

DECEPTIVE BARGAIN

THE HIDDEN TIME BOMB OF DEFERRED INTEREST CREDIT CARDS



December 2015

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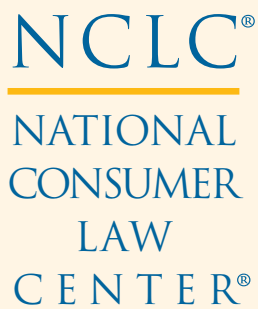
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ACKNOWLEDGEMENTS

The author would like to thank NCLC colleagues Lauren Saunders and Jan Kruse for editorial review; Yael Shavitz for reviewing and selecting the case narratives from the CFPB complaints database; and Cleef Millien for technical assistance.



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EXECUTIVE SUMMARY

“Deferred interest” promotions on credit cards are a trap for the unwary. They lure consumers with promises of “no interest” or “0% interest” for a promotional time period, but there is a debt time bomb at the end: Consumers who don’t pay off the entire balance before the promotional period ends will be charged interest retroactively back to the date that they bought the item, even on amounts that have been paid off. For example, if a consumer buys a \$2,500 living room set on January 2, 2016 using a one-year 24% deferred interest plan, then pays off all but \$100 by January 2, 2017, the lender will retroactively charge nearly \$400 interest on the entire \$2,500 dating back one year.

The two leading providers of deferred interest credit cards are Synchrony Bank (formerly known as G.E. Capital) and Citibank. Both lenders offer deferred interest credit card plans through retailers, such as Walmart, Sears, J.C. Penney, Macy’s, Best Buy, Home Depot, and Staples, where the cards are used to sell big-ticket items such as electronics or appliances. One third of large retailers surveyed by the website CardHub offer these plans. PayPal also offers deferred interest credit financing through PayPal Credit (formerly BillMeLater), which it promotes through online retailers that offer PayPal as a payment option.

More troubling, both Synchrony and Citibank offer deferred interest credit cards through healthcare providers to pay for dental and medical bills, often for optional procedures. Synchrony’s credit card, called CareCredit, has been the subject of enforcement by the Consumer Financial Protection Bureau (CFPB) and the New York Attorney General.

Pitfalls of deferred interest plans include:

- **Inherent deception** Many consumers do not understand that they can be charged interest retroactively for the entire deferred interest period if they do not pay off the balance by the end of the period. The complexity of these plans makes it almost impossible to formulate a short, simple disclosure necessary to prevent consumers from being deceived.
- **“Life Happens”** Even consumers who do understand the nature of deferred interest plans can get trapped. Consumers may expect to be able to pay the balance in full by the end of the promotional period, but for a variety of reasons (such as job loss or other financial emergency) find that they cannot. Or, consumers may forget or miscalculate the critical date for payoff, especially if the end of the promotional period does not coincide with the payment due date for that month.
- **High APRs** Deferred interest credit cards typically carry very high interest rates, with an average of 24% and as high as 29.99%. These rates can be almost twice as much as the APR for a mainstream, prime credit card. To illustrate the impact of deferred interest, we have provided a [link](http://bit.ly/1OxWnMc) (see <http://bit.ly/1OxWnMc>) to an online calculator provided by the Finance Buff that compares the costs of a deferred interest plan to a mainstream credit card when the entire balance is not paid off by the end of the promotional period.

- **Balloon interest charges and interest on interest** For consumers hit with deferred interest, those charges come in one big lump sum at the expiration of the promotional period. Interest charges that might have been manageable in small pieces can result in the outstanding balance on a card increasing dramatically. Consumers who cannot pay off that huge interest charge at once then start paying interest on the back interest.
- **Impact on the most vulnerable** A Consumer Financial Protection Bureau (CFPB) study found that for consumers with subprime credit scores – who are more likely to be financially vulnerable – over 40% were unable to pay off the balance by the end of the deferred interest period. These consumers were likely socked with lump sum retroactive interest charges. While most of the consumers who used deferred interest plans were able to pay off the balances without paying interest, the consumers who benefited the most were superprime consumers. Thus, better-off consumers get the benefit of interest-free financing, while credit card lenders make their profits off of financially constrained consumers.
- **Minimum payments don't pay off the balance** Lenders generally set the minimum payment as less than the amount that would pay off the balance during the deferred interest period. Thus, consumers who make only the minimum payment – often thinking they are doing what they need to do to avoid interest – will inevitably be hit with retroactively assessed interest at the end of the deferred interest period.
- **Difficulty allocating payments to successfully avoid retroactive interest** If a consumer makes additional purchases that either do not have deferred interest or have different promotional periods, problems can arise with allocating payments to ensure that the deferred interest balance is paid off. Payment allocation is extremely complex and fraught with pitfalls, and it can be nearly impossible to pay off a deferred interest balance while minimizing interest charges.

Deferred interest promotions are one of the biggest abuses that remain after the passage of the Credit Card, Accountability, Responsibility and Disclosures (CARD) Act of 2009. In fact, the Federal Reserve Board actually banned these plans in 2009 because of their deceptive nature, but then reversed itself. While the Credit CARD Act does not explicitly ban deferred interest, these promotions technically violate two provisions of the Credit CARD Act. However, the Federal Reserve carved out an exception, asserting that Congress intended to preserve these plans.

As one of the few tricks and traps left after the Credit CARD Act, the use of deferred interest promotions is growing. These promotions are inherently unfair, as their profits depend on trapping consumers either by confusion or because the consumer cannot pay due to financial problems, thus imposing a huge lump sum retroactive interest charge on those least able to handle it. The simplest, most effective, and best step that the CFPB could take to protect consumers from the trap of deferred interest is to ban these promotions. While there are other steps the CFPB could take to lessen the harm caused by these debt time bombs, it is time to simply get rid of deceptive deferred interest promotions.

I. INTRODUCTION

“Deferred interest” promotions are a trap for the unwary, a debt time bomb in essence. Credit card issuers heavily promote terms such as “no interest for 12 months” or “0% interest until January 2017.” The catch with these plans is that they are not truly interest-free. The consumer must pay off the entire purchase by the time the promotional period ends. If the consumer does not, the lender will impose interest retroactively back to the date that the consumer bought the item. Thus, if a consumer buys a \$2,500 living room set on January 2, 2016, and pays off \$2,400 by the end of the promotional period one year later, the consumer would be charged interest on the entire \$2,500 dating back to January 2016 when he or she bought the living room set.

Deferred interest promotions for credit cards are often pitched to consumers purchasing big-ticket items, such as electronics or appliances. The promotions are popular with retailers during the holiday shopping months.

Most troubling, deferred interest promotions on credit cards are heavily marketed to pay for healthcare expenses, particularly dental work. The CareCredit card, offered by Synchrony (formerly GE Capital Bank), is promoted by dentists and other healthcare providers specifically as “interest free” financing. CareCredit has been the subject of enforcement actions by the Consumer Financial Protection Bureau (CFPB) and the New York Attorney General.

Deferred interest promotions on credit cards are heavily marketed to pay for healthcare expenses, particularly dental work.

Another variation of a deferred interest plan is PayPal Credit (formerly BillMeLater), which is an open-end line of credit offered through PayPal for online purchases. It is effectively an online credit card. PayPal Credit has also been the subject of a CFPB enforcement action.

Deferred interest promotions are one of the biggest abuses that remain after the passage of the Credit Card, Accountability, Responsibility and Disclosures (CARD) Act of 2009. The CFPB has noted that deferred interest is an area of concern for the Bureau, which has characterized the promotions as “the most glaring exception to the general post-CARD Act trend towards upfront credit card pricing.”¹ The CFPB noted that the plans “can end up costing a significant segment of vulnerable consumers a sizable amount of money.”²

A sample of consumer complaints from the CFPB’s complaint database and other sources reveal the confusion and misleading nature of deferred interest promotions. Note that the CFPB “scrubs” certain information in its complaints narratives to avoid identification of consumers, replacing information with X’s or {rounded dollar amount}. Throughout this report, we have reproduced the complaints as they are found in the CFPB database.

Consumer Complaint: Even Lawyers Get Snared

J.K. is a twenty-something year old lawyer who bought a diamond engagement ring at Lux Bond & Green, a New England area jewelry chain, for his fiancée. Lured by the promise of 0% interest, he signed up for a G.E. Capital credit card to pay for the \$6,000 ring on May 14, 2013. The GE Capital Credit Card had a one year deferred interest promotion. However, while J.K. was told by the sales staff that after one year the interest rate would kick in and that the rate would be pretty high, he was not made aware that he would have to pay retroactive interest if he did not pay off the entire \$6,000 in full.

In June 2014, he was chagrined to see that \$1,760 in deferred interest had been retroactively charged to his account, at an APR of 29.99%. By that point, he had paid off \$5,000 out of the \$6,000, so the retroactively imposed interest payment was higher than the outstanding principal remaining.

Note: Complaint as told to the author of this report.

II. THE PITFALLS

A. *Inherent deception in the nature of the product*

Many consumers do not understand that deferred interest promotions can result in retroactive interest charges for the entire deferred interest period, even on amounts already paid, if they do not pay off the balance by the end of the period. The complexity of these plans makes it almost impossible to formulate a short, simple disclosure necessary to prevent consumers from being deceived. The CFPB has noted that “there are significant indications that the lack of transparency in this market contributes to avoidable consumer costs.”³

At one point, the Federal Reserve Board actually banned these plans, noting “disclosure may not provide an effective means for consumers to avoid the harm caused by these plans.”⁴ Currently, lenders are required to make the following disclosure for deferred interest plans:

“(i) Interest will be charged from the purchase date if the balance is not paid in full within the deferred interest period.”⁵

Even read in isolation, this disclosure requires a reading grade level ability of 10th to 11th grade, according to the Flesch-Kincaid system. Moreover, the disclosure is just part of the fine print that consumers are encouraged to ignore, and deferred interest promotions are often offered at the last minute to a consumer who is distracted by evaluating and making a purchase of a product.

In addition to consumer complaints, another indication that consumers are confused by deferred interest promotions is the fact that one-third of those who are socked with deferred interest then proceed to pay off the entire amount owed within two billing cycles. Consumers who have the ability to pay off their balances would likely have done so earlier and avoided huge interest charges if they had understood how the plans work. The CFPB has noted that this fact “call[s] into serious question the notion that consumers understand the way in which the product works. A significant share of consumers appear to be acting in a way that strongly suggests that they do not have that understanding.”⁶

B. *Payoff date is not the same as the payment due date*

Even if some consumers realize that they must pay the balance in full by a certain date they may still get trapped by these schemes. Consumers may forget or miscalculate the critical date for payoff, especially if the end of the promotional period might not coincide with the payment due date for that month.

C. *“Life Happens”*

Deferred interest plans also take advantage of the phenomenon of “hyperbolic discounting,” or more colloquially, “Life Happens.” Consumers overvalue the immediate benefits of something and under-value the potential for future costs. Thus, consumers may expect to be able to pay the balance in full but for a variety of reasons (such as job loss or other financial emergency) find that they cannot. In any of these circumstances, the consumer is hit with an enormous, retroactive application of interest, at a time when s/he is least able to afford it. This is something that lenders count on in making deferred interest offers.

The CFPB found a high correlation between a consumer’s failure to avoid deferred interest and whether s/he was assessed a late fee. This led the Bureau to observe that “this high correlation, even controlling for credit risk, could suggest that some consumers who fail to pay before the end of the promotional period may have experienced an exogenous shock that caused late payments and undermined their ability to pay the promotion on time.”⁷

D. *High costs*

Deferred interest credit cards typically carry very high interest rates, with an average of 24% APR,⁸ and examples of up to 29.99%. These rates can be almost twice as much as the APR for a mainstream, prime credit card. One study found that if a consumer pays off a deferred interest plan one month past the end of the specific date, it could increase the consumer’s cost for that credit more than 27 times.⁹ Chart 1 compares the interest that a consumer will pay if she uses a deferred interest plan and pays off all but 4% of the entire purchase during a one-year promotional period, versus a general purpose credit card with a prime rate of 14% APR.

Consumer Complaint: Deception at the Dentist’s Office

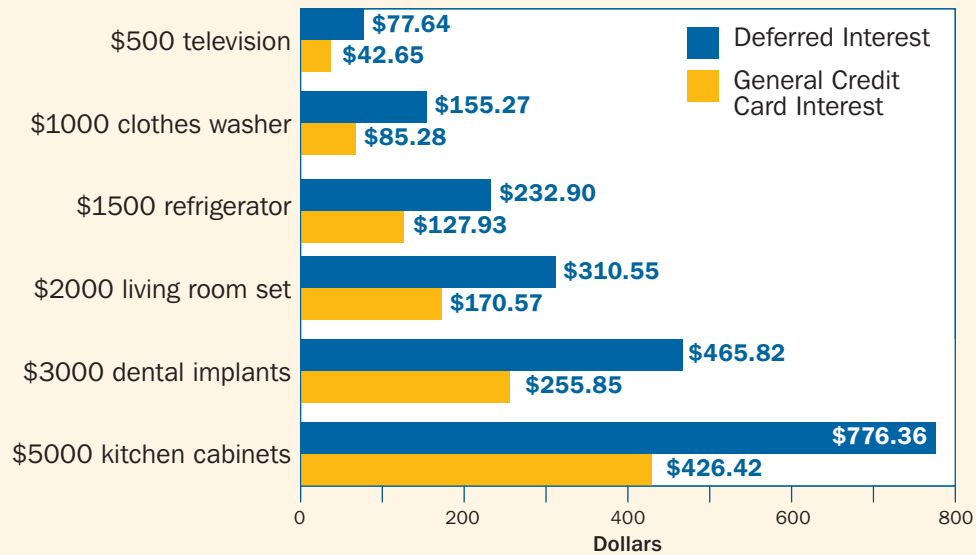
“A year ago, I signed up for a CareCredit/GE Capital Retail Bank to pay for emergency dental treatment at XXXX XXXX in XXXX XXXX. After making payments for a whole year, I am very upset to receive my latest statement dated XX/XX/XXXX, which shows that my interest rate suddenly jumped from 0 % to 26.99 %. All of the sudden, my total interest charges increased from {\$0.00} to {\$530.00}. As a result, my balance increased from {\$1000.00} to {\$1400.00}. Nobody at my dentist ‘s office ever told me when I signed up for CareCredit that the rate would suddenly increase from 0 % to 26.99 % or that the interest would accrue during a promotional period. Nobody even gave me a copy of the credit card agreement.

. . . If I had known the truth about CareCredit ‘s deceptive practices last year, I never would have signed up for this card.”

Source: CFPB Complaint No. 1405477, filed June 4, 2015.

CHART 1

Comparison of Interest Paid for One-Year Deferred Interest Promotion at 24% APR versus General Credit Card at 14% APR



Assumes a monthly payment of 8% (or 96% of the total) of the original purchase.

In addition to the high APRs, another difference between mainstream credit cards and deferred interest plans is that deferred interest charges come in one big lump sum at the expiration of the promotional period. Thus, interest charges that might have been manageable in small pieces can result in the outstanding balance on a card increasing dramatically. Consumers who cannot pay off that huge interest charge at once then start paying interest on the back interest.

To help illustrate the impact of deferred interest, we have provided a [link](http://bit.ly/1OxWnMc) (see <http://bit.ly/1OxWnMc>) to an online calculator provided by the Finance Buff that compares the costs of a deferred interest promotion to a mainstream credit card when the entire balance is not paid off by the end of the promotional period.

In addition to the risks posed by the deferred interest plan itself, merchants have been known to inflate the purchase price of goods financed with these plans.¹⁰

E. Impact on vulnerable consumers

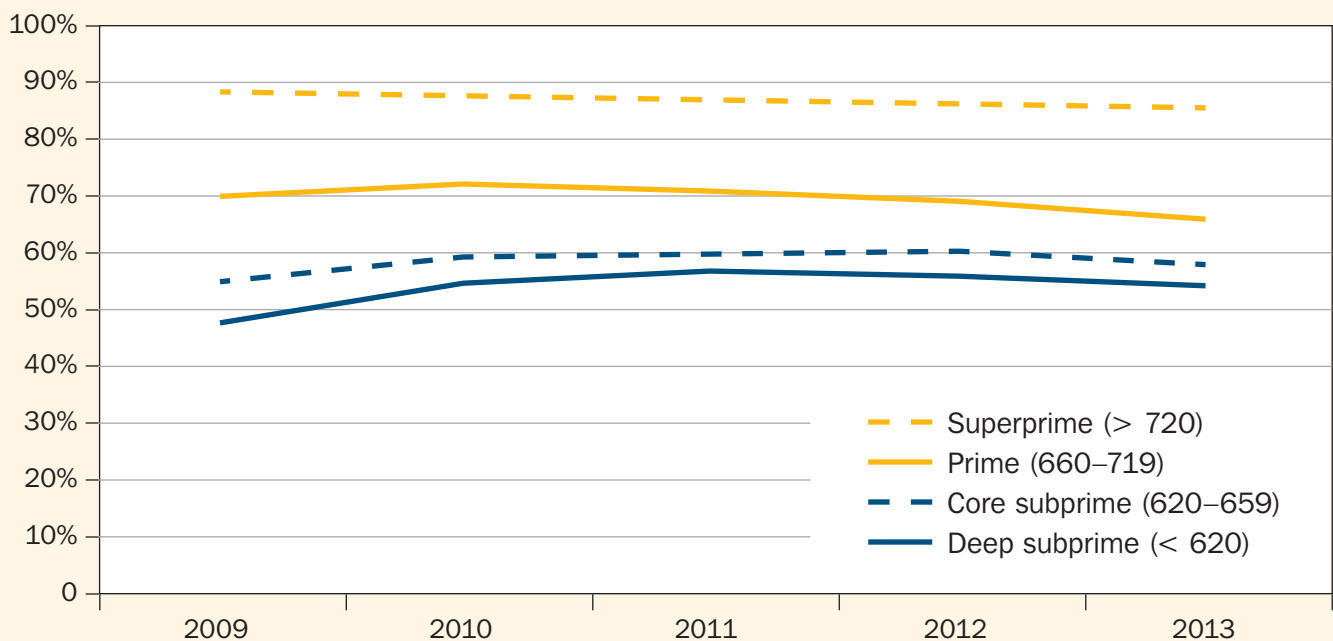
According to the CFPB, deferred interest promotions are “not working equally for all consumers.”¹¹ Subprime consumers are particularly vulnerable to the debt time bomb of deferred interest. They are more likely to be unable to pay within the deferred interest period and thus become burdened by retroactive interest charges. Subprime consumers are more likely to be experiencing some sort of financial distress and thus more economically vulnerable.

A CFPB study of credit cards found that among consumers with subprime credit scores (under 620) more than 40% were unable to pay off the balance by the end of the deferred interest period and thus incurred lump sum retroactive interest charges.¹² These huge charges hit the consumers who are least able to handle them.

The CFPB study did find that about 75% of consumers who used deferred interest promotions were able to pay off their balances in time to avoid interest charges.¹³ But the consumers who benefitted most from deferred interest promotions were superprime consumers, with nearly 90% receiving interest-free financing. Even among prime consumers (score of 660-719), about 30% end up being assessed deferred interest.¹⁴ Thus excluding superprime consumers, the average would be below 75%. Chart 2 shows payoff rates of different categories of consumers.¹⁵

Superprime consumers are generally more well off. These consumers get the benefit of interest-free financing, while the credit card lenders make their profits off of more financially constrained consumers. In other words, more vulnerable consumers are subsidizing the credit card benefits of better-off consumers. This was a frequent critique generally of the abuses committed by credit card issuers prior to the Credit CARD Act.

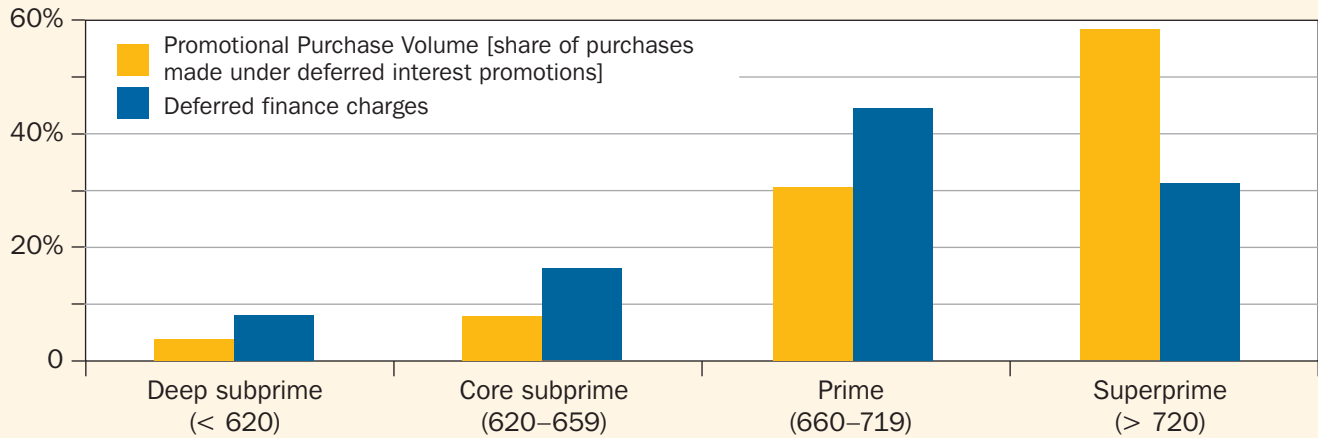
CHART 2
**Promotion Payoff Rates by Consumer Credit Score
 for Deferred Interest Loans with
 Promotional Periods from Six to 17 Months**



Source: Consumer Financial Protection Bureau, Consumer Credit Card Market Report, Dec. 2015, p. 167 (Figure 8)

CHART 3

Share of Promotional Spending and Deferred Interest Charges by Consumer Credit Score, 2009–2013



Source: Consumer Financial Protection Bureau, Consumer Credit Card Market Report, Dec. 2015, p. 197 (Figure 30)

**Consumer Complaint:
Preying on the Cash-Strapped**

“I was told that I should apply for a carecredit card by my surgery facility in order to pay for my surgery and that many patients have done it before and are happy with the decision. My surgery was in the summer of 2013 and costed {\$3000.00} but now since it is past the promotional period that I was not made aware of, the interest I pay on it monthly is 26%. That is insanely high in my opinion. So now I have almost XXXX dollars to pay and if I continue paying the minimum payment, I’ll pay it off by 2020. I feel like I was fooled into believing that this would help me pay for surgery yet it has cost me so much more money than I can afford. I’m a college student and can barely make it financially as is, but to have this kind of financial stress on me every month is too much. 26% interest is a crime!”

Source: CFPB Complaint No. 1473436, filed July 18, 2015.

In fact, this cross-subsidization becomes more obvious when we observe the portion of deferred interest charges paid by subprime consumers, and even prime consumers, versus their share of purchase volume.¹⁶

As seen in Chart 3, superprime consumers make up nearly two-thirds of deferred interest purchases, yet only pay less than one-third of the interest charges imposed by these promotions. Meanwhile, deep and core subprime consumers only make up a combined 11% of purchase volume, but pay 24% of the interest charges. And even prime consumers pay more—they make up only 30% of purchase volume, but pay nearly half (44%) of the interest charges.

An example of a vulnerable consumer is a senior who used a CareCredit deferred interest promotion and complained to the CFPB “I would not have accepted this loan if I knew the interest was above 26%. I live on social security and their payment and my HUD subsidized rent exceed my entire income.”¹⁷

F. Minimum payments

Another problem with deferred interest promotions is that the lenders generally set the minimum payment as less than the amount that would pay off the balance during the deferred interest period.¹⁸ Many deferred interest lenders do not calculate the impact of deferred interest in the minimum payment, thus setting the minimum payment amounts even lower than those for general purpose credit cards.¹⁹

Thus, a consumer making only the minimum payment will inevitably be assessed retroactive interest on the entire balance for the entire deferred interest period. The CFPB has noted that “consumers who pay only the minimum payment during a deferred interest promotional period can end the promotional period with debt that exceeds the amount of the promotional purchase, even if the card has not been used for any other purchases.”²⁰ (And, as discussed under payment allocation, if the card has been used for other purchases, it is also extremely difficult to make sure that extra payments are applied to the right balance.)

The CFPB’s focus group research revealed that most consumers did understand that paying the minimum payment amount would not be sufficient to pay off the deferred interest balance in full before the end of the promotional period. However, there were indications that some consumers wrongly believed that the minimum payment would suffice for this purpose.²¹

Another problem with deferred interest promotions is that the consumer’s ability to repay²² is assessed on the minimum payment.²³ It is not based on the larger payment required on a monthly basis to pay off the entire balance before the end of the promotional period. Some consumers might have the ability to pay based on the minimum payment and will be approved for a credit card but will not have enough income or assets to pay the larger payoff amount during the promotional period; these consumers are likely to be snared by deferred interest. For example, the CFPB noted that a consumer need only have the ability to pay \$350 in total for a six month period to pay the minimum on a \$2,000 purchase with a six month deferred interest promotion, but she would need to pay nearly six times that amount to pay off the purchase in full and avoid deferred interest.²⁴

Consumer Complaint: Minimum Deception

The following is an example of a consumer who was misled into believing that the minimum payment would pay off the deferred interest balance.

“I applied for a ge/care credit card to pay for my son XXXX. At the time I applied I was told interest would not be added to this account during the promotional period which would have allowed me to pay the entire balance off as long as I made my minimum payments (just as I did before). Before the promotional period was over ge capital retail bank/care credit added an estimated {\$1000.00} of interest to this account. I was shocked and stunned when they sent me a statement with this interest dade I then called and spoke to several reps. Trying to resolve the matter they felt it was not right but they could not take the interest off so I therefore attempted to make several more payments until I could not anymore. I knew this was not right and at the time I did not know who to turn to for help about the matter who governed this type of misrepresentation and or fraud from credit card companies. They added interest and will not accurately report to the credit bureau they have me owing XXXX of dollars in which I was almost done paying them until they pulled they stunt and they continued adding interest every month thereafter after the lump sum amount of an estimated {\$1000.00}.”

Source: CFPB Complaint No. 1505892, filed Aug. 6, 2015.

G. Inability to allocate payments to minimize interest

The majority of consumers who have deferred interest promotions also use their credit cards to make other purchases. Those subsequent purchases may not have a deferred interest promotion or may have a different promotional period. Thus, these consumers carry multiple balances on their accounts with different rules and their payments need to be allocated among those balances. It is nearly impossible to do so in a way that both helps the consumer to pay off the deferred interest balance in time and minimizes interest charges overall.

Synchrony has reported that holders of their retail cards made an average of more than 12 purchases per account. A substantial majority—69%—of CareCredit transactions are from existing customers re-using their cards for other medical expenses.²⁵ The CFPB found that “just under a quarter of accounts in the data we reviewed had overlapping promotional and non-promotional balances at least once during our data period. Around 40% of the accounts had overlapping promotional balances at least once in the data period.”²⁶ In those situations, how a consumer’s payments are allocated to different purchases is critically important.

The Credit CARD Act has a complicated rule that attempts to give consumers the benefit of an interest-free period while also enabling the consumer to pay off the deferred interest balance before the end of the promotional period. The CARD Act provides that payments in excess of the minimum must be applied to a higher rate balance, which generally is not the deferred interest balance, until the last two months of the promotional period.

GRAPHIC 1

Payment Allocation Example for Deferred Interest Promotion

This graphic illustrates how a \$100 payment above the minimum would be credited during a twelve-month deferred interest promotion for two purchases, only one of which (television) is subject to deferred interest. Many consumers will not be aware that the \$100 is applied solely to the non-promotional purchase (headphones) and will not help them reduce the deferred interest television balance.



The purpose is to enable the consumer to pay off a balance that is generating interest ahead of one that is not. For example, assume that a consumer buys a \$1,000 television using a deferred interest promotion on a credit card with a 24% interest rate, and then later spends \$500 on headphones, a purchase that does accrue interest. If the consumer makes a payment that is \$100 above the minimum, that \$100 is allocated to reduce the \$500 headphones balance in order to reduce the balance on which the consumer is paying interest. None of the excess payment is allocated to the \$1,000 deferred interest balance.

This rule cannot be applied indefinitely, however, because otherwise consumers who carry other balances would not be able to pay off the deferred interest balance before the end of the promotional period. Therefore, under the CARD Act, during the last two months, payments above the minimum are applied to the deferred interest balance (see Graphic 1).

The problem is that this rule frustrates consumers who are trying to make additional payments toward the deferred interest balance before the last two months in order to ensure that the balance is paid off in time. The consumer will find that the payment is applied to other balances. In addition, the rule essentially forces the consumer to pay the entire deferred interest balance in the last two months, which some consumers will find difficult to do even if they understand the payment allocation rules.

There is an option under the regulations implementing the Credit CARD Act that allow a card issuer to honor a consumer's request to apply a payment to the deferred interest balance even before the last two months. However, some issuers refuse to honor such consumer requests.²⁷ In May 2015, the CFPB took enforcement action against PayPal for telling consumers that it would honor such requests, but when consumers tried to make such requests, they could not reach a customer-service agent at all to make

Consumer Complaint: Misleading Representations about Payment Allocation

Email from L.R., a consumer advocate to the National Consumer Law Center, February 20, 2013:

"I have a Macy's credit card which is on an installment basis. I made a "special events" purchase about 10 months ago and was told by the sales representative that if I made payments above my minimum payment amount, the extra funds would be applied to the "special events" purchase. This is significant because if I do not pay off the "special events" purchase within a year from my purchase date, I will have to pay interest on the original purchase amount. That means that about \$300.00 in interest would be added to my bill. Well, as you can imagine, my payments in excess of the minimum payment amount were not applied to the "special events" purchase.

Today, I called Macy's to ask why the additional payments I made were not applied toward the "special events" purchase. By my allocations, I paid off the "special events" purchase several months ago. The customer service representative with whom I spoke told me that as per the Credit CARD Act, Macy's is obligated by law to apply all of my payments to the installment loan portion of my bill. They told me that they could not apply any "overage" toward the "special events" purchase since the "special events" purchase was not interest-bearing. They instead must apply any overages toward the portion of my bill that is interest-bearing. The only amount of my payment that they could apply toward the "special events" account is the minimum payment for the "special events" purchase."

Consumer Complaint: Paying the Newest First

“I got a Care Credit card at my children’s dentist office, we were told that we had a certain time to pay off and if it was n’t paid off in a certain time then we would have to start paying interest. I ended up using the card again for other medical bills, and later found out that the money I was paying was going toward the most recent transaction instead of the oldest, so I started getting billed interest. So now I was paying on bills and interest that I should have never had to pay. I actually called a few times and customer service put my payments on the old transactions for me and actually told me that was what I would need to do in order to have my payments go toward the right transactions. And I actually found out that I was still paying on a bill for XXXX years ago that should have been paid off long before now. So basically since this company is making sure that it can charge interest from its customers even if they are never late and pay over the minimum payment. I also found out today that I was charged {\$700.00} interest.”

Source: CFPB Complaint 1456751, filed July 8, 2015.

a request or their requests were ignored.²⁸ Moreover, many consumers do not even understand how their payments are being applied or the option to ask for the payments to be applied differently. Lenders and retailers have admitted that, for deferred interest promotions, “a high share of the complaints they received focus on payment allocation issues.”²⁹

The combination of a deferred interest balance and a regular balance can also cause consumers to lose their grace periods. Consumers who normally pay their entire credit card balance every month cannot carry a deferred interest balance without losing the benefit of a grace period for other transactions. Any additional purchases the consumer makes with the credit card may incur interest charges right away.³⁰

Another complaint involving payment allocation is that, when there are two separate deferred interest balances, some deferred interest card issuers will apply payments to the later balance. This will cause the earlier balance to be paid down more slowly or not at all, triggering the application of deferred interest.³¹

In general, overlapping deferred interest and non-promotional balances will result in much greater costs to the consumers. The CFPB found that, in more than half of the cases where consumers with other non-promotional balances failed to pay off the deferred interest purchase, the consumer had made payments that exceeded the original amount of the purchase.³² Pay off rates are generally higher for consumers whose promotional purchases have no overlap with non-promotional balances.³³

H. Charging for work not completed

Medical credit cards can be especially problematic when providers charge for treatments that have not yet taken place. This can be a problem if the consumer does not wish to go forward with further treatment, perhaps because she is unsatisfied with the provider’s care. The N.Y Attorney General’s settlement with Synchrony noted this issue, stating: “Prepayment of large fees for services before they are rendered continues to be at the core of many of the OAG complaints concerning CareCredit.”³⁴ The CFPB’s consent order with Synchrony required that the bank, in its contracts with providers, prohibit charges for services not yet rendered, with limited exceptions.³⁵

I. Problems posed by electronic statements

Some of the complaints filed with the CFPB involved consumers who were surprised by deferred interest because they only received electronic statements. Banks and other lenders have aggressively pushed consumers into electronic statements because it saves them the cost of postage and processing required by paper statements. Some providers, like PayPal Credit, require electronic communications and do not give consumers the option of paper statements or notices. However, purely electronic communications can present a pitfall because they can be overlooked in email overload and the statements take more effort for consumers to log in and access them. Thus, consumers may be less likely to review them. Electronic transactions may also only be available for the past several months and consumers who discover a problem may have difficulty reviewing older transactions. In addition, the complaints suggest that at least one consumer may have been involuntarily signed up for electronic statements without his/her knowledge.

J. Not necessary or not affordable

One of the arguments made by lenders and retailers offering deferred interest promotions is that they serve as an “important tool for consumers to purchase necessities” and “as a crucial lifeline . . . when appliances fail.”³⁶ However, the CFPB has noted that “this picture is not generally an accurate description of deferred interest use” because many of the consumers who accept a deferred interest offer have prime credit scores that make them eligible for other credit. Even many subprime cardholders have general-purpose credit cards.³⁷ To the extent that a subprime consumer is ineligible for a general-purpose card, these are the consumers likely to be socked by deferred interest, as discussed in Section II.E.

Consumer Complaint: Pet problems

“I had a sick pet XXXX at the XXXX animal hospital in XXXX XXXX. The XXXX suggested I could pay for the procedure with Care Credit 18 month interest free. Having no money for the procedure it sounded like my only option at the time so I signed up. I set up my payment plan and started making monthly payments. I continued to pay on a monthly basis and thought I would be paid off by the time interest would start to accrue and it would be minimal at the end of 18 months. In the mean time follow up visits to the vet were necessary and paid for on care credit. I continued to pay monthly payments for roughly 3 years. My statements were electronic and I set up automatic withdrawal from my bank account. Thinking I was close to paying off my debt I went on to the care credit website and intended to pay the remaining balance in full. I was shocked. I now owed more than my original balance. I owed even more than my entire credit limit with them. The customer website was no help. I can log in, make a payment, and see my balance, however it is unclear what I am actually paying for and there is no history of my original transactions. I found it odd that the account history was not available save that I made my regular payments for the last few months.”

Source: CFPB Complaint No. 1327885, filed April 13, 2015.

Consumer Complaint: “Everything was Done Online”

“When I applied for the care credit at the dental office, they did not inform me that there is a 6 months dead line and after that if I didn’t pay the balance, I would have to pay a high interest rate@26.99 %. Everything was done online and I was never given a brochure or contract to read my terms.”

Source: CFPB Complaint No. 1325915, filed April 10, 2015.

Indeed, retailers have argued that deferred interest promotions are important because they enable the retailers to sell products “that likely would have been unaffordable to consumers living on a budget.”³⁸ We would argue that enticing consumers to purchase “unaffordable” goods that are not within their budget is a very bad idea, especially because it involves exposing them to the time bomb of being hit with a large lump sum of retroactive interest at the end of the promotional period.

Furthermore, deferred interest promotions are often offered during the holiday shopping season or when consumers buy optional items, such as a newer model television. In those cases, deferred interest is not being used for a necessity.

III. THE INDUSTRY

The use of deferred interest promotions is growing, with a nearly 21% increase in deferred interest purchases from 2010 to 2013.

Source: CFPB, December 2015.

Deferred interest promotions are quite prevalent. A survey by the website CardHub of 49 major retailers found that 73% offered financing options and, of those, 47% offered deferred interest promotions (for a total of over one-third of these retailers offering deferred interest promotions).³⁹ The CFPB found that deferred interest promotions comprised about a quarter of all spending on retail credit cards.⁴⁰ Furthermore, the use of deferred interest promotions is growing, with a nearly 21% increase in deferred interest purchases from 2010 to 2013.⁴¹

The largest credit card lenders for deferred interest cards are Synchrony Bank, which issues 29% of these cards as measured by number of retailers, and Citibank, which issues 35% of them.⁴²

A. Synchrony Bank

Synchrony Bank was formerly part of GE Capital Bank. Its primary product lines are retail-branded credit cards, private label cards, installment loans, and medical credit cards. It earned gross revenue of \$11.3 billion in interest and fees in 2013.⁴³ About one-third of Synchrony Bank’s lending is concentrated in four states:

- Texas (10.1%);
- California (9.6%),
- Florida (7.5%) and
- New York (5.8%).⁴⁴

In 2013, Synchrony was the top issuer of retail credit cards, with \$41.7 billion in outstanding loans.⁴⁵ It had 62 million active credit card accounts and processed 47 million applications in 2013.⁴⁶ Almost 51 million of those accounts are retail card accounts.⁴⁷ About 75% of Synchrony’s credit cards are “private label,” and of those, one-third are subject to a promotional offer.⁴⁸ Thus, it appears that deferred interest cards make up a significant volume of Synchrony’s credit card offerings.

Synchrony's retail credit card business is highly concentrated with a handful of retailers. Its ten largest partnerships with retail chains accounted for nearly 60% of its revenue for that product line. The five largest partners (Gap, J.C. Penney, Lowe's, Sam's Club, and Wal-Mart) accounted for nearly 48% of its revenue. Thus, Synchrony is heavily dependent on these retailers, which might provide one explanation why it needs to offer deferred interest, *i.e.*, to be competitive in attracting and retaining retail partners.⁴⁹ The "no interest" promotion attracts customers, drives higher sales,⁵⁰ and is critical to enticing consumers to purchase "big-ticket" items.⁵¹ These features offer a benefit to Synchrony's retail partners. Retaining retail partners is critical to Synchrony's success, because: "[a] significant percentage of [Synchrony's] platform revenue comes from relationships with a small number of Retail Card partners, and the loss of any of these Retail Card partners could adversely affect our business and results of operations."⁵²

In addition, Synchrony notes:

*Our partners generally accept most major credit cards and various other forms of payment, and therefore our success depends on their active and effective promotion of our products to their customers. We depend on our partners to integrate the use of our credit products into their store culture by training their sales associates about our products, having their sales associates encourage their customers to apply for, and use, our products and otherwise effectively marketing our products.*⁵³

Thus, Synchrony offers deferred interest to differentiate itself from the other, general purpose credit cards that its retail partners accept.

Furthermore, Synchrony does not charge or earn interchange fees from its retail partners for private label credit card products.⁵⁴ To the contrary, Synchrony actually pays these partners to promote its cards, to the tune of \$2.4 billion in 2013.⁵⁵ However, Synchrony does receive a fee from a merchant for providing a deferred interest promotion.⁵⁶ The longer the deferred interest period, the greater the fee.⁵⁷ And we assume that a true 0% interest promotion would cost the merchant more than a deferred interest promotion, making the true 0% financing much less popular to retailers.

Synchrony Bank is regulated by the CFPB and the Office of Comptroller of Currency.⁵⁸ The CFPB has taken two enforcement actions against Synchrony, discussed in Section V.A.

B. Citibank

After Synchrony, Citibank is the second largest issuer of store-branded credit cards.⁵⁹ Citibank is also the second largest issuer of credit cards in general (after JP Morgan Chase).⁶⁰ Because it has partnerships with a greater number of larger retailers, Citibank is the largest issuer of deferred interest credit cards as measured by number of retailers, comprising 35% of such retailers in a survey by CardHub.⁶¹ Citibank is the credit card issuer for Sears, Home Depot, Staples, Best Buy, The Children's Place, and a number of other retailers.⁶² In addition, Citibank owns Department Stores National Bank, making it the issuer for Macy's and Bloomingdales store cards.⁶³ Most of these credit cards offer deferred interest promotions.

Citibank had \$30 billion of private label credit card transactions in 2013.⁶⁴ It has 90 million accounts as part of its Retail Services division, with over 600 million transactions.⁶⁵ Citibank boasts that with its co-branded credit cards, “Retailers Can . . . Increase retail sales and margins from your valued customers.”⁶⁶

C. Medical credit cards

A particularly problematic subset of deferred interest promotions on credit cards are those offered by healthcare providers to pay for medical and dental expenses. Healthcare providers who steer patients to specific lenders have an inherent conflict of interest.⁶⁷ For providers, the advantages of getting patients to pay their medical bills with

credit cards are obvious: Providers get their money right away, while offloading the burden of pursuing payments to third parties, and the cards are also a way to convince a patient to go ahead with a treatment not covered by insurance. Medical credit cards are sometimes used for optional procedures. In addition, some credit card lenders pay “rebates” to providers when the providers steer patients to those credit cards.⁶⁸ Patients tend to trust their healthcare providers and may follow their recommendations to sign up for financial products with unfavorable terms.

Consumers who are sold medical credit cards are also more vulnerable. First, their medical condition, e.g., severe pain or discomfort, could impact their ability to make financial decisions. There have even been examples of consumers signed up for credit cards under the influence of sedation.

Second, consumers of medical credit cards appear to be experiencing more financial issues than other cardholders. Synchrony has reported that the average FICO score for CareCredit cardholders is 684, which is lower than the average FICO score of 718 for its

retail card customers.⁶⁹ A score of 684 is not that far above the subprime cutoff score of 660.⁷⁰ Since this is an average FICO score, a significant number of CareCredit consumers are likely to be subprime and thus potentially financially struggling.

Synchrony also reports that almost all of the credit extended on CareCredit cards is subject to promotional financing,⁷¹ which suggests that the vast majority of CareCredit customers have deferred interest plans. In December 2013, the CFPB took enforcement action against CareCredit, which is discussed further in Section V.A.

Consumer Complaint: Signed up Under Sedation

“I went in XXXX 2013 to have XXXX surgery. During the setup for the surgery when i was filling our paperwork they gave me a sedative for the surgery. They offered me a pay later form of payment and had me fill out the paperwork. I was never explained what deferred interest was or that there was any pertaining to the paperwork. I made payments for the next years and then in XXXX saw a huge spike in my payments and balance. I went back through my emails and saw the balance go from {\$1400.00} approx to {\$3200.00} approx (more than the initial surgery in full) I called to figure out what was going on and they told me that since i had not paid the balance in full all the interest would be applied to the full amount and not only that. The interest that was applied would now be accruing interest along with the previous balance.”

Source: CFPB Complaint No. 1474496, filed July 18, 2015.

As with deferred interest cards offered by retail stores, Synchrony and Citibank are two of the biggest issuers of medical credit cards. In addition, Wells Fargo offers a medical credit card with a deferred interest feature.

Promoters of medical credit cards might argue that banning deferred interest promotions would deprive consumers of their only option to finance healthcare expenses not covered by insurance. However, there are several medical credit card or other loan programs that do not appear to offer deferred interest, including AccessOne MedCard, CarePayment, iCare Financial, and Medkey Healthcare Finance.⁷² Consumer Action has published an in-depth guide on medical credit cards.⁷³

Furthermore, Synchrony has admitted that its research shows a significant number of its cardholders would postpone or forego a healthcare procedure if credit was not available.⁷⁴ It might be preferable for a consumer to forgo an optional procedure or postpone it rather than incur debt at 24% APR.

IV. A COMPLICATED LEGAL HISTORY

Deferred interest promotions technically violate more than one provision of the Credit CARD Act. They exist in part because there is an exception for these plans in Regulation Z, which implements the Truth in Lending Act (of which the Credit CARD Act is a part).

A. Deferred interest banned by regulators in 2009 as inherently deceptive

An ironic fact about the regulation of deferred interest is that, at one point, federal regulators were so concerned about the practice that they banned it. In January 2009, the Federal Reserve Board (FRB), Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) made the decision to ban deferred interest plans as part of their efforts to reform the credit card market. In doing so, the FRB, OTS and NCUA stated:

*[Assessment of deferred interest] is precisely the type of surprise increase in the cost of completed transactions that §___.24 is intended to prevent. As noted by the commenters, the assessment of accrued interest causes substantial injury to consumers. In addition, for the same reasons that consumers cannot, as a general matter, reasonably avoid rate increases as a result of a violation of the account terms, consumers cannot, as a general matter, reasonably avoid assessment of deferred interest as a result of a violation of the account terms or the failure to pay the balance in full prior to expiration of the deferred interest period. For example, just as illness or unemployment may reasonably prevent some consumers from paying on time, these conditions may reasonably prevent some consumers from paying the deferred interest balance in full prior to expiration. **In addition, as noted by the commenters, disclosure may not provide an effective means for consumers to avoid the harm caused by these plans.***

Finally, although deferred interest plans provide some consumers with substantial benefits in the form of an interest-free advance if the balance is paid in full prior to expiration, the Agencies conclude that these benefits do not outweigh the substantial injury to consumers. As discussed above, deferred interest plans are typically marketed as “interest free” products but many consumers fail to receive that benefit and are instead charged interest retroactively. Accordingly, as with the prohibitions on other repricing practices discussed above, prohibiting the assessment of deferred interest will improve transparency and enable consumers to make more informed decisions regarding the cost of using credit. Accordingly, the Agencies conclude that an exception to the general prohibition on rate increases is not warranted for the assessment of deferred interest.⁷⁵

A few months later, the Federal Reserve Board and banking regulators reversed themselves and permitted deferred interest plans under Regulation AA.⁷⁶ This reversal appears to be the result of heavy lobbying by retailers, including arguments that deferred interest offers are “a critical driver of sales” and were “particularly important in the current economic environment [i.e. the Great Recession] and should be encouraged.”⁷⁷ In fact, one retailer, Sears, engaged in a campaign urging its store managers to send comments to the FRB using themes of “Protecting Jobs” and “Preserving Main Street Retail.” Some of the sample comments offered by Sears executives included:⁷⁸

- “Consumers are feeling the effects of a slumping economy and need financing options for purchasing big-ticket items, especially household appliances that sometimes need replacement regardless of whether or not they have the cash to pay for it at the time.”
- “One of the worst economies in decades has already resulted in widespread job loss and store closures. Being able to continue to offer varied promotional options on expensive products will help me keep my store open and my employees on the job.
- “My Hometown store in (enter city, state) offers a wide-range of trusted Sears appliances and products. Hometown stores are typically located in smaller communities where you are not likely to find large department stores. They carry primarily large-ticket items—many of which are offered along with deferred-interest financing offers to ease the financial burden.”

B. How deferred interest violates the Credit CARD Act

In May 2009, Congress passed the Credit CARD Act, which addressed many of the abuses in the credit card market that consumers had complained about for years. The CARD Act does not explicitly ban deferred interest. However, two of the Credit CARD Act’s provisions technically prohibit deferred interest. The first provision is Section 102(a) of the Act, which states:

a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to— (A) any balances for days in billing cycles that precede the most recent billing cycle.⁷⁹

This provision in the law prohibits double-cycle billing.* However, the language also prohibits deferred interest plans, because such plans also impose a finance charge based on balances from prior billing cycles if the consumer does not repay the entire balance within the specified time period (which would qualify as “the loss of any time period within which the consumer may repay a balance without incurring a finance charge”). Indeed, when the Credit CARD Act was passed, one of abuses cited was a double cycle billing example that appears very similar to a deferred interest plan. Senator Carl Levin complained of the practice in which “[i]f I charge \$5,000 and pay off \$2,500 by the due date ...I will still be charged interest on the full \$5,000 balance, starting with the first day of the billing period.”⁸⁰

The second provision of the Credit CARD Act that prohibits deferred interest is Section 101(b). The Section, which is codified at 15 U.S.C. § 1666i-1, prohibits the retroactive application of an interest rate increase. Deferred interest plans also violate that prohibition.

The Credit CARD Act does specifically mention deferred interest in another section, the payment allocation provision. Section 104 states:

“CLARIFICATION RELATING TO CERTAIN DEFERRED INTEREST ARRANGEMENTS—A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.”⁸¹

The FRB relied on this provision to assert that the Credit CARD Act explicitly permits deferred interest plans.⁸² The FRB relied on the provision to create the exceptions to the above prohibitions in order to allow credit card lenders to offer the plans. The Credit CARD Act would otherwise ban them if not for the exceptions that the FRB carved out to permit them.

However, despite the FRB’s belief, Section 104 does not expressly mandate or even authorize deferred interest plans; the provision merely sets the rules for payment allocation if such plans exist. Furthermore, Section 104 does not expressly state what *kind* of deferred interest plan it is referring to. It does not endorse deferred interest plans that permit retroactive imposition of interest even for amounts that have been paid off. Section 104’s reference could be to plans in which interest is only retroactively imposed on the remaining unpaid balance. For example, a deferred interest plan could provide that if a consumer makes a \$1,000 purchase and pays off \$800, then the accrued deferred interest for *only the remaining \$200 will be imposed*.

* Double cycle billing occurs when a consumer who has carried a balance from one month to the next then pays off the entire balance. Despite paying the full balance shown on the statement, the consumer would still be charged interest for that month because the lender would assess interest based on the account balance for the past *two* billing cycles.

Instead of substantive protections for deferred interest plans, Regulation Z requires special disclosures for deferred interest programs. These include:

- Special disclosures for advertisements.⁸³
- Disclosure of the deferred interest APR, not a 0% APR, in the application/solicitation table or “Schumer Box.”⁸⁴
- Disclosure for monthly statements of the deferred interest APR, balance, and accrued interest.⁸⁵
- A mandatory warning for periodic statements.⁸⁶

V. ENFORCEMENT AND REGULATORY ACTIONS

A. Synchrony/CareCredit

In December 2013, the CFPB brought an enforcement action against Synchrony over the CareCredit card.⁸⁷ The CFPB alleged that some health care providers had misled patients by not clearly explaining the terms of the deferred interest program when the patients signed up and by not giving patients the legally required credit card disclosures. Furthermore, the CFPB alleged it was Synchrony’s lack of oversight and monitoring that allowed this deception.

Synchrony settled the case by agreeing to provide enhanced disclosures to consumers and to implement a training program for providers who offer the CareCredit Card.⁸⁸ Furthermore, the bank agreed to contact new applicants within 72 hours to explain the product over the phone, and to require any consumer submitting an application for dental services over \$1000 to apply directly with CareCredit instead of with the provider’s staff.⁸⁹ Synchrony also promised in its contracts with providers to prohibit charges for services not yet rendered, with limited exceptions.⁹⁰ The bank agreed to pay up to \$34.1 million in restitution to injured consumers.⁹¹

In addition to the CareCredit enforcement action, the CFPB took a separate enforcement action against Synchrony for (1) deceptive marketing of debt cancellation or suspension products; and (2) discriminating against Hispanic consumers by excluding consumers who primarily spoke Spanish and Puerto Rico residents from receiving special debt relief offers.⁹²

However, problems remain with the CareCredit card, as indicated by complaints filed with the CFPB since December 2013.

B. PayPal

The CFPB brought an enforcement action against PayPal Credit (formerly known as BillMeLater) for, among other violations, abuses in its deferred interest program. The abuses specifically involved payments allocation. When consumers made payments large enough to pay off an expiring promotion, PayPal allocated the payments in a way that resulted in consumers incurring deferred interest.⁹³ PayPal also represented to

consumers that they could request that payments be allocated to specific balances, but many consumers could not reach a customer-service agent at all to make a request or when they did, PayPal ignored the request.⁹⁴

C. CFPB bulletin on marketing of credit card promotional APR offers

As discussed in Section II.G, consumers who normally pay their entire credit card balance every month cannot accept a deferred interest offer without losing the benefit of a grace period for other transactions. If they have a deferred interest balance, any additional purchases the consumer makes with the credit card may incur interest charges right away. In 2014, the CFPB issued a bulletin highlighting its concerns regarding the impact of deferred interest and other promotional annual percentage rate (APR) offers (balance transfers, convenience checks) on grace periods.⁹⁵

VI. RECOMMENDATIONS

A. Ban deferred interest

The simplest, most effective step that the CFPB can take to protect consumers from the trap of deferred interest is to ban deferred interest plans. As the FRB and banking regulators concluded over half a decade ago, deferred interest “causes substantial injury to consumers” and “disclosure may not provide an effective means for consumers to avoid the harm caused by these plans.” It is time to ban the product.

The CFPB clearly has the authority to ban deferred interest. As discussed in Section IV.B, the prohibitions against double cycling billing and retroactive application of interest rate increases in the Credit CARD Act already proscribe the imposition of deferred interest. It is only the fact that Regulation Z carves out exceptions to these prohibitions for deferred interest that permit the existence of these plans. To eliminate deferred interest, the CFPB can simply remove those exceptions.

B. Other reforms

While less than optimal, the CFPB could take other actions to reduce the harm imposed by deferred interest, including:

1. Permit deferred interest only on unpaid balances

Nothing in the Credit CARD Act provides any indication that Congress intended to permit retroactive interest on the portion of a balance that has been paid off. The CFPB could revise and narrow the definition of “deferred interest” under Regulation Z to be limited to plans in which retroactively accrued interest is imposed only on unpaid amounts. Regulation Z could provide that only these plans are exempted from the Credit CARD Act’s prohibitions against double cycling billing and retroactive application of interest rate increases.

2. Require higher minimum payments

The CFPB should require lenders to set the minimum payment for deferred interest plans at an amount that will pay off the deferred interest balance during the promotional period. In addition, the consumer's ability-to-pay should be assessed based on this higher minimum payment.

3. Prohibit using deferred interest balances to eliminate grace periods

For consumers who are carrying a deferred interest balance and make subsequent purchases, the CFPB should require credit card issuers to give consumers the full benefit of a no-interest grace period if the subsequent purchases are paid off in full. Otherwise, it is unfair, deceptive, and abusive to use a supposedly no-interest promotion as a trick to generate interest on purchases that should also be interest free.

4. Require issuers to solicit and follow consumer requests on payment allocation

As discussed in Section II.G, the payment allocation rules for deferred interest plans are quite complex. Some consumers will prefer to make regular progress in paying off a deferred interest balance, and others will prefer to minimize interest-bearing balances and then to pay off the deferred interest balance in a lump sum at the end of the promotional period. No matter what camp they are in, consumers will likely be confused by the rules and not realize that they have the right to direct their payments to the appropriate balance.

GRAPHIC 2 Sample Payment Form

Minimum payment:	\$25
Additional payment towards deferred interest balance:	\$ _____
Additional payment towards 24% interest balance:	\$ _____
Total payment:	\$ _____

Important Note: You can minimize your interest charges by designating payments above the minimum to your 24% interest balance. However, if you do so, you must be sure to pay off your entire deferred interest balance by January 1, 2017 if you wish to avoid back interest. If you do not pay off your **entire** deferred interest balance by that date, you will be assessed \$457 interest on your January 2017 statement.

Some of this confusion will be eliminated by preserving grace periods, as previously discussed. For consumers who do carry other balances month to month, the payment form should ask the consumer how she wishes to allocate the balance and inform her about the consequences of different choices as illustrated. Issuers should solicit the consumer's preferences on the payment stub for paper statements, and should require the blanks to be filled out for consumers who pay online (see Graphic 2: Sample Payment Form).

However, the complexity of this notice illustrates why the far better approach is simply to ban deferred interest. It may not be possible to develop a simple disclosure that helps consumers to minimize interest in both the short and long run. (And a disclosure does nothing to help consumers who have an unforeseen difficulty paying off their balance.)

In addition, Regulation Z should also be clarified to require the lender to allocate the payment as the consumer requests. Finally, when there are two or more deferred interest balances, Regulation Z should require that the payment above the minimum be allocated to the oldest such balance.

5. Require a warning 60 days before the end of the promotional period.

Lenders should be required to give consumers a warning 60 days before the end of the promotional period specifying the amount of interest that will be charged if they do not pay off the balance. This warning should be prominent, in a place consumers cannot miss. It should be mentioned in the subject line of any email sent to consumers who receive notice of electronic statements and on the front page of any mailed statement.

VII. CONCLUSION

In 2009, Congress passed the Credit CARD Act in order to eliminate “tricks and traps” from the credit card market. For the most part, it succeeded, and has saved consumers an estimated \$16 billion in credit card fees.⁹⁶ Deferred interest promotions, however, are an unfortunate exception. As one of the worse remaining abuses on the market, the use of these promotions is growing.

It is time to simply get rid of deferred interest promotions. A product that makes a profit only due to consumer confusion or inability to pay due to financial problems is one that is inherently unfair, deceptive, and abusive. The Federal Reserve Board did the right thing when it initially banned deferred interest in 2009. The CFPB’s recent study on the credit card market confirms that the abuses of these promotions continue unabated and are growing. The next logical step is to eliminate the debt time bomb of deferred interest promotions altogether.

ENDNOTES

1. Consumer Financial Protection Bureau, Consumer Credit Card Market Report 10 (Dec. 3, 2015), available at http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf [hereinafter “CFPB 2015 Credit Card Report”]
2. Consumer Financial Protection Bureau, CARD Act Report: A Review of the Impact of the CARD Act on the Consumer Credit Card Market 81 (Oct. 1, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf [hereinafter “CFPB 2013 CARD Act Report”].
3. CFPB 2015 Credit Card Report at 10.
4. 74 Fed. Reg. 5498, 5528 (Jan. 9, 2009).
5. Regulation Z, 12 C.F.R. § 1026.16(h)(4).
6. CFPB 2015 Credit Card Report at 200.
7. CFPB 2015 Credit Card Report at 178.
8. *Id.* at 148.
9. Alina Comoreanu, 2015 Deferred Interest Study: The Retailers with the Sneakiest Financing Offers, Cardhub.com, available at <http://www.cardhub.com/edu/deferred-interest-study/>.
10. *See, e.g.,* Villaseñor v. American Signature, Inc., 2007 WL 2025739 (N.D. Ill. July 9, 2007) (merchant charged \$705 more for customers who paid using deferred interest plan).
11. CFPB 2015 Credit Card Report at 7.
12. CFPB 2015 Credit Card Report at 167 (Figure 8).
13. *Id.* at 166.
14. *Id.* at 167 (Figure 8).
15. *Id.*
16. *Id.* at 197.
17. *Source:* CFPB Complaint No. 1519539, filed Aug. 14, 2015.
18. At one point, some deferred interest cards did not require any minimum payment during the deferred interest period, and were promoted as “no payment” programs. In 2009, federal regulators required banks under their supervision to have minimum payments for credit card accounts, including for deferred interest plans. Timothy Ward, Deputy Director of Examinations, Supervision and Consumer Protection, Office of Thrift Supervision, Memorandum for Chief Executive Officers re: “No Interest, No Payment” Credit Card Programs (Sept. 24, 2009), available at www.occ.gov/static/news-issuances/ots/ceo-memos/ots-ceo-memo-321.pdf.
19. CFPB 2015 Credit Card Report at 150.
20. *Id.*
21. *Id.* at 204.
22. Lenders are required by the Credit CARD Act to assess a consumer’s ability to pay a credit card debt. 15 U.S.C. § 1665e
23. The ability to pay is not based the minimum payment consisting just of the purchase amount, but on a somewhat higher minimum payment that does include deferred interest. CFPB 2015 Credit Card Report at 205.
24. CFPB 2015 Credit Card Report at 206.
25. Synchrony Financial, Form S-1: Registration Statement under the Securities Act of 1933, March 13, 2014, at 4 [hereinafter “Synchrony Prospectus”].
26. CFPB 2015 Credit Card Report at 187.

27. See Fred O. Williams, How to avoid big costs of deferred-interest financing deals: Banks don't have to allocate payments the way you request, www.creditcards.com, Sept. 25, 2105, at <http://www.creditcards.com/credit-card-news/allocate-payments-deferred-interest-1282.php>.
28. Complaint, Consumer Financial Protection Bureau v. PayPal Inc., Civ. Ac. No. 1:15-cv-1426 (D. Md. May 18, 2015), ¶ 38, available at http://files.consumerfinance.gov/f/201505_cfpb_complaint-paypal.pdf.
29. CFPB 2015 Credit Card Report at 190.
30. There is evidence that issuers have been aware of consumer confusion over this issue. See *Murr v. Capital One*, 28 F. Supp.2d 575, 584-95 (E.D. Va. 2014) (permitting fraud, breach of contract, TILA and UDAP claims against convenience check offers that resulted in loss of grace period for purchases). Discovery documents in this case "revealed that defendant was aware of a steady stream of complaints from consumers who lost their grace periods after accepting the Offer despite paying off their purchase balances in full," and that the issuer "adopted a less-than-forthcoming approach to obvious consumer confusion." *Id.* at 586.
31. Fred O. Williams, How to avoid big costs of deferred-interest financing deals: Banks don't have to allocate payments the way you request, www.creditcards.com, Sept. 25, 2105, at <http://www.creditcards.com/credit-card-news/allocate-payments-deferred-interest-1282.php>.
32. CFPB 2015 Credit Card Report at 190.
33. *Id.* at 193.
34. In the Matter of GE Capital Retail Bank and CareCredit, LLC, Assurance No. 12-103 Assurance Of Discontinuance Under New York Executive Law Section 63, Subdivision 15, June 3, 2013.
35. See Consent Order, In the Matter of GE Capital Retail Bank, CareCredit L.L.C., No. 2013-CFPB-0009, ¶ 31 (Consumer Fin. Prot. Bureau Dec. 10, 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ge-carecredit.pdf.
36. CFPB 2015 Credit Card Report at 159 (quoting comment letters from the Retail Industry Leaders Association (RILA), Consumer Bankers Association, and Financial Services Roundtable).
37. *Id.* at 207 ("while 18% of U.S. credit cardholders with subprime scores have private label but no general purpose cards, some 38% have one or more private label cards *and also one or more general purpose cards*. (The remainder have only general purpose cards.)") (emphasis in the original).
38. *Id.* at 155 (quoting RILA comment letter).
39. Alina Comoreanu, 2015 Deferred Interest Study: The Retailers with the Sneakiest Financing Offers, Cardhub.com, available at <http://www.cardhub.com/edu/deferred-interest-study/> (providing retailer-by-retailer list of which companies offered deferred interest plans, and whether their disclosures were transparent).
40. CFPB 2015 Credit Card Report at 148.
41. *Id.* at 154.
42. *Id.*
43. Synchrony Prospectus at F-3.
44. *Id.* at 93.
45. Adrian Goffinet & Alison Williams, Bloomberg, Synchrony, Citigroup Lead U.S. Private Label Card Share: Primer, Feb. 17, 2015.
46. Synchrony Prospectus at 4, 5.
47. *Id.* at 4.
48. *Id.* at 126.

49. *Id.* at 20.
50. See *id.* at 112 (“average sales per customer in these platforms are higher for customers who use our cards compared to consumers who do not”).
51. *Id.*
52. *Id.* at 20.
53. *Id.* at 21.
54. *Id.* at 31. Synchrony does earn some interchange income from its cards that can be used as general-purpose credit cards. But that amount — \$325 million in 2013—pales in comparison to the \$11.3 billion in interest income that same year. *Id.* at 78, 86.
55. *Id.* at 78.
56. *Id.* at 126.
57. *Id.*
58. *Id.* at 9.
59. Adrian Goffinet & Alison Williams, Bloomberg, Synchrony, Citigroup Lead U.S. Private Label Card Share: Primer, Feb. 17, 2015.
60. Alison Williams, Bloomberg, Consolidation Has Further Concentrated Credit-Card Share: Primer, Jan. 13, 2015.
61. Alina Comoreanu, 2015 Deferred Interest Study: The Retailers with the Sneakiest Financing Offers, Cardhub.com, available at <http://www.cardhub.com/edu/deferred-interest-study>.
62. Research obtained by searching the CFPB Credit Card Agreement Database, www.consumerfinance.gov/credit-cards/agreements/, visited November 24, 2015.
63. Consent Order, In the Matter of: Citibank, N.A.; Department Stores National Bank; and Citicorp Credit Services, Inc. (USA), Administrative Proceeding File No. 2015-CFPB-0015, ¶¶ 51-57 (CFPB July 21, 2015), available at http://files.consumerfinance.gov/f/201507_cfpb_consent-order-citibank-na-department-stores-national-bank-and-citicorp-credit-services-inc-usa.pdf.
64. Adrian Goffinet & Alison Williams, Bloomberg, Synchrony, Citigroup Lead U.S. Private Label Card Share: Primer, Feb. 17, 2015.
65. Citibank Retail Services, About Us, at <https://www.citiretailservices.com/aboutus/> (visited Nov. 24, 2015).
66. Citibank Retail Services, Advantages, at <https://www.citiretailservices.com/advantages/> (visited Nov. 24, 2015).
67. See Jim Hawkins, Doctors As Bankers: Evidence from Fertility Markets, 84 Tulane L. Rev. 841 (Mar. 2010).
68. See In the Matter of GE Capital Retail Bank and CareCredit, LLC, Assurance No. 12-103 Assurance Of Discontinuance Under New York Executive Law Section 63, Subdivision 15, June 3, 2013. The CFPB’s Consent Order against CareCredit prohibits the bank from paying rebates to providers.
69. Synchrony Prospectus at 2.
70. CFPB 2013 CARD Act Report at 96.
71. Synchrony Prospectus at 3.
72. See Consumer Action, Medical Credit Card Survey, Summer 2014, available at www.consumer-action.org/downloads/english/summer_2014_medCCs.pdf.
73. *Id.*
74. Synchrony Prospectus at 3.
75. 74 Fed. Reg., 5498, 5528 (January 9, 2009). [emphasis added]
76. 74 Fed. Reg. 20804 (May 5, 2009).
77. Letter from Lowe’s Inc. to Federal Reserve Board, May 29, 2009 (on file with the author).

78. Memo From: Sears Hometown Store, Mark Stockman, Subject: Truth in Lending–Version 3 (undated)(on file with the author).
79. Codified at 15 U.S.C. § 1637(j).
80. See 155 Congr. Rec. S5318 (May 11, 2009) (statement of Sen. Levin).
81. Codified at 15 U.S.C. § 1666c(b)(2).
82. 74 Fed. Reg. 36,077 (July 22, 2009).
83. Regulation Z, 12 C.F.R. § 1026.16(h); See National Consumer Law Center, Truth in Lending § 6.4.6 (9th ed. 2015), updated at www.nclc.org/library.
84. Official Interpretations to Regulation Z, 12 C.F.R. § 1026.60(b)(1)-9.
85. Official Interpretations to Regulation Z, 12 C.F.R. § 1026.7(b)-1.
86. Regulation Z, 12 C.F.R. § 1026.12(b)(14).
87. Press Release, Consumer Fin. Prot. Bureau, CFPB Orders GE CareCredit to Refund \$34.1 Million for Deceptive Health-Care Credit Card Enrollment (Dec. 10, 2013), available at www.consumerfinance.gov/newsroom/cfpb-orders-ge-carecredit-to-refund-34-1-million-for-deceptive-health-care-credit-card-enrollment.
88. Consent Order, In the Matter of GE Capital Retail Bank, CareCredit L.L.C., No. 2013-CFPB-0009 (Consumer Fin. Prot. Bureau Dec. 10, 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ge-carecredit.pdf.
89. *Id.* at ¶¶ 32, 36.
90. *Id.* at ¶ 31.
91. *Id.* at ¶ 7.
92. Consent Order, In the Matter of Synchrony Bank, f/k/a GE Capital Retail Bank, Administrative Proceeding File No. 2014-CFPB-0007 (C.F.P.B. June 19, 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.
93. Complaint, Consumer Financial Protection Bureau v. PayPal Inc., Civ. Ac. No. 1:15-cv-1426 (D. Md. May 19, 2015), ¶ 35, available at http://files.consumerfinance.gov/f/201505_cfpb_complaint-paypal.pdf.
94. *Id.* at ¶ 38. The CFPB did not take action against these practices under TILA, but instead alleged that they were deceptive in violation of the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5536(a)(1)(B) (prohibition against engaging in unfair, deceptive, or abusive acts or practices).
95. Consumer Financial Protection Bureau, CFPB Bulletin 2014-02, Marketing of Credit Card Promotional APR Offers (Sept. 3, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_bulletin_marketing-credit-card-promotional-apr-offers.pdf.
96. CFPB 2015 Credit Card Report at 10.

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