

Statement of
The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
March 24, 2009

NEWS FROM U.S. SENATOR SHELDON WHITEHOUSE

March 24, 2009

FOR IMMEDIATE RELEASE

Contact: Alex Swartsel

(202) 228-6293 press office

press@whitehouse.senate.gov

Statement of Senator Sheldon Whitehouse
Chairman, Subcommittee on Administrative Oversight and the Courts
Hearing on "Credit Cards and Bankruptcy"

The hearing will come to order.

With the economy deep in recession, unemployment rates climbing, and teaser rates on home mortgages expiring and triggering higher mortgage payments, American consumers are relying more than ever on credit cards to make ends meet each month. At the same time, banks losing money in mortgages and their other areas of business are attempting to squeeze more and more profit out of their credit card customers.

The standard credit card agreement gives the lender the power to bleed their customers through evolving and ever more crafty tricks and traps. The typical credit card agreement, which twenty years ago was a page in length, has grown to a 20-page, small print contract filled with legalese. In substance, it gives the companies the right to raise interest rates for almost any reason, and in some cases no reason at all.

While interest rates for other types of lending are at historic lows, credit card lenders continue to charge double-digit rates, with average rates around 14% , exclusive of fees. At a time when the prime rate is 3.25% and the average 30-year fixed mortgage rate is under 5%, it is hard to understand why credit card borrowing remains so costly.

Although high in comparison with other types of lending, a 14% interest rate may seem like a bargain to a family that has fallen behind on its payments. When families come up short on their credit card payment, they can find a 10% or 12% annual interest rate morph into a 25% or 20% or 40% penalty rate. Add to that late payment and other penalty fees, and falling behind on a credit card can mean financial ruin.

When a family struggles to pay its bills, when a parent gets laid off or unexpected medical expenses arise, it enters what Professor Ronald Mann of Columbia Law School has called the "sweat box" of credit card debt, like any good trap, the entrance to this one is easy: a high credit limit and soon enough a high credit balance. If you can't pay the balance off, then they have you: a payment delayed, a minimum not met, and now your interest rate doubles, and fees and penalties pile one. You can't escape, and they sweat you. Under this business model, the lender focuses on squeezing out as much revenue as possible in penalty rates and fees, pushing the customer closer and closer to bankruptcy. When its customer finally does fall of the financial edge, the lender can recover a portion of the outstanding principal under the bankruptcy plan.

I have introduced legislation that would give consumers leverage to negotiate for reasonable rates with their lenders and ban abusive lenders from using the bankruptcy court system to enforce their claims. Under the Consumer Credit Fairness Act, or CCFA, claims in bankruptcy stemming from consumer credit agreements carrying interest above a variable threshold - currently 18.5% -- would be disallowed. With the leverage of a bankruptcy threat, a customer struggling under a 30% penalty rate could negotiate for more reasonable terms. In addition, bankruptcy filers with debts carrying effective interest rates above the threshold would be exempt from the so-called means test, a tactic that was enacted in the bank-written 2005 reforms to make it more difficult to enter bankruptcy. In practice, the means test delays relief in bankruptcy, keeping consumers in the "sweat box" of credit card debt.

In addition to discussing the nexus of abusive credit card terms and bankruptcy in general, I hope that we will take some time today to explore the CCFA. Following Senator Sessions' opening statement, we will hear from our distinguished panel of witnesses.

Douglas Corey, a constituent of mine from North Scituate, Rhode Island will share his experiences with his credit card lender. Mr. Corey has worked in sales and marketing and is a graduate of Rhode Island College.

Judge Rosemary Gambardella has served on the Bankruptcy Court for the District of New Jersey since 1985. A native of Newark, she attended Rutgers University and Rutgers Law School. Judge Gambardella is a member of the National Association of Women Judges, the National Conference of Bankruptcy Judges, the American Bankruptcy Institute, and former member of the Bankruptcy Judges Advisory Group for the Administrative Office of the United States Courts.

Professor Adam Levitin of the Georgetown University Law Center is a nationally regarded expert in bankruptcy and consumer law. He has served as Special Counsel for Mortgage Affairs for the Congressional Oversight Panel, as an expert witness for the FTC and FDIC on credit card litigation, and as a law clerk for the Honorable Jane Roth of the United States Court of Appeals for the Third Circuit. Professor Levitin is a graduate of Harvard, Columbia, and Harvard Law School.

Professor Mark Scarberry of Pepperdine University School of Law is an expert in bankruptcy and contract law. A graduate of Occidental College and the UCLA School of Law, he is a member of the American Bankruptcy Institute Law Review Advisory Board and Pro Bono Task Force.

David John is a Senior Research Fellow at the Heritage Foundation and specializes in pensions, financial institutions, asset building, and Social Security reform. Prior to joining the Heritage Foundation, he served on the staff of Representative Mark Sanford of South Carolina. Mr. John has a bachelor's and three masters' degrees from the University of Georgia.

###