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Advocates Urge Consumer Financial Protection Bureau to Stand Firm on Protection from Fee-Harvester Credit Cards

WASHINGTON—Today, consumer advocates from four national groups encouraged the Consumer Financial Protection Bureau (CFPB) to stay strong on rules protecting consumers from high-cost subprime "fee-harvester" credit cards; the National Consumer Law Center issued a report on this topic at http://www.nclc.org/images/pdf/pr-reports/report-fee-harvester.pdf. Advocates responded to a new proposal by the CFPB (https://www.federalregister.gov/articles/2012/04/12/2012-8534/truth-in-lending-regulation-z), which scales back protections previously issued by the Federal Reserve Board. The protections were the subject of a lawsuit by fee-harvester card issuer First Premier, which had successfully obtained an injunction from a South Dakota federal judge.

The rule at issue requires that the Credit CARD Act's 25% limit on fees for a credit card account be applied to fees that the consumer is required to pay before account opening. The Federal Reserve issued the rule in April 2011 after First Premier began charging a $95 "processing fee" for its credit cards before the account was opened, as well as a $75 annual fee, for a credit limit of $300 ($225 after the annual fee is subtracted).

"Charging $170 for a credit card with available credit of $225 is exactly the sort of abuse that the fee-harvester rule should prohibit," stated Chi Chi Wu, National Consumer Law Center staff attorney. "The CFPB should not back down in protecting consumers from this sort of chicanery."

"The CFPB was created to protect consumers," said Ed Mierzwinski, U.S. PIRG consumer program director. "And the best way to do that is to defend the CARD Act regulations when predatory lenders try to chop it back."

In applying the 25% limit to fees charged before the account is open, the Federal Reserve used its authority to issue rules to prevent circumvention or evasion under the Truth in Lending Act (which the Credit CARD Act is part of). This authority was transferred to the CFPB by the Dodd-Frank Act of 2010.

"Trying to avoid the 25% cap on fees by claiming that a $95 is paid before an account is opened certainly sounds like an evasion or circumvention," stated Janis Bowdler, director of the Wealth-Building Policy Project at National Council of La Raza, "The Fed got this issue right, and the CFPB should stay the course."

Advocates also noted that Supreme Court decisions from 1973 to the present have affirmed that Federal Reserve regulations under the Truth in Lending Act are entitled to substantial deference and should not be struck down unless "demonstrably irrational."

"The Supreme Court has said repeatedly—as recently as 2009—that the Federal Reserve was entitled to expansive authority in issuing Truth in Lending regulations," said Lauren Saunders, National Consumer Law Center managing attorney. "Now the CFPB stands in the shoes of the Fed. We urge the CFPB to protect this authority, keep the original rule, and take this case to the Court of Appeals."

"We believe it would be a mistake to turn back the clocks," said Linda Sherry, director of national priorities at Consumer Action.

Consumers can submit a comment to the CFPB on its proposal to scale back fee harvester protections at http://www.consumerfinance.gov/notice-and-comment/

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