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CREDIT CARDS AND OLDER AMERICANS

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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CREDIT CARDS AND OLDER AMERICANS

Tuesday, August 7, 2007

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1 p.m., in Halfmoon Senior Center, 287 Lower New Town Road, Halfmoon, New York, Hon. Carolyn Maloney [chairwoman of the subcommittee] presiding.

Present: Representative Maloney.

Also present: Representative Gillibrand.

Mr. EMMETTE. We welcome you to a congressional hearing. We have people here who are interested in seeing that senior citizens are protected as far as credit is concerned and everything else. It's with great pleasure, not only will you meet Congresswoman Gillibrand, but I turn the floor over to Congresswoman Maloney, from the east side of Manhattan.

Chairwoman MALONEY. Thank you very, very much, Robert, for welcoming us and I want to thank everyone for coming and participating today, and I particularly want to thank the Halfmoon Senior Center for providing us with an area where we could have our hearing. I am Congresswoman Carolyn Maloney and this hearing will come to order officially. This field hearing of the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit, called, "Credit Cards and Older Americans" is the third hearing of this subcommittee in the 110th Congress examining credit card issues.

I want to note that the record will be held open without objection for all members' opening statements to be made a part of the record. Congressman McNulty and Congressman Walsh had indicated their interest in coming, as well as Chairman Frank, and all members of the committee in Congress who wish to put into the official record their comments will be made part of the official record.

This field hearing is being held at the request of Congresswoman Kirsten Gillibrand who wrote to me as the chairwoman of the subcommittee requesting this hearing regarding credit cards and their impact on older Americans. I am absolutely delighted to be here and I would like to thank Congresswoman Gillibrand and her staff, and the Halfmoon Senior Center for helping my office to organize it, and I should also publicly thank the legislative director of the

subcommittee, Ms. Eleni Constantine, who has come here to be with us today from Washington.

I also would like to thank all of the witnesses for coming to provide their expertise on this important issue. Many of them traveled quite a distance, and we are very thankful. This hearing, as I said, is part of a series of hearings that this subcommittee is holding to examine credit card issues. The first hearing on credit cards was held on April 26th and examined facts about the market, the practices that are most criticized, and the enforcement problems that confront card holders, as well as State and local authorities.

The second hearing was held on June 7th and examined the changes to credit card disclosures and the Federal Reserve's proposed Regulation Z. In addition, I convened a roundtable discussion with consumer groups and the top six credit card issuers on July 30th. The discussion focused on the development of principles the credit card industry should consider when issuing unsecured credit. We took what we had learned at the roundtable and issued the principles last week. They focus on the key areas of underwriting, disclosure, notice and choice and help for those in trouble, and I would say that this hearing focuses on the fourth principle. Often, older Americans and college students have reported to our subcommittee various abuses that they have confronted.

This hearing will focus on issues surrounding credit card issues facing older consumers including rising levels of personal debt, especially among fixed-income older Americans. The hearing will also focus on options older consumers have when trying to reduce credit card debt and the special challenges that they face in this effort.

As with all consumers, the use and acceptance of credit cards are a great convenience for older Americans. Transactions using credit cards also add a security to transactions that do not exist with other forms of payment. Access to credit has also provided a crucial financial safety net in certain emergency situations, particularly health care. But problems occur when consumers' use of credit cards creates a cycle of debt that they are unable to escape.

In September 2004, the consumer organization, Demos, released a report that documented increases in credit card debt held by older Americans between 1992 and 2001. Among the report's key findings were that average self-reported credit card debt among indebted seniors increased by 89 percent between 1992 and 2001, to over $4,000. That's quite a substantial increase. Seniors between the ages of 65 and 69 years old, presumably the newly retired, saw the most staggering rise in credit card debt, 217 percent, to an average of well over $5,000. Female-headed senior households experienced a 48 percent increase in credit card debt between 1992 and 2001, to well over $2,000 average debt.

Among seniors with incomes under $50,000, which is 70 percent of all seniors, about one in five families with credit cards are in debt hardship, spending over 40 percent of their income on debt payments, including the mortgage debt. Importantly, it is not just that older consumers have more credit card debt than before, but that many are buried in unaffordable debt. In a 2006 survey, AARP found that close to half of U.S. adults age 40 or older see their current level of debt as a problem. About 30 percent of retirees in a survey describe their debt as a problem, and only 7 percent of retir-

ees said they did not have any debt. I repeat, only 7 percent of retirees say they don't have any debt.

During this same time period, the number of older Americans filing for bankruptcy tripled, making them the fastest growing group in the bankruptcy court. Conventional wisdom suggests that seniors with a lifetime of financial experience, high homeownership rates, and a record of thrift would be immune to the record debt increases of the 1990's among other age groups. Unfortunately, what the data suggests is that many older Americans use credit cards as a plastic safety net to make essential purchases they cannot otherwise afford, including out-of-pocket medical expenses, energy and utility bills, and rising property taxes.

At the same time, the most important bulwark seniors have against debt, savings and assets, also has diminished. Finally, there are concerns about the level of financial literacy among older families confronted with rapidly changing financial service products. The growing debt level of this Nation's older consumers is a very real and growing concern. We are here to examine these issues in detail and I look forward to hearing from all of the panelists and hearing personal stories from the seniors. And with that, I'd like to recognize my colleague, Kirsten Gillibrand, who requested this hearing.

Ms. GILLIBRAND. Thank you, Chairwoman Maloney. I really appreciate your leadership very much. I appreciate the fact that you've come to Saratoga County in order to hold this hearing on an issue that is very troubling for many seniors in our District. I want to thank all of the witnesses for testifying and for providing expertise: Mr. Robert O'Connell, executive council member, AARP, New York; Ms. Katie Porter, associate professor, College of Law, University of Iowa; Ms. Barbara Whipple, from the Barbaruolo Law Firm; Mr. David Billet, director of legislation and government affairs for the New York State Banking Department; and John DeCelle, executive vice president, State Employees Federal Credit Union. Your testimony will be very useful for today's proceedings.

In addition, I'm very grateful for the AARP's help coordinating the hearing, and for Eilleen Pettis and Lisa Perry's assistance for the Halfmoon Senior Center, and to our president who gave the opening remarks. You've all graciously allowed the subcommittee to host this hearing here and for all of the seniors here in the room, it's wonderful to see you to represent our community so effectively and to lend your very important voice to this discussion. It's exceedingly meaningful and it's something that Congress very much relies on as we begin to write legislation to address some of our concerns.

I recently expressed my concern to Chairwoman Maloney about the growing issue of credit card debt affecting senior citizens. I'm grateful that the chairwoman decided to hold a field hearing here in upstate New York to investigate this issue that affects such an important demographic of our country. Soon the Baby Boom generation will begin to retire and I believe that the prevalence of credit card debt among older Americans is an issue that needs to be studied further and in depth. A third of all seniors have at least one credit card and the Baby Boom generation is especially vulnerable as they approach retirement as evidenced by the fact that sen-

iors between the ages of 65 and 69 years old who have either recently retired or are preparing to retire have experienced a 217 percent rise in credit card debt between 1992 and 2001, and have an average credit card debt of $5,800.

Credit cards play an important role in the lives of many Americans by offering convenience and financial security in unforeseeable situations. However, I'm concerned that too many seniors, after decades of hard work and service to this country, are drowning in unaffordable debt. Older Americans are the fastest growing age group to file for bankruptcy and I believe that increased financial literacy education is needed.

It's important that seniors are not targeted for complex or confusing lending agreements and as a result become economically vulnerable. More than one third of the seniors depend on Social Security benefits for over 90 percent of their income and a high-interest rate fee can be devastating for a senior who lives on a fixed income. We are living in an era where pensions are no longer guaranteed and health care, energy, and housing costs are sky rocketing. It's important that seniors do not fall into the trap of relying on credit cards to survive. Credit card marketing needs to be accurate and honest and changing credit card term agreements are also causes of concern for the American seniors. It is critical that seniors clearly understand the contractual agreements that they enter into. Additionally, I'm very concerned about the effects that credit card issues have on women as they are more likely to experience financial insecurity, live longer, and rely on Social Security.

I look forward to hearing from our witnesses on the causes of the increase in credit card debt amongst older Americans, any possible steps that Congress can take to protect our older Americans, and what seniors can do if they find themselves in unmanageable debt.

Thank you again, Madam Chairwoman, for holding this hearing today. I'm very grateful.

Chairwoman MALONEY. Thank you. We have fine panelists and we're going to have 5 minutes of opening statements from each panelist, and then I'm just going to move the table in front of you and have everybody respond to questions jointly.

So first up, Mr. Robert O'Connell, executive counsel, AARP. And thank you very much for really working with us on this hearing and giving us much needed information. Thank you.

STATEMENT OF ROBERT O'CONNELL, EXECUTIVE COUNCIL MEMBER, AARP–NEW YORK

Mr. O'CONNELL. Thank you very much. By the way, I'm a local resident of Clifton Park, so I'm in your territory, Representative Gillibrand.

Chairwoman Maloney, Representative Gillibrand, and members of the subcommittee, on behalf of AARP's 39 million members, I want to thank you for the opportunity to testify on credit card practices. An estimated 3 out of every 4 Americans age 65 and older have credit cards, and for many of these older Americans, the credit card is a great convenience. They can afford to pay their balance in full each month and generally enjoy lower annual percentage rates. These are the so-called "convenience users" who collect airline miles, reward points, and even can get cash back on their pur-

chases. However, a growing number of older Americans find themselves deep in credit card debt or even filing for bankruptcy. Although older households long have been considered among the most frugal and resistant to consumer debt, changing economic conditions—particularly declining pension and investment income and rising costs for basics such as prescription drugs, health care, and utilities—have made credit card debt a more serious financial issue for older Americans.

What is of greatest concern to AARP is not just that older consumers carry more credit card debt than ever before, but that more seniors are being buried in what may be considered unaffordable debt. You've already referenced the survey that AARP did about the number of people who, over the age of 40, find themselves with debt as a problem, and I won't go into those statistics any further.

For those who are unable to make more than the required minimum monthly payments on their cards, industry practices—including sky high penalty interest rates, high accumulating fees, and interest on fees—often push them into unmanageable credit card debt.

Permit me to give just one example to illustrate this point: Ruth Owens was in her 50's, and on Social Security disability, when she found herself with a $1,963 balance on her Discover Card. At that point, Ms. Owens stopped using her credit card. She made no further purchases, did not take any cash advances, and resolved to pay off the debt. Over the course of 6 years, Ms. Owens made payments of $3,492 to Discover. From 1997 to May of 2003, when Discover sued Ms. Owens in court, not one penny of her payments went to reduce the principle. Instead, all of her payments went to pay penalties and interest, and her balance grew even larger. She incurred $1,518 in over-the-limit fees; $1,160 in late fees; $369.62 in credit insurance; and $6,008.66 in interest and other fees for a total of $9,056.28. In a handwritten note to the judge, Ms. Owens noted that she had no money to pay them and that she was very sorry. Luckily, the judge in this case barred Discover from collecting any more money from Ms. Owens. As this example illustrates, it is the customer who sometimes misses a payment, or sends a payment late, or simply pays the minimum due each month who generates the real profits for credit card companies. According to one estimate, interest in penalty fee revenues in 2005 added up to a staggering $79 billion. Nearly $8 out of every $10 of revenue for the credit card companies comes from customers who cannot pay off their bills in full every month.

While credit card companies have every right to earn a profit, AARP is concerned that the consumers in the marketplace be treated fairly and that credit card companies not reap huge financial rewards from the very practices that sink customers into deeper and deeper debt.

AARP's key concerns are as follows: (1) the incomprehensible, and in some instances meaningless, disclosure procedures; (2) allowing certain practices such as going over the limit and then assessing penalty fees for engaging in such behavior; (3) penalty interest rates that average more than 27 percent and can be as high as 32 percent even for relatively minor infractions such as being hours or just days late on a payment; (4) multiple and variable in-

terest rates that make it difficult for consumers to know what interest rate they are paying for any particular purchase or cash advance; (5) universal default in which a card holder is penalized based on behavior with another creditor even if he or she has no blemishes on the credit card in question; and (6) mandatory arbitration for credit card disputes.

Deregulation of the credit card marketplace has drastically changed the way issuers market and price credit cards to consumers of all ages. It is clear that in recent years, credit card companies have become far more aggressive in imposing questionable fees and practices. The result is that penalty interest rates, high and accumulating fees, and interest on fees can push consumers over the financial edge.

AARP commends you for taking a serious look at these issues and endorses the following reforms: Improve the disclosure and conditions for credit cards; prohibit universal default (which I would note, Chairwoman Maloney has included in her principles that were published at the end of last week); limit penalty fees and interest rate hikes; and prohibit mandatory binding arbitration.

I want to conclude by emphasizing that the growing debt level of this Nation's older consumers is a very real and serious concern. AARP urges Congress to prohibit the abuse of credit card practices that contribute to and exacerbate the financial concerns of this Nation's older population.

Thank you very much.

[The prepared statement of Mr. O'Connell can be found on page 40 of the appendix.]

Chairwoman MALONEY. I want to thank you, Mr. O'Connell, for your really excellent testimony. Businesses cannot raise prices retroactively without telling their customers, but credit card companies can. Your example of Ms. Owen really was a staggering example. I'm going to carry that back to Washington and maybe she'll be testifying before Washington. Her story shows a lot of what's wrong. So thank you for being here, and sharing your principles with me, and we'll take that into account when we're writing our legislation.

The next witness is Ms. Katie Porter. She's an associate professor from the College of Law at the University of Iowa. She traveled a long way to be with us today, and we want to thank her very much for being here. Thank you very much for coming.

STATEMENT OF KATHERINE PORTER, ASSOCIATE PROFESSOR, COLLEGE OF LAW, UNIVERSITY OF IOWA

Ms. PORTER. Chairwoman Maloney, Representative Gillibrand, and members of the subcommittee, credit cards are not age neutral financial products. Older Americans face particular risks from credit cards that are not addressed by current law. Recent studies have documented several troubling trends: About 70 percent of Americans age 65 or older have credit cards; of this group with cards, 3 in 10 seniors carry a credit card balance. These numbers have remained relatively steady over time. The alarming trend, however, is a sizable increase in the amount of credit card debt that older Americans carry. In 2004, households headed by people ages 55 to 64 had the highest credit card balances of any age group with the

average card holding family owing nearly $6,000 in credit card debt. Between 2001 and 2004, the credit card balances increased in all three cohorts of older Americans, those aged 55 to 64, 65 to 74, and over 75. The rising amount of credit card debt carried by older Americans was in contrast to the pattern among younger Americans whose credit card balances remained the same or decreased in that same period. Older Americans' credit card debts are on the rise.

Part of the explanation for the upward trend in older Americans' credit card debts may be the failure of seniors to adopt debit cards. A 2006 Federal Reserve study found that only about half of Americans have debit cards and that debit card use is much less common among older Americans. Several studies have shown that when consumers use credit cards to pay, they spend more than if they pay with cash, check, or debit card. At an aggregate level, using data from several different countries, Professor Ronald Mann has established that a societal preference to use credit cards to pay even when credit card borrowing is held constant causes total consumer debt to increase. Because seniors prefer credit cards over debit cards, spending among seniors may be racheted up by their credit card use. This important credit card effect may cause seniors to exceed their budgets and leave them with fewer leftover dollars for savings.

Eliminating the preferential consumer protections for credit cards and ensuring that debit card overdraft protections are fair would help encourage debit card use by older Americans. These changes would help seniors live within their means and use credit cards responsibly.

Debit card use may have another advantage for older Americans which is to help them avoid the punitive charges imposed for many credit card practices. A recent Massachusetts Institute of Technology economics paper analyzed how consumers' financial decisions vary with age. The researchers found that older consumers are more likely than middle-aged consumers to pay credit card late fees, to pay fees for exceeding the limit on their credit card, and to pay cash advance fees on credit cards. The economists term these behaviors "credit card mistakes" because they are very, very costly and consumers would usually avoid the transaction if they understood the full cost of the charges.

The researchers also found that older Americans were more likely to make sub-optimal and expensive decisions after transferring credit card balances such as making new charges at the very high rates on the new cards and apparently not understanding that credit card issuers first apply any payments to the low interest transferred balances.

The research findings indicate that older Americans may be less adept at deciphering the extremely complicated pricing and penalty schemes used by credit card issuers. This means that older Americans disproportionately boost card issuers' profits. Quite simply, credit cards are more expensive financial products in the hands of older Americans.

Disclosures made right at the point of sale, at the moment when customers can choose to use a different form of payment, could be very effective at deterring and preventing costly credit card mis-

takes and in curbing credit card spending. These point-of-sale disclosures would be similar to the receipts and information available at ATM terminals. For example, consumers could be alerted that a transaction would exceed their limit and warned of the amount of the over-the-limit fee. Consumers should also be given the current balance on their card after each and every transaction. These simple, but frequent disclosures could help consumers better manage their credit card use.

The difficulties of older Americans in managing credit cards are also evidenced in the bankruptcy system. As has already been noted, older Americans are the fastest growing age group of bankruptcy filers. The bankruptcy rate of households headed by individuals 65 or older increased 213 percent between 1991 and 2001 even after adjusting for changes in population size. The data also show a gradual, but troubling increase in the average age of bankruptcy debtors. As the Baby Boom generation ages into the next decade, the number of older Americans who file bankruptcy is poised to climb dramatically. Bankruptcy increasingly may become an older American phenomenon, rather than the middle age experience that it has been historically.

Very high credit card debt is the single defining characteristic of bankruptcies by older Americans. Two studies using data from the U.S. Trustees Office found that older Americans who filed bankruptcy have extraordinary credit card debts even when compared with other families in bankruptcy. The average senior aged 70 and older in bankruptcy owed over $38,000 in bank credit card debt and approximately $3,800 in additional store retail credit card debt. Yet, at the time of their bankruptcy, the average senior had a net monthly income of only $1,500. Credit card debts had utterly overwhelmed these older families by the time they filed bankruptcy. Put in the most concrete terms, the average older American would have had to find a way to live absolutely free, incur no more debt, and magically halt all accruing interest and fees, and they still would have had to devote every penny of their income for more than 2 years just to pay off their credit card debt. Bankruptcy was a last option for these seniors and many expressed feelings of shame and depression that after decades of hard work, and good or perfect credit, high credit card debts led to their financial collapse in bankruptcy.

Many older Americans are very troubled by the marketing practices of credit card companies. In interviews with Consumer Bankruptcy Project researchers, many seniors were shocked and angered that even after having to resort to bankruptcy to deal with unmanageable credit card debt, the card companies continued to send them dozens and dozens of solicitations. These older Americans described credit card offers "coming out of the woodwork" less than 1 year after filing bankruptcy, and expressed shock at being "preapproved more times than you can count." One woman told us that she "felt like Donald Trump" based on the way lenders would send her credit cards, and many consumers simply said they wanted the solicitations to stop. One man recounted his difficulty in getting the credit card issuers to halt the solicitations to his 81-year-old father even after he told them that his father had filed bankruptcy, had

been diagnosed with dementia, and had enacted a power of attorney.

Consumers are woefully unaware of the Fair Credit Reporting Act law that allows them to opt-out of receiving pre-screened credit card solicitations. Only 20 percent of all Americans have even heard of the law and only 6 percent have chosen to opt out. Consumers are deterred from opting out by fears of identity theft because the current system requires them to disclose their Social Security number to opt out. An opt-in system, in which consumers who wanted to get credit card offers could elect to do so, would eliminate this problem, and overcome the cognitive and behavioral barriers inherent in an opt-out system.

Credit card debt is a serious financial risk for many older Americans. Seniors are more likely to suffer many types of credit card harms: Carrying higher card balances; having to pay late fees; over limit fees, and other penalty charges; and having such high credit card debts that they need bankruptcy relief. Compared to other age groups, older Americans are more likely to fall prey to the complex schemes that hide the real cost of credit card use, and they lack knowledge about financial alternatives to credit cards and consumer laws that can help them avoid credit card debt.

Older Americans are particularly vulnerable to credit cards and the trends suggest that this problem will only worsen in the upcoming years unless Congress enacts laws to reform credit card practices.

Thank you for inviting me to testify.

[The prepared statement of Ms. Porter can be found on page 48 of the appendix.]

Chairwoman MALONEY. Thank you, and we are working on legislation to curb these abuses.

Our next panelist is Ms. Barbara Whipple of the Law Firm Barbaruolo and you are from this area also. It is very nice to see you. Thank you for coming.

STATEMENT OF BARBARA WHIPPLE, BARBARUOLO LAW FIRM

Ms. WHIPPLE. Chairwoman Maloney, Representative Gillibrand, and members of the subcommittee, thank you for this opportunity to speak to you today.

My name is Barbara Whipple and I am an associate attorney at the Barbaruolo Law Firm where I practice, primarily in consumer debt. Prior to my going into private practice, I also was a law clerk to the Honorable Robert E. Littlefield, the United States Bankruptcy Judge for the Northern District of New York, the Albany Division. I'd like to thank you for letting me come and speak to you about what I see in practice every day.

What I can add to the subcommittee's examination of these issues are my experiences day in and day out and those of my colleagues across the country. The simple truth is that older debtors comprise a growing proportion of our bankruptcy clients. In fact, what has been researched and discussed over the last several years has come to bear out. The Consumer Bankruptcy Project found that the rate at which older Americans, those 65 years of age or older, filed for bankruptcy increased 213 percent between 1991 and 2001.

This trend of rising bankruptcies among older Americans is likely to continue. The steepest increase in Chapter 7 liquidation filings occurred among people older than the age of 55. Although the U.S. population as a whole is getting grayer, as the Baby Boomer generation ages, the percent of older people seeking bankruptcy protection is rising even faster. As a matter of fact, yesterday, I had an opportunity to speak to a Chapter 7 trustee. His comment to me when I said I was coming here was, "Barb, I've noticed that there have become two different categories of bankruptcy debtors, the elderly and everyone else."

The problem of rising debt among older Americans is exacerbated when the credit card debt is subject to exorbitant interest rates and a multitude of penalties and other fees. During the several years that Congress debated bankruptcy reforms, some of your colleagues referred to the debtors as "deadbeats" and "irresponsible." I must say I was with Judge Littlefield when the 2005 bankruptcy law was passed and my comment was, "If all of our legislation in this country is passed based upon sound bytes and misinformation as this Bankruptcy Reform Act, we are in a world of trouble."

I can tell you the majority of the consumers I see in bankruptcy practice are not deadbeats. They do not irresponsibly ring up fees and a majority of my clients incur debt with every intention of paying it back. Often my clients file for bankruptcy only after paying the principle for years and years and still see no relief on the credit card debt.

In 2004, a bankruptcy court in North Carolina ordered a credit card company to itemize the claims it filed in a Chapter 13 bankruptcy case. In the findings, the bankruptcy judge listed claims filed in 18 separate cases broken down as between principle, interest, and fees. On average, interest and fees consisted of more than half of the total amounts listed in the claims. In one case, the card company filed a claim in the amount of $943.58—$199 was principle, and $743.95 was interest and fees.

In another case, a claim of $1,100 was filed consisting of $273 in principle, and $738.64 in fees. A bankruptcy case from Virginia tells another story of the impact of credit cards and penalties on the ability of consumers to pay back the debt. During a 2-year period before she filed bankruptcy, a consumer made only $218.16 in new charges on her Visa. After making $3,000 in payments, all of which went to pay finance charges at the rate of 29.99 percent, over limit fees, bad check fees, and phone payment fees, the balance on her account increased from $4,888 to $5,357. On her Providien Master Card for the same period, she made only $203.06 in charges, while making over $2,000 in payments. Again, all of her payments went to pay finance and other charges and her account balance increased from $2,000 to $2,607.

The scope of the problem here has been well-documented over the course of your hearings. Consider the case of the witness who testified at the Senate Hearing, the Ohio resident who exceeded his credit card's $3,000 limit by $200 and triggered what ended up being $7,500 in penalties and interest. After paying an average of $1,000 a year for 6 years, the man still owed $4,400. Two local cases that I've had recently include residents in this area who ran up—both people were retired—over $100,000 in credit card debt in

an attempt to fix and pay them, they took a home equity loan out on their house. When they came to see me, their house was valued at $80,000. They owed over $125,000, and their disposable income at the end of every month was a negative $800.

Last week, I met with a woman who is 70 years old and simply cannot retire. Her disposal income consists of $1,400 worth of credit card payments per month. I said to her, "You need to retire." She responded, "I absolutely cannot afford to do that. Barb, I have convinced myself I will be working until I die."

National studies show that more households headed by retirees or those near retirement owe money and the typical debt level is increasing. According to the Employee Benefit Retirement Research Institute in 2004, 60.6 percent of families headed by someone aged 55 or older owed money. In 1992, 53 percent of similarly situated families owed money, and the average debt level rose from $29,000 in 1992, to $51,000 in 2004. Debt grew fastest among the poor, and among families headed by someone over 75 years old.

My experience is that credit card debt is one of the top reasons seniors seek bankruptcy protection. The older retirees are less accustomed to credit cards and more vulnerable to falling into a cycle of credit card debt led by raising interest rates, late fees, and other penalties. Other consumers who turn to me are embarrassed, ashamed, and often do not talk to their children about their financial problems. The biggest complaint I hear is, "I pay every month and the debt doesn't go down, even when I don't make a purchase." It eventually becomes evident that they may never pay off their debt due to the interest rate, penalties, and fees.

Finally, in conclusion, I would just like to say that every time I have met with an elderly debtor, I have had the experience where they're absolutely heartbroken and mortified. My sermon to them in an attempt to make them feel better is, if you have worked your entire life, you are 70 years old, you are set to retire, and you cannot because of credit card debt, you have not failed; the system has failed you. And I would like for that to be noted because there's no way that these people who should be enjoying all they've done, and reaping the rewards of all they've done their entire lives, should have to be sitting across from me in an office.

Thank you.

[The prepared statement of Ms. Whipple can be found on page 62 of the appendix.]

Chairwoman MALONEY. I want to thank you for your very gripping testimony and this is very much of a bipartisan effort on credit card reform. At our last hearing, Spencer Bachus, the ranking member of the Financial Services Committee—he is a Republican; I happen to be a Democrat—said, and I'm quoting for you, on the credit card hearing, this is what he said: "What did we do with the bankruptcy bill? We created more bankruptcies." And I think your final statement that it is a system that has failed the public that creates these high fees that are churning and churning and they can never seem to get out of.

Thank you for your work and for your testimony.

Ms. WHIPPLE. Thank you.

Chairwoman MALONEY. Mr. David Billet, the director of legislation and governmental affairs for the New York State Banking De-

partment. Thank you so much for being here. And how is our superintendent?

Mr. BILLET. He's fine. He is enjoying some vacation time in Cape Cod with his family. That's one reason he couldn't attend.

Chairwoman MALONEY. Thank you.

STATEMENT OF DAVID BILLET, DIRECTOR OF LEGISLATION AND GOVERNMENT AFFAIRS, NEW YORK STATE BANKING DEPARTMENT

Mr. BILLET. Good afternoon, Chairwoman Maloney, Representative Gillibrand, and members of the public. I am David Billet, director of legislation and governmental affairs for the New York State Banking Department. I'm pleased to be here today to make the following comments on behalf of the Department and Superintendent Richard Neiman. I will not repeat the testimony that the superintendent presented to the subcommittee at its hearing on June 7th, but there are certain points, however, that should be stated again.

First, consumer Impact. Credit cards are a major source of complaints for State and Federal law enforcement authorities and regulators. The major problem that arises for consumers having a credit card account is burdensome fees. You've heard that over and over, particularly for those consumers who do not and cannot pay their credit card bills in full each month. The amount charged in fees has skyrocketed and can cause consumers to fall deeper into debt. Early and minor mistakes in securing and using credit can lead to spiraling debt burdens, punitive fees, and possible long-term destruction of the borrower's financial well-being.

The following are card issuer practices the Department considers misleading or abusive and of greatest concern:

One, universal default. This practice permits credit card issuers to increase a consumer's interest rate, often to 30 percent or higher, for conduct that has no relationship to the consumer's payment history with the card issuer.

Two, penalty rates and late fees. Consumers are often penalized for minor failures. A credit card payment that is only nominally late can trigger huge interest rate increases and/or over-limit fees that are often applied retroactively to existing balances.

Three, billing cycle and similar practices. Many credit card issuers charge interest even for the amount of credit card debt paid on time.

Four, unilateral changes in terms. Many credit card agreements are one-sided and allow the creditor to change the terms for "any reason," with as little as 15 days' notice to consumers.

Five, deceptive promotion of subprime credit cards. These cards target consumers in economic distress or who have troubled credit histories with deceptive solicitations and misrepresentations of the terms of credit, and impose excessive fees, especially initial fees, that push consumers quickly into debt.

Six, lack of clear information abut credit card terms. The problem is not simply a proliferation of onerous credit card terms and fees. The contracts have excessive, dense, and incomprehensible text.

Seven, regulation of the credit card industry. The industry is dominated by national credit card bank issuers and subject to the realities of Federal preemption. The 10 largest credit card issues hold 90 percent of the outstanding balance of credit card debt nationwide. Only two of these issuers are State-chartered institutions. All of these issuers are headquartered in States that have favorable interest rate and usury law provisions and those laws govern what banks may charge.

Based on various Federal statutes and court decisions, banks headquartered in one State may export their interest rates to consumers resident in another State. Further, Federal law has also expanded what comprises such "interest." It includes, among other things, numerical periodic rates, late fees, insufficient fund fees, over-the-limit fees, annual fees, cash advance fees, and membership fees. To the best of the Department's knowledge, the assets of self-issuers in New York State represent one percent or less of the total domestic banking assets for institutions headquartered in this State. This provides some sense of the extent to which cardholders in New York would be affected by New York State regulation of credit card interest rates and practices.

States have essentially no authority to apply their consumer protection laws to the activities of the Nation's largest credit card issuers. In short, State regulation of credit card practices is presently not a viable option. The only option is for the Federal Government to adopt national standards to address credit card problems on a nationwide basis which then would protect all citizens in all States.

Eight, problems of the elderly using credit cards. The Department has no particular expertise with respect to identifying and quantifying the problems associated with elderly use of credit card accounts. However, we believe that such problems are not significantly different from those that confront other consumers. The following, however, may be key factors for elderly consumers:

Understanding the terms and conditions of credit card accounts. Presumably, a large majority of consumers acquire a credit card or open a credit card account as a result of a mail solicitation. These solicitations usually do not provide a full statement of all the terms and conditions that apply. Further, as noted, the contracts are voluminous and not easily understood. The Department doubts that the majority of consumers, not just the elderly, who have credit card accounts have fully ever read these statements.

The Federal Reserve Board has undertaken a revision of Regulation Z, which implements the Truth in Lending Law, governing credit card practices. This may result in requirements making statements of the terms and conditions of credit card accounts clearer and more understandable, and provide a better basis to compare credit card offers. The Board's initiative, however, will likely only be limited to enhancing disclosure of such terms. The proposed revisions will not cap or prohibit certain fees. They will not limit the amount of interest that may be charged. They will not outlaw default rates. And finally, the implementation of these requirements will not happen shortly.

The Department offers these suggestions. If consumers have a banking relationship, they should explore with the bank or credit

union what credit card accounts may be available through the institution. This will at least give a consumer an individual with which to discus the terms and conditions, and it also gives the consumer a local contact if problems arise. Understand, however, that the credit card likely is issued by a subsidiary of the bank and not the bank itself, so the consumer may be referred to another contact that can be contacted only by telephone. Further, if the account is arranged through the local banking relationships, the consumer should consider establishing an automatic electronic monthly payment arrangement directly from his or her checking or savings account to cover at least a portion of any monthly balance. This will avoid the charging of penalty fees due to any oversight to make the payment in a timely fashion.

Given the triggers for the application of these fees, and that terms of the agreement may be changed unilaterally by the issuer, it is a basic necessity that any consumer understand first and foremost what he or she will be obligated when using the credit card.

How will the credit card be used? And this goes particularly to some of the points that Ms. Porter was making. Many consumers acquire credit cards to make it easier to purchase goods and services. Using a credit card avoids having to write a check or carry sufficient cash to make a purchase. Using a card also permits consumers to purchase large ticket items, such as a refrigerator or a TV over time when there is insufficient, periodic income to pay at the time of purchase. A credit card, however, should not be used to bridge short-falls in disposable income except in the case of purchasing necessary but costly large ticket items. A credit card should not be used to make necessary and daily expenditures, except as a convenience. When necessary and daily items are purchased, monthly disposable income should be sufficient to pay for those items, either at the time of purchase or in full when the monthly credit card statement is received. In short, use of a credit card is not intended to make up for lack of disposable income; its use is a convenience.

If elderly consumers have other sources of equity, such as a fully paid for home, or even close to a fully paid home, it is better that this equity be used to pay for large ticket items or even to provide sufficient disposable income for necessary and daily expenditures. A home equity loan or a reverse mortgage will access this equity. If the equity is not needed for daily expenditures, the mortgage loan should be a line of credit rather than one that provides regular monthly distributions of equity to the consumer. These loans likely will not have as high an interest rate charge or the various fees that accompany a credit card account. Such alternatives to credit cards again make the point that the credit card should only be used as a convenience.

Improvements in Federal regulation of the credit card industry. Congress should consider setting a national affordability standard that requires documentation of sufficient disposable income for all forms of consumer credit. The superintendent made reference in his testimony to the affordability standard contained in section 6–L of the New York State Banking Law, which applies to high cost home loan mortgages. The consumer must have 50 percent of his or her disposable monthly income remaining after all other debt ob-

ligations are deducted, including the required payment for principal and interest and escrow of the mortgage. What is crucial with respect to a credit card account, which is an open line of credit, is that an affordability standard should apply to the total available credit line. As is the case with the current subprime mortgage problems, much of this debacle is due to creditors extending credit without regard to the consumer's ability to pay total debt, fully amortized.

As Congress tracks the Federal Reserve Board's rulemaking revisions of Regulation Z, it should consider going beyond any final standards that it considers inadequate. Many times initial proposals by Federal bank regulators or regulatory agencies, related to consumer interests, are narrowed or reduced under industry pressure. Limited as the Board's efforts are to expanded disclosure, nonetheless, it is likely that its initial proposals are well thought out and justified.

The State Regulatory Role. When considering legislative options to reform credit card lending practices and disclosures, States can play an important role in gathering information and monitoring compliance. The Banking Department is an intake for many consumer complaints that involve federally regulated financial institutions. The Department forwards and tracks these complaints to the Federal regulator. Further, the Department has enhanced this activity by entering into a Memorandum of Understanding (MOU) with the OCC that provides for complaint referrals between the Banking Department and the OCC and reflects a commitment on behalf of both agencies to share information concerning the status and resolution of complaints.

States are also in a position to provide valuable public information about credit card practices and the cost of credit. The New York State Banking Department publishes a quarterly survey of credit card interest rates that is available online and in hard copy upon request. The survey provides comparative information about rates, over the limit and late fees, and the existence of universal default and penalty provisions for each credit card. The Department also engages in extensive consumer outreach to organizations to promote financial literacy, especially in regard to the use of credit.

In conclusion, as the superintendent stated, credit cards are a convenient method of payment for millions of Americans, and the availability of credit to Americans across income lines have undeniable benefits to individuals, households, and the economy. Lending practices that have the effect of destroying credit ratings and borrower's financial futures, however, destabilize the economy and ultimately fly in the face of our goal, which is to make the widest possible range of safe and sound banking services available to consumers at all levels of our society. Thank you.

Chairwoman MALONEY. Thank you so much. I am going to add a link on my Web site to your comparative survey on interest rates. That's very, very helpful for consumers and I wanted to note that the New York State Banking Association has a very privileged situation now. Richard Neiman, our superintendent, has been elected to be the leader of all the superintendents of banks in our Nation,

so their voice has a very important voice now when it comes to consumer issues and reform.

In regard to your statement on the difficulty of understanding your balance, understanding your credit card receipts and billing questions, one of the most astonishing times that I've had on the Financial Services Committee was when the head of Freddie Mac, one of our largest GSEs, testified that he and his wife sat down and spent down well over an hour trying to understand their credit card statement and they could not understand it. We had one of the heads of a major financial institution saying that he could not understand it, so you can understand why older Americans, and all citizens, are having trouble with this and why we welcome and intend to legislate Regulation Z that the Fed has come out with to make it easier to understand.

I have a number of questions, but we want to get through our panelists and ask questions all together. Thank you so much for coming and all of your recommendations are very, very helpful.

Our last panelist is John DeCelle, the executive vice president of the State Employees Federal Credit Union. Thank you.

STATEMENT OF JOHN T. DeCELLE, EXECUTIVE VICE PRESIDENT, STATE EMPLOYEES FEDERAL CREDIT UNION

Mr. DECELLE. Hi, there. I am also from the area.

Chairwoman MALONEY. So many wonderful participants from Saratoga.

Mr. DECELLE. Great place to live, great place to work.

Chairwoman MALONEY. I want to come back on vacation.

Mr. DECELLE. I'm thrilled to be the last person here talking. But seriously, good afternoon. As you said, my name is John DeCelle, and I am an executive vice president for SEFCU, a credit union based in Albany, New York, formerly known as the State Employees Credit Union. I'm pleased to be testifying on behalf of New York's credit unions and the New York State Credit Union League and their affiliates.

Since 1934, SEFCU has been meeting the financial services needs of consumers and commercial members in upstate, central, southern tier, and western New York. Today, we have over 150,000 members, 21 offices, and over $1.4 billion in assets. Since 1917, the New York State Credit Union League has been the principal trade association of New York State and Federal credit unions. Today, NYSCUL represents over 500 credit unions and their 4.1 million members.

Chairwoman Maloney, Congresswoman Gillibrand, and members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, I thank you for the opportunity to provide comment from the credit union movement regarding credit cards and older Americans. I think you'll find our side of the story is very different than some of the examples you've heard earlier from some of the big, bad monoline banks that are out there.

Throughout our existence, New York's not-for-profit credit unions have remained true to their origin and continue to focus on their mission to promote thrift and financial stability. We commend the subcommittee for calling this hearing to examine credit cards and older Americans, and I look forward to telling you about how credit

unions typically operate their credit card programs and how they do so with the best interests of their members in mind.

Like other credit unions in New York State, SEFCU serves the financial needs of its members, some of whom would not be able to secure financial services from other financial institutions. We're building branches where other banks are pulling out, as an example with the Albany Housing Authority Branch we're putting in next month. That will meet the needs of consumers in lower-income neighborhoods. When we design products and services, we incorporate strategies that help us serve these households so that we may live up to our mission of improving the quality of our members' lives.

New York's more than 500 credit unions, member owned and not-for-profit cooperatives, strive to help their 4.1 million members create a better economic future for themselves and their families. We are also concerned about the growing problems associated with credit card abuse and older Americans.

Increasingly, older Americans, those 55 or older, are caught in a financial crunch that is forcing them to rely on credit cards for survival. This really does correlate to the national savings crisis that we're currently in. Recent studies indicate that older consumers use their cards more often and with less care than adults aged 18 to 34. Reduced retirement savings due to the stock market, rising medical costs, and fixed incomes often leave seniors no choice but to rely on credit cards to survive on day-to-day expenses. Many are raising their grandchildren and have needs similar to young parents. Credit unions recognize this group and the needs that they have and we do so by offering reasonably priced financial products so that they learn to manage a successful retirement on a limited income.

As you know, a September 2006 study conducted by the United States Government Accountability Office, GAO, found that some issuers of credit cards charge excessive fees and rates of interest. The study also found widespread use of weak disclosure practices by the largest credit card issuers. Many credit card agreements contain questionable terms and conditions, including universal default clauses that allow issuers to raise a borrower's interest rate based on indebtedness or late payments to other creditors that previous panel members have mentioned.

What's interesting about credit unions is we're not for profit, cooperatively owned, financial institutions that return our profits to our members, either through a dividend payment or through a lower cost for services in terms of branching and other services. To participate in any activity that would take advantage of our members, who are also our owners, would be counterproductive to our structure and our philosophy. Our philosophy is supported by our volunteer board of directors, a board that is elected by the membership and has the responsibility to serve the membership and is not focused on making profits for stockholders.

Credit unions seek to offer the most fair and affordable credit card programs and have taken positive steps through their voluntary efforts to educate all members, including seniors, on how to manage credit card debt. At SEFCU, we're committed to educating our members on how to manage their financial lives responsibly,

and will continue to do so in an effort to reduce the instances we see each day, of members committing to credit terms and conditions that are predatory in nature.

We work with our members fully to explain credit card rates and fees that they are currently paying and to show them the true cost for items purchased. In all of the examples given earlier, and from what some of the comments were that we had, financial literacy really is necessary to help improve the situation. At SEFCU, we actually offer a program called, "It's Gonna Cost You" that will touch on why you shouldn't be using a credit card for certain types of purchases or why rent-a-centers are not always the best thing. We encourage our consumers to establish solid saving habits for purchases and the proverbial rainy day. If you were to ask an individual what the interest rate is on one of their credit cards, you will find that more than 80 percent of the time they cannot answer that question. But if you ask them how many miles they earned last month for their airline card, they could probably tell you that.

According to research conducted by the Credit Union National Association, the average fixed-interest rate on credit union credit cards is three percentage points lower than the rate on cards issued by banks. The difference translates into an annual savings of $240 on the average American household credit card with an outstanding balance of $8,000. Additionally, according to Bankrate.com, credit unions average more than one percentage point less on interest for a variable-rate credit card compared to that of banks.

According to the latest Credit Union vs. Bank Datatrac Ratedex, in comparing credit card rates, it shows that credit unions charge an average credit card rate of 12.25 percent, compared to the average rate of 15.04 percent. The GAO report found that credit card issuers typically apply multiple interest rates to the same card, depending on the circumstances. For example, the credit card industry typically uses one interest rate for cash advances, another for regular purchases, a third for balance transfers and account checks, etc. That gets very, very confusing. When a consumer pays off a portion, or even the majority of a monthly balance, the credit card industry charges interest on the entire amount previously owed, including the portion that was paid before the due date. In the best interest of its members, credit unions don't follow this type of practice which results in a much higher—those practices result in a higher cost to card holders.

At SEFCU, we offer card programs that provide low interest rates, no hidden fees, and other benefits that meet the needs of our members. Like other credit union credit card programs, we have designed ours to be understandable, and to add value to membership. This differs from the industry norm as it relates to grace period policies.

Although many consumers think that all credit cards provide them with a grace period before the interest is charged, the fact is that most credit card issuers do not provide a grace period to cardholders unless they pay their credit card balances each month in full. If a consumer has any balance owing on a card from the prior month, there is no grace period on new purchases. Every purchase racks up the interest from day one. Nine out of ten credit unions

nationally offer their members a grace period on purchases with 23 days being the average, even if there is an outstanding balance on the members' card, very different from the industry norm.

Credit unions also recognize that fees associated with credit card programs are a major component of the credit card problem among Americans. Credit union card programs typically allow a member an average of 14 days to pay after the due date without penalty, and if the credit union charges a late fee, it's usually around $19, much lower than the industry average.

Credit union card programs do not include fees such as balance transfers, new account, or telephone payment fees, again, setting them apart from the for-profit card issuers. In addition to structuring a card program's financial parameters with the best interest of members in mind, credit unions also provide a high quality member service for their members who carry a credit union credit card.

As we heard earlier, a lot of times with larger credit card companies, you're forced to have a P.O. Box or a toll-free number to deal with a representative. At a credit union, you simply walk into a branch and you can talk to any representative and they can help you. It's that one-to-one service that makes a difference.

Credit unions are also well aware of the problems that senior citizens face as credit card offers continue to be dangled in front of them at a time in their lives when many have very limited income. Many credit unions continue to work with these members, educating them not only about what they need to get their current finances in order, but also providing them with the tools necessary to make good life-long financial decisions.

At SEFCU, we offer our members the ability to work with certified debt counselors, and they're available to assist people in understanding how to manage their debt and household budgets in a better way. Credit unions believe working one-on-one with adult members is an effective way to teach them the skills necessary to improve their financial position. Credit unions in New York agree that to truly change the level of financial literacy of their memberships they had to take education to a new level. The New York Credit Union Foundation also works with the National Endowment for Financial Education to bring education materials to credit unions and community centers for uses of financial literacy. At SEFCU, our Member Education Department logs hundreds of hours each year, working with over 2,000 individuals annually, helping them through education efforts to make better and more well-informed financial decisions. We offer these programs to our members, at community outreach centers for their clients. We work with local schools and we also work with the local Department of Social Services, striving to help people go from welfare to workfare.

Many have proposed that additional oversight is necessary to address abuse within the credit card industry. As you gather information and deliberate such an approach, we ask that you consider the following:

First, the New York Credit Union League and I believe the industry is sufficiently regulated by disclosure requirements. If additional Federal disclosure mandates are enacted, it will cause further confusion at the consumer level. As credit card issuers seek

to comply with various State and Federal laws, the content, the length of complexity of disclosures and agreements, it will be counterproductive to the intended goals. Sometimes when you add more, it makes it more difficult to understand.

Also, credit unions are only able to offer credit card programs to their membership by contracting with smaller unions—excuse me, are only able to offer credit card programs to the membership by contracting with outside processors. We ask that you are mindful of new laws that would likely increase expenses to these processors, which will translate into adding cost for credit unions to run their programs. Currently, credit unions are addressing increases in insurance premiums, insurance coverage limitation, and increased security requirements on credit card programs due to the increased amount of credit card fraud. Adding to these costs are challenges and also adding with the additional disclosure requirements, will definitely move us to the question, "Can we afford to continue to offer a credit program to our members?" If we have to answer that question with a "no," that really limits where consumers can go to get a credit card that meets their needs and provides lower rates and fees.

There has never been a need for credit unions to engage in any of the abusive credit card practices discussed here today that could prove to be detrimental to their members, their owner's financial well-being. Credit unions, because of their not-for-profit structure, have no shareholders to pay at the end of the month. Any profits made from credit union credit card portfolios are either returned back to its members in the form of lower interest rates or low or no fees, or reinvested back into the credit union to allow it to provide better services to card holders. We urge the committee to look towards further enforcement of current regulation and financial literacy education as a means of tackling this growing concern, perhaps using the credit union program as a model.

Members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit: I, along with the New York State credit unions and their credit union league, and their 4.1 million member-owners, applaud you for your leadership and thank you again for calling this hearing.

[The prepared statement of Mr. DeCelle can be found on page 32 of the appendix.]

Chairwoman MALONEY. Thank you, and thank you for your insightful testimony. We'll certainly be considering it when we draft legislation. I would like to note that without objection, all of your written testimony will be made part of the record. You may add other supportive documents if you so wish.

I would like to ask the first question. Actually, what I think we ought to do is switch. I think that they should come up here and we should move there, because they're going to be passing the microphone back and forth and answering jointly.

[Pause]

I would like to begin. I don't know where Kirsten is. She's coming right back? Okay.

I would like to begin by asking Mr. O'Connell and Ms. Porter, and then anyone else who would like to add to it, what is behind this spike in credit card debt? Why is it jumping so much for the

elderly now? We saw the AARP report that showed the tremendous spike. To what extent have credit card practices contributed to this problem and what, in particular, practices are contributing to this spike in credit card debt?

I would also like a clarification from Ms. Porter. You were saying that if you moved to a debit card, it would be better for the seniors, but we have received some reports that debit cards are not as safe as credit cards in terms of identity theft, that there are a lot of identity theft efforts against elder Americans, and that debit cards are not as secure.

Now we have put forward, in our hearings, the concept that at the point of sale, you get the information that you're overdrawing your account or what your account is, similar to what we have proposed for the ATMs. We are being told by the industry that they do not have the technology to make that happen, and if any of you have any information or comments on that, that it's too costly and that the technology is not there for the point-of-sale information to anyone, not just the elderly, but anyone, I open it up to all panelists.

Ms. PORTER. I'd like to start with responding to the point-of-sale disclosure. There's no doubt that the industry doesn't want to do this because they are the people who have conducted the studies that show that when you spend with a credit card, you spend more, and part of that spending effect goes to the fact that with a debit card, people are much more aware that the money is coming out today.

I would suggest that if there are concerns about implementing point-of-sale disclosures, there could be simply a 1- to 2-year phase-in period. I believe something like 95 percent of credit card transactions are already processed simultaneously online with immediate communication. There could be a waiver for that 5 percent of transactions that are still done with the old fashioned paper system, but a phase-in would address that.

Regarding the debit cards and identity theft, I am not aware that debit cards lead to more instances of identity theft than credit cards. I do think credit card issuers have been very aggressive in promoting among consumers the idea that they will do more to help you in the case of identity theft than banks, but I have not seen any evidence to show that actually is true. I would suspect that the credit union representative here would say that they do a lot at the local bank level in any way to help.

There are some concerns about debit card overdraft practices, and I know that the subcommittee has already held a hearing addressing those, so I would encourage you to implement those simultaneously to make sure that consumers get the same protection in the case of fraud whether they use a credit card or a debit card to pay because the very best academic research that exists today shows that when you spend with credit cards—even if you're a convenience user—you spend more. That is a real problem with seniors trying to adjust to retirement income and live on fixed incomes.

Chairwoman MALONEY. Any statement on why are we seeing such a spike in debt for elder Americans? Everyone is reporting on it. Why is it jumping up so much now?

Mr. DECELLE. I think primarily because the cost of living is increasing. Seniors are on fixed incomes and they're relying on credit cards, as I stated earlier, to help supplement their income. Again, I think that goes back to the true need for financial literacy because there are other alternatives out there other than simply using your credit card to float a 36-, 60-, or 90-day loan and with regard to the previous question on debit card use, I think what's happening in terms of most Americans associate their debit card with their checking account, so if their identity is lost, they don't want their checking account to be impacted. Again, that goes back to the need for financial literacy education and through cooperative efforts, SEFCU and the New York State Credit Union League in the fall of this year are—will be delivering a whole series on how to protect yourself identity theft should that happen. Again, it goes back to the more knowledge we can give to consumers, the more powerful they'll be in making their own decisions.

Chairwoman MALONEY. Mr. O'Connell, since it was your report from AARP, I'd love to hear your comments on that.

Mr. O'CONNELL. I mean, it's everything we were just hearing about, obviously, the cost of living and I think there's a myth in this country that older persons are well off. The Baby Boom generation is about to become aged, but the reality is that more than 60 percent of older Americans still rely on Social Security as their primary income and Social Security income is less than $11,000 a year, on average. You combine that limited income, the cost of living increases, and now the availability, the marketing that we're seeing by the credit card companies, and people just would tend to look to credit as a solution and then they get caught in that spiraling increasing cost.

Ms. GILLIBRAND. Thank you, members of the panel. I appreciate it. I really want to talk about some of the policies that we, as Members of Congress, can put in place to make a difference. I appreciated, Mr. O'Connell, that you gave four suggestions. You wanted to improve disclosure of terms and conditions of credit card, prohibit universal default, a limit on penalty fees and interest rate hikes and prohibit mandatory binding arbitration. I would like to go through each of those suggestions and get your comments on it, specifically about how to implement it. So if we can start with the first one, improve disclosure of terms and conditions of the credit card.

How would you like to do this, what recommendations specifically do you want made?

Mr. O'CONNELL. I'll turn to my colleagues. I can talk more about the kinds of improvements that would be needed in disclosure.

Ms. PORTER. I think we all would say that the Federal Reserve Board has taken an important step in actually consulting with consumers to ask them, why are these disclosures so confusing, and so we can look forward to, I hope, improved disclosure at the time that you take out a card and in your periodic statement, but I would just say that all of the academic research suggests that for a variety of reasons, nobody takes out a credit card intending to get hit with lots of fees. So we don't look at the fees, because we don't plan on being hit with exorbitant fees, and so we're not processing those disclosures no matter how big you make the font. If you sim-

ply think they won't ever apply to you, you don't read them, and that's why a point-of-sale disclosure, a warning, that you're about to exceed the limit and a notification of what that's going to cost you, a reminder printed on every credit card receipt on when the payment will be due for that transaction is important. The point-of-sale technology, if banks can do it, and the banks way, way lag the credit card issuers on the technology front, but if the banks can implement things like that at point-of-sale disclosure at ATMs and debit card users, there's no reason that credit card issuers, at least over a phase-in period of 1 to 2 years, wouldn't be able to make some more point-of-sale disclosures.

I am all for improving the initial disclosures and the periodic statement disclosures, but I don't think they will have the same effect on consumer behavior.

Ms. GILLIBRAND. Any other specific suggestions on that one?

Mr. O'CONNELL. I don't know specifically, but I certainly know that my colleagues in Washington, we can address that and get something in writing to you in terms of the specifics.

Ms. GILLIBRAND. Okay.

Chairwoman MALONEY. I just want to say that at the panel we had last week with the issuers, two of the issuers came out voluntarily saying that they will no longer do universal default, and that they would do a 2-year fixed rate, which I think is an extraordinary accomplishment even before legislation, that they are willing to set that standard, and hopefully others will repeat it.

I think one of the problems that you hit on, Ms. Porter, is that we are accustomed to buying things in a certain way, and when we buy a garment, or a car, or whatever, they don't jack up the prices overnight and add all these other fees that you don't anticipate. Yet, the credit card industry does that. They can jack up prices and add all these fees and people don't expect it and they don't see it coming. And I think that's one of the reasons that it gets run up so quickly.

Ms. GILLIBRAND. The third recommendation was limits on penalty fees and interest rate hikes. What would you specifically like to see if you could make a recommendation?

Mr. BILLET. The key, at least in my opinion, and I think the opinion of a lot of my colleagues in the Banking Department, goes to the issue, although I'm not sure whether Congress in this day and age could successfully address it. It goes to the ability of these credit card companies to export their rates. If you, as a banking institution, in order to do business in this State were subject to New York State law, and the State could also define what constitutes interest for that purpose, then you would have effective controls in this State over what would happen at least to the residents in this State.

But the fundamental problem with the fees issue is, in my mind, that under regulatory interpretation which has subsequently been upheld and abetted by the Federal judiciary and the Supreme Court, is that fees also constitutes interest and that's why that can be sent out as part of the credit card charges. So when you address that issue, you have to keep that in mind. It's the same as the interest rate charge, so when you address that, however you intend to do it, somehow you have to address that problem.

Ms. PORTER. I would concur. There is a real unfair advantage that is given to the national banks because of, to be frank, very weak enforcement activity by the Office of the Comptroller of the Currency, which is a Federal agency that very few people, including most of the people in this room, have ever heard of, but it is the agency that is supposed to be protecting and monitoring and regulating Federal banks. And so I think our State banks and the credit unions face a real disadvantage in trying to provide the best possible services for their customer when they compete with national banks. And the State banks, when they try to charge a fee, they have to deal with Mr. Billet. When the national banks up their late fee to $39 or $49, they effectively know they can do so with no oversight and no regulatory fear. So I really applaud the efforts of the subcommittee in the last year to bring some scrutiny to the credit card industry. And I think the reason you're seeing issuers stand up and say we'd be happy to eliminate universal default is because I think they are afraid that the subcommittee is actually getting a handle on how serious this problem really is. So you just see credit card issuers, I think, are really worried that America and its representatives have finally had enough of some of these practices.

Mr. BILLET. I just would add, just to try to make this point as clear as possible, that the reason State law applies to these institutions, and it depends on where they're headquartered, which is usually in States that have favorable usury and interest rate laws, is because there is no Federal law that regulates interest or these fees essentially. So whatever State you're in, if you're a New York bank and you sell to somebody or give a loan to somebody in Ohio, New York law applies with respect to the fees and the interest rate charge.

Ms. GILLIBRAND. The last issue is to prohibit mandatory binding arbitration. Why is that affecting the issue and why do you recommend that as a change?

Mr. O'CONNELL. I can only reference the example we gave of Ms. Owens. When she got to a court, the court settled it, as opposed to if she was in a situation where she had to go to a mandatory arbitration, in an arbitration venue that was set up by the credit card industry, and she would obviously be at a great disadvantage.

Ms. PORTER. I am actually conducting some research about this practice because increasingly what we see is not just credit card issuers using arbitration to resolve an actual dispute, that is a true disagreement about an asserted violation. But instead what we're seeing is widespread use by credit card companies of a few arbitrators in particular to simply collect debts. So rather than using the existing court process of filing a small claims judgment, obtaining a judgment, and having the judge make sure it's all fair and correct, they are sending people through an arbitration process as a way to shortcut the traditional collection process and the protections that exist at State law.

Mr. DECELLE. I guess I'd like to just go back to something that Mr. O'Connell referenced in his statement and that is, that there is not that one-to-one contact that's taken place with the larger card issuers with their card holders as they're going down that very slippery slope of going into debt and I think if you take a look

at what the credit union movement is doing we have debt counselors that work with our members so that they don't get to that point of needing to go to arbitration. Again, I see some people are kind of shaking their head. We're not the end-all, be-all, but what we are is a great solution to be able to work with consumers so that they are able to make better and well-informed financial decisions. And again, not to sound like a broken record, we need to do more in terms of financial literacy and financial education from the elementary school right into buildings like this, a senior citizens' center.

We need to do a better job of getting the message out on why taking a zero percent credit card offer for 12 months is not the best solution to be able to roll some debt so that you have some alleviation of interest rate. We take a look at the savings rate crisis that we're in. We as a country are not savers, so to think you're going to be able to roll a 12-month debt at a zero rate on a card and have it paid off in 12 months, if you're not already a good saver, that's not going to happen, and that's where we need to do a better job and as credit unions do, working with members, working with community resource groups, working in the schools, and working with senior citizens on how to develop good habits in terms of financial decisionmaking.

Ms. GILLIBRAND. What is your opinion about whether this issue is going to get better or worse? Is the next generation ready for this or is it something that you think is going to increase because of the Baby Boomer generation? And related, who is the worst hit by this? Is it something that is affecting all retirees or is there a specific group who are being affected more?

Ms. PORTER. I would just say that I anticipate, at least for the foreseeable future, that it is going to get worse. The Baby Boom generation has an appetite for credit cards that is not really paralleled by other generations. Young people, because they became aware of credit cards much earlier, many young people do not use credit cards. The credit card rate among young people is actually on the decline. But the Baby Boom generation continues to escalate their credit card use, exactly at the time that they've saved less than prior generations and are heading into retirement.

So I think we're likely to see, at least for the next 10 to 20 years, a worsening of these problems.

Mr. BILLET. I will tell you from my own personal experience, I agree with that assessment by Ms. Porter. My children are recently out of college and they had credit cards and started to learn how to use a credit card and had some rough roads and they also obtained debit cards at the same time and fundamentally they're using the debit card for their daily expenditure purposes and are using the credit cards for what they are intended—to hit that big ticket item when you don't have sufficient income at the time of payment.

Ms. WHIPPLE. I do agree with the panelists. I just have a little bit different take on this. I certainly think the elderly are going to be extremely hard hit. I think it has to do with not only the fixed income, going back to your question, Madam Chairwoman, there are a variety of factors that have converged. The lack of medical and health insurance is one of the most disturbing and distressing

reasons why people are coming into my office. We've gotten to the point where I have people literally sitting in front of me saying, "I can't take my medicine, I can't afford it." So that's a huge one I think that affects the elderly more just as we grow a generation.

I also do some credit abuse resistance education for high school and colleges and our theory was that you go into high schools and colleges to prepare the college students for the day, the first day they walk on a campus, and they're going to have Capital One sitting there, and Capital One is going to say, here's your free frisbee, here's your great t-shirt, here you go. All you have to do is sign here and guess what, it's free money. By the time these kids get out of school, if they're not educated, and I think a lot has to do with education, I think the statistics are that that between 19 and 24-year-olds, they are increasing in bankruptcy as well as the elderly. I think the Baby Boomers are in a position right now where they're robbing Peter to pay Paul. I don't think they recognize the debt that they find themselves in and I think the elderly are a little bit more wise and will be able, when they finally hit a point they say okay, I am in trouble now. They may be a little bit quicker. You play the game right, you can use credit cards to move money around for years and years. I have seen people do it, and at the end of the day, you are still going to end up in my office.

So I think that even though the Baby Boomers might be moving the money around, our older generation and our younger generation are where we should probably be focusing so that we can teach the Baby Boomers where they're going and they can, in fact, teach our children. We're the first generation to have credit cards. My parents didn't have a credit card. So you give somebody a credit card, and say, here you go, pay your money, and everything is fine and dandy. I don't think it's on luxury goods and I certainly don't think that it's a situation where people are saying, let me go out and use a credit card to buy this, that, or the other thing. People are using credit cards now to survive and that is where the problem lies. Because if you have to rely on a credit card to survive, you will never be able to pay that credit card off.

Mr. DECELLE. Let's pass the microphone. I absolutely agree with you that people are using credit cards as a means of survival. However, I think what we need to do as an industry is we need to continue to work with our consumers, our members, our customers, however you want to refer to the segment and educate them on all the other alternatives that are out there other than living day-to-day on a credit card. I do disagree that I don't think this is an issue that's relative just to seniors and to the younger generation. I actually think the younger generation—I never thought I'd say that, the younger generation—I actually think younger Americans are more comfortable using a debit card because they're not fearful of that transaction hitting their checking account versus older Americans who sometimes feel like they don't want those transactions just hitting their checking accounts. They're used to once a week sitting down and settling their bills. So I think that's where education plays a key role.

Again, I think it goes straight across the board and I also think some of the difficulties we're having tie directly back to the fact that as a Nation we have the lowest savings rate since the Great

Depression. My parents were savers. They didn't buy a house, buy a car, whatever, unless they had the money where they go and go with a cashier's check and make that payment. We're not savers and that's part of what the problem is nowadays. We're not saving enough for that proverbial rainy day and when the clouds open up, what do you do and who do you go to and who can help you?

Chairwoman MALONEY. Thank you. I would like to ask the audience a question. I'd like to know how many of you have a credit card? Can you raise your hands? Okay. And how many of you use a credit card? How many of you have a debit card? Much fewer. How many of you use the debit card? So how many of you have a credit card or debit card story to tell us that we could hear? Quite a few. Okay.

I want to ask one question that refers to the bill that we're working on, and then I would like to listen to the audience, asking a question. And I'd like to start with Mr. Billet because I know we're running out of time here so I want to get your responses to this idea and see whether or not you think this would help solve the problem. We're talking about disclosure. We're talking about choice. What if you had a requirement that you had to disclose to consumers exactly what everything was going to be and if you change that, if you change that with an increased fee or any increased interest rate you had to notify the consumer, we are increasing your fees. We are increasing your interest rate, it's going to be this much more and then you gave the consumer 45 days to make a choice. They could freeze their account and leave it as it is at the agreed amount and let them pay it off over a year or they could decide to opt-in, yes, I agree to pay that 18 percent interest increase. In other words, informing them. As we were talking, Kirsten and I, about how many solicitations we get from credit cards, they fight very hard to get that customer. I would think that if they had that they would be very cautious about raising fees and interest rates because they could lose that customer to a competitor who is offering a much lower fee.

Do you think that would curb the challenge that we have now? Allowing them to know exactly what's happening and allowing them to freeze their account at that amount so that they could pay it off, go to another card, or just—your response?

Mr. BILLET. I think that would address the issue where the fees and the late penalties and what have you essentially constitute so much of the debt that you can't pay off the principle which are the stories you heard today.

That also means that, in effect, the credit card will not be able to be used again. So that's the other side of the story.

Chairwoman MALONEY. You could go to another credit card that has no fee. Competition between the credit cards are immense.

Mr. BILLET. That's true, but I would say those kinds of changes will have a ripple effect than with respect to the availability of credit. So what you see now is uncontrolled solicitation may, in fact, dry up or be significantly reduced. Now that may be a good outcome in that sense, but that—it's one of the things you have to think about with respect to what is called default rates or penalty rates. You have to understand—the thing you have to realize about credit cards, it is an open line of credit, so our banker friend from

the credit union will tell you that if that person's debt increases, that person becomes a greater risk. And normally, under all rules of banking, that person should pay the higher rate of interest for any further use of the debt that they have. So that's what you're going to hear from the industry. I can guarantee it.

Ms. PORTER. I think it's important, I think you might want to consider that many consumers already have this option to stop using the card when they get notification of a fee hike. Now it may well be that the notifications are not clear enough and so consumers don't take advantage of that option. But I would also suggest that there are real problems with suggesting that if you don't like what card issuer "A" does, keep that balance, and go get card "B." It sort of facilitates the growing number of cards which can have a detrimental effect on people's credit scores and sort of shifting among cards is not necessarily the ideal financial practice.

I also think it's important that you consider at one point you said in describing the proposal that consumers would have to opt-in to the higher rate and my guess is that the industry is conceiving of this as a very different proposal which would require the consumer to affirmatively notify the industry that they want to take the free option. So I think it will make a difference of how it's framed, whether the assumption is you don't want to be charged the higher rate and you want to stop or the assumption is that you do. It will make a different on how effective it is.

Chairwoman MALONEY. Ms. Whipple?

Ms. WHIPPLE. I am a proponent of all and as much disclosure as you can possibly give. My one concern would be if there was a way for it to be a one paragraph disclosure as clear and concise because if you get one of—the daily disclosures we get now which are a form this thick that are in a font of .2 inches, then it's probably not going to make a difference not to be a pessimist. I think disclosure is a wonderful thing and I think if it's clear enough so that individuals can take advantage of what you propose to do, I think it's a great idea.

I also just want to note one other thing to follow up what Ms. Porter had said before. Previously, you had said that credit card companies say that they are not—they financially can't do certain things. We used to hear that a lot in the court—we can't do this, we can't do that, and then the judge orders it, and lo and behold, they can do it. So I take with a grain of salt anyone telling me well, as a credit card industry we can't do it, because if Congress legislates it, they can do it. It's just a matter of somebody has to tell them to do it.

Mr. DECELLE. As somebody from a credit union who is responsible for marketing, if you can get a disclosure into one paragraph, I would be thrilled.

[Laughter]

Because how many people have within the last 6 months to a year opened up a new account or done anything with a credit card or even just a deposit account? You get a stack of disclosures because of the required mandates that we have from the legislature. The only thing I would say with all due respect is through the scenario that you had stated earlier, Madam Chairwoman, that really will increase the technological expense that will take place and

what's going to happen eventually is more and more smaller issuers are going to drop out of the market, making less and less choices for consumers to be able to go where there is a lower rate, lower fees, and all of those things.

And so that's the one thing that you should take a look at some of the best practices that are out there. Are there some banks that all they do are credit cards, taking advantage? Absolutely. However, there are some very good organizations that are out there, SEFCU being one of them, that do not take advantage of our members. We work diligently to make sure that our members understand what they're getting into, how the product works, so that they are better off down the road.

From our point of view, the more success they have financially, the better we are because that's going to make them a happier member. Yes, there are certain things courts can mandate, and we need to jump through hoops, but what you need to understand is the more and more technological and legislative guidelines you put on our shoulders, that means we have to make that decision. As I said earlier, we have to look at that question and say, can we afford to offer credit cards to our members? And if it becomes too costly, then it's a negative impact on our members, so we have to say no, we can't, and then that reduces where people can go to get a product that will truly meet their needs.

Chairwoman MALONEY. Mr. O'Connell, if you have a comment?

Mr. O'CONNELL. Apparently now, there must be a 30-day requirement. I got one in the mail yesterday on a change. I don't think 45 days necessarily would be the answer. I think it has to get back to controlling the actual fees somehow. But they did get it into a simple statement here.

Chairwoman MALONEY. Thank you and I'll call upon—you can take my seat. You had a story you wanted to tell us. Here, take my seat. Sit down so you can talk to the mic.

Mr. OCEANS. My name is Len Oceans and my wife just told me that a couple of years ago, she paid a bill in full to one of the credit card holders. And we got a letter back saying that we are dropping you and we're canceling your card. Why? Because you paid it in full. If you want to take it out again, they're going to charge us a fee of $30. So we said "Sayonara, we don't need you. You need us."

I have a question about identity theft. Is it true that Congress passed a law that when you go into a store on a credit card it should only be the last four numbers on your receipt?

Ms. PORTER. Yes.

Mr. OCEANS. Because my wife always looks at it and she sees the whole digit, she crosses it out and only leaves the last four numbers.

Ms. PORTER. There was a phase-in period for that. The issuers said they couldn't do that technologically. They just didn't know how they'd ever succeed. So they were given a couple of year period, but that period has elapsed, so your wife could actually sue for those violations.

Mr. OCEANS. Oh, and then we'll be millionaires.

[Laughter]

Just one more question. Why are the lobbyists so powerful and strong to keep those rates up so high?

Mr. BILLET. It's not a function of the lobbyists. It's the function of the industry that's behind the lobbyists, so you know, the banking industry is one of the strongest industries in the United States, if not the strongest industry out there as far as putting forward their point of view on issues. And you know, I guess it just goes to what they're about. They have the capital. People want the capital. They say you're not going to get the capital. People respond to that.

Ms. GILLIBRAND. Would any other audience members like to ask a question of the panel? We're just about done anyway. We plan to hold this hearing until 3 o'clock. I want to thank you all for coming. I want to thank each of our panelists for being here and for testifying on something the Financial Services Committee hopes to write legislation on this year.

I also want to recognize some of our local elected officials. Mindy Warmoth, are you still here? Hello, Mindy, how are you? She's our supervisor for this town. And Regina Parker, she's our councilwoman. Is she here? Thank you, Regina, for being here as well. Thank you for being our elected leaders and coming to this forum. It's such an important part of what we do in Congress to take testimony from experts to help us write legislation. And thank you all for participating. It's extremely valuable that you're here and I just want to commend Congresswoman Maloney. If you'd like to say a few words, Congresswoman? Thank you for your leadership. Thank you for coming to our District and listening to the views of many upstate New Yorkers on these very difficult, but important issues.

Thank you, Congresswoman.

Chairwoman MALONEY. Thank you for inviting me. I certainly learned a great deal and will be back in touch with our panelists, and with you, Kirsten, on items that came up today.

I wanted to note that for 5 days, you will be able to put into the record any comments, additional questions, or any other item that you would like to be part of the official Federal record. We are moving forward with legislation. All of you have helped clarify where we need to go and what we need to do. We know that credit cards are a part of our life, a great convenience. They allow us to have access to credit immediately, but it needs to be fully disclosed and in a fair way.

I've had a wonderful time here today learning more about this issue, but also seeing an absolutely beautiful city. I would love to come back and have a vacation here some time. You're very fortunate to live here and it's wonderful to be here and thank you for hosting it, particularly the Halfmoon Senior Center for having us and our wonderful panelists. And the meeting is adjourned.

[Whereupon, at 3:10 p.m., the hearing was concluded.]

A P P E N D I X

August 7, 2007

New York State
Credit Union League, Inc.
and Affiliates

"Serving and supporting credit unions since 1917."

At a Public Hearing

"Credit Cards and Older Americans"

House Subcommittee on Financial Institutions and Consumer Credit

Tuesday, August 7, 2007 -1:00 p.m.

Halfmoon Senior Center

287 Lower Town Road, Halfmoon, New York

Testimony of

John T. DeCelle, Executive Vice President

SEFCU

Albany, NY

also representing **The New York State Credit Union League, Inc. and Affiliates**

Good afternoon ... I'm John DeCelle, and I am an Executive Vice President for SEFCU, a credit union based in Albany, New York. I am pleased to be testifying on behalf of New York's credit unions and the New York State Credit Union League, Inc. & Affiliates (NYSCUL).

Since 1917, NYSCUL has been the principal trade association of New York state and federal credit unions. Today, NYSCUL represents over 500 credit unions and their 4.1 million members. Since 1934, SEFCU has been meeting the financial services needs of consumers and commercial members in Upstate, Central, the Southern Tier and Western New York. Today we have over 150,000 members, 21 offices and over $1.4 billion in assets.

Chairwoman Maloney, Congresswoman Gillibrand and Members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit: I thank you for the opportunity to provide comments from the credit union movement regarding credit cards and older Americans.

Throughout their existence, New York's not-for-profit credit unions have remained true to their origins and continue to focus on their mission - to promote thrift and financial stability. We commend the committee for calling this hearing to examine credit cards and older Americans, and I look forward to telling you about how credit unions typically operate their card programs – and how they do so with their member's best interests in mind.

Like all other credit unions in New York, SEFCU serves the financial needs of its members, some of whom would not be able to secure financial services from other financial institutions. When we design products we incorporate strategies that help us serve these households so that we may live up to our mission of improving the quality of our member's lives.

New York's more than 500 credit unions - member owned, not-for-profit cooperatives - strive to help their 4.1 million members create a better economic future for themselves and their families, and we too are concerned about the growing problems associated with credit card abuse and older Americans.

Increasingly, older Americans, those 55 or older, are caught in a financial crunch that is forcing them to rely on credit cards for survival. Recent studies indicate these seniors use the cards more often and with less care than adults aged 18 to 34. Reduced retirement savings due to the stock market, rising medical costs and fixed incomes often leave seniors no choice but to rely on credit cards to survive day-to-day expenses. Many are raising their grandchildren and have needs similar to younger parents. Credit unions recognize that this group needs access to reasonably priced financial products, and they need to learn how to manage a successful retirement on a limited income.

As you know, a September 2006 study conducted by the United State Governmental Accountability Office (GAO) found that some issuers of credit cards charge excessive fees and rates of interest. The study also found widespread use of weak disclosure practices by the largest credit card issuers. Many credit card agreements contain questionable terms and conditions, including universal default clauses that allow issuers to raise a borrower's interest rate based on indebtedness or late payments to other creditors, and binding mandatory arbitration clauses.

Credit unions as non-profit, cooperatively owned financial institutions return to their members, either with dividend payments or through lower costs for services any profits they make. To participate in any activity that would take advantage of our members, who are also our owners, would be counter-productive to our structure and our philosophy. Our philosophy is supported

by our volunteer board of directors, a board that is elected from the membership and has the responsibility to serve the membership and is not focused on making profits for stockholders.

Credit unions seek to offer the most fair and affordable credit card programs and have taken positive steps through their voluntary efforts to educate all their members, including seniors, on how to manage credit card debt. At SEFCU, we are committed to educating our members on how to manage their financial lives responsibly and will continue to do so in an effort to reduce the instances we see each day of members committing to credit terms and conditions that are predatory in nature.

We work with our members to fully explain credit card rates and fees they are currently paying and show them the true cost for items purchased. We touch on this in one of SEFCU's education programs called "It's Gonna Cost You" – to encourage consumers to establish solid savings habits for purchases and the proverbial rainy day. If you were to ask an individual, what the interest rate is on one of their credit cards, you will find that more than 80% of the time they cannot answer or will answer wrong.

According to research conducted by the Credit Union National Association[1], the average fixed-interest rate on credit union credit cards is three percentage points lower than the rate on cards issued by banks. This difference translates into an annual savings of $240 on the average American household credit card with an outstanding balance of $8,000. Additionally, according to Bankrate.com.[2], credit unions average more than one percentage point less interest for a variable-rate credit card compared with banks.

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[1] Credit Union National Association-"The Benefits of Membership"-June 2006.

[2] Bankrate.com- April 2007.

According to the latest Credit Union vs. Bank Datatrac Ratedex [3] comparing credit card rates, it shows that credit unions charge an average credit card rate of 12.25% compared to the average bank rate of 15.04%. The GAO report found that credit card issuers typically apply multiple interest rates to the same card, depending on the circumstances. For example, the credit card industry typically uses one interest rate for cash advances, another for regular purchases, a third for balance transfers and account checks, and if a cardholder pays late or exceeds a credit limit, the company may substitute a so-called penalty interest rate that can exceed 30%. When a consumer pays off a portion – or even the majority – of a monthly balance, the credit card industry charges interest on the entire amount previously owed, including the portion that was paid before the due date. In the best interest of their members, credit unions do not follow this type of practice which results in a much higher cost to the cardholder.

At SEFCU, we offer card programs that provide low interest rates, no hidden fees and other benefits that meet the needs of our members. Like other credit union credit card programs we have designed ours to be understandable and to add value to membership; this differs from the industry norm as it relates to grace period policies.

Although many consumers think that all credit cards provide them with a grace period before interest is charged, the fact is most credit card issuers do not provide a grace period to cardholders unless they pay their credit card balances in full each month. If a consumer has any balance owing on a card from the prior month, there is no grace period on new purchases -- every purchase racks up interest charges from day one. Nine out of ten credit unions nationally offer their members a grace period on purchases with 23 days being the average, even if there is an outstanding balance on the member's card.

[3] Datatrac Ratedex- April 2007.

Credit unions also recognize that fees associated with credit cards programs are a major component of the current credit card problem among older Americans. Credit union card programs typically allow a member an average of 14 days to pay after a due date without any penalty. And, if a credit union charges a late fee, it's usually around $19, much lower than the industry average. Credit union card programs do not include fees such as balance-transfer, new account or telephone payment fees –again setting them apart from other for-profit card issuers.

In addition to structuring card program financial parameters with the member's best interests in mind, credit unions also provide high quality member service for their members that carry a credit union credit card. For example, issuers in the credit card industry typically require cardholders to mail payments to a P.O. box- a nameless, faceless center where there is no person to person contact resulting in a level of detachment. In contrast credit union cardholders have one on one access to a credit union employee to assist with any questions or concerns about their account. This also gives members an opportunity to explore possible options if credit problems arise.

Credit unions are also well aware of the problems that senior citizens face as credit card offers continue to be dangled in front of them at a time in their lives when many have very little income. Many credit unions continue to work with these members, educating them not only about what they need to do to get their current finances in order, but also providing them with the tools necessary to make good life- long financial decisions.

At SEFCU we offer our members the ability to work with certified debt counselors- available to assist people in understanding how to manage debt and household budgets better. Credit unions believe working one on one with adult members is an effective way to teach them the skills necessary to improve their financial position. Credit unions in New York agree that to truly

change the level of financial literacy of their memberships they had to take education to a new level. The New York Credit Union Foundation also works with the National Endowment for Financial Education to bring educational materials to credit unions and community centers to be used in financial literacy educational efforts. At SEFCU, our Member Education Department logs hundreds of hours each year, working with over 2,000 individuals annually, helping them through education efforts to make better and more well informed financial decisions. We offer these programs to our members, at community outreach centers for their clients and with the local Department of Social Services offices, striving to help people go from welfare to workfare.

Many have proposed that additional oversight is necessary to address abuses within the credit card industry. As you gather information and deliberate such an approach we ask that you consider the following:

First, The New York State Credit Union League and I believe the industry is sufficiently regulated by federal disclosure requirements. If additional federal disclosure mandates are enacted, it will cause further confusion at the consumer level. As credit card issuers seek to comply with various state and federal laws, the content, length and complexity of disclosures and agreements will be counterproductive to the intended goals.

Also, credit unions are only able to offer credit card programs to their membership by contracting with outside processors. We ask that you are mindful of new laws that would likely result in increased expense to these processors, which will translate into added cost for credit unions to run their programs. Currently, credit unions are addressing increases in insurance premiums, insurance coverage limitations and increased security requirements on credit card programs due to the increased amount of credit card fraud. Adding to these cost challenges, with additional disclosure requirements, will definitely move us closer to asking the question, "Can

we afford to continue to offer a credit card program to our members?" In many cases, this will also cause other credit unions to leave the credit card market as well, which in turn will harm all consumers who benefit from the consumer-oriented programs credit unions currently offer.

There has never been a need for credit unions to engage in any of the abusive credit card practices discussed here today that could prove detrimental to their member/owner's financial well-being. Credit unions, because of their not-for-profit structure, have no shareholders to pay at the end of the month. Any profits made from credit union credit card portfolios are either returned back to their members in the form of lower interest rates and low or no fees, or reinvested back into the credit union to allow it to provide better services to the cardholders. We urge the Committee to look towards further enforcement of current regulation and financial literacy education as a means of tackling this growing concern, perhaps using the credit union program as a model.

Members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit: I, along with all New York State credit unions and their 4.1 million member-owners, applaud your leadership in holding these public hearings and serving your communities and we appreciate your steadfast support of the credit union movement. Thank you again for the opportunity to address you today. I am happy to answer any questions you may have at this time.

Written statement
before the

Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services Committee
United States House of Representatives

on

"Credit Cards and Older Americans"

August 6, 2007

WITNESS: Bob O'Connell
Executive Council Member
AARP – New York

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Chairwoman Maloney, Rep. Gillibrand and Members of the Subcommittee, on behalf of AARP's 39 million members, thank you for the opportunity to testify on credit card practices. I also want to take this opportunity to thank you and your colleagues for focusing congressional attention on broader consumer credit issues, including subprime lending, predatory lending and bank fees. These practices have a real impact on the financial well-being of so many consumers, including many older Americans, and we appreciate your attention to them.

Credit Cards and Older Americans

Credit cards are more and more a fixture of U.S. economic life. They provide a tremendous convenience for many consumers, including older consumers, who increasingly use credit cards to pay for a range of products and services. Most people do not view credit cards as a form of borrowing, and for consumers who use a credit card simply for convenience and pay off the balance in full each month, the cards generally work well. The main problems occur when a consumer cannot pay off the full amount due and carries forward a balance, truly borrowing, and gets caught in a downward spiral of exorbitant interest rates, fees and penalties, and other billing practices that appear designed simply to wring more fees out of consumers. And, as Professor Porter discusses in her testimony, the marketing practices of credit card issuers also can prove problematic for older Americans.

Today, a growing number of older Americans find themselves deep in credit card debt – or even filing for bankruptcy. Although older households long have been considered among the most frugal and resistant to consumer debt, changing economic conditions -- particularly declining pension and investment income and rising costs for basic expenses such as prescription drugs, health care, and utilities -- have made credit card debt a more serious financial issue for older Americans.

According to a study released in February 2004 by Demos,[1] between 1992 and 2001, Americans over age 65 saw their credit card debt nearly double, on average, from $2,143 to more than $4,000. Seniors between the ages of 65 and 69, presumably the newly-retired, saw the most staggering rise in credit card debt – 217 percent – to an average balance of $5,844.[2] The number of seniors filing for bankruptcy more than tripled during the same time period.[3] Other warning signs also are evident. The proportion of income spent to pay off debts by households headed by individuals 65 to 74 years of age has risen steadily over the past decade.[4] Among seniors with incomes under $50,000 (which is about 70 percent of all seniors), an estimated one in five

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[1] Demos is a New York-based research and advocacy group and may be found on the Web at www.demos.org.
[2] Tamara Draut and Heather McGhee, Demos, "Retiring in the Red: The Growth of Debt Among Older Americans," February 2004, available at http://www.demos.org/pubs/Retiring_2ed.pdf.
[3] Theresa Sullivan, Deborah Thorne and Elizabeth Warren, "Young, Old and In Between: Who Files for Bankruptcy?" *Norton Bankruptcy Law Advisor*, Iss. No. 9A, September 2001, at 5. The number of older Americans declaring bankruptcy during this period rose from 23,890 to 82,207.
[4] According to the Federal Reserve Survey of Consumer Finances, the median debt services ratio for households aged 65-74 grew by 54 percent from 9.8 percent in 1992 to 15.1 percent in 2001 and debt services ratio for households 75 and older grew 169 percent, from 2.6 percent to 7 percent during the same period.

families with credit card debt is in what is considered "debt hardship," spending more than 40 percent of their income on debt payments, including mortgage debt.[5]

What is of greatest concern to AARP is not just that older consumers carry more credit card debt than before, but that more seniors are being buried in what may be considered ***unaffordable*** debt. In a 2006 survey, AARP found that close to half of U.S. adults age 40 or older see their current level of debt as a problem. About 30 percent of retirees in the survey described their debt as a problem and just 7 percent of retirees said they did not have any debt.[6]

Creditor Practices

Today, an estimated three out of every four Americans age 65 and older hold credit cards. For many of these older Americans, the credit card is a great convenience. They can afford to pay their balance in full each month and generally enjoy lower annual percentage rates. These so-called "convenience users" collect airline miles, reward points, and even cash back on their purchases. But, for those who are unable to make more than the required minimum monthly payments on their cards, industry practices often push them into unmanageable credit card debt Consider just a few examples:

- June Black's financial problems began when she put charges for a doctor visit, medical tests and prescription drugs on her credit card because she couldn't pay the full balance of about $300. Three years later, after a series of fees and finance charges were imposed, Black, 71 was more than $6,000 in debt. The Riverside, CA woman sold her car, moved to a smaller and cheaper apartment and writes a $127 check each month to pay off a credit card she long ago cut up. With the 32.24 percent interest rate she is being charged, Ms. Black has little hope of ever climbing out of the debt. "It just keeps spiraling," Black said of her debt. "I figure I'm going to die before this gets taken care of."[7]

- In May 1997, Ruth Owens stopped using her credit card, did not make further purchases or take cash advances, and tried to pay off her debt to Discover Bank. At that time, she owed $1,963. Over the next six years, Ms. Owens made $3,492 in payments to Discover Bank. One might assume this was enough to pay off her debt. After all, if Ms. Owens had made the same payments on a $2,000 loan with interest at 21 annual percentage rate, her debt would be paid off. From May 1997 until her account was sent for collection in May 2003, not one penny of Ms. Owens' $3,492 in payments went to reduce her debt. During this time, Discover Bank charged Ms. Owens fees that consumed all of her payments and caused her debt to grow even larger. Among the fees and other charges:

[5] Demos, "Retiring in the Red."
[6] Hanna Holley, AARP, "Retirement Planning Survey Among U.S. Adults Age 40 and Older," May 2006, available at http://www.aarp.org/research/financial/retirementsaving/ret_planning.html.
[7] As reported by David Olson, The Press-Enterprise, "More Seniors Struggle with Debt," June 4, 2007.

Over-limit fees	$1,518.00
Late fees	$1,160.00
Credit insurance	$ 369.62
Interest and other fees	$6,008.66
TOTAL	**$9,056.28**

Despite her payments totaling $3,492, Discover Bank claimed that Ms. Owens still owed $5,564 when it filed a collection lawsuit against her in Ohio court. Ms. Owens told the court, in a handwritten statement: "I would like to inform you that I have no money to make payments. I am on Social Security Disability. After paying my monthly utilities, there is no money except a little food money and sometimes it isn't enough. If my situation was different I would pay. I just don't have it. I'm sorry." The judge in this case barred Discover from collecting any more money from Ms. Owens.[8]

- "Alvah" was 79 when he lost his part-time security guard job in the Albuquerque, N.M. mobile home park where he lives. He had been taking in about $600 monthly for the work, enough to allow him and his wife Doris to stay current with payments on the nine credit cards they had. Doris had been sick and they used their credit cards primarily to pay for prescriptions, doctor visits, and emergency room charges. Alvah and Doris used their $1,600 in monthly Social Security to cover their living expenses, including the mortgage they still were paying on their 27-year-old mobile home. The nine credit cards – six from one issuer – had about $15,000 total in charges on them when Alvah lost his security guard job in November 2004. Alvah says he immediately sent a letter to all the lenders saying he couldn't pay and asking for some relief, to no avail. When he was unable to make the payments, the interest rate on the outstanding balance skyrocketed – in one case from 14 percent to 25 percent in a single month. Added to that were monthly late fees. By January 2006, the original $15,000 debt had ballooned to nearly $30,000.[9]

As these examples illustrate, it is the customer who sometimes misses a payment, or sends a payment late, or simply pays the minimum due each month who generates the real profits for credit card companies. In 2005, interest and penalty fee revenues alone added up to a staggering $79 billion. Nearly 8 out of every 10 dollars of revenue for the credit card companies comes from customers who cannot pay off their bills in full every month.[10] While no one will dispute that credit card companies have every right to earn a profit, AARP is concerned that consumers in the marketplace be treated fairly and that credit card companies not reap huge financial rewards from the very practices that sink consumers into deeper and deeper debt.

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[8] Deanne Loonin, National Consumer Law Center, "The Life and Debt Cycle: The Implications of Rising Credit Debt Among Older Consumers," July 2006.
[9] *Id.*
[10] Elizabeth Warren, testimony before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, "Examining the Billing, Marketing, and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers," January 25, 2007.

Key AARP concerns with respect to credit card practices are as follows:

Incomprehensible disclosures. Anyone who has ever tried to read a credit card agreement knows that the terms are simply indecipherable and filled with language that even lawyers have trouble understanding. According to the *Wall Street Journal*, the typical credit card contract in the early 1980s was one page long. But, by the early 2000s, the contract had grown to more than 30 pages of incomprehensible text.[11] Compounding the problem of overly complex front-end disclosure is the fact that expansive "change-in-terms" provisions permit credit issuers to revise the key contract terms at any time and for any reason simply by sending a notice to the cardholder. Given the freedom that credit providers retain to change key terms such as interest rates, fees, and length of time to make payments, the early disclosure and contract terms are of minimal value to consumers. Finally, the monthly bills sent to cardholders do little to help facilitate consumer awareness of the impact of making just a minimum payment or the true cost of the credit.

Penalty fees. It used to be that certain practices, such as exceeding a credit limit, were prohibited. But, in recent years these practices have been allowed, although cardholders are penalized for engaging in such behavior. As such, penalty fees have become primarily a revenue enhancer for credit card issuers. The United States Government Accountability Office (GAO) looked at the interest rates and fees applied to 28 popular credit cards issued by the six largest credit card issuers and found that "...typical cards today now include higher and more complex fees than they did in the past for making late payments, exceeding credit limits, and processing returned payments." The GAO also identified several new fees that issuers have begun charging in recent years, some of which they are not required to disclose to consumers in advance. One example of such a fee is for the payment of bills by telephone, which can range from $5 to $15.[12]

A substantial number of Americans are paying these fees. Thirty-five percent of the credit card accounts from the six largest issuers that the GAO examined had at least one late fee in 2005, representing about 242 million credit cards. Thirteen percent of all accounts – or about 90 million cards – were assessed over-limit fees in 2005.[13] Late fees have been steadily rising over the past decade and easily can exceed monthly payments for consumers paying low minimum balances.

Penalty interest rates. The majority of credit card issuers also increase interest rates for credit card account holders who pay their bills late, even by a few hours. In a survey released this year, Consumer Action found that 85 percent of issuers charged penalty rates for late payments on their cards, up from 79 percent in 2005.[14] The GAO found that all but one of the 28 cards from the six largest issuers it reviewed charged default rates in 2005. The average default rate was

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[11] Mitchell Pacelle, "Putting Pinch on Credit Card Users," Wall Street Journal, July 12, 2004.
[12] "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," U.S. Government Accountability Office, GAO-06-929, September 2006.
[13] *Ibid.*
[14] "2007 Credit Card Survey," Consumer Action, May 2007, available at http://www.consumer-action.org/news/articles/2007_credit_card_survey/.

27.3 percent, up from 23.8 percent in 2003.[15] Some consumers with low-rate cards could see their interest rates double overnight for being late on one credit card payment. Some issuers also say that they will charge default interest rates for exceeding the credit limit on the card or for returned payments, or that they will increase interest rates for cash advances and balance transfers or for other violations of card terms.

Multiple and variable interest rates. It used to be that credit cards offered a single fixed interest rate. That is not true anymore. The GAO examination of credit card practices found that multiple interest rates are being applied to the same card for the same consumer. For example, there typically is one interest rate for cash advances, another for regular purchases, another for balance transfers, and yet another for late payers and those who exceed their credit limit.[16] According to the GAO, there also is a trend toward higher interest rates. For example, from 2003 to 2005, the number of accounts subject to interest rates greater than 25 percent doubled, from 5 percent to 11 percent of all accounts.[17]

Universal default. Card issuers now routinely check their cardholders' credit reports and will raise the interest rate if there has been a change in the consumer's profile, whether that is a drop in credit score, a late payment to another creditor, or assuming additional debt – even if the cardholder has never been late or missed a payment to that particular credit card issuer. The increases are triggered not just by a late mortgage or credit card payment to other lenders, but also to payment disputes with other types of creditors, such as utilities or book clubs.[18] In 2005, 44.7 percent of credit card issuers surveyed by Consumer Action reported having universal default policies in place.[19] The GAO reported that four of the six largest issuers reserve the right to impose rate increases because of behaviors related to other creditors as a change in terms, which typically requires only 15 days notice under Regulation Z of the Truth in Lending Act.[20] More recently, some credit issuers have told Congress that they have abandoned the practice of universal default. However, Consumer Action in its 2007 Credit Card Survey reports that the practice "appears to be alive and well and living in another section of your cardholder agreement."[21]

Mandatory arbitration. Most credit card issuers today require their customers to resolve disputes through mandatory binding arbitration, rather than in a court of law. Indeed, Consumer

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[15] "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," U.S. Government Accountability Office, GAO-06-929, September 2006.
[16] Opening statement of Senator Carol Levin, U.S. Senate Permanent Subcommittee on Investigations Hearing on Credit Card Practices: Fees, Interest and Grace Periods," March 7, 2007, available at http://hsgac.senate.gov/_files/OPENINGLEVINwithExhibits.pdf.
[17] "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," U.S. Government Accountability Office, GAO-06-929, September 2006.
[18] Bill Burt, "Pay One Bill Late, Get Punished by Many," *Bankrate.com*, January20, 2004.
[19] "2005 Credit Card Survey," Consumer Action, July 28, 2005, available at http://www.consumer-action.org/downloads/english/CC_Issue_2005.pdf.
[20] "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers," U.S. Government Accountability Office, GAO-06-929, September 2006.
[21] "2007 Credit Card Survey," Consumer Action, May 2007, available at http://www.consumer-action.org/news/articles/2007_credit_card_survey/.

Action's 2007 Credit Card Survey found that all of the top 10 credit card issuers require binding arbitration, often in a forum chosen by the issuer.[22]

Recommendations for Reform

Deregulation of the credit card marketplace, in which state laws limiting interest rates and fees were nullified by two Supreme Court decisions in 1978 and 1996,[23] has drastically changed the way issuers market and price credit cards to consumers of all ages. It is clear that in recent years credit card companies have become far more aggressive in imposing questionable fees and interest rate practices. The result is that penalty interest rates, high and accumulating fees and interest on fees can push consumers over the financial edge. In fact, consumers in debt trouble sometimes owe as much or more in fees and penalty interest charges, as in principal. These practices contribute to the growing level of "unmanageable" debt incurred by all consumers, including older consumers.

AARP commends Congress for taking a serious look at these issues and endorses the following reforms:

Improved disclosure of terms and conditions of the credit card. Clearly, the current disclosure regime does not work. Giving consumers pages and pages of small print simply is not acceptable. Consumers need more comprehensible and useful information on the front-end, at the point-of-sale, and in monthly statements. AARP recognizes the Federal Reserve's recent notice of rulemaking intended to improve credit card disclosure and will be commenting on the proposed regulations. Consumers should be given adequate advance notice of any changes in terms and conditions of the card and should be notified if a purchase will exceed their credit limit and the fees and penalties associated with such activity. Monthly billing statements clearly articulate what it means to make a minimum payment and the cost of doing so. The statement should clearly identify the type and dollar amount of all fees that are being charged and the conditions that triggered imposition of the fees. It should be pointed out that while AARP endorses efforts to improve disclosure, we caution lawmakers and regulators that better disclosure alone is no substitute for substantive regulation that outlaws abusive credit card practices that unfairly keep American families mired in debt. Improved disclosure should go hand-in-hand with more substantive regulatory improvements.

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[22] *Ibid.*

[23] Credit card deregulation began in 1978, with the Supreme Court's decision in *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.* (Marquette Nat'l Bank of Minn. v. First of Omaha Serv. Corp., 439 U.S. 299, 99 S. Ct. 540, 58 L. Ed. 2d 534 1978). his case gave national banks the green light to take the most favored lender status from their home state across state lines, and preempt the law of the borrower's home state. As a result, national banks and other depositories established their headquarters in states that eliminated or raised their usury limits. In 1996, the U.S. Supreme Court paved the way for credit card banks to increase their income stream even more dramatically. In *Smiley v. Citibank (South Dakota), N.A.*, the court approved a definition of interest that included a number of credit card charges, such as late payment, overlimit, cash advance, returned check, annual, and membership fees. As a result, national banks and other depositories can charge fees in any amount to their customers as long as their home state laws permit the fees.

Prohibit universal default. Congress should prohibit punitive "universal default" interest rates based on alleged missteps with another credit issuer or other company. This practice penalizes responsible debtors and should be prohibited.

Limits on penalty fees and interest rate hikes. Credit card companies should be prohibited from charging interest on debt that is paid on time, charging fees for consumers to pay their bill by phone, computer or other means, and doubling or tripling interest rates to penalize late payments or over-the-limit charges. Penalty fees and interest rates should be reasonable in relation to the cost of the default.

Prohibit mandatory binding arbitration. It is AARP's position that appropriate and adequate redress must be available to aggrieved consumers. Mandatory binding arbitration infringes on a consumer's ability to seek redress and should be prohibited.

Conclusion

The growing debt level of this nation's older consumers is a very real and serious concern. Facing rising costs for basic necessities, older consumers often are forced to make a choice to go without or borrow to pay. Of course, many older people go without, often at serious expense to their own well being. But, for those who have chosen to rely on the "plastic" safety net, borrowing increasingly means sky-high costs and the very real prospect of endless service debt. AARP urges Congress to prohibit the abusive practices that contribute to and exacerbate the financial concerns of this nation's seniors.

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CREDIT CARD RISKS FOR OLDER AMERICANS

Written Testimony
of

Katherine Porter
Associate Professor of Law
University of Iowa College of Law

Before the
United States House of Representatives
Subcommittee on Financial Institutions
and Consumer Credit

Hearing on
Credit Cards and Older Americans

August 7, 2007

Witness Background

I am an Associate Professor of Law at the University of Iowa College of Law. I joined the faculty in 2005.[1] I received my J.D. degree *magna cum laude* from Harvard Law School and my B.A. degree *cum laude* from Yale College. I teach bankruptcy, commercial law, and consumer law and have published empirical research on consumer bankruptcy in several respected journals, including the Cornell Law Review, the Wisconsin Law Review and the American Bankruptcy Law Journal.[2] My most recent article explores how lenders, including credit card issuers, repeatedly target recently bankrupt families with new offers of credit. I served as Project Director of the 2001 Consumer Bankruptcy Project and am one of the principal investigators in the ongoing 2007 Consumer Bankruptcy Project. Also, I am a co-investigator in the Mortgage Project, a national empirical study of mortgage claims in consumer bankruptcy cases. I have not received any federal grants or contracts relevant to this testimony.

Introduction

Older Americans face many hurdles to financial security—fixed incomes, rising health care costs, loss of income from the death of a spouse or partner, and even fraudulent scams aimed specifically at elderly people. Credit cards pose an additional threat to the well-being of this generation. Today, older Americans carry more credit card debt than they did in prior years, are the fastest growing age cohort of bankruptcy debtors, and are particularly hard hit by the penalty charges and fees that are prevalent in the credit card market.

My testimony has two parts. First, I present the scholarly research on how older Americans use credit cards and how credit cards affect their financial well-being. Second, I suggest three areas for policy attention, identifying how federal law could better shield older Americans from the risks of credit cards.

Part I
Empirical Data on Older Americans and Credit Cards

A handful of studies have examined the credit card practices of older Americans or the effect of credit card debt on the financial situations on senior households. The research suggests that many older Americans face challenges in managing and controlling credit card debt.

Credit Card Use by Older Americans

Older Americans use a wide variety of financial products, including credit cards. Although some have suggested that young people are the "plastic generation," and attempted to pin rising credit card use on generational preferences,[3] the data show otherwise. Most older Americans have credit cards. Using data from the Federal Reserve Board's Survey of Consumer Finance, the Demos study, *Retiring in the Red*, concluded that about seven in ten Americans aged 65 and older have a credit card.[4] This number has remained relatively steady since 1992.[5]

However, the credit card debts of older Americans seem to be increasing, particularly among those transitioning to retirement age. Demos researchers found that among Americans 65 years and older who have at least one credit card, about 3 in 10 seniors admitted to carrying a balance on their credit cards.[6] The most current time-series data from the Survey of Consumer Finance confirm that about 30 percent of senior households that have credit cards carry credit card balances. While older Americans are less likely to have credit card balances than younger Americans, the percentage of households headed by baby boomers near retirement age (55-64

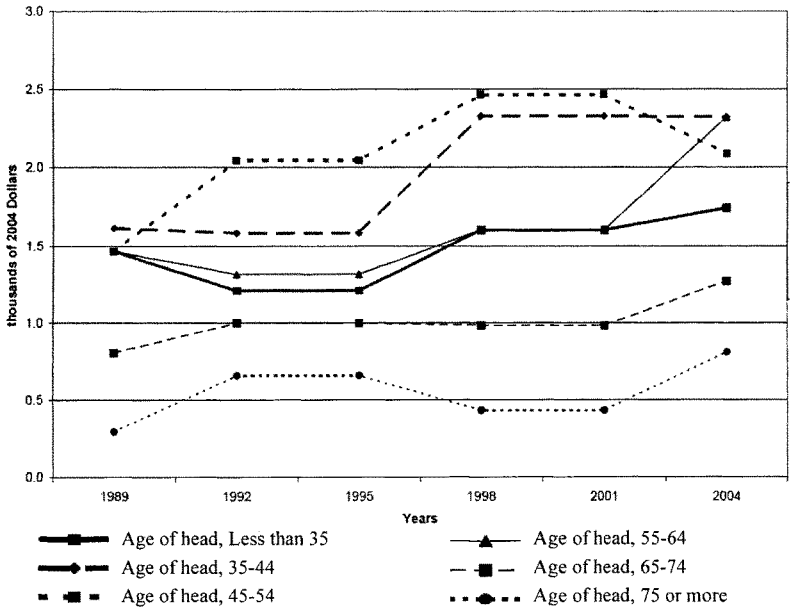
years old) with credit card balances has increased.[7] As this cohort ages, the proportion of Americans age 65 years or older with credit card balances may correspondingly grow.

While the popularity of credit cards among older Americans has been relatively constant, the amount of credit card balances has increased. Between 1998 and 2001, the average credit card debt among households headed by a person aged 65-69 steadily climbed.[8] Evidence from the current Survey of Consumer Finances reinforces that the credit card debts of older Americans continue to grow. The data reveal noticeable increases in both the average and median amounts of credit balances among the three oldest age cohorts. Among those who have credit cards, families with heads of households who are aged 55-64 years have, on average, the largest credit card balances of all age demographics.[9] Households in this near-retirement age group reported an average credit card balance of nearly $6,000.

Figure 1 shows the changes over time in the median amount of credit card balances for different age groups. Older American households had steep jumps in credit card balances in 2004. This increase consistently appeared among all three of the older cohorts: households headed by an individual aged 55-64, 65-74, or 75 or older. These increases outpaced the younger demographic groups, in which the typical household had no increase in credit card balances between 2001 and 2004.[10] Credit card balances among older Americans are trending upward.

Figure 1

Median value of credit card balances for families with holdings, by age of head



Source: 2004 Survey of Consumer Finance Chartbook

While older Americans are less likely to have credit card debt than younger Americans, the data show that the credit card balances of seniors have climbed. This pattern of increasing credit card debts is alarming. Such debt exposes older American families to greater risk of financial harm from credit card penalty tactics and greater risk of bankruptcy.

Older American's Credit Card Practices

Even their proponents concede that credit cards are extremely complex products.[11] This complexity presents particular challenges for older Americans. A new research paper from the Massachusetts Institute of Technology economics department shows that older Americans borrow at higher interest rates and pay more fees than middle-aged adults, even when researchers controlled for all observable characteristics, including risk factors such as credit scores and income levels.[12] Using a representative random sample of 128,000 credit card accounts, the researchers found that older Americans are more likely to pay three types of credit card fees: late fees, overlimit fees, and cash advance fees.[13] They term the payment of these fees "mistakes" because many consumers would and could alter their behavior to avoid these expensive fees if they were aware of the impending charges. Older Americans pay a disproportionate share of the fees and penalties imposed by credit card issuers.

The researchers also analyzed whether age correlated with how consumers handled transfers of account balances to new cards. They measured the likelihood that consumers of different ages would avoid what they call the "catch" of balance transfers—purchases on the new card have very high interest rates and subsequent payments on the new card go *first* to paying down the low interest transferred balances. Analyzing a national dataset of 14,798 consumer accounts that showed balance transfers, the authors found a pronounced U-shape effect of suboptimal balance transfer behavior based on age. Older and younger Americans were less likely to adopt the optimal strategy of transferring a balance and not making any new charges during the introductory period.[14] In fact, people in their seventies fared worse than 18 year olds—the usual minimum age for a credit card contract.[15] This age effect persisted even though researchers controlled for factors such as education, income and credit-worthiness in the analysis.

Older Americans are more likely to pay credit card fees and fall into the pricing traps of credit card companies. In effect, older Americans are at heightened risk for suffering a financial penalty from credit card use. Increases in fees or penalty charges fall more sharply on the senior population. The financial impact of credit card mistakes is particularly harsh for older Americans, who not only incur such fees more frequently, but are who are more likely to live on a fixed income that cannot absorb extra costs such as the default interest rate that accompanies a penalty charge.

Older Americans in Bankruptcy

Bankruptcy is a public admission of severe financial distress. Studying the bankrupt population is a useful lens for understanding the pressures that push families to financial collapse. However, many more families struggle to make ends meet and suffer serious privations than actually file bankruptcy. Examining the bankrupt population is like looking at the tip of an iceberg: It's the easiest way to see the phenomenon but seriously underestimates the complete reality of it.

Consumer Bankruptcy Project[16] data offer the most complete age-based findings on the bankrupt population.[17] Dr. Teresa Sullivan, Dr. Deborah Thorne, and Professor Elizabeth Warren analyzed changes in the age demographics of bankruptcy filers. Overall, they concluded that bankruptcy is a middle-age experience.[18] However, they found a definite, sharp increase in the rate of bankruptcy among older Americans. Between 1991 and 2001, the bankruptcy filing rate of Americans age 65 and older increased by 213 percent, a doubling of the prevalence of bankruptcy among older Americans.[19] People age 65 and older were the fastest-growing age demographic in bankruptcy.[20]

The increase in the bankruptcy rate among older Americans is troubling because it may signal a decline in the ability of senior households to avoid severe financial problems. The trend of bankruptcy as a middle-age phenomenon may wane in the future, as the largest single group of debtors has aged significantly during successive Consumer Bankruptcy Project studies.[21] The ongoing 2007 Consumer Bankruptcy Project is collecting data that will reveal whether the bankruptcy rate among older Americans has continued to escalate and how the 2005 bankruptcy reforms may have harmed older Americans.[22]

A study using data collected by the Executive Office of the U.S. Trustee estimated that 4.4 percent of the total bankruptcy debtor population who filed Chapter 7 between 1998 and 2000 were 70 years or older.[23] In 2001, the Consumer Bankruptcy Project data showed that approximately 5 percent of the bankrupt population was 65 years or older.[24] Both studies conclude that older Americans were underrepresented among bankruptcy filers based on their share of the total population. However, the absolute number of older Americans who file bankruptcy will very likely climb in future years as the baby boom generation ages. Thus, the proportion of all bankruptcy debtors who are seniors will probably grow. Additionally, rising credit card use may erode the historic resilience of older Americans to financial distress and drive up the bankruptcy rate among seniors.

Older Americans in bankruptcy have one major distinguishing characteristic from the typical bankruptcy filer—very high credit card debts.[25] The most detailed study to date found that people age 70 or older who filed bankruptcy had much larger credit card debts than other bankruptcy debtors. The average elderly debtor owed $38,187 in bank credit card debt, and $3,812 in retail store credit card debt. At the median, elderly bankruptcy debtors owed more than double the amount of bank credit card debt and store credit card debt of the typical bankruptcy debtor.[26] The table below reproduces those findings:

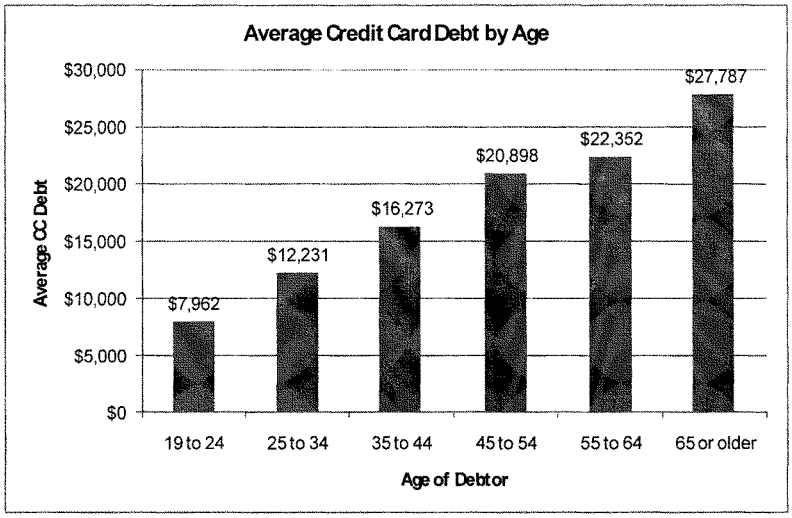
Credit Card Debts of Bankruptcy Debtors

	Average Bank Credit Card Debt	Average Store Credit Card Debt	Median Bank Credit Card Debt	Median Store Credit Card Debt
Elderly	38,187	3,812	24,360	2,233
All Debtors	17,891	2,392	10,587	1,035

Source: A Closer Look at Elderly Chapter 7 Debtors

In another study, researchers found that credit card debt consistently escalated with the age of the bankruptcy filers.[27] Figure 2, below, illustrates that relationship:

Figure 2



Source: Credit Card Debt in Chapter 7 Cases

Debtors age 65 or older had, on average, nearly four times as much credit card debt as debtors under the age of 25. These data on the financial characteristics of bankruptcy filers highlight the particular vulnerability of older Americans to unmanageable credit card debt.

High credit card debt can overwhelm the limited incomes of older Americans. The credit card debts of elder Americans in bankruptcy are particularly grim when compared to these debtors' low incomes. Bankruptcy debtors who were 70 years or older owed, on average, more than double their annual income in credit card debt.[28] This means that even if the average older American could somehow manage to halt all accruing credit card interest, fees, and penalty charges, incur no more debts, and eliminate all living expenses, that senior would still have to devote more than two entire years of income solely to credit card issuers to pay off their credit card obligations. Bankruptcy is a last resort option for older Americans with such credit card debts, and the recent increases in bankruptcy filing fees and attorneys' fees[29] may present serious obstacles to bankruptcy relief for older Americans who struggle to make ends meet on low incomes.[30]

The stories of the older Americans from the 2001 Consumer Bankruptcy Project reveal some of the reasons for the escalating bankruptcy rate and particularly high credit card debts of older Americans. Many families suffer financial shocks due to changes in family structure such as those caused by divorce.[31] With older Americans, a spouse's death is another type of family

dissolution that can lead to financial problems. Some seniors are not prepared or able to manage credit cards without the help of their spouse or life partner. A 64-year woman from California explained that she had learned the hard way that she could not handle her finances on her own. When this woman was married, her husband always took care of all financial responsibilities. After her husband passed away, she lived with her son, and he helped her make financial decisions. When the son married, this woman was left alone. While trying to look after herself, her debt spiraled out of control, leading to her bankruptcy filing.[32] This woman's experience illustrates how increasing isolation from family can expose seniors to the risk of overwhelming credit card debt.

Other older Americans experience a different sort of family-related financial problem. A vast majority of older Americans are parents and often grandparents. In some cases, retirement-age households may be trying to provide financial support for both their elderly parents and their college-age or young adult children. Despite their advancing years and the financial constraints of retirement, these seniors' sense of familial duty may not abate. Several older Americans in the Consumer Bankruptcy Project described serious financial problems that stemmed from trying to help family members. A 79 year old retired postal carrier said that his financial problems started when he used credit cards to pay his elderly mother's medical and regular expenses before her death. During that same period, his own health began to deteriorate and he faced a growing pile of medical debts for his own care.[33] A 72 year old woman told us that despite having good credit all her life, she wound up filing bankruptcy because of her son's financial problems. After her son divorced, he could no longer afford to contribute to her living expenses. The situation worsened when she allowed her son to use her credit cards to deal with his post-divorce financial problems. He maxed out her cards, and neither she nor her son could repay the obligations. This senior confessed that she was "very embarrassed" to have filed bankruptcy, but said that she had just grown exhausted with being "hounded and hounded and hounded by bill collectors."[34]

The interest rate adjustments and penalty provisions imposed by credit card companies pose particular challenges for older Americans in financial distress. Current law permits card issuers to apply the new rate to existing balances, even though consumers incurred those charges under a prior rate. When credit card companies hike interest rates or apply the default rate to the account, consumers suddenly need to find additional money to meet their credit card obligations. Relative to younger borrowers, seniors have fewer options to cope with escalating credit card costs. Older Americans are more likely to live on fixed incomes, have fewer job opportunities, and may be unable to work at all due to deteriorating health. These limitations on earning ability make it harder for seniors to "earn" their way out of credit card debt and to cope with the industry's retroactive price increases.

Some older Americans find themselves in bankruptcy because they did not understand the implications of credit card use. These seniors, many of whom are quite elderly, find that their cognitive abilities have slowly eroded, making it difficult or impossible for them to appreciate the complicated pricing structure of credit cards. The son of an 81 year old man who filed bankruptcy told Consumer Bankruptcy Project researchers that he now acted as power of attorney after his father's credit card debts led to bankruptcy.[35] The man said his father was diagnosed with dementia, but it took his children many months to discover the father's large credit card debts. He complained that credit card companies preyed on his father, even after he had told the companies that his father was ill, easily confused, and had a power of attorney.

With support and leadership from AARP, the new 2007 Consumer Bankruptcy Project (Phase IV of these studies) has launched a special in-depth study of older Americans in

bankruptcy as part of its larger study of the consumer bankruptcy system.[36] John Pottow, a professor at the University of Michigan Law School, has a particular interest in this research and is working to analyze how credit cards contribute to older Americans' bankruptcies. This research will provide important new insights on the causes and consequences of bankruptcy for senior household and likely will yield implications for credit card policy that can help shield older Americans from financial collapse.

Existing and ongoing research suggest that credit cards are an important factor in the escalating bankruptcy rate among older Americans. These findings buttress the research showing that the amount of credit card debt carried by older Americans has increased and that older Americans are more likely to be hit with credit card fees and default penalties. Credit cards are not age-neutral in their financial effects. Older Americans are particularly vulnerable to credit card harms compared to middle-aged consumers.

Part II
Improving Older Americans Credit Card Management

Many older Americans struggle to manage credit cards successfully. The policy proposals developed below are relatively modest changes to existing law that would help older Americans avoid harmful effects of credit cards. These reforms focus on the needs of seniors but would benefit all consumers.

Reducing Credit Card Errors and Fees with Point-of-Sale Disclosure

Credit card regulation focuses on disclosures at the initial point of contracting.[37] The Truth-in-Lending Act requires card issuers to make copious written disclosures in credit card solicitations and credit card contracts.[38] The credit industry has conceded that existing disclosures should be improved,[39] and pending legislation proposes such reforms.[40] Research on the credit card habits of older Americans highlights the benefit of a fresh approach—focusing on the timing of disclosure. Drawing on the research of Professor Ronald Mann, I suggest point-of-sale disclosures as a beneficial adjunct to the initial and periodic statement disclosures that are required by existing law.

Older Americans are more likely to incur credit card penalties. Point-of-sale disclosures could reduce the number of consumers saddled with these expensive fees. At the moment of each card transaction, the credit card user could be warned that the transaction would cause them to exceed their credit limit and advise the consumer of the amount of the overlimit penalty charge.[41] Such disclosures would help consumers avoid rewarding the industry for its practice of knowingly allowing consumers to exceed their credit limit and then retroactively applying a penalty rate to the entire balance as a consequence for being over their credit limit.

At the point of sale, consumers also should be advised of their current outstanding credit card balance. Most credit card transactions are authorized online with immediate communication with the card company, and the balance could be displayed on the electronic terminal or printed on the consumer receipt. This disclosure mirrors the practice of ATM terminals of providing consumers with advice on their bank account balance when they make withdrawals. These disclosures would help consumers monitor the amount of their credit card debt throughout the billing cycle and may curb discretionary expenditures that exceed the consumer's budget. Point-of-sale disclosures could also tackle the frequency of late payments to card issuers. To aid

consumers in remembering to pay on time, card issuers could be required to display or print the next payment due date at each point-of-sale moment.

Card-processing technology has improved tremendously in recent years, and the proposed disclosures could be phased in over a relatively short period of one to two years. Point-of-sale disclosures harness these technological changes and consumers' existing credit card habits to improve consumers' awareness of their financial practices and the penalties that accompany certain credit card transactions.

Encouraging the Debit Alternative

Credit cards combine spending and borrowing functions in a single financial instrument. This unique feature of credit cards has a troubling effect. In his book, Charging Ahead, Professor Ronald Mann analyzes aggregate financial data from five Western countries, including the United States. He shows how a societal preference for using credit cards as a payment device drives up total consumer debt. He finds that even when credit card debt is held constant, an increase in using credit cards to pay for transactions (as opposed to cash, checks, debit cards, etc.) drives up a country's total consumer debt. In his words, "[h]olding all else equal, an increase of $100 in per capita credit card spending is associated with an increase, one year later, in total consumer borrowing of $105."[42] Americans' preference for using credit cards as payment devices—without regard to whether consumers carry credit card balances—contributes significantly to the rising total consumer debt in this country. The consequence of using credit cards to pay for routine purchases is to leave American with fewer dollars leftover to put toward savings. In this way, credit cards ratchet up the risk that a family will not have enough savings to weather an unexpected expense or a loss of income without falling into serious financial distress or even having to resort to bankruptcy. Mann finds that increased credit card debt leads to higher bankruptcy filings, even if total debt is held constant.[43]

The policy solution to these harmful effects of credit cards is to encourage Americans to use debit cards as their primary payment device. Debit cards capture the transactional benefits of plastic payments. Indeed, they are even faster and cheaper to process than credit cards, and certainly more so than paper checks. Debit cards are safer than cash, deterring criminal activity and identify theft, both of which may be particular concerns for older Americans. Most importantly, debit cards do not appear to increase total consumer debt or bankruptcy filings. Thus, debit cards may reduce the number of families in financial distress, while also protecting consumers from the credit card industry's high-cost practices such as late fees and universal default rate changes.[44]

Yet, fewer Americans have debit cards than credit cards,[45] and debit cards are used less frequently than credit cards.[46] The discrepancy in card use is particularly sharp among older Americans. In 2004, a Federal Reserve study found that only 20 percent of consumers age 65 or older with a checking account made occasional use of a debit card.[47] The study concluded that the probability of having and using a debit card decreases steadily with age. Older Americans shy away from debit cards.

Several factors contribute to the relative disfavor of debit cards in America. One reason is differing legal protections for debit and credit cards. Current law disadvantages consumers who chose to use debit cards instead of credit cards. The Truth-in-Lending Act gives consumers in some situations the right to withhold payments to a credit card company based on the consumer's assertion that it has a defense to paying the merchant.[48] No comparable protection exists for debit cards. Particularly for Internet and telephone transactions in which the consumer cannot

evaluate the merchandise or service, this protection could cause consumers to prefer paying with credit cards instead of debit cards.

Older Americans are more likely to live on fixed incomes than the general American population, and debit cards facilitate seniors keeping spending within their budgets. Congress should level the field between debit cards and credit cards so that consumers are entitled to identical consumer protections under the law, regardless of which method they use to pay. As an additional measure to encourage debit card use, financial literacy programs for senior citizens should educate older Americans about debit cards and their benefits. Advocacy groups such as AARP should offer more information on the comparative advantages of debit cards to their members, and banks should be encouraged to promote debit card products as part of their service packages that are specifically marketed to older Americans.

Shifting non-borrowing transactions onto debit cards should reduce total consumer debt, reduce the incidences of credit card penalties and fees, and reduce the number of families struggling with unmanageable credit card debt. If improved protections for debit card transactions were enacted into law and these changes were well-publicized, this change could help encourage older Americans to adopt debit cards for their routine spending.

Vulnerability to Credit Card Solicitations

Many Americans feel overwhelmed with the frequency and aggression of credit card solicitations.[49] Older consumers may be particularly vulnerable to the marketing practices of credit card companies. Because many older Americans are retired or work part-time, they confront many more telemarketing offers from credit card companies than younger Americans. Additionally, older Americans may suffer from health issues that limit their mobility or decrease their social networks. Such increasing isolation ratchets up the opportunity for telemarketers to persuade older Americans to accept new credit cards. For some seniors, hearing loss or declining mental acuity may hamper their ability to decipher the terms of oral offers.

For many of the same reasons, older Americans may be less able to manage the onslaught of written credit card solicitations that the industry mails.[50] The fine-print disclosures are not easy to read at any age; such information may be completely illegible to many older Americans. Older Americans also may be particularly concerned about the risks of throwing out mail without opening it for fear of missing important correspondence.

The prior section described research showing that elderly families who seek bankruptcy relief are particularly likely to have overwhelming credit card debt. Yet, credit card solicitations are unrelenting—even after families have filed bankruptcy due to high credit card debts. A married woman in her 60s colorfully observed that credit card solicitations after bankruptcy were so frequent they were "coming out of the woodwork."[51] Over 90 percent of respondents who were interviewed in the Consumer Bankruptcy Project said that creditors had sent them solicitations within the first year after they filed bankruptcy.[52] Older Americans were particularly frustrated and concerned about credit card marketing. A 70 year old consumer recounted being "preapproved more times than you can count" during the first year after her bankruptcy. She explained that "you'd think that I was Donald Trump, the way they would send me credit cards."[53] One debtor even resorted to sending a "blistering" letter to a credit card issuer to express frustration with the continued solicitations, while most consumers reported that they tried not to open the offers and put them directly in the trash to avoid future credit card problems.

Existing law provides two tools to help older Americans—indeed, all Americans—deal with persistent and overwhelming credit card marketing. First, the do-not-call registry permits

families to remove their names from telemarketing lists and reduces the risk of aggressive telephone sales pitches for credit cards.[54] Senior citizens are more likely to have put themselves on the do-not-call list than younger households,[55] and overall participation in the registry is high. Second, the Fair Credit Reporting Act provides a mechanism for eliminating pre-screened written credit offers.[56] Consumers can call or use the Internet to opt-out of such offers.[57] However, only six percent of all consumers with credit records have opted-out.[58] While older households are more likely to opt-out than their younger counterparts, a Federal Reserve study found that just over ten percent of Americans aged 55 -64 years or aged over 65 have opted-out. The vast majority of older Americans have not taken advantage of the opt-out for pre-screened credit solicitations.

The credit solicitation opt-out is infrequently used because few Americans know about this law. A survey commissioned by the Federal Reserve found that less than twenty percent of all consumers had even heard of the opt-out provision.[59] This paltry figure needs to be addressed. Congress passed the opt-out law to help Americans take control of their credit card debt and financial well-being. The current law fails in its purpose because consumers do not know their rights.

Academic research has identified cognitive and behavioral barriers that plague the efficacy of opt-out provisions.[60] A better law would require consumers to opt-in to receiving prescreened credit card solicitations. In effect, the default position is reversed. The presumption would be that unsolicited credit card offers are an unwanted intrusion. Such a law leaves the choice about credit card marketing up to individual Americans, but removes the procedural hurdles that hinder people from affirmatively acting to opt-out. An opt-in presumption also eliminates the need for consumers to disclose their social security number, a requirement of opting-out that deters consumers from taking advantage of the current law. Alternatively, there should be improved outreach efforts about the opt-out law. The Federal Trade Commission should step up its educational efforts, and groups such as AARP should work hard to inform their members about this legal right. Nursing homes, assisted living facilities, and senior centers should educate both older Americans and their family members or caretakers about options to control credit card marketing.

Shielding older Americans—and all families—from the burdens and pressures of credit card solicitations improves their control of their financial well-being. An 89-year old woman who filed bankruptcy in 2001 suggested such a law reform. She told Consumer Bankruptcy Project researchers, "Really, I don't think that they should be able to send credit cards to people the way that they do. I think that if you want one, you should have to contact them and apply."[61] Reversing the presumption of the Fair Credit Reporting Act provision on pre-screened credit offers would permit Americans who want credit card offers to still receive them, while removing the potential risks to older Americans who may not be aware of the opt-out process or able to manage such solicitations.

Conclusion

Age does not immunize against credit card harms. In fact, the existing research suggests the opposite effect. Older Americans carry increasing amounts of credit card debt, are more likely to pay credit card fees or make suboptimal credit card decisions, and are more likely to file bankruptcy because of overwhelming credit card debts than younger Americans. Older Americans are particularly vulnerable to the dangers of credit cards. They struggle to understand

existing disclosures, are less likely to use debit cards as an alternative to credit cards, and are particularly at risk from aggressive credit card marketing.

Modest amendments to existing laws could address these problems. Congress should require point-of-sale disclosures to prevent credit card mistakes and to improve individuals' awareness of credit card fees and escalating card debts. It should also amend existing laws on consumer protections to boost the attractiveness of debit cards as the primary device for spending transactions and transform the opt-out provision to an opt-in provision to protect families from unwanted credit card solicitations. Such changes could dramatically improve the ability of older Americans to avoid the serious harms that can accompany credit card use and would help Americans of all ages take charge of their financial well-being.

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[1] Additional biographical information and my curriculum vitae are available at my faculty page at the University of Iowa College of Law at http://www.law.uiowa.edu/faculty/katie-porter.php.
[2] My research papers may be downloaded from my SSRN author page at http://ssrn.com/author=509479.
[3] Christine Dugas, *Debt Smothers America's Youth*, USA TODAY, Feb. 2, 2001, *available at* http://www.usatoday.com/news/nation/2001/02/2001-02-12-young-debt.htm; Ben Woolsey, *Gen P: The Plastic Generation,* Jan. 21, 2005.
[4] *Heather C. McGhee & Tamara Draut, Retiring in the Red: The Growth of Debt Among Older Americans, Demos Briefing Paper,* at 2, *available at http://www.demos-usa.org/pubs/Retiring_In_The_Red_WEB.pdf.*
[5] Id. at Fig 1.
[6] Id.
[7] 2004 Survey of Consumer Finances Chartbook, Percent of families with credit card balances, by age of head, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[8] McGhee & Draut, *Retiring in Red*, Fig. 2.
[9] Mean value of credit card balances for families with holdings, by age of head, 2004 Survey of Consumer Finances Chartbook, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[10] Median value of credit card balances for families with holdings, by age of head, 2004 Survey of Consumer Finances Chartbook, *available at* http://www.federalreserve.gov/pubs/oss/oss2/2004/scf2004home.html.
[11] Credit Card Practices: Current Consumer and Regulatory Issues, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Consumer Credit Hearing, 110th Cong. (April 26, 2007) (statement of Oliver Ireland) ([T]he flexibility and features that support the benefits of credit cards also result in credit cards being inherently complex products.")
[12] Sumit Agarwal, John Driscoll, Xavier Gabaix, & David Laibson, *The Age of Reason: Financial Decisions Over the Lifecycle* (Mar. 15, 2007), *available at* http://ssrn.com/abstract=973790.
[13] Id. at p. 26, Fig. 14.
[14] Id. at 27-28, Fig. 15.
[15] Id. at 30, Fig. 16.
[16] Consumer Bankruptcy Project III received funding from the Robert Wood Johnson Foundation, The Ford Foundation, Harvard Law School, and New York University Law School. I was the Project Director during the first several months of the study. Teresa Sullivan, Jay Westbrook, David Himmelstein, Robert Lawless, Bruce Markell, Michael Schill, Deborah Thorne, Susan Wachter, Steffie Woolhandler, and John Pottow played key roles in developing the bankruptcy dataset.
[17] Bankruptcy filers are not required to give their ages on bankruptcy court documents, and most people do not disclose their age. To address this information gap, the Consumer Bankruptcy Project gathered original data by administering written surveys to debtors to collect demographic information.
[18] Sullivan, Thorne & Warren, *Old, Young, and In Between* at 2 ("[T]he overwhelming fact that emerges from this study is that most of the activity in the bankruptcy courts comes from middle-aged debtors.")
[19] Id. at 8, Fig. 4.
[20] Id. at 2.
[21] Old, Young, and In Between, at 2-3 ("In ten years, the median age of bankrupt debtors, according to our studies, has risen from 36.5 to 40.6.")

[22] Dr. Teresa Sullivan, Dr. Deborah Thorne, and Prof. Elizabeth Warren plan to reprise their *Old, Young, and In Between* article in the next few months. They will compare the numbers of older Americans in bankruptcy in 2007 with the demographic data from 1991 and 2001, providing a longitudinal picture of the age demographics of bankruptcy debtors.
[23] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors*, American Bankruptcy Institute Law Journal, April 2002, *available at* http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/abi_042002.htm.
[24] Sullivan, Thorne & Warren, *Old, Young, and In Between* at 4, Tbl. 1.
[25] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors*. ("The major distinguishing characteristic of the elderly debtors was their large bank credit card debt.")
[26] The median bankruptcy filer had $10,587 of bank credit card debt and $1,035 in store credit card debt. *See* id.
[27] Ed Flynn & Gordon Bermant, *Credit Card Debt in Chapter 7 Cases*, American Bankruptcy Institute Law Journal, December 2003, *available at* http://www.usdoj.gov/ust/eo/public_affairs/articles/docs/abi_1203.html.
[28] Ed Flynn, et al., *A Closer Look at Elderly Chapter 7 Debtors*.
[29] Pamela Yip, *Bankruptcy Could Grow Less Affordable*, DALLAS MORNING NEWS, July 24, 2006, *available at* http://www.dallasnews.com/sharedcontent/dws/bus/columnists/pyip/stories/DN-moneytalk_24bus.ART.State.Edition1.159e95c.html.
[30] Among Chapter 7 bankruptcy debtors age 70 and older who filed between 1998 and 2000, the median income was $1,450. During the same period, the median Chapter 7 debtor earned $2,028. *See* Ed Flynn, et al, *A Closer Look at Elderly Chapter 7 Debtors*.
[31] Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, The Fragile Middle Class, 172-198 (2000).
[32] Respondent CA-07-147, Consumer Bankruptcy Project III data (on file with author).
[33] Respondent PA-07-004, Consumer Bankruptcy Project III data (on file with author).
[34] Respondent IL-07-010, Consumer Bankruptcy Project III data (on file with author).
[35] Respondent PA-07-121, Consumer Bankruptcy Project III data (on file with author).
[36] The primary researchers in the Consumer Bankruptcy Project IV are Dr. David Himmelstein, Prof. Melissa Jacoby, Prof. Robert Lawless, Angie Littwin, Prof. Katie Porter, Prof. John Pottow, Dr. Steffie Woolhandler, Dr. Teresa Sullivan, Dr. Deborah Thorne, and Prof. Elizabeth Warren.
[37] Ronald Mann, Charging Ahead 160 (2006).
[38] Truth in Lending Act, §§ 127 and 143; Regulation Z §§226.5a and 225.5.
[39] Credit Card Practices: Current Consumer and Regulatory Issues, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Consumer Credit, 110th Cong., April 26, 2007 (statement of Edward Yingling, on behalf of the American Bankers Association) ("The banking industry agrees with the GAO that better disclosures are needed.")
[40] Credit Card Accountability Responsibility and Disclosure Act of 2007 (Credit CARD Act of 2007), H.R. 1461, 110th Cong. §§ 201-202 (2007).
[41] Ronald Mann, Charging Ahead 163 (2006).
[42] Id. at 54.
[43] Id. at 66.
[44] Certain debit card practices are also unfriendly to consumers, mimicking the problems of credit cards. This subcommittee recently has heard testimony regarding these practices. Overdraft Protections: Fair Practices for Consumers, Hearing Before the H. Comm. on Fin. Serv., Subcomm. on Fin. Inst. and Credit, 110th Cong., July 11, 2007. Any effort to shift credit card spending to debit card spending should consider improved protections for debit card users from penalty fees as part of its strategy.
[45] Somewhat surprisingly, there are no consistent federal data on how many Americans have debit and credit cards. A 2004 Federal Reserve study found that only 52 percent of households had a debit card. Ron Borzekowski, Elizabeth K. Kiser, & Shaista Ahmed, *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response* (April 2006), *available at* http://www.federalreserve.gov/pubs/feds/2006/200616/200616pap.pdf, and most estimates suggest that about three in 4 adult Americans have a credit card. Ronald Mann, Charging Ahead at 98, n. 12.
[46] Ronald Mann, Charging Ahead at 76, 94 at Fig. 9.1.
[47] Borzekowski, et. al, Consumers' Use of Debit Cards at 23, Tbl. 2
[48] Truth in Lending Act, § 170.
[49] Bob Sullivan, *Deluged with credit card mail? Help is coming*, MSNBC (Aug. 8, 2005), *available at* http://www.msnbc.msn.com/id/8827007/.

[50] Consumers received almost eight billion direct mail solicitations for credit cards in 2006. The number of credit card solicitations has climbed significantly in recent years, despite the enactment of the opt-out law in 1996. Carbweb collects annual credit card solicitation data at http://www.cardweb.com/cardtrak/news/2007/february/21a.html.

[51] Respondent PA-07-016, Consumer Bankruptcy Project III data (on file with author).

[52] Katherine Porter, *Bankrupt Profits: The Credit Industry's Business Model for Postbankruptcy Lending* (Aug. 1, 2007), *available at* http://ssrn.com/abstract=1004276.

[53] Respondent CA-07-187, Consumer Bankruptcy Project III data (on file with author).

[54] Information on the do-not-call registry is available here, http://www.ftc.gov/bcp/menus/consumer/phone/dnc.shtm.

[55] Hal Varian et. al., *The Demographics of the Do-Not-Call List*, Jan/Feb 2005, *available at* http://www.ischool.berkeley.edu/~hal/Papers/2005/demographics-of-do-not-call.pdf.

[56] 15 U.S.C. § 1681b(e) (604 of Fair Credit Reporting Act); *see also* Bd. of Governors of Fed. Reserve Sys., *Report to Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance* at 11-12 (Dec. 2004), *available at http://www.federalreserve.gov/boarddocs/rptcongress/ UnsolicitedCreditOffers2004.pdf.*

[57] Consumers may call 1-888-5-OPTOUT (1-888-567-8688) or visit www.optoutprescreen.com.

[58] Bd. of Governors of Fed. Reserve Sys., *Report to the Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance*, at 4, 17 (Dec. 2004), *available at* http://www.federalreserve.gov/boarddocs/rptcongress/UnsolicitedCreditOffers2004.pdf. The Federal Reserve generated the actual opt-out rate based on its review of a nationally-representative sample of 30,000 consumers provided by one of the large credit reporting agencies. Based on a survey that it contracted with the University of Michigan to conduct, the Federal Reserve concludes that the opt-out rate could be somewhat lower at 4 to 5 percent. Id. at 31.

[59] Id. at 31.

[60] Behavioral concepts of self-control, procrastination, and hyperbolic discounting explain why many people tend to inertia, despite rational benefits of certain changes. Such research has influenced law reform proposals on consumer savings, such switching retirement savings programs from opt-in to opt-out schemes. *See* Richard H. Thaler & Shlomo Benartzi, *Save More Tomorrow: Using Behavioral Economics to Increase Employee Saving*, 112 Journal of Political Economy (2004), *available at* http://www.journals.uchicago.edu/JPE/journal/issues/v112nS1/112118/112118.web.pdf.

[61] Respondent CA-07-129. Consumer Bankruptcy Project III (2001).

Testimony of

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Before the
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
U.S. House of Representatives

"Credit Cards and Older Americans"

August 6, 2007

Chairwoman Maloney, Representative Gillibrand, and Members of the Subcommittee, thank you for the opportunity to appear before you today on the subject of credit cards and older Americans.

I am Barbara Whipple, an associate attorney at the Barbaruolo Law Firm, located in Latham, New York, where I practice primarily in the area of consumer bankruptcy. Prior to joining the law firm, I was a law clerk to the Honorable Robert Littlefield, United States Bankruptcy Judge for the Northern District of New York, Albany Division. I also serve as the Credit Abuse Resistance Education (CARE) liaison in the Capital Region.[1]

What I can add to the Subcommittee's examination of these issues are my experiences and those of my colleagues across the country in terms of the growing number of older consumers we are seeing in our bankruptcy practices.

The simple truth is older debtors comprise a growing proportion of our bankruptcy clients. In fact, what we have said to one another over the last several years about the increasing number of older people we are seeing has been borne out by the research. The Consumer Bankruptcy Project found that the rate at which older Americans – those

[1] The CARE outreach program began as a project of the U.S. Bankruptcy Court for the Western District of New York and has expanded nationwide. Its purpose is to provide high school and college educators easy access to local volunteer professionals who go into schools and colleges with a financial literacy program that teaches teens and young adults about the mportance of using consumer credit wisely; avoiding credit card debt; and the consequences and financial problems that result if they don't.

65 years of age and older – filed for bankruptcy increased 213 percent between 1991 and 2001.[2]

The trend of rising bankruptcies among older Americans is likely to continue for the foreseeable future, according to researchers at the Administrative Office of U.S. Courts.[3] In fact, according to this latest research, personal bankruptcy filings by people age 55 and older are growing faster than those by any other age group. In 2002, the percentage of Americans older than 45 who entered bankruptcy reached 39 percent, up from 27 percent in 1994, the study found. The steepest increase in Chapter 7 (liquidation) filings occurred among people older than age 55. Although the U.S. population as a whole is getting grayer as the baby boomer generation ages, the percent of older people seeking bankruptcy protection is rising even faster.

The primary concern is that a growing number of older Americans either are entering retirement with debt (primarily mortgage debt) that will be difficult to pay back on a fixed income or are incurring debt in their retirement years (primarily medical debt) that they will not be able to pay back. Other witnesses today have touched on what is causing older Americans to incur debt later in life, including the cost of medical care and prescription drugs, rising property rates and home maintenance costs, utilities, and other basic expenses.

The problem of rising debt among older Americans is exacerbated when it is credit card debt subject to exorbitant interest rates and a multitude of penalties and other fees. During the several years that Congress debated bankruptcy reforms, some of your colleagues described debtors seeking bankruptcy relief as "deadbeats," or "irresponsible." I can tell you that the majority of consumers I see in my bankruptcy practice are not deadbeats and do not irresponsibly ring up debt buying luxury goods or going on vacations they cannot afford. Instead, the overwhelming majority of clients I see incur debt with every intention of paying what they owe and file for bankruptcy only as a last resort.

Often, my clients file for bankruptcy only after paying back the principal they owe, plus significant sums of interest and fees, over a several year period. You have heard examples here today of older Americans trapped in debt they cannot escape because of unrelenting and mounting interest and penalty fees. In 2004, a bankruptcy court in North Carolina ordered a credit card company to itemize the claims it filed in chapter 13 bankruptcy cases. In his findings, the bankruptcy judge listed claims filed in 18 separate cases broken down as between principal and interest and fees. On average, interest and fees consisted of more than half (57%) of the total amounts listed in the claims. In one case, the card company filed a claim in the amount of $943.58, of which $199.63 was listed as principal and $743.95 was listed as interest and fees. In another

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[2] Theresa Sullivan, Deborah Thorne, and Elizabeth Warren, "*Old, Young and In Between: Who Files for Bankruptcy?*" Norton Bankruptcy Law Adviser, September 2001.
[3] John Golmant and Tom Ulrich, *"Aging and Bankruptcy: The Baby Boomers Meet Up at Bankruptcy Court,"* American Bankruptcy Institute Journal, May 2007.

case, a claim of $1,011.97 consisted of $273.33 in principal and $738.64 in interest and fees.[4]

A bankruptcy case from Virginia tells another story of the impact of credit card fees and penalties on the ability of consumers to pay back that debt. During the two year period before she filed bankruptcy, a consumer made only $218.16 in new charges on her Providian Visa. After making $3,058 in payments, all of which went to pay finance charges (at the rate of 29.99%), late charges, over-limit fees, bad check fees, and phone payment fees, the balance on her account increased from $4,888 to $5,357. On her Providian Mastercard for the same period, she made only $203.06 in purchases while making $2,008 in payments. Again, all of her payments went to pay finance and other charges, and her account balance increased from $2,020.90 to $2,607.66.[5]

The scope of problem here has been well documented over the course of the hearings held by your Subcommittee, Madam Chairwoman, and by other Committees. Consider the case of the witness who testified at a Senate hearing. This Ohio resident exceeded his credit card's $3,000 limit by $200 and triggered what ended up as $7,500 in penalties and interest. After paying an average of $1,000 a year for six years, the man still owed $4,400.

I could go on and on with examples from my own practice and those of my colleagues of seniors in financial distress. They are there for different reasons – the exploding cost of health care -- including prescription drugs -- that either drains savings and/or is diverted to credit cards, necessities such as food and gas bought on credit, or outliving retirement savings and turning to credit cards to meet daily expenses. But the story is the same – a sustained effort to pay the credit card charges only to discover that it simply may not be possible given the trap of interest rates, fees and penalties.

National studies show that more households headed by retirees or those nearing retirement owe money and that the typical debt level is increasing. According to the Employee Benefit Retirement Research Institute, in 2004, 60.6 percent of families headed by someone age 55 or older owed money. In 1992, just 53 percent of similarly situated families owed money. And, the average debt level also rose, from $29,309 in 1992 to $51,791 in 2004, according to the Institute. Debt grew fastest among the poor and among families headed by someone 75 or older.[6]

My experience is that credit card debt is one of the top reasons seniors seek bankruptcy protection. The older retirees less accustomed to credit cards are more vulnerable to falling into a cycle of credit card debt, fed by rising interest rates, late fees and other penalties and fees. Older consumers who turn to me for help are embarrassed, ashamed and often do not talk to their children about their financial problems. The biggest complaint I hear is "I pay and pay every month and my debt doesn't go down,"

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[4] ***In re* Blair, No. 02-1140 (Bankr. W.D.N.C. filed Feb. 10, 2004).**

[5] *In re* McCarthy, No. 04-10493-SSM (Bankr. E.D. Va. filed July 14, 2004).

[6] Employee Benefit Research Institute, *"Debt of the Elderly and Near Elderly*, 1992-2004, available at http://www.ebri.org/pdf/notespdf/0404notes.pdf

even when I don't make purchases. It eventually becomes evident that they may never pay off that debt due to interest rates and penalty fees.

The credit card industry has designed a system that maximizes burdensome penalties and fees while ratcheting up interest rates that can exceed 30 percent. I would encourage Congress to put an end to these abusive credit card practices that often force consumers over the "financial edge."

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