/first-premier-bank/first-premier-bank-rip-me-off-14724.htm> (Attachment D).

²⁴ Affidavit of Miles K. Beacom, CEO of Premier Bankcard, First Premier Bank v. United States Consumer Fin. Prot. Bureau, Case No. 4:11-cv-04103 (D.S.D. Aug 4, 2011). A copy is attached as Attachment C.

Corp – actually came up with a higher calculation. By his estimate, First Premier has over a 50% default rate on its card.²⁵

Whether it is 40% or 50%, the default rate is enormously higher than mainstream credit cards. For example, the Federal Reserve Board reported that charge-off rate for all credit cards in the first quarter of 2012 was 4.25%²⁶ - about one-tenth of First Premier's default rate.

The CFPB must ensure that the ability to repay provision has meaning. A card issuer's compliance with this rule is not merely based on whether it considers income and assets when a card is issued. Deliberately marketing a card to consumers with poor credit records, who then turn out not to be able to make regular payments when due, shows that the issuer is intentionally providing cards to consumers who do not have the ability to repay. Compliance with the ability to repay rule requires examination of the entirety of the issuer's practices and experience, and not merely the application process.

D. Periodic Statement Requirements

TILA and Regulation Z require that credit card issuers provide periodic statements. These statements are legally required and are an essential consumer protection measure. No consumer should ever be denied access to basic account information because it is too expensive or they do not wish to pay for it.

It appears from the Ripoff Report complaints described above that First Premier may be violating this requirement by charging for statements, both electronic and written. First Premier charges \$4.95 merely to access accounts online,²⁷ and it also charges for written statements (though it is not clear if it charges only for extra copies or for the initial statement).

Issuers should be not be permitted to charge for written or electronic statements.²⁸ The example described above shows why it is so dangerous to permit an issuer to use fees as a way of inhibiting access to this information and of hiding what is going on inside the account.

The FRB and the CFPB should also examine whether First Premier is complying with the requirements of the E-Sign Act in substituting electronic statements for written ones.

²⁵ Andrew Kahr, "CFPB Replaces Fed's Illegal Regulation with Its Own Illegal Regulation," American Banker (Apr. 16, 2012), available at <http://www.americanbanker.com/bankthink/CFPB-Card-Act-First-Premier-Fed-1048401-1.html>.

²⁶ Federal Reserve Board, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, May 18, 2012, available at <http://www.federalreserve.gov/releases/chargeoff/chgallsa.htm>.

²⁷ See <https://www.mypremiercreditcard.com/>.

²⁸ This has not generally been a problem with credit cards but it is a growing problem with bank accounts that the CFPB should address. Statement fees should not be used as a revenue driver or as a means of inhibiting consumers from getting important account information in the form that works for them.

E. TILA Ban on Pay-to-Pay

The Credit CARD Act and Regulation Z prohibit charging a fee to make a payment online or through the telephone or by other means unless the payment involves an expedited service by a live customer service representative.²⁹ A Ripoff Report complaint indicates that First Premier may be charging “pay to pay” fees even when a live representative is not involved, in violation of this prohibition.

F. Debt Collection and Credit Reporting Practices

Several Ripoff Reports complain about debt collection practices of First Premier or collectors that it engages, or about erroneous reports to credit reporting agencies. That is not surprising, given that the issuer solicits consumers with poor credit records and plans for high defaults.

First Premier is not subject to the Fair Debt Collection Practices Act, though its third party collectors are. But practices that violate the FDCPA are likely unfair, deceptive or abusive and are violations of the Federal Trade Commission Act or the Consumer Financial Protection Act. In addition to abuse by collectors, reports posted to complaint websites also complain about First Premier selling debt that has already been paid, which is an unfair and deceptive practice.³⁰

G. Credit Protection Plans

First Premier sells credit protection plans that purport to help a consumer who loses a job or cannot pay the minimum payment on the card for other reasons. Ripoff Reports complaints indicate that the bank does not honor the representations about these policies after consumers have been paying into the plans.³¹

H. Other Unfair, Deceptive or Abusive Practices

One Ripoff Report complaint claims that First Premier offered \$90 in “free” gifts, then charged \$88 for the gifts and would not refund the charges.³²

The FRB, the CFPB and other bank regulators should thoroughly examine the practices of card issuers who target consumers with poor credit records. They should review complaints from every available source – i.e., the card issuer’s call center or complaints database, government agencies, internet complaint sites – to uncover other unfair, deceptive or abusive practices that need attention.

²⁹ 15 U.S.C. § 1637(l).

³⁰ See, e.g., <http://first-premier-bank.pissedconsumer.com/fraud-scam-and-bullsh-ers-20120505316780.html> (June 3, 2012 comment to original post) (Attachment D).

³¹ See, e.g., <http://www.ripoffreport.com/credit-card-processing-companies/premier-credit-prote/premier-credit-protection-firs-76079.htm> (Attachment D).

³² See, e.g., <http://first-premier-bank.pissedconsumer.com/first-premier-bank-is-legal-robbery-20120203294153.html> (Attachment D).

Conclusion

The fee harvester situation is an early test of the CFPB's authority and its willingness to change the culture of deception and abusiveness that has pervaded the credit card industry and some other industries. How the Bureau reacts will send a signal for how industries behave in the future. The CFPB of course did not ask to put in this position, and the district court's decision poses challenges. But the CFPB is not without options. The CFPB can let First Premier get away with an evasion so blatant that it drove the FRB to issue a clarifying rule with lightning speed, or it can use whatever tools it has to ensure that, one way or another, the most vulnerable consumers are protected.

Thank you for the opportunity to submit these comments.

Addendum
**Cases Establishing Board Authority of Federal Reserve Board under TILA
and Entitlement to Substantial Deference**

- *Mourning v. Family Publications Service*, 411 U.S. 356, 93 S. Ct. 1652 (1973) (establishing that the FRB is entitled to deference when issuing TIL regulations).
- *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 100 S. Ct. 790 (1980). In this seminal case establishing the FRB’s broad authority to issue TIL regulations and the deference that such regulations must accorded, the Supreme Court stated:
 - “Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit.”
 - “Unless demonstrably irrational, Federal Reserve Board staff opinions construing the Act or Regulation should be dispositive.”
 - “This traditional acquiescence in administrative expertise is particularly apt under TILA, because the Federal Reserve Board has played a pivotal role in ‘setting [the statutory] machinery in motion’”
 - “[W]holly apart from jurisprudential considerations or congressional intent, deference to the Federal Reserve is compelled by necessity; a court that tries to chart a true course to the Act’s purpose embarks upon a voyage without a compass when it disregards the agency’s views.”
- *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 219, 101 S.Ct. 2266 (1981)(“absent some obvious repugnance to the statute, the Board’s regulation implementing this legislation should be accepted by the courts,”).
- *Household Credit Servs., Inc. v. Pfennig*, 541 U.S. 232, 239, 124 S.Ct. 1741 (2004) (re-affirming the Board’s pivotal role in interpreting TILA and *Milhollin*’s holding).
- *Chase Bank USA v. McCoy*, 131 S. Ct. 871 (2011) (citing *Milhollin* and its standard with approval and applying deference to FRB amicus briefs).

As recently as 2006, the Eighth Circuit (which includes the District of South Dakota that issued the First Premier decision) noted:

“Deference to the views of the Board is ‘especially appropriate’ in the process of interpreting the TILA, given the agency’s ‘pivotal role in setting the statutory machinery in motion,’ broad administrative lawmaking power delegated by Congress, and unique position to navigate the complexities of the statute striking the appropriate balance between ‘competing considerations of complete disclosure and the need to avoid informational overload.’” (citing *Milhollin*)

Hess v. Citibank, (South Dakota), N.A., 459 F.3d 837, 842 (2006).

And just 6 months ago, the First Circuit re-affirmed the *Milhollin* standard in its opinion in *DiVittorio v. HSBC Bank USA, NA (In re DiVittorio)*, 670 F.3d 273 (Bankr. 1st Cir. 2012).

ATTACHMENT A

**AMENDMENT TO THE COMMITTEE PRINT OF JULY
24, 2008**

OFFERED BY MR. ELLISON OF MINNESOTA

Page 22, beginning on line 25, strike “the credit card may not be” and all that follows through line 5 and insert “no payment of any fees (other than late fees or over-the-limit fees) may be made from the credit made available by the card. No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.’.”



ATTACHMENT B

[Committee Print]

[JULY 24, 2008]

[The Committee Print consists of an Amendment in the Nature of a Substitute to H.R. 5244]

Strike all after the enacting clause and insert the following:

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

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

12 **“(a) RETROACTIVE RATE INCREASES AND UNI-**
13 **VERSAL DEFAULT LIMITED.**—

14 **“(1) IN GENERAL.**—Except as provided in sub-
15 section (b), no creditor may increase any annual per-
16 centage rate of interest applicable to the existing

1 balance on a credit card account of the consumer
2 under an open end consumer credit plan.

3 “(2) EXISTING BALANCE DEFINED.—For pur-
4 poses of this subsection and subsections (b) and (c),
5 the term ‘existing balance’ means the amount owed
6 on a consumer credit card account as of the end of
7 the fourteenth day after the creditor provides notice
8 of an increase in the annual percentage rate in ac-
9 cordance with subsection (c).

10 “(3) TREATMENT OF EXISTING BALANCES FOL-
11 LOWING RATE INCREASE.—If a creditor increases
12 any annual percentage rate of interest applicable to
13 credit card account of a consumer under an open
14 end consumer credit plan and there is an existing
15 balance in the account to which such increase may
16 not apply, the creditor shall allow the consumer to
17 repay the existing balance using a method provided
18 by the creditor which is at least as beneficial to the
19 consumer as 1 of the following methods:

20 “(A) An amortization period for the exist-
21 ing balance of at least 5 years starting from the
22 date on which the increased annual percentage
23 rate went into effect.

24 “(B) The percentage of the existing bal-
25 ance that was included in the required min-

1 imum periodic payment before the rate increase
2 cannot be more than doubled.

3 “(4) LIMITATION ON CERTAIN FEES.—If—

4 “(A) a creditor increases any annual per-
5 centage rate of interest applicable on a credit
6 card account of the consumer under an open
7 end consumer credit plan; and

8 “(B) the creditor is prohibited by this sec-
9 tion from applying the increased rate to an ex-
10 isting balance,

11 the creditor may not assess any fee or charge based
12 solely on the existing balance.”.

13 (b) EXCEPTIONS TO THE AMENDMENT MADE BY
14 SUBSECTION (a).—Section 127B of the Truth in Lending
15 Act is amended by inserting after subsection (a) (as added
16 by subsection (a)) the following new subsection:

17 “(b) EXCEPTIONS.—

18 “(1) IN GENERAL.—A creditor may increase
19 any annual percentage rate of interest applicable to
20 the existing balance on a credit card account of the
21 consumer under an open end consumer credit plan
22 only under the following circumstances:

23 “(A) CHANGE IN INDEX.—The increase is
24 due solely to the operation of an index that is

1 not under the creditor's control and is available
2 to the general public.

3 “(B) EXPIRATION OR LOSS OF PRO-
4 MOTIONAL RATE.—The increase is due solely
5 to—

6 “(i) the expiration of a promotional
7 rate; or

8 “(ii) the loss of a promotional rate for
9 a reason specified in the account agree-
10 ment (e.g., late payment).

11 “(C) PAYMENT NOT RECEIVED DURING 30-
12 DAY GRACE PERIOD AFTER DUE DATE.—The
13 increase is due solely to the fact that the con-
14 sumer's minimum payment has not been re-
15 ceived within 30 days after the due date for
16 such minimum payment.

17 “(2) LIMITATION ON INCREASES DUE TO LOSS
18 OF PROMOTIONAL RATE.—Notwithstanding para-
19 graph (1)(B)(ii), the annual percentage rate in effect
20 after the increase permitted under such subsection
21 due to the loss of a promotional rate may not exceed
22 the annual percentage rate that would have applied
23 under the terms of the agreement after the expira-
24 tion of the promotional rate.”.

1 (c) ADVANCE NOTICE OF RATE INCREASES.—Section
2 127B of the Truth in Lending Act is amended by inserting
3 after subsection (b) (as added by subsection (b)) the fol-
4 lowing new subsection:

5 “(c) ADVANCE NOTICE OF RATE INCREASES.—In the
6 case of any credit card account under an open end con-
7 sumer credit plan, no increase in any annual percentage
8 rate of interest may take effect unless the creditor pro-
9 vides a written notice to the consumer at least 45 days
10 before the increase takes effect which fully describes the
11 changes in the annual percentage rate, in a complete and
12 conspicuous manner, and the extent to which such in-
13 crease would apply to an existing balance.”.

14 (d) CLERICAL AMENDMENT.—The table of sections
15 for chapter 2 of the Truth in Lending Act (15 U.S.C.
16 1631 et seq.) is amended by inserting after the item relat-
17 ing to section 127A the following new item:

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

18 **SEC. 3. ADDITIONAL PROVISIONS REGARDING ACCOUNT**
19 **FEATURES, TERMS, AND PRICING.**

20 (a) DOUBLE CYCLE BILLING PROHIBITED.—Section
21 127B of the Truth in Lending Act is amended by inserting
22 after subsection (c) (as added by section 2(c)) the fol-
23 lowing new subsection:

24 “(d) DOUBLE CYCLE BILLING.—

1 “(1) IN GENERAL.—No finance charge may be
2 imposed by a creditor with respect to any balance on
3 a credit card account under an open end consumer
4 credit plan that is based on balances for days in bill-
5 ing cycles preceding the most recent billing cycle.

6 “(2) EXCEPTIONS.—Paragraph (1) shall not
7 apply so as to prohibit a creditor from—

8 “(A) charging a consumer for deferred in-
9 terest even though that interest may have ac-
10 crued over multiple billing cycles; or

11 “(B) adjusting finance charges following
12 resolution of a billing error dispute.”.

13 (b) LIMITATIONS RELATING TO ACCOUNT BALANCES
14 ATTRIBUTABLE ONLY TO ACCRUED INTEREST.—Section
15 127B is amended by inserting after subsection (d) (as
16 added by subsection (a)) the following new subsection:

17 “(e) LIMITATIONS RELATING TO ACCOUNT BAL-
18 ANCES ATTRIBUTABLE ONLY TO ACCRUED INTEREST.—

19 “(1) IN GENERAL.—If the outstanding balance
20 on a credit card account under an open end con-
21 sumer credit plan represents an amount attributable
22 only to accrued interest on previously repaid credit
23 extended under the plan—

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

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

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

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

9 “(B) the accrual of interest on the out-
10 standing balance on any such account in ac-
11 cordance with the terms of the account and this
12 title.”.

13 (c) ACCESS TO PAYOFF BALANCE INFORMATION.—
14 Section 127B of the Truth in Lending Act is amended
15 by inserting after subsection (e) (as added by subsection
16 (b)) the following new subsection:

17 “(f) PAYOFF BALANCE INFORMATION.—Each peri-
18 odic statement provided by a creditor to a consumer with
19 respect to a credit card account under an open end con-
20 sumer credit plan shall contain the telephone number,
21 Internet address, and Worldwide Web site at which the
22 consumer may request the payoff balance on the ac-
23 count.”.

24 (d) CONSUMER RIGHT TO REJECT CARD BEFORE
25 NOTICE IS PROVIDED OF OPEN ACCOUNT.—Section 127B

1 of the Truth in Lending Act is amended by inserting after
2 subsection (g) (as added by subsection (c)) the following
3 new subsection:

4 “(g) CONSUMER RIGHT TO REJECT CARD BEFORE
5 NOTICE OF NEW ACCOUNT IS PROVIDED TO CONSUMER
6 REPORTING AGENCY.—

7 “(1) IN GENERAL.—A creditor may not furnish
8 any information to a consumer reporting agency (as
9 defined in section 603) concerning the establishment
10 of a newly opened credit card account under an open
11 end consumer credit plan until the credit card has
12 been used or activated by the consumer.

13 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
14 shall not be construed as prohibiting a creditor from
15 furnishing information about any application for
16 credit card account under an open end consumer
17 credit plan or any inquiry about any such account
18 to a consumer reporting agency (as so defined).”.

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

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

1 “(1) ‘FIXED’ RATE.—The term ‘fixed’, when
2 appearing in conjunction with a reference to the an-
3 nual percentage rate or interest rate applicable with
4 respect to such account, may only be used to refer
5 to an annual percentage rate or interest rate that
6 will not change or vary for any reason over the pe-
7 riod clearly and conspicuously specified in the terms
8 of the account.

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

16 “(3) DUE DATE.—

17 “(A) IN GENERAL.—Each periodic state-
18 ment for any such account shall contain a date
19 by which the next periodic payment on the ac-
20 count must be made to avoid a late fee or be
21 considered a late payment, and any payment re-
22 ceived by 5 P.M., local time at the location
23 specified by the creditor for the receipt of pay-
24 ment, on such date shall be treated as a timely
25 payment for all purposes.

1 “(B) CERTAIN ELECTRONIC FUND TRANS-
2 FERS.—Any payment with respect to any such
3 account made by a consumer on-line to the Web
4 site of the credit card issuer or by telephone di-
5 rectly to the credit card issuer before 5 P.M.,
6 local time at the location specified by the cred-
7 itor for the receipt of payment, on any business
8 day shall be credited to the consumer’s account
9 that business day.

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

23 (f) PRO RATA PAYMENT ALLOCATIONS.—Section
24 127B of the Truth in Lending Act is amended by inserting

1 after subsection (h) (as added by subsection (e)) the fol-
2 lowing new subsection:

3 “(i) PRO RATA PAYMENT ALLOCATIONS.—

4 “(1) IN GENERAL.—Except as permitted under
5 paragraph (2), if the outstanding balance on a credit
6 card account under an open end consumer credit
7 plan accrues interest at 2 or more different annual
8 percentage rates, the total amount of each periodic
9 payment made on such account shall be allocated by
10 the creditor between or among the outstanding bal-
11 ances at each such annual percentage rate in the
12 same proportion as each such balance bears to the
13 total outstanding balance on the account.

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

21 “(3) SPECIAL RULES FOR ACCOUNTS WITH
22 PROMOTIONAL RATE BALANCES OR DEFERRED IN-
23 TEREST BALANCES.—

24 “(A) IN GENERAL.—Notwithstanding para-
25 graph (1) or (2), in the case of a credit card

1 account under an open end consumer credit
2 plan the current terms of which allow the con-
3 sumer to receive the benefit of a promotional
4 rate or deferred interest plan, amounts paid in
5 excess of the required minimum payment shall
6 be allocated to the promotional rate balance or
7 the deferred interest balance only if other bal-
8 ances have been fully paid.

9 “(B) EXCEPTION FOR DEFERRED INTER-
10 EST BALANCES.—Notwithstanding subpara-
11 graph (A), a creditor may allocate the entire
12 amount paid by the consumer in excess of the
13 required minimum periodic payment to a bal-
14 ance on which interest is deferred during the 2
15 billing cycles immediately preceding the expira-
16 tion of the period during which interest is de-
17 ferred.

18 “(4) PROHIBITION ON RESTRICTED GRACE PE-
19 RIODS UNDER CERTAIN CIRCUMSTANCES.—If, with
20 respect to any credit card account under an open
21 end consumer credit, a creditor offers a time period
22 in which to repay credit extended without incurring
23 finance charges to cardholders who pay the balance
24 in full, the creditor may not deny a consumer who
25 takes advantage of a promotional rate balance or de-

1 ferred interest rate balance offer with respect to
2 such an account any such time period for repaying
3 credit without incurring finance charges.”.

4 (g) **TIMELY PROVISION OF PERIODIC STATE-**
5 **MENTS.**—Section 127B of the Truth in Lending Act is
6 amended by inserting after subsection (i) (as added by
7 subsection (f)) the following new subsection:

8 “(j) **TIMELY PROVISION OF PERIODIC STATE-**
9 **MENTS.**—Each periodic statement with respect to a credit
10 card account under an open end consumer credit plan
11 shall be sent by the creditor to the consumer not less than
12 25 calendar days before the due date identified in such
13 statement for the next payment on the outstanding bal-
14 ance on such account, and section 163(a) shall be applied
15 with respect to any such account by substituting ‘25’ for
16 ‘fourteen’.”.

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

19 Section 127B of the Truth in Lending Act is amend-
20 ed by inserting after subsection (j) (as added by section
21 3(g)) the following new subsections:

22 “(k) **OPT-OUT OF CREDITOR AUTHORIZATION OF**
23 **OVER-THE-LIMIT TRANSACTIONS IF FEES ARE IM-**
24 **POSED.**—

1 “(1) IN GENERAL.—In the case of any credit
2 card account under an open end consumer credit
3 plan under which an over-the-limit-fee may be im-
4 posed by the creditor for any extension of credit in
5 excess of the amount of credit authorized to be ex-
6 tended under such account, the consumer may elect
7 to prohibit the creditor, with respect to such ac-
8 count, from completing any transaction involving the
9 extension of credit, with respect to such account, in
10 excess of the amount of credit authorized by noti-
11 fying the creditor of such election in accordance with
12 paragraph (2).

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

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

17 “(B) by submitting to the creditor a signed
18 notice of election, by mail or electronic commu-
19 nication, on a form issued by the creditor for
20 purposes of this subparagraph.

21 “(3) EFFECTIVENESS OF ELECTION.—An elec-
22 tion by a consumer under paragraph (1) shall be ef-
23 fective beginning 3 business days after the creditor
24 receives notice from the consumer in accordance

1 with paragraph (2) and shall remain effective until
2 the consumer revokes the election.

3 “(4) NOTIFICATION SYSTEM.—Each creditor
4 that maintains credit card accounts under an open
5 end consumer credit plan shall establish and main-
6 tain a notification system, including a toll-free tele-
7 phone number, Internet address, and Worldwide
8 Web site, which permits any consumer whose credit
9 card account is maintained by the creditor to notify
10 the creditor of an election under this subsection in
11 accordance with paragraph (2).

12 “(5) ANNUAL NOTICE TO CONSUMERS OF
13 AVAILABILITY OF ELECTION.—In the case of any
14 credit card account under an open end consumer
15 credit plan, the creditor shall include a notice, in
16 clear and conspicuous language, of the availability of
17 an election by the consumer under this paragraph as
18 a means of avoiding over-the limit fees and a higher
19 amount of indebtedness, and the method for pro-
20 viding such notice—

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

24 “(B) in any such periodic statement which
25 includes a notice of the imposition of an over-

1 the-limit fee during the period covered by the
2 statement.

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

9 “(7) REGULATIONS.—

10 “(A) IN GENERAL.—The Board shall issue
11 regulations allowing for the completion of over-
12 the-limit transactions that for operational rea-
13 sons exceed the credit limit by a de minimis
14 amount, even where the cardholder has made
15 an election under paragraph (1).

16 “(B) SUBJECT TO NO FEE LIMITATION.—
17 The regulations prescribed under subparagraph
18 (A) shall not allow for the imposition of any fee
19 or any rate increase based on the permitted
20 over-the-limit transactions.

21 “(1) OVER-THE-LIMIT FEE RESTRICTIONS.—With re-
22 spect to a credit card account under an open end consumer
23 credit plan, an over-the-limit fee may be imposed only once
24 during a billing cycle if, on the last day of such billing
25 cycle, the credit limit on the account is exceeded, and an

1 over-the-limit fee, with respect to such excess credit, may
2 be imposed only once in each of the 2 subsequent billing
3 cycles, unless the consumer has obtained an additional ex-
4 tension of credit in excess of such credit limit during any
5 such subsequent cycle or the consumer reduces the out-
6 standing balance below the credit limit as of the end of
7 such billing cycle.

8 “(m) OVER-THE-LIMIT FEES PROHIBITED IN CON-
9 JUNCTION WITH CERTAIN CREDIT HOLDS.—Notwith-
10 standing subsection (l), an over-the-limit fee may not be
11 imposed if the credit limit was exceeded due to a hold un-
12 less the actual amount of the transaction for which the
13 hold was placed would have resulted in the consumer ex-
14 ceeding the credit limit.”

15 **SEC. 5. STRENGTHEN CREDIT CARD INFORMATION COL-**
16 **LECTION.**

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

19 (1) in paragraph (1)—

20 (A) by striking “COLLECTION RE-
21 QUIRED.—The Board shall” and inserting

22 “COLLECTION REQUIRED.—

23 “(A) IN GENERAL.—The Board shall”.

24 (B) by adding at the end the following new
25 subparagraph:

1 “(B) INFORMATION TO BE INCLUDED.—
2 The information under subparagraph (A) shall
3 include, for the relevant semiannual period, the
4 following information with respect each creditor
5 in connection with any consumer credit card ac-
6 count:

7 “(i) A list of each type of transaction
8 or event during the semiannual period for
9 which 1 or more creditors has imposed a
10 separate interest rate upon a consumer
11 credit card accountholder, including pur-
12 chases, cash advances, and balance trans-
13 fers.

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

16 “(I) each distinct interest rate
17 charged by the card issuer to a con-
18 sumer credit card accountholder dur-
19 ing the semiannual period ; and

20 “(II) the number of cardholders
21 to whom each such interest rate was
22 applied during the last calendar
23 month of the semiannual period, and
24 the total amount of interest charged

1 to such accountholders at each such
2 rate during such month.

3 “(iii) A list of each type of fee that 1
4 or more of the creditors has imposed upon
5 a consumer credit card accountholder dur-
6 ing the semiannual period, including any
7 fee imposed for obtaining a cash advance,
8 making a late payment, exceeding the cred-
9 it limit on an account, making a balance
10 transfer, or exchanging United States dol-
11 lars for foreign currency.

12 “(iv) For each type of fee identified
13 under clause (iii), the number of
14 accountholders upon whom the fee was im-
15 posed during each calendar month of the
16 semiannual period, and the total amount of
17 fees imposed upon cardholders during such
18 month.

19 “(v) The total number of consumer
20 credit card accountholders that incurred
21 any finance charge or any other fee during
22 the semiannual period.

23 “(vi) The total number of consumer
24 credit card accounts maintained by each

1 creditor as of the end of the semiannual
2 period.

3 “(vii) The total number and value of
4 cash advances made during the semiannual
5 period under a consumer credit card ac-
6 count.

7 “(viii) The total number and value of
8 purchases involving or constituting con-
9 sumer credit card transactions during the
10 semiannual period.

11 “(ix) The total number and amount of
12 repayments on outstanding balances on
13 consumer credit card accounts in each
14 month of the semiannual period.

15 “(x) The percentage of all consumer
16 credit card accountholders (with respect to
17 any creditor) who—

18 “(I) incurred a finance charge in
19 each month of the semiannual period
20 on any portion of an outstanding bal-
21 ance on which a finance charge had
22 not previously been incurred; and

23 “(II) incurred any such finance
24 charge at any time during the semi-
25 annual period.

1 “(xi) The total number and amount of
2 balances accruing finance charges during
3 the semiannual period.

4 “(xii) The total number and amount
5 of the outstanding balances on consumer
6 credit card accounts as of the end of such
7 semiannual period.

8 “(xiii) Total credit limits in effect on
9 consumer credit card accounts as of the
10 end of such semiannual period and the
11 amount by which such credit limits exceed
12 the credit limits in effect as of the begin-
13 ning of such period.

14 “(xiv) Any other information related
15 to interest rates, fees, or other charges
16 that the Board deems of interest.”; and

17 (2) by adding at the end the following new
18 paragraph:

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

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

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

5 “(ii) interest with an annual percent-
6 age rate equal to or greater than 25 per-
7 cent;

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

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

10 and

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

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

15 Section 127B of the Truth in Lending Act is amend-
16 ed by inserting after subsection (m) (as added by section
17 4) the following new subsection:

18 “(n) STANDARDS APPLICABLE TO INITIAL ISSUANCE
19 OF SUBPRIME OR ‘FEE HARVESTER’ CARDS.—In the case
20 of any credit card account under an open end consumer
21 credit plan the terms of which require the payment of fees
22 (other than late fees or over-the-limit fees) by the con-
23 sumer in the first year the account is opened in an amount
24 in excess of 25 percent of the total amount of credit au-
25 thorized under the account, the credit card may not be

1 issued to the consumer and the opening of the account
2 may not be reported to any consumer reporting agency
3 (as defined in section 603) until the creditor receives pay-
4 ment in full of all such fees, and such payment may not
5 be made from the credit made available by the card.”.

6 **SEC. 7. EXTENSIONS OF CREDIT TO UNDERAGE CON-**
7 **SUMERS.**

8 Section 127(c) of the Truth in Lending Act (15
9 U.S.C. 1637(c)) is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(8) EXTENSIONS OF CREDIT TO UNDERAGE
12 CONSUMERS.—No credit card may be issued to, or
13 open end credit plan established on behalf of, a con-
14 sumer who has not attained the age of 18, unless
15 the consumer is emancipated under applicable State
16 law.”.

17 **SEC. 8. EFFECTIVE DATE.**

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

22 (b) REGULATIONS.—The Board of Governors of the
23 Federal Reserve System, in consultation with the Comp-
24 troller of the Currency, the Director of the Office of Thrift
25 Supervision, the Federal Deposit Insurance Corporation,

1 the National Credit Union Administration Board, and the
2 Federal Trade Commission, shall prescribe regulations, in
3 final form, implementing the amendments made by this
4 Act before the end of the 6-month period beginning on
5 the date of the enactment of this Act.



ATTACHMENT C

2. I am the current Chief Executive Officer of Premier Bankcard, which has its primary business operations in Sioux Falls, South Dakota. I have served as Chief Executive Officer of Premier Bankcard for approximately fifteen years. I have personal knowledge of the credit card program offered by First Premier that is the subject of this litigation, including its history, operation, marketing and related ordinary business matters. I also have personal knowledge regarding the credit card industry and the practices of creditors, borrowers, credit reporting organizations, and vendors for which consumers utilize credit cards.

3. A credit card is much more than the ability to borrow money. Credit cards offer many benefits. First Premier consumers buy and use our credit cards for medical emergencies, prescriptions, access to travel, entertainment and other transactions. One must have a credit card in order to make car rental, hotel and other reservations, because most car rental companies and hotels will not accept a debit or prepaid card to guaranty payment. Credit cards are thus especially valuable to consumers who are required to travel for their employment.

4. First Premier consumers also buy and use our credit cards because credit cards provide fraud protection. Although consumers can use debit or prepaid cards to make purchases with generally the same functionality of a credit card, debit and prepaid cards are not subject to legal protections for unauthorized use. Having a credit card permits consumers to safely enjoy the savings and convenience of online shopping in a way that debit or prepaid cards do not.

5. First Premier credit cards are especially valuable to our consumers who are trying to build or rebuild their credit. For these consumers, credit card issuers like First Premier are often the only creditors who report positive performance to credit bureaus. This permits consumers to improve their credit scores, which can generate meaningful savings for consumers in future interest costs. Moreover, a good credit report has a significant impact on a consumers'

ability to obtain affordable insurance premiums, decent rental housing and even certain employment opportunities.

6. After the relevant provisions of the Credit Card Accountability Responsibility and Disclosure Act (“the Credit Card Act”) became effective in February 2010, First Premier started a new program, offering credit cards that require an up-front processing fee to be paid before account opening (“the Program”). First Premier structured this credit card offering in accordance with the requirements of TILA, the Credit Card Act, Regulation Z, and, in particular, § 226.5 of Regulation Z, as it was initially promulgated by the Board of Governors of the Federal Reserve System (“the Board”) in 2010 (“the 2010 Rule”).

7. First Premier Bank and Premier Bankcard jointly operate the Program. First Premier Bank issues the credit cards under the Program and Premier Bankcard is primarily responsible for administering the Program. First Premier Bank and Premier Bankcard, LLC have an agreement by which they apportion responsibilities under the Program and divide profits.

8. Under the Program, First Premier offers Visa and MasterCard credit cards to consumers who do not qualify for traditional credit card products. These underserved consumers have poor credit history, low credit scores, and are typically unable to obtain credit because they are considered high-risk borrowers. Many of these consumers are middle-class Americans, some of whom have developed broken credit through adverse circumstances often beyond their control, such as employment layoffs, health problems, or poor decisions by a spouse. Without access to credit cards, consumers in the underserved credit market have limited opportunities to rebuild their credit history or to improve their credit score and are essentially locked out indefinitely from the credit market. Instead, they have to resort to obtaining credit from pawn

shops, payday loans, or other non-traditional forms of credit with less desirable terms. These non-traditional creditors typically do not report positive payment records to credit bureaus.

9. First Premier approves approximately 70% of applicants under the Program. Through the Program, these approved applicants have the opportunity to obtain credit, make regular payments, rebuild their credit history, and reenter the traditional credit market.

10. To account for its high-risk lending to the underserved credit market and to cover costs incurred in serving the market and opening new accounts, First Premier charges certain fees for its product. However, a relatively high number of Program consumers default. Historically, more than 40% of the charges, fees, and interest owed to First Premier is never paid. To account for the high level of default associated with lending to the underserved credit market and to cover costs incurred in serving the market and opening new accounts, First Premier must charge fees for its product that are higher than traditional credit cards. Without these fees, it is not economically feasible for First Premier to offer unsecured credit cards to the high-risk, underserved market. In the same way that consumers of auto insurance with poor driving records pay more in auto insurance premiums, credit consumers with poor credit records generally pay more for credit.

11. Under the structure of the Program, First Premier charges an up-front, pre-account-opening processing fee ranging from \$25.00 to \$95.00 per account (“Up-Front Fee”), which an applicant must pay in full before credit is extended and an account is opened. First Premier’s application and account-opening disclosures clearly describe this fee and other fees associated with the product. And independent surveys of First Premier customers reflect that they understand First Premier’s credit card fees. The Up-Front Fee helps to offset the high credit

risk associated with the underserved market. The applicant cannot charge the Up-Front Fee to the credit card account.

12. Applicants typically have 85 days to fully pay the Up-Front Fee. Because no account is opened prior to payment of the Up-Front Fee, there is no activity similar to the activity on an open account. For example, applicants cannot use the account for transactions, First Premier does not send the applicant a billing statement, there are no collection attempts, and nothing is reported to a credit bureau. When applicants partially pay the Up-Front Fee but ultimately choose not to open an account, First Premier refunds the partially paid Up-Front Fee. Furthermore, when applicants pay the Up-Front Fee in full, but change their mind and choose not to utilize the credit made available to them, First Premier refunds the Up-Front Fee, closes the account, and reverses fees assessed to the account.

13. Under the Program, the credit card account is not opened and no credit is extended to applicants until the Up-Front Fee is paid in full. Only after an applicant has paid the Up-Front Fee, First Premier creates a new account on its processing system and activates a credit line on that new account for the very first time. The approved applicant may begin drawing on the line of credit and using his or her credit card for transactions only after this new account is created and the credit line is activated.

14. It is impossible for an applicant to pay the Up-Front Fee with the credit made available to the applicant by First Premier. This has two significant advantages for the consumer. First, because the Up-Front Fee is paid separately, the consumer is better able to understand and evaluate the Up-Front Fee associated with the account. Second, the amount of the fee does not reduce the available credit on the account, thereby giving greater utility to the customer.

15. In the spring of 2010, First Premier and the Minneapolis Federal Reserve Bank engaged in discussions regarding whether First Premier's Up-Front Fee violated § 226.52 of Regulation Z—the 2010 Rule.

16. In November of 2010, the Board published proposed revisions to Regulation Z, including revisions to § 226.52. In response, First Premier submitted a public comment letter objecting to the Board's proposed revisions to § 226.52 of Regulation Z. Nevertheless, the Board took final agency action and promulgated its revisions to § 226.52 of Regulation Z as proposed (the "2011 Amendment"). My understanding is that the effective date of this 2011 Amendment is October 1, 2011.

17. The challenged portion of the 2011 Amendment, which extends to fees paid "prior to account opening," forces First Premier to choose between shutting down the Program or violating the Board's regulations, with its heavy attendant consequences. First Premier has no intention of violating the 2011 Amendment, and thus without postponement of its October 1, 2011 effective date, First Premier will be forced to terminate the Program.

18. Compliance with the Board's 2011 Amendment would have an immediate, severe, and irreparable economic impact on the day-to-day workings of First Premier's business. Without postponement of the effective date of the challenged portion of the 2011 Amendment, and ultimately its invalidation, First Premier will be forced to terminate the Program. This will result in a reduction in work force at locations across the state of South Dakota, substantial unrecoverable costs and lost profits to First Premier, and the loss of customer goodwill.

19. The 2010 Rule and 2011 Amendment have contributed to Premier Bankcard shutting down its entire facility in Spearfish, South Dakota, and laying off the 330 employees working at that center. First Premier would have likely been able to keep the Spearfish facility

operational had it not been for the challenged portion of the 2011 Amendment. First Premier has also scaled back its marketing of the credit card offered under the Program, and has experienced a significant decrease in the number of account openings. The unfortunate closing of Premier Bankcard's Spearfish facility had a devastating impact on the Spearfish community. Premier Bankcard was one of Spearfish's largest employers, and the community will likely suffer a substantial loss in revenue, taxes, people, and charitable contributions due to the closure of the Spearfish facility. The closure or reduction of operations in additional South Dakota communities is likely to have similar negative effects.

20. The damage to First Premier will continue absent postponement of the October 1, 2011 effective date for the challenged portion of the 2011 Amendment. Without the ultimate invalidation of the challenged portion of the 2011 Amendment, the 2011 Amendment will threaten Premier Bankcard existence. If the challenged portion of the 2011 Amendment is not set aside, Premier Bankcard will have significantly reduced new business going forward. Premier Bankcard will be able to service existing accounts, but there is a normal attrition rate of those accounts, which is likely result in a corresponding reduction of workforce.

21. First Premier is taking reasonable efforts to develop a profitable credit card product in addition to the credit card offered under the Program. But if it is unable to do so and the effective date for the challenged portion of the 2011 Amendment is not stayed, it is highly likely that First Premier will have to reduce its workforce. Development of additional credit card products is involves thorough testing, which can take many months, if not longer.

22. First Premier has opened approximately 340,000 accounts under the Program since its inception. If First Premier is unable to operate the Program and issue credit cards under the Program during the pendency of this litigation, First Premier will be deprived of profits that it

would have earned on the thousands of accounts per month that it expects normally would have been opened under the Program during that time period. But for the challenged portion of the 2011 Amendment, First Premier would open more than 50,000 new accounts each month. Without a stay of the effective date of the challenged portion of the 2011 Amendment, First Premier will lose millions of dollars in profits on credit cards that would have been issued during the pendency of the litigation. Likewise, First Premier will lose the opportunity to attract and earn the loyalty of the customers who would open credit card accounts under the Program during this litigation.

23. Absent a stay, First Premier will face the need for additional lay offs and/or reduced use of current facilities. Before July 23, 2011, Premier Bankcard employed about 1830 employees. After laying off 330 employees at the Spearfish facility, Premier Bankcard now employs approximately 1500 people, all in South Dakota. Unless the Program is able to continue and unless First Premier can develop an additional, profitable credit card product very quickly, it is highly likely that First Premier will be forced to lay off more South Dakota employees in the various departments for the credit card issued under the Program.

24. Terminating the Program would also require First Premier to constrict its facilities in other locations across the state of South Dakota. First Premier currently has operation centers in Dakota Dunes, Huron, Watertown, and Sioux Falls. Unless the challenged portion of the 2011 Amendment is stayed and ultimately invalidated, First Premier will need to significantly reduce operations and shut down other facilities in the state. The reduction in operations of these facilities will cause significant, unrecoverable shut-down costs and will injure First Premier, its employees, and the towns in which those facilities are located.

25. If the challenged portion of the 2011 Amendment's October 1, 2011 effective date is not postponed but First Premier is ultimately successful in invalidating the challenged portion of the 2011 Amendment, restarting the Program after taking necessary shut-down measures would be difficult and costly. First Premier would have to replace or retrain employees laid off on account of the termination of the Program. Replacement of employees is a significant cost because of the normal four-to-six month learning curve for most Program-related jobs. Furthermore, based on First Premier's experience in hiring employees in South Dakota, given the current economic climate, it is likely that some laid off employees would leave South Dakota to obtain new employment and not be available for rehire. This would mean more unrecoverable cost for First Premier.

26. First Premier enjoys significant goodwill amongst the underserved consumer credit card market. It is one of only a few creditors that offers those high-risk borrowers the opportunity to obtain a credit card and rebuild their credit history. In fact, between March of 2010 and 2011, First Premier had an estimated 20% share of the market that serves consumers who do not qualify for traditional credit cards, and that market share is increasing as a result of competitors who have left the market. By providing this opportunity, as well as excellent customer service, First Premier has created goodwill in the market that will be lost if First Premier is forced to shut down the Program.

27. Shutting down the Program will deprive individuals who do not qualify for traditional credit cards of the opportunity to obtain unsecured credit cards and rebuild their credit history. According to statistics provided by Experian, which Premier Bankcard relies on in the ordinary course of its business, approximately 70 million individuals do not qualify for traditional credit cards. A true and correct copy of the Experian report on which that figure is

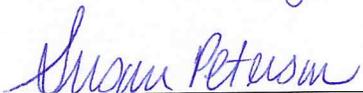
based is attached as **Exhibit A**. Without access to credit cards, individuals who do not qualify for traditional credit card products have limited means by which to improve their credit qualifications.

28. First Premier's studies show that most customers use the Program's credit cards to purchase gasoline and essential goods such as food and clothing, primarily from discount stores like Walmart. In other words, like most Americans, customers use the cards to make everyday purchases and they do so as a means to rebuild their credit rating. Many of First Premier's customers employ the credit card under the Program to recover from a history of undisciplined borrowing and a significant percentage of customers emerge from the Program with rebuilt credit history and improved credit scores, thus making them eligible for access to traditional credit cards.

FURTHER YOUR AFFIANT SAYETH NOT.


Miles K. Beacom

Subscribed and sworn to before me
this 4th day of August, 2011.



Notary Public

SUSAN PETERSON
My Commission Expires August 3, 2012.



ATTACHMENT D

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Souix City South Dakota
United States of America**Phone:** 800-987-5521
Web: www.firstpremierbank.com
Category: [Credit & Debt Services](#)

First Premier Bank First Premier Bank Card Totally taken advantage of! Souix City , South Dakota

*Consumer Comment: **Funny**Recommend this on [Goog](#) [Tweet](#) 0 [Like](#)

I got this card 4 years ago to help build my credit. It seemed like a good idea at the time because I was desperate to get a lender that would trust me and build my credit. I read the offer in its entirety and didnt see anything about the numerous annual, monthly, usage and processing charges.

I received my card with a credit limit of \$250, but \$175 had already been racked up on the card for processing fees. I was upset, but disregarded and paid because I didnt have room to be picky. Every month I would look at my statement online and cringe at how much money this company was making off me. I was knowingly and submissively being financially raped! on top of that, I paid all of my bills on time except for one month. I must not have clicked all the way through the online payment, because i could have sworn i put the payment through. They reported my account being delinquent after 5 days to the credit bureau!

Now, I am doing very well financially but still am building my credit. As of August of this year, any negative reportings on my credit report will be removed, due to the 7.5 year rule.

I wanted to print out my statement for 2011 to find out how much interest and fees I paid. I am reworking my budget and am weeding out any unnecessary financial burdens. There was no way to print or even see my statements from more than 3 months ago. I pay an monthly internet access fee to be able to SEE a few months worth of data. I know they do this on purpose so we cannot go back and see exactly how much we have been ripped off.

I called in to the company to request a year-end statement. The representative told me that I would have to pay \$5 per monthly statement. If I wanted them for all of 2011, it would be \$60. I lost it and requested that they close my account immediately. The representative asked me why and I told her that her company has made soooo much

¹ Author
³ Consumer
⁰ Employee/Owner

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to request my OWN personal statements
She proceeded to argue with me that most cards are this way and I told her that the 3
statement online free of charge. i dont pay a monthly fee and do not pay an interest
fee.

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For the last few months that i COULD view, i average monthly fees of about \$30 +
interest charges on purchases. I would wager to bet that this company has made over
\$1500 on me and I have only charged maybe \$600 worth of stuff to the card. So,
basically I paid \$2100 for \$600 worth of stuff and negative marks on my credit.

I have NO idea why this isn't yet illegal. So, until someone does something about...I
will do everything in my power to make sure this company's name is blasted all over the
internet forums for economic mutany and credit scams. Beware.....at all costs. need to
improve your credit??? great. just make sure you are not getting raped in the process.
I had this card for 4 years and it did NOTHING but negatively affect my credit and cost me
over \$2000. Believe me....the \$250 credit limit (that you only get \$75 up front) is not
worth it. I know you feel desperate right now and dont have the luxury of thinking about
the future....but you wouldnt pay someone on the street \$175 to borrow you \$75...that
you have to pay back anyway. please avoid....at all costs!

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	Author	Consumer
	0	
#1 Consumer Comment		Employee/Owner

So what you are saying
AUTHOR: Robert - Irvine (U.S.A.)
SUBMITTED: Friday, March 09, 2012

Is that they gave you credit when NO ONE else would, and now that you are in
better(?) shape you want to deny people the same chance...wow aren't you nice.

I gave you a couple of ?? to "better" because after 3 years of on-time payments with
what appears 4 cards in total there is no reason you should still need "Credit
Building" cards. So I wonder if you are telling the entire story as to your actual
situation.

Now, if you are telling the entire story and you have a good history except for this
one late pay. By closing your account you have screwed yourself more than that
single late will actually hurting you after a couple of months. Because once the
account is closed you now loose the "age" of that account, but still get to keep the
negative.

Dr. Sharon Mcquillan
[She did nothing to me personally aventura, Florida](#)

Wunderland Cockers
[ACC'S Cockers Alice](#)
[Gettelfinger / Alice Haycraft](#)
[Gettelfinger Sells unsocialized dogs. doesn't give all AKC paperwork, slanders others breeders, lies, sells out from under you Ramsey, Indiana](#)

Weavers Wood & Metal & Walnut Hills Rentals
[I agreed to purchase a storage building from Weaver's Wood & Metal. Walnut Hills filed a false claim of financing Carrollton, GA/Bells Tenn., Tennessee](#)

Don Troiano
[Don Thomas Troiano Scammer, Thief, Fake internet posts, Child Molester Danbury, Connecticut](#)

Matthew M Olyphant
[Matt Olyphant, Matthew Olyphant, Matthew Olyphant, Matthew Olyphant.com artist, Matt M Olyphant Matthew Olyphant uses the web, Facebook, and his famous brother's name to meet young girls online. San Rafael, California](#)

Al's Towing
[3035 New St. Oceanside NY 11572](#)
[516-766-0055. Blocked my car in and demanded money. Oceanside, New York](#)

Laminine LifePharm
[Global Life Pharm Global mlm scam fraud product Rancho Santa Margarita, California](#)

Talking Stick Resort
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Reported By: kent with — **Anahiem California** United States of America**first premier bank**
po box 5524 sioux falls sd 57117-5524
sioux falls South Dakota 57117
United States of America**Phone:**
Web:
Category: [Credit Card Fraud](#)

first premier bank kept increasing the amount out for a deposit sioux falls, South Dakota

*UPDATE EX-employee responds: **Not the whole truth here, at all.**Recommend this on [Goog](#) [Tweet](#) 0 [Like](#)

I was offered to open a credit card with first premier for \$75.00. I sent them the \$95.00 to open the account. On january 31,2012 I received another bill for \$65.00 to access my account. I then told them to close my account because they kept increasing the amount of money to keep the account. I was then told I would have to contact a 900 number in order to clear up this mes.

There is billing and collection issues that need to be resolved.

1 Author
0 Consumer
1 Employee/Owner

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Reported By: Bama — Birmingham Alabama United States of America**First Premier Bank**
Internet
United States of America**Phone:**
Web: www.firstpremierbank.com
Category: [Credit Card Fraud](#)

First Premier Bank Rip me off charge me for a card I never use Internet

***Consumer Comment: Kilrath is right, read the terms of your card...**Recommend this on Goog [Tweet](#) 0 [Like](#)

I would say this is a bad credit card to get y becaue i got the card but never use it y cuz they ask me to send them 180 dollars just to get the card started an only had a 300 dollars limit an i said to myself no im not sending them nothing which i didnt send thing to them them but they say i owe them 207 dollars but i havent still paid them anything but the mess my credit up they have on my credit were I owe them 207 dollars i dont now y cuz i never use the card

1 Author
3 Consumer
0 Employee/Owner

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[First Premier Bank Complaint](#) by Sandy35

Review #: **316780**
 Posted by: **Sandy35**
 From: Poughkeepsie, NY
 Posted On: 2012-05-05
 Total hits: 157

My cousin open a account with first premier and assigned me as just a authorize user with only my name.. I never signed anything my [social security](#) number was never attached?. Just for me to later find out that his account is now showing on my [credit report](#) as well as my sister which her information was not submitted no where on his applications:. Where they got her info from we have no idea:. I called them and they explained that we will have to dispute it with the credit bureau they didn't do it'. And they don't know how the credit bureau attached her info to his acct". But how could the credit bureau add his [credit card](#) to two other people account with out a signature, ss# and don info'. Then the killer is that if he doesn't pay for it even though they we never signed nothing it will show on our credit report as a **bad debt**:. That's like being a **co signer** with out giving permission.. Where they received our personal info from to add that to our credit report is the major question! And then they stated it was nothing they could do we have to dispute it with he credit bureau. 178488a

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I Removed my collections for \$59! And my credit score jumped 203 pts

Comments (1)

1. Written by **Linda12** on June 3, 2012 From -, -, US
 In 2000 I was going through a [divorce](#) and attempting to rebuild my credit. I was offered a low \$300 credit line from First Premier Bank with a very high interest. Ok, I sent the \$95 to open the account as requested and then an annual charge. I was left with a little over \$100 to spend. Two years later I owed them over \$700 in monthly and annual fees and huge interest attach to spending the limit. I paid them off in June, 2002. About 5 years later I received a notice I owed them this [money](#) from [a collection agency](#) which keeps selling my account to others. I do not have the receipt of when I paid by this time so I can't prove a thing.

This company are SCAMMERS!!!!

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Privacy Invasion WARNING



FACEBOOK warns Privacy Invasion. WARNING.. EMPLOYERS SNOOPING YOUR FACEBOOK? Change your Facebook and Twitter privacy settings to only allow friends access to them. Have you been violated by your employer or potential employer by demanding your Facebook or other social media password? If you think

Submitted: Tuesday, May 01, 2012 Posted: Tuesday, May 01, 2012 Reported By: Dennice — Yonkers New York United States of America

PREMIER CREDIT PROTECTION Phone: 866-332-8226
P.O. Box 43297 Web:
Jacksonville Florida 32203 Category: Credit Card Processing Companies
United States of America

PREMIER CREDIT PROTECTION First Premier Bank They informed me that they would not be approving my claim. I have been paying into this plan for over 15 years and they will not pay my claim of \$250.00. Jacksonville, Florida

Recommend this on Goog 0

I have had an account with First Premier Bank for over 15 years and I have had this credit card protection plan just as long. I became unemployed back in Dec. of 2011 after working 11 months full time. I put in my claim I believe in Jan. 2012 and I mailed them in all of the papers that they asked for. I believe that they made one payment and then stopped. I was told by First Premier that I was back in my payment and that only one payment had been made by the credit protection plan co. I called them all and was told that I needed to send in updated material and I did and two weeks later I receive a letter from them stating that my claim was not approved because I worked seasonal. I never worked seasonal and if that was the case why did they make that first payment. They are lying and they do not want to pay my credit card bill of \$250.00 they have gotten more than that from me over the years paying into protection plan.

1 Author Consumer
0 Employee/Owner

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FIRST PREMIER BANK IS LEGAL ROBBERY.

Comments (0)

[First Premier Bank Complaint](#) by Maureen616

They sent me a [promotion](#) saying that because I was a valued customer, I was offered \$90 in free gifts. I was then charged \$88 for their [free gifts](#) and after fighting it, they still haven't returned my [money](#) into my account. Get this..they took the [money](#) and said the "free gifts" would be sent on 3/26. Are they kidding! Needless to say, I cut up the card, and believe me, that's a first. If I'm going to be robbed, I'd feel better if the robber had a gun. At 36% interest, who needs it. I would rather have one less card than deal with these scam artists. 17849ec

Review #: **294153**
 Posted by: **Maureen616**
 From: Rochester, NY
 Posted On: 2012-02-03
 Total hits: 277

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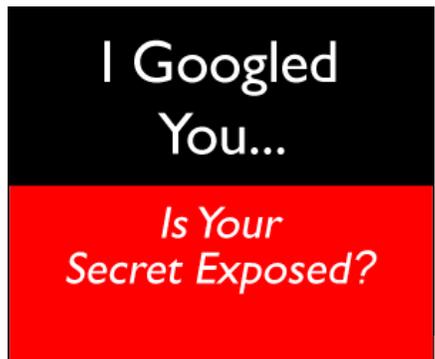
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