

**Legislative Bulletin.....May 20, 2009**

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**H.R. 627**—Senate Amendments to Credit Cardholders’ Bill of Rights Act

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**(Maloney, D-NY)**

**Please note the possible conservative concerns on page 3.**

**Order of Business:** The House will take up Senate amendments to H.R. 627 on Wednesday, May 20, 2009, under a closed rule that waives all points of order except for Clause 10 of Rule XXI (PAYGO), and provides one hour of general debate. The rule provides for a division of the legislation into two votes. There will be a vote on concurring with Section 512 (gun rights in national parks) of the Senate amendment to H.R. 627 and a vote concurring with the rest of the underlying bill. Under the rule, if either part of the divided question is not adopted, than the House shall be considered to have not adopted the Senate amendment.

**Summary:** H.R. 627 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;
- Failure to comply with a workout plan;
- The consumer’s minimum payment has not been received within 60 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.

Creditors would have to inform consumers in writing (“in a clear and conspicuous” manner) at least 45 days in advance of any rate increase, or other changes to the cardholder agreement.

**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.

Over-the-Limit Transactions. Requires a consumer to opt-in to any credit card account in which an over-the-limit fee may be imposed by the creditor.

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.”

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. The legislation also requires the the card issuer to apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest.

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.

Rules for Periodic Statements. The legislation requires the payment due date for a credit card account to be the same day each month.

Statement Dates. Requires that credit card statements be sent to the consumer at least 21 calendar days before the due date.

Consideration of Ability to Repay. The legislation prohibits a card issuer from opening a credit card account for a consumer unless the issuer considers “the ability of the consumer to make the required payments under the terms of such account.”

Minimum Payment Warning. The legislation requires credit card statements to include a statement that paying only the minimum balance due increases the amount of interest paid by the consumer and increases the amount of time it takes to repay the balance. The bill further requires that the statement include information on the number of months that it would take to pay the entire amount of the balance if the consumer only pays the minimum amount due, as well as other information on the cumulative cost of paying only the minimum balance on a credit card each month.

Credit Card Agreements. H.R. 627 requires each creditor to establish and maintain a website and post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.

Credit to Individuals Under Age of 21. Prohibits credit cards from being issued to individuals under age 21 except with the exceptions outlined on pages 35-36 of the legislation. The legislation also prohibits credit issuers from sending prescreened credit offers to individuals under the age of 21.

Gift Cards. The legislation generally prohibits fees or charges on a gift certificate, store gift card, or a general-use prepaid card.

Interchange Fees Study. H.R. 627 requires the Comptroller General to submit a report on interchange fees within 180 days of enactment.

Small Business Information Security Task Force. H.R. 627 requires the Small Business Administrator, in conjunction with the Security of Homeland Security, to establish a task force to address, among other things, the information technology security needs of small business concerns.

Limiting Flexibility of the Fed. Puts into statute what the Federal Reserve is doing by regulation. Eliminates flexibility to correct or cease what's not working.

## Section 512

**Gun Rights in National Parks:** Section 512 of the legislation prohibits the Secretary of the Interior from promulgating or enforcing any regulation that prohibits an individual from possessing a firearm including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if:

- The individual is not otherwise prohibited by law from possessing the firearm.
- The possession of the firearm is in compliance with the law of the state in which the unit of the National Park System or the National Wildlife Refuge System is located.

**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 implementing a “bailout” plan to relieve the credit crunch.**

**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.

**Committee Action:** On January 22, 2009, H.R. 627 was introduced in the House and referred to the Financial Services Committee, which, on April 22, 2009, marked up the bill and ordered it reported to the full House by a vote of 48-19. The legislation went on to be approved by the House on April 30, 2009, by a vote of [357 to 70](#). On May 19, 2009, the Senate passed an amended version of the legislation by a vote of [90 to 5](#).

**Administration Position:** No Statement of Administration Policy (SAP) is available for the Senate-passed version of the legislation. However, on May 11, 2009, the Administration released a [SAP](#) expressing support for the amendment in the nature of a substitute that was brought to the Senate floor.

**Cost to Taxpayers:** No CBO score of the Senate amendment to H.R. 627 is available.

**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?:** According to the [CBO score](#) for the version of the legislation that was reported out of committee on April 22, 2009, 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 (\$139 million in 2009, 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 111-088, asserts that, "H.R. 627 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI." But no similar statement is available for the Senate amendment to H.R. 627 that the House will consider today.

**Constitutional Authority:** The Financial Services Committee, in House Report 111-088, 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).

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