

New Federal Initiatives Project

**National Interest Rate Ceiling
on Credit Cards**

By

Todd Zywicki and Jeffrey Frank*

April 29, 2010



*The Federalist Society
for Law and Public Policy Studies*

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On May 22, 2009, President Obama signed the Credit CARD Act of 2009. This legislation imposed notice requirements and moratorium periods on the ability of credit card companies to increase rates and fees.¹ During the interim period between May 2009 and the statute's effective date in February 2010, credit card companies have responded with many policy changes which increase the costs of credit, including direct increases on consumer credit card interest rates.² Interest rates on credit cards have steadily climbed a few percentage points since passage of the law, and the rates charged to consumers with poor credit have in some cases surpassed 20%.³

Some members of Congress have expressed concern about this activity. Rep. John F. Tierney has introduced legislation that would establish a nationwide cap on consumer credit card interest rates. The bill, entitled the Restoring America's Commitment to Consumers Act of 2009, would set that cap at an annualized percentage rate of 16%.⁴

The law, if passed, would mandate that interest rate calculation include any fee that would be given to the creditor for opening an account, extending credit, or continuing either service – this would explicitly include membership fees and annual fees.⁵ The Board of Governors of the Federal Reserve System would be empowered to raise the maximum rate ceiling; however, the Board must determine that severe economic conditions exist to justify an increase, and that such increase is in the public interest. It must also provide an opportunity for comment prior to setting an increase in the rate.⁶ There would also be a grace period for Congress to consider the increase.⁷

If a credit card company increases interest rates on a credit card that had a rate below 16% at any time between the bill's introductory date of December 11, 2009 and 60 days after enactment, it is to be treated under Section 108 of the Truth in Lending Act as though it has committed an unfair or deceptive practice.⁸ Although the referenced section of the Act does not use analogous terminology, this provision of the bill could be read to require credit card companies to adjust the accounts of all their cardholders who paid the higher interest rate so as to undo the rate increase.⁹ Such adjustments might include a refund of interest paid by consumers.¹⁰

Finally, the bill would place a cap at \$15.00 on any fee that is not accounted for as part of the interest calculation.¹¹ This would include fees for late payment, overdraft, bounced checks, and fees for exceeding the credit limit. Unlike the Credit CARD Act, these provisions would become effective as of the date of enactment.¹²

Federal law currently lacks a national usury rate governing credit cards. Under the current construction of the National Banking Act, a nationally chartered bank is only subject to usury laws of the state in which it is based.¹³ As a result of certain state laws abolishing usury ceilings - such as that in South Dakota - as well as the ease of relocating a bank's base of operations, there is effectively no cap on credit card interest rates in the United States.¹⁴

This is not the first time that Congress has considered a national usury law. The Senate has considered, and rejected, a proposal for a 15% usury ceiling during deliberations leading up to its final passage of the Credit CARD Act.¹⁵ The proposal faced bipartisan opposition from 60

senators, and at the time, some believed that attaching the proposal to the Credit CARD Act would have prevented its passage.¹⁶

* *Todd Zywicki is a George Mason University Foundation Professor of Law and teaches in the areas of bankruptcy and contracts. Jeffrey Frank is a 2011 J.D. Candidate at the George Mason University School of Law.*

Additional Reading:

Todd J. Zywicki, *The Economics of Credit Cards*, 3 CHAPMAN L. REV. 79 (2000).

¹ See, e.g., Board of Governors of the Federal Reserve System, *What You Need to Know: New Credit Card Rules*, available at:

http://www.federalreserve.gov/consumerinfo/wyntk_creditcardrules.htm.

² Nancy Trejos, *Credit Card Issuers Raising Rates Ahead of New Law*, WASH. POST, July 2, 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/01/AR2009070103868.html>.

³ Jeremy M. Simon, *Interest rates fall as issuers modify credit card offers*, CREDITCARDS.COM, April 14, 2010, available at: <http://www.creditcards.com/credit-card-news/interest-rate-report-apr-chase-partners-first-1276.php>.

⁴ Restoring America's Commitment to Consumer's Act of 2009, H.R. 4300, 111th Cong. (Dec. 11, 2009).

⁵ *Id.* at § 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Cf.* 15 U.S.C. § 1607 (2010).

¹⁰ *Cf.* Federal Financial Institutions Examination Council, 63 Fed. Reg. 47497 (Sept. 8, 1998), available at <http://www.fdic.gov/regulations/laws/rules/5000-300.html>.

¹¹ H.R. 4300, *supra* n. 4, at § 3.

¹² *Id.*

¹³ *Marquette Nat. Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978); see also *Smiley v. Citibank*, 517 U.S. 735 (1996) (affirming the same principle for laws governing late fees).

¹⁴ *Cf.* S.D. CODIFIED LAWS § 54-3-1.1 (including credit card agreements by reference to § 54-11-9).

¹⁵ Carl Hulse, *Senate Rejects a 15% Ceiling on Credit Card Interest Rates*, N.Y. TIMES, May 14, 2009 at B10.

¹⁶ *Id.*

Related Links:

Restoring America's Commitment to Consumer's Act of 2009, H.R. 4300, 111th Cong. (Dec. 11, 2009): <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:h.r.04300>:

"Regulation of Payment Card Interchange Fees" by Todd J. Zywicki and Jeffrey Frank, New Federal Initiatives Project, April 6, 2010: http://www.fed-soc.org/publications/pubid.1844/pub_detail.asp

"What You Need to Know: New Credit Card Rules" Board of Governors of the Federal Reserve System: http://www.federalreserve.gov/consumerinfo/wyntk_creditcardrules.htm

"Credit Card Issuers Raising Rates Ahead of New Law" by Nancy Trejos, *Washington Post*, July 2, 2009: <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/01/AR2009070103868.html>

"Interest rates fall as issuers modify credit card offers," by Jeremy M. Simon, *Credit Cards.com*, April 14, 2010: <http://www.creditcards.com/credit-card-news/interest-rate-report-apr-chase-partners-first-1276.php>

Federal Financial Institutions Examination Council, 63 Fed. Reg. 47497 (Sept. 8, 1998): <http://www.fdic.gov/regulations/laws/rules/5000-300.html>

Letter to Congressman Tierney Supporting HR 4300, National Association of Consumer Advocates, January 14, 2010: http://www.naca.net/_assets/shared/633994946620681238.pdf