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**Legislative Bulletin.....November 4, 2009**

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(Maloney, D-NY)**

**Take-Away Points**

- The legislation would generally move up the effective date of the regulatory requirements of the Credit Card Accountability Responsibility and Disclosure Act (the CARD Act) to December 1, 2009. Under current law these provisions will take effect on either February 2010 or August 2010 (depending on the regulation).
- The CARD Act imposed a series of new regulations on the business practices of credit card issuers. See [here](#) for more information on this legislation.
- Potential Conservative Concerns:** Among other things, conservatives may have the following concerns with H.R. 3639:
  - 1) Many conservatives opposed the CARD Act, and might therefore also oppose moving up the effective date of its various provisions.
  - 2) Moving up the implementation date will further increase costs to credit card issuers (CBO says these costs exceed the \$139 million private-sector threshold established by Unfunded Mandates Reform Act of 1995). Many conservatives would argue that these costs will get passed onto consumers in the form of higher rates, other fees, or denied access to credit.
  - 3) Institutions that will have to comply with this law say that they cannot meet a December 1<sup>st</sup> deadline. Among other things, this means the bill could lead to class action lawsuits—a boon to the trial lawyers.

*For more details, see below.*

**Order of Business:** The bill is scheduled to be considered on Wednesday, November 4, 2009, under a structured rule ([H.Res. 884](#)). The rule waives all points of order against considering the

bill (except those for PAYGO and earmarks), waives *all* points of order against the bill itself, and provides for one hour of general debate.

The rule self-executes one amendment (included in the summary of the underlying bill). This amendment exempts depository institutions with fewer than two million credit cards in circulation from the new effective dates. The rule also makes in order 5 other amendments. *For summaries of these amendments, see pages 3-4 of this Legislative Bulletin.*

**Summary:** H.R. 3639 changes the effective dates of the regulatory requirements in the Credit Card Accountability Responsibility and Disclosure Act (the CARD Act). Under the CARD Act, the numerous new regulations on credit card issuers go into effect in one of three dates:

- August 20, 2009;
- February 22, 2010; or
- August 22, 2010.

H.R. 3639 would, generally, move up the effective date of the regulations that have yet to go into effect (those scheduled to go into effect on either February 22, 2010 or August 22, 2010) to December 1, 2009.

The bill exempts depository institutions with fewer than two million credit cards in circulation from the expedited effective dates under H.R. 3639.

**Background:** The Credit Card Accountability Responsibility and Disclosure Act (The CARD Act) was signed into law on May 22, 2009. That law created numerous new regulations on the business practices of credit card issuers. See the RSC Legislative Bulletin on this legislation [here](#).

Opponents of this legislation argued that it would increase costs on lenders, which would in turn be passed onto consumers (either through higher interest rates or reduced access to credit). Now that the legislation has become law, and credit card companies have to spend money to transition to the requirements of the law, the Democrats in the Financial Services Committee cite as justification for this legislation: “many credit card companies have raised interest rates and decreased credit limits on their consumers before the effective date.”

Committee Republicans (in the dissenting views of the committee report) further explain the unintended consequences of enactment of the CARD Act:

“No longer will even exemplary behavior—never carrying a balance, never incurring a late fee, for example—shield some customers from unexpected fees. Because of the CARD Act some banks have started charging inactivity fees, and some are planning to charge annual usage fees—charges that many believed became extinct years ago.”

**Potential Conservative Concerns:** The following are some of the concerns that conservatives may have with H.R. 3639:

Concerns with the CARD Act. Many conservatives had numerous concerns with the CARD Act when it came before Congress earlier this year, and thus might have concerns with having the law be implemented early. These concerns include:

- **Excessive Government Intervention in the Private Market:** The law 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.
- **More Expensive Credit for Consumers:** The law increases the regulatory burden on credit card companies, who have already been forced to make up for the added expense by passing on the costs to consumers in the form of higher interest rates (or other new fees).
- **Reduced Access to Credit:** Many conservatives would argue that the law makes it harder for creditors to properly price credit for riskier consumers. This will force some creditors may make the entirely rational decision of withholding credit from the higher-risk consumers altogether. In other words, the people whom the CARD Act was intended 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 when the law is implemented.

Further Cost to Consumers from Moving Up Implementation Date. Companies will have difficulty meeting the new deadline. CBO concludes that the cost of the legislation to the private-sector will likely exceed the annual threshold under the Unfunded Mandates Reform Act of 1995 (\$139 million). These costs will be passed on to consumers and small businesses. As the Federal Reserve has noted:

“If institutions were not provided a reasonable time to make changes to their operations and systems to comply with the final rule, **they would either incur excessively large expenses, which be passed on to consumers, or cease engaging in the regulated activity altogether, to the detriment of consumers.**”

Boon for Trial Lawyers. The companies that will have to comply with this legislation have argued that it will be impossible to comply with new deadlines established by H.R. 3639. Consequently, these institutions could be subject to class action lawsuits.

### **Amendments Made in Order:**

1. **Hensarling (R-TX).** The CARD Act requires creditors to inform consumers in writing (“in a complete and conspicuous manner”) 45 days in advance of changes to the consumer’s interest rates (or other fees). This amendment would make this requirement non-applicable in the case of a creditor lowering a consumer’s interest rate, eliminating or decreasing any fees, or “any significant benefit change in terms solely or primarily for the benefit of the consumer into effect immediately.” In other words, under this amendment, a creditor would not have to wait 45 days before making changes to a consumer’s account that benefit the consumer.

2. **McCarthy (D-NY).** The amendment would make the effective date February 22, 2010 (instead of December 1, 2009 in the underlying bill) for any creditor with respect to an existing credit card account under an open end credit card plan *if* the creditor:
  - Does not increase interest rates or fees on consumers.
  - Does not change the terms to the “detriment of the consumer.”
3. **Maffei (D-NY).** Would make the effective date of certain provisions in the CARD Act the date of enactment of H.R. 3639 (as opposed to December 1, 2009 in the underlying bill).
4. **Sutton (D-OH).** The amendment prohibits a creditor or consumer reporting agency from using the closure of a credit card account in response to the imposition of a new fee to negatively impact a consumer’s credit report or credit score.
5. **Stupak (D-MI).** The amendment would prohibit creditors (in the case of any credit card account under an open ended consumer credit plan) from increasing annual percentage rates, fees, and finance charges, as well as a moratorium on changing the terms for repayment of outstanding balances on credit card accounts, for nine months after enactment of the CARD Act (which was enacted May 22, 2009).

**Committee Action:** The legislation was introduced on September 24, 2009 and referred to the House Financial Services Committee, which ordered the bill to be reported on October 22, 2009.

**Administration Position:** A Statement of Administration Policy (SAP) for H.R. 3639 is not available at press time.

**Cost to Taxpayers:** According to CBO, the legislation would not have a significant impact on the federal budget.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill expedites numerous regulations on the private-sector.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, the costs that this legislation would impose on the private-sector (from the earlier implementation of numerous regulations), will “**probably exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).**”

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The House Financial Services Committee, in House Report [111-314](#), states that the bill contains no earmarks.

**Constitutional Authority:** The House Financial Services Committee, in House Report [111-314](#), states “...the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating

to the power to regulate interstate commerce).” Some conservatives may question these justifications.

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