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Republican Study Committee

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Legislative Bulletin……………………………………..………September 23, 2008

Contents:

H.R. 5244—Credit Cardholders' Bill of Rights Act (*Maloney, D-NY*)

Please note the possible conservative concerns on page 4.

Order of Business: The bill is scheduled to be considered on Tuesday, September 23rd, subject to a (likely) closed or modified closed rule. The RSC will summarize any amendments made in order under the rule in a separate document.

Summary: H.R. 5244 would further increase the federal government's control over the business practices of credit card issuers. Highlights of the legislation are as follows:

Rate Increases on Existing Balances. Prohibits creditors from increasing any annual percentage rate on an *existing* balance on a credit card, unless the increase is due solely to the:

- Expiration of a promotional rate;
- Loss of a promotional rate for a reason specified in the account agreement (e.g. late payment);
- The consumer's minimum payment has not been received within 30 days after the due date; or
- The operation of an index that is not under the creditor's control and is available to the general public.

The annual percentage rate after the loss of a promotional rate could not exceed the rate that would have applied under the terms of the agreement after the normal expiration of the promotional rate.

Any remaining balance at lower rates (after a rate increase) would have to be allowed to be repaid either 1) amortized over five years, 2) in minimum balance increments not more than double the proportion to balance before the rate increase, or 3) in some other manner "at least as beneficial to the consumer" as these two prior options.

Creditors would be prohibited from assessing any fee or charge based on an existing balance that has to remain at a lower interest rate in accordance with the above restrictions.

Creditors would have to inform consumers in writing ("in a complete and conspicuous manner") at least 45 days in advance of any rate increase and to what extent the increase would apply to existing balances.

Double Cycle Billing. Prohibits finance charges under most circumstances from being levied on credit card balances from days in billing cycles preceding the most recent billing cycle.

Interest-Only Balances. Prohibits fees against outstanding balances at the end of a billing period that are attributable only to interest accrued during the preceding billing period. Prohibits any failure to make timely repayments of a balance attributable only to interest from constituting a default on the account.

Payoff Balance Information. Requires each credit card billing statement to include the phone number, email address, and website at which the consumer could request the payoff balance on the account.

Credit Reporting Information. Prohibits a creditor from providing information to the credit reporting agency until the credit card has been activated or used by the consumer.

Fixed Rates. Requires that any reference to "fixed rate" (including in advertising) can only be an interest rate that "will not change or vary for any reason over the period clearly and conspicuously specified in the terms of the account."

Prime Rate. Requires that any reference in an agreement or contract to "prime rate" only refer to the bank prime rate published in the Federal Reserve Statistical Release.

Due Date. Requires that each credit card statement list a date by which the next payment is due before being deemed late. Any payment received by 5:00pm local time at the specified payment location on such date would have to be treated as on-time. Any telephone or Internet payment made by 5:00pm on a business day would have to be credited to the consumer's account on that business day. Any evidence (such as a postal receipt) showing that the consumer sent a payment at least seven days before it was due would create a presumption that the payment was made on time. Creditors could rebut this presumption by claiming consumer fraud or dishonesty.

Pro Rata Payments. Requires creditors to allocate payments against balances with two or more interest rates in the same proportion as each portion of the total balance bears to the total balance. Creditors may elect to allocate a higher proportion of a payment to the higher-interest portion of the balance.

Promotional Rate Balances. Requires that amounts paid in excess of the minimum payment on credit cards with promotional rate balances or deferred interest balances be allocated to such promotional or deferred interest balance only if other balances have been fully paid (subject to exception). Creditors would be prohibited from denying special grace periods (time to make payments without incurring finance charges) to consumers with promotional rate balances or deferred interest balances.

Statement Dates. Requires that credit card statements be sent to the consumer at least 25 calendar days before the due date.

Over-the-Limit Fees. Requires that consumers be allowed to prohibit creditors from completing transactions in excess of the authorized amount of credit, if such transaction would otherwise result in over-the-limit fees. Creditors would have to create a special phone number, email address, and webpage through which consumers could notify creditors of their election to stop transactions in excess of the authorized amount of credit. Such election would have to be effective beginning three days after the creditor receives notice.

Creditors would have to notify consumers of their options in this regard at least once a year, as well as in any statement in which over-the-limit fees are assessed. No over-the-limit fees could be assessed on any consumer who has made the election above, even if the balance somehow exceeds the authorized credit limit.

The Federal Reserve would be directed to provide for the completion of over-the-limit transactions that exceed a consumer's credit limit by a *de minimis* amount—even when the consumer has elected to have such transactions blocked. Fees could not be assessed on such transactions.

Over-the-limit fees could only be imposed once during a billing cycle—and only if the credit limit is exceeded as of the last day of such billing cycle. Such fees could then only be assessed once in each of the two billing cycles, subject to certain exceptions.

Information Collection. Increases the details of information that the Federal Reserve would have to collect about credit card transactions (such as the total number and amount of balances accruing finance charges during each six-month period, the total value of purchases made on credit cards, etc.). The Board would have to report to Congress annually on the approximate, relative percentage of income derived by the credit card operations of depository institutions from the imposition of interest rates on cardholders, the imposition of fees on cardholders and merchants, and any other material sources of income.

Subprime Cards. Prohibits fees (other than late fees or over-the-limit fees) required in the first year an account is open in excess of 25% of the total authorized credit limit from being paid with the credit made available by the card.

Cards to Minors. Prohibits credit cards from being issued to people under age 18 (unless emancipated under state law). Proof of age may be provided by a signed statement at the time of applying.

Effective Date. Makes the provisions of this bill effective one year after the enactment of this legislation. The Federal Reserve, in consultation with other financial regulatory agencies, would be directed to issue regulations implementing the provisions of the bill.

RSC Bonus Fact: The Federal Reserve Board, in conjunction with the Office of Thrift Supervision and the National Credit Union Administration, are currently writing new rules that address the primary concerns about credit cards expressed by Congress and others. These rules, the promulgation of which was mandated by Congress, are aimed at preventing unfair and deceptive trade practices. These agencies are expected to issue final rules before the end of 2008, as the agencies are still reviewing the tens-of-thousands of comments they received before the August 4, 2008 deadline for comments.

Committee Action: On February 7, 2008, H.R. 5244 was introduced in the House and referred to the Financial Services Committee, which, on July 31st, marked up the bill and ordered it reported to the full House by a vote of 39-27.

Possible Conservative Concerns: Many conservatives have expressed concerns about this bill, including the following:

Excessive Government Intervention into the Private Market. This bill is a laundry list of federal mandates on the intricate details of private-market transactions. The federal government telling credit card issuers what time the cut-off is for on-time payments, for example, is no different than the federal government telling retail stores what their business hours must be or what their returns policy must be.

Unconstitutional. Some conservatives may question the constitutionality of this bill. The interstate commerce clause of the Constitution does not give the federal government the authority to decide how businesses should be structured and operated.

Reduces Investment. Because the bill would make the issuing of credit cards a riskier business with limited ability to build such risk into its rate and fee structures, the bill could discourage investors from holding credit-card asset-backed securities (ABS), which, according to the American Bankers Association, are used to fund approximately 50% of credit card lending. **Thus, fewer funds will be available for lending, further exacerbating the credit crunch at the very same time the federal government is seeking a "bailout" plan to relieve the credit crunch.**

Limits Risk-Based Pricing. The bill restricts the ability of credit card issuers to freely engage in risk-based pricing of credit. While it may not feel like it, every time you use a credit card, you are getting a loan—often interest-free, depending on the terms of the card and when you pay your bill. Not all borrowers, i.e. not all credit card users, are created equal. Some are more likely to default, to fail to pay their loans back, than others. Few people question an insurance company charging higher rates to a driver who gets into major accidents five times a year, yet this bill limits the ability of credit card issuers to charge higher rates to a credit card user who misses five payments a year.

Increased Rates and Fees for Everyone. The irony of restricting risk-based pricing is that it will likely force credit card issuers to spread the risk across all consumers (instead of just the risky ones), yielding increased rates and fees for everyone. Creditors would also be likely to modify or eliminate promotional-rate programs, since the bill limits the ability to seek repayment on these balances.

Reduced Credit Availability Primarily for Those the Bill Tries to Protect. Another irony of restricting risk-based pricing is that it will reduce the overall availability of credit. If creditors cannot properly price credit for riskier consumers, some creditors may make the entirely rational decision of withholding credit from the higher-risk consumers altogether. In other words, the people whom this bill purports to protect—those with imperfect credit histories and young people or new market entrants without much of a credit history—will be those who find it most difficult to get credit under this legislation.

Administration Position: Although a Statement of Administration Policy (SAP) was not available at press time, the Administration is expected to oppose this legislation, citing the need to allow the rulemaking process at the Federal Reserve to be completed first.

Cost to Taxpayers: According to the Federal Reserve and other agencies, the regulatory activities required by H.R. 5244 would have no significant effect on their workload or budgets. CBO estimates that enacting this bill would reduce revenues by less than $500,000 over the 2009-2018 period and would have a negligible net effect on direct spending.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would grow the federal government's reach into the private sector.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The bill contains several private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require creditors to submit detailed information to the Federal Reserve on a semiannual basis, require creditors to perform various billing and issuing practices, and prohibit creditors from performing others. CBO estimates that the aggregate cost for creditors to comply with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Financial Services Committee, in House Report 110-857, asserts that, "H.R. 5244 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

Constitutional Authority: The Financial Services Committee, in House Report 110-857, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to provide for the general welfare of the United States) and Clause 3 (the congressional power to regulate interstate commerce).

Outside Organizations: As of press time, the following entities were strongly opposed to the legislation:

- American Bankers Association (ABA), representing all major banks issuing credit cards;
- VISA;
- MasterCard;
- Discover; and
- American Express.

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