

EXPEDITED CARD REFORM FOR CONSUMERS ACT OF
2009

OCTOBER 26, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial
Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3639]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3639) to amend the Credit Card Accountability Responsibility and Disclosure Act of 2009 to establish an earlier effective date for various consumer protections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Expedited CARD Reform for Consumers Act of 2009”.

SEC. 2. EARLIER EFFECTIVE DATE FOR THE CREDIT CARD ACT OF 2009, GENERALLY.

Section 3 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 is amended by striking “become effective 9 months after the date of enactment of this Act,” and inserting “take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010.”.

SEC. 3. EARLIER EFFECTIVE DATES FOR SPECIFIC PROVISIONS TO PREVENT FURTHER ABUSES.

(a) REVIEW OF PAST CONSUMER INTEREST RATE INCREASES.—Section 148(d) of the Truth in Lending Act (15 U.S.C. 1665c(d)) (as added by section 101(c) of the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking “9 months after the date of enactment of this section” and inserting “December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010.”; and

(2) by striking “become effective 15 months after that date of enactment” and inserting “take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be August 22, 2010”.

(b) REQUIREMENT THAT PENALTY FEES BE REASONABLE AND PROPORTIONAL TO THE VIOLATION.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) (as added by section 102(b) of the Credit Card Accountability Responsibility and Disclosure Act of 2009) is amended—

(1) by striking “9 months after the date of enactment of this section,” and inserting “December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010.”; and

(2) by striking “become effective 15 months after the date of enactment of the section” and inserting “take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be August 22, 2010”.

PURPOSE AND SUMMARY

H.R. 3639 accelerates the implementation dates of the Credit Card Accountability Responsibility and Disclosure Act (The CARD Act), which was signed into law on May 22, 2009. The Expedited CARD Reform for Consumers Act, H.R. 3639, will move the nine-

month (February 20, 2010) and 15-month (August 22, 2010) implementation dates up to December 1, 2009.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3639 was introduced on September 24, 2009, by Congresswoman Maloney and Chairman Frank to move up certain implementation dates of the Credit Card Accountability Responsibility and Disclosure Act (The CARD Act, P.L. 111–24), which was signed into law on May 22nd. Since that time, instead of preparing to implement these consumer protection provisions, many credit card companies have raised interest rates and decreased credit limits on their consumers before the effective date. The CARD Act contains three separate implementation dates, 90 days, 9 months and 15 months after enactment. The break-out below lists when provisions become effective.

The Expedited Card Reform for Consumers Act, H.R. 3639, will move the nine-month (February 20, 2010) and 15-month (August 22, 2010) implementation dates up to December 1, 2009.

The following provisions became effective on August 20, 2009:

- Provide increased written notice to consumers of any increases in the interest rate or otherwise makes a significant change to the terms of a credit card account;
- Inform consumers of their right to cancel the card before the rate hike goes into effect;
- Send statements to consumers 21 days before the due date of any payments.

The following provisions will become effective on February 22, 2010:

- Prohibits arbitrary interest rate increases and universal default on existing balances;
- Prohibits issuers from charging over-limit fees unless the cardholder elects to allow the issuer to complete over-limit transactions, and also limits over-limit fees on electing cardholders;
- Requires payments in excess of the minimum to be applied first to the credit card balance with the highest rate of interest;
- Prohibits issuers from setting early morning deadlines for credit card payments;
- Prohibits interest charges on debt paid on time (double-cycle billing ban);
- Requires issuers extending credit to young consumers under the age of 21 to obtain an application that contains: the signature of a parent, guardian, or other individual 21 years or older who will take responsibility for the debt; or proof that the applicant has an independent means of repaying any credit extended;
- Protects recipients of gift cards by requiring all gift cards to have at least a five-year life span, and eliminates the practice of declining values and hidden fees for those cards not used within a reasonable period of time.

The following provisions will become effective on August 22, 2010:

- Requires penalty fees to be reasonable and proportional to the omission or violation;

- Requires that creditors periodically review all interest rate increases since January 2009 and reduce rates when a review indicates that a reduction is warranted.
- Amends the Electronic Fund Transfer Act to limit dormancy, inactivity, and service fees associated with gift cards.

HEARINGS

The Full Committee held a hearing on October 8, 2009 entitled “H.R. 2382, the Credit Card Interchange Fees Act of 2009 and H.R. 3639, the Expedited CARD Reform for Consumers Act of 2009.” The following witnesses testified regarding H.R. 3639:

Ms. Ruth Susswein, Deputy Director, National Priorities, Consumer Action

Mr. Kenneth J. Clayton, Senior Vice President and General Counsel, ABA Card Policy Council, American Bankers Association

Mr. Todd McCracken, President, National Small Business Association

Mr. Anthony Demangone, Senior Compliance Counsel, National Association of Federal Credit Unions

Mr. Nick Bourke, Manager, Safe Credit Cards Project, The Pew Charitable Trusts

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 22, 2009, and ordered H.R. 3639, Expedited CARD Reform for Consumers Act of 2009, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a voice vote.

During the consideration of the bill, the following amendments were considered:

An amendment by Mr. Sherman (and Mrs. Capito), no. 1, exempting small issuers from the expedited dates except for the gift card provisions, was agreed to by a voice vote.

An amendment by Mr. Sherman (and Mr. Scott), no. 2, deleting references to the gift card implementation dates, was agreed to by a voice vote.

An amendment by Mr. Lee (and Mr. Castle), no. 3, regarding a Federal Reserve certification, was not agreed to by a voice vote.

An amendment by Mrs. McCarthy (NY), no. 4, regarding a moratorium on interest rate increases, was offered and withdrawn.

An amendment by Mr. Hensarling, No. 5, regarding a clarification that 45-day delay does not apply to reductions in interest rates and fees, was ruled out of order as not germane.

An amendment by Mr. Maffei, No. 6, changing the effective date to the date of enactment, was not agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3639 accelerates the implementation dates of the Credit Card Accountability Responsibility and Disclosure Act (The CARD Act), by moving the nine-month (February 20, 2010) and 15 month (August 22, 2010) implementation dates up to December 1, 2009.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

OCTOBER 23, 2009.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3639, the Expedited CARD Reform for Consumers Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Barbara Edwards.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3639—Expedited CARD Reform for Consumers Act of 2009

H.R. 3639 would accelerate the implementation of certain provisions in existing law related to the regulation and operations of the credit card industry. The Credit Card Accountability Responsibility and Disclosure Act of 2009 set deadlines for implementing various reforms and procedures, with most of those measures scheduled to

take effect in February and August of 2010. This bill would change those effective dates to December 1, 2009, subject to exemptions for entities that issue prepaid gift cards and depository institutions (such as banks and credit unions) with less than 2 million credit cards in circulation.

Based on information from the Board of Governors of the Federal Reserve, CBO estimates that implementing this bill would have a negligible net effect on the workload of the affected regulatory agencies. The budgetary effects on the Federal Reserve, which has primary responsibility for regulating credit card practices, are recorded as changes in revenues (governmental receipts). Costs incurred by other financial regulatory agencies would affect direct spending, but most of those expenses are offset by fees or income from deposit insurance premiums. Thus, CBO estimates that enacting this bill would have no significant effect on revenues or net direct spending.

H.R. 3639 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

By accelerating the implementation of several requirements on creditors, H.R. 3639 would impose private-sector mandates as defined in UMRA. The cost of the mandates would be the cost for creditors to comply with the requirements sooner than required under current law. Based on information from the Federal Reserve and industry sources, CBO estimates that the aggregate cost of those mandates would probably exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Barbara Edwards (for federal costs) and Brian Prest and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Frank Sammartino, Assistant Director for Tax Analysis, and Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that 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).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3639 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

This section establishes the short title of the bill, the “Expedited CARD Reform for Consumers Act of 2009.”

Section 2. Earlier Effective Date for the Credit Card Act of 2009, Generally

This section establishes an effective date of December 1, 2009 for the Credit Card Accountability Responsibility and Disclosure Act of 2009, except for depository institutions as defined in the Federal Reserve Act with fewer than 2 million credit cards in circulation on the date of enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010.

Section 3. Earlier Effective Dates for Specific Provisions to Prevent Further Abuses

This section establishes the December 1, 2009 effective date for specific provisions that were to take effect 9 months after enactment and 15 months after enactment, except for depository institutions as defined in the Federal Reserve Act with fewer than 2 million credit cards in circulation on the date of enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010 or August 22, 2010, as appropriate.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**CREDIT CARD ACCOUNTABILITY RESPONSIBILITY AND
DISCLOSURE ACT OF 2009**

* * * * *

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall **[become effective 9 months after the date of enactment of this Act,]** *take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for*

Consumers Act of 2009, the effective date shall be February 22, 2010, except as otherwise specifically provided in this Act.

* * * * *

TRUTH IN LENDING ACT

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CHAPTER 3—CREDIT ADVERTISING

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SEC. 148. INTEREST RATE REDUCTION ON OPEN END CONSUMER CREDIT PLANS.

(a) * * *

* * * * *

(d) RULEMAKING.—The Board shall issue final rules not later than **[9 months after the date of enactment of this section]** *December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010,* to implement the requirements of and evaluate compliance with this section, and subsections (a), (b), and (c) shall **[become effective 15 months after that date of enactment]** *take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be August 22, 2010.*

SEC. 149. REASONABLE PENALTY FEES ON OPEN END CONSUMER CREDIT PLANS.

(a) * * *

* * * * *

(b) RULEMAKING REQUIRED.—The Board, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than **[9 months after the date of enactment of this section,]** *December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be February 22, 2010,* to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall **[become effective 15 months after the date of enactment of this section]** *take effect on December 1, 2009, except that for a depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)), with fewer than 2 million credit cards in circulation*

on the date of the enactment of the Expedited CARD Reform for Consumers Act of 2009, the effective date shall be August 22, 2010.

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DISSENTING VIEWS

The way that consumers pay for products and services is dramatically changing, with electronic payments (credit and debit cards) now accounting for more than half of all transactions. Credit cards provide quick, easy and convenient ways for consumers to conduct their daily financial transactions. And given the crucial role that credit cards have come to play for individual consumers and the economy, it may be appropriate to consider new ways to protect consumers from unfair and deceptive credit card practices, ensuring that they receive useful and complete disclosures about the terms and conditions governing their cards. But policymakers must realize that in endeavoring to protect consumers, they may end up imposing considerable costs on the U.S. economy, because even the best policy cannot substitute for personal responsibility and may end up both raising the price of credit for some and unfairly limiting access to credit to others.

Since President Obama signed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (P.L. No. 111-24) (CARD Act) into law on May 22 of this year, consumers and small businesses alike have witnessed a dramatic constriction of credit. Seventy-nine percent of small businesses surveyed by the National Small Business Association said that credit card lending has tightened since last year. Small business lending is down almost \$118 billion since the fourth quarter of 2008 and 10 percent of all credit-card lines have been cancelled outright. The proponents of H.R. 3639, the Expedited CARD Reform for Consumers Act of 2009, are ignoring these facts, insisting on a timetable for implementation of the CARD Act that is patently unworkable.

The CARD Act requires that card issuers rethink their entire business models, reprogram their systems, and redesign their marketing materials, solicitations, periodic statements and contracts. For many, particularly smaller issuers that do not enjoy the economies of scale and technological capabilities of the largest firms, an earlier implementation date is not feasible. Federal Reserve Board officials have testified that speeding up implementation could be counter-productive if issuers passed higher expenses on to customers or eliminated some product offerings that consumers depend on. Fed Chairman Ben Bernanke reaffirmed these concerns in an October 20, 2009 letter to Ranking Member Bachus. He said that expediting the rules would cut consumers' voices out of the rule-writing process and complicate effective implementation of the rules. He also explained that companies need to have sufficient time to "to allow for an orderly transition and to avoid unintended consequences, compliance difficulties and potential liabilities."

During the debate of the CARD Act, Republicans warned that its enactment would penalize some of the most responsible credit users. Unfortunately, this has already proven true. Curtis Arnold,

founder of CardRatings.com, says he expected credit card issuers to raise annual fees after the legislation was enacted. What he did not expect, he says, “was that good customers were going to be hit.” No longer will even exemplary behavior—never carrying a balance, never incurring a late fee, for example—shield some consumers 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.

Economic anxiety is widespread and Americans do not feel secure. Yet H.R. 3639, a bill whose proponents claim will address one of the sources of that anxiety, may only make matters worse, by driving up the costs of credit and significantly curtailing its availability. It is the wrong bill at the wrong time.

SPENCER BACHUS.
SCOTT GARRETT.
MICHELE BACHMANN.
RON PAUL.
LYNN JENKINS.
CHRISTOPHER LEE.
RANDY NEUGEBAUER.
MIKE CASTLE.
JEB HERSARLING.

