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# United States Senate

WASHINGTON, DC 20510-3005

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The Honorable Ben Bernanke  
Chairman of the Federal Reserve Board  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Dear Chairman Bernanke,

I first want to applaud you for issuing final rules this week, as directed by the Credit Card Accountability Responsibility and Disclosure Act of 2009, to finally implement the fairness consumers have been looking for from their credit card companies for years. As a champion and author of the law, I have observed its implementation closely, and I have no doubt that the rules you have set forth will bring new protections to almost every American who holds a credit card and will prevent thousands of Americans from facing bankruptcy due to unfair credit card practices. By prohibiting credit card companies from raising interest rates for a full year on a new card, by prohibiting instantaneous and surprise interest rate increases, by requiring consumer consent for exceeding a credit limit, and by preventing consumers under the age of 21 from casually obtaining a card – among other rules – this law will make families across the country more financially stable.

Faced with a landmark consumer protection law that will prohibit credit card companies from charging consumers in unfair ways, some of these companies have, perhaps predictably, either ballooned interest rates and fees before the law's enactment or have devised new forms of interest rates and fees in a thinly-veiled attempt to circumvent laws. Among the evasive practices that some credit card companies are using, not all of which have been addressed by the Federal Reserve in its final regulations, are:

- For consumers whose interest rates increase, the bill prohibits subsequent large increases in the minimum payment. But some credit card companies have been reported to evade this protection by increasing the minimum payment first and threatening to increase the interest rate later. Some credit card companies are even increasing minimum payments for customers with low interest rates to encourage them to switch to cards with lower minimum payments, but higher interest rates.
- The bill allows consumers who were late in paying by more than 60 days and incurred a higher "penalty" interest rate the right to "earn back" the previous lower interest rate by paying on time for six months. Some credit card companies are reported to now be avoiding that consumer right to "earn back" a lower interest rate by threatening that the consumer must pay the balance in full after they are late.

- The bill stops credit card companies from charging consumers over the limit fees unless the consumer “opts in” to being charged such fees. But credit card companies are evading this requirement by making the terms of the account worse if consumers choose not to be charged over the limit fees.
- The bill stops retroactive interest rate increases on existing balances unless the consumer is at least 60 days late in paying. Credit card companies are evading this rule by charging, for example, 29% interest but saying they will refund or rebate 10% of interest if the consumer pays on time. Then if the consumers are even one day late, they are effectively paying the higher interest rate, circumventing the rule against higher interest rates unless they are 60 days late.

These are unfair practices meant to exploit loopholes in the law. As a result, fellow Members of Congress and consumer groups have urged the Federal Reserve to adopt an additional rule that would warn credit card companies that the Federal Reserve will not tolerate attempts to circumvent these vital consumer protection laws. As delineated above, we have already begun to see these types of evasive practices, but it is safe to assume that the months and years ahead will see additional attempts to circumvent the law. It is simply not realistic for the Federal Reserve to issue new rulemaking with each new development in the credit card industry that may be meant to exploit the law.

I urge you to initiate a new rule that gives the Federal Reserve the ability and flexibility to address these practices as they evolve. I thank you for your implementation of the Credit CARD Act, and I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Robert Menendez". The signature is written in a cursive, flowing style with a large initial "R" and "M".

ROBERT MENENDEZ  
United States Senator