KELLEY DRYE

Comparison of H.R. 5244 ("Credit Cardholders' Bill of Rights") & Certain Rules Governing Credit Cards Approved by Federal Reserve, et al.*

Issue	H.R. 5244 – "Credit Cardholders' Bill of Rights"	Final Federal Reserve Rules
Billing	• Prohibits method of assessing interest, commonly called "double-cycle" or "two-cycle" billing, that retroactively assesses interest on the balance for days in the preceding billing cycle when the balance is not fully paid within the grace period. • Card companies are required to mail billing statements no fewer than 25 days before the payment due date. • Mailed payments received by 5:00 pm on the due date have to be considered timely. If a cardholder presents proof that a payment was mailed within seven days of the due date, then the card company cannot charge a late fee.	• Prohibits method of assessing interest, commonly called "double-cycle" or "two-cycle" billing, that retroactively assesses interest on the balance for days in the preceding billing cycle when the balance is not fully paid within the grace period. • Consumers have to be granted a "reasonable amount of time to make payment." If such time is not provided the card issuer is not be able to charge a late penalty. The rule does not define a "reasonable" timeframe, but does provide a safe harbor to institutions that mail or deliver billing statements at least 21 days before the payment due date. • Mailed payments received by 5:00 pm on the due date (or the following business day if payments are not accepted on the due date) have to be considered timely.
Rate Increases and Fees	• Card companies have to give forty-five days notice of any rate increase and upon notice, cardholders have the ability to opt-out of the rate increase and close their account. Cardholders must opt-out within two billing cycles and must pay any existing balance at the original rate.	• Institutions are prohibited from increasing the interest rate on existing credit card balances. Similarly, any fee or other charge based only on an outstanding balance (and therefore having the same effect as a rate increase) is also prohibited. The rule includes three exceptions that would allow for such an increase: if the rate increase is due to the operation of an index; if a promotional rate ends or is otherwise lost; or if minimum payment is not made within thirty days of the due date.

* This comparison was prepared by Kelley Drye & Warren LLP's Consumer Financial Services and Government Relations & Public Policy Practice Groups. It is based on primary sources and summaries available at http://maloney.house.gov/index.php?option=com_issues&task=view_issue_leg&issue=298&Itemid=35 and http://www.federalreserve.gov/newsevents/press/bcreg/20081218a.htm. For further information about Kelley Drye please visit http://www.kelleydrye.com or contact Lisa S. Andrews, Special Counsel, at landrews@kelleydrye.com.

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	• Institutions are prohibited from charging fees on an interest-only balance of a cardholder that has paid in full and on time.	• For any security deposits and fees associated with making credit available (e.g., membership fees), banks are be prohibited from financing such fees if they exceed fifty percent of the initial credit limit. If such fees exceed twenty-five percent (but not more than fifty percent) of the initial credit limit, financing the fees are allowed, but the financing must be spread over the first year of credit.
	• Requires that cardholders have the option to set a fixed credit limit and therefore would prevent card companies from charging over limit fees on fixed limit accounts. For accounts that do not have fixed limits, card companies would not be allowed to charge over-limit fees more than three times. • Card issuers are allowed to continue practice of raising rates based on "universal default" or "broad-based repricing" but any rate increase can only be applied to future, not existing, balances. The same notice and opt-out requirements discussed above also apply to these rate increases.	• Banks are forbidden from charging a fee if a consumer exceeds their credit limit because of pending holds on available credit.
Payment Allocation	• When a cardholder's account has APRs that apply to different balances on the card (e.g. balance transfers versus new purchases), the cardholder's payment must be allocated to the different balances on a proportional (i.e. pro rata) basis.	• When a cardholder's account has different APRs that apply to different balances on the card, and the cardholder makes a payment exceeding the minimum payment, the bank is not allowed to allocate the full amount of the excessive portion of the payment to the balance subject to the lower

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		rate. Instead, the bank has to allocate the amount over the minimum payment in one of the following ways: split the amount equally between the two balances; allocate the payment first to the balance with the higher APR; or allocate on a pro rata basis. Banks may also allocate under any other method that is "no less beneficial to the consumer."
Disclosures and Marketing	• Sets definitions for "fixed rate" and "prime rate" when used by card issuers in the credit card agreement. "Fixed rate" can only be used to refer to and APR that will not for any reason not clearly specified in the agreement. "Prime rate" can only refer to the prime rate published by the Federal Reserve. • Cardholders can reject a card for which they have been pre-approved up to the time that they use or activate the card, without any negative impact on their credit. • In order to increase disclosure and understanding of fees associated with subprime credit cards, card companies that issue subprime cards must charge all related fees before the card is issued.	• Card companies that make a "firm offer" of credit that includes multiple APRs or multiple credit limits will be required to disclose the criteria used to determine which APR or credit limit will be finally offered.