UNITED STATES HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY WHIP
THE HONORABLE JAMES E. CLYBURN (SC-06)

THE WHIP PACK

WEEK OF SEPTEMBER 22, 2008

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Bill Text and Background for the Week of September 22, 2008

- H.R. 5244 - The Credit Cardholders' Bill of Rights Act of 2008
- H.R. 2638 - The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act
- H.R. 7060 – The Renewable Energy and Job Creation Tax Act of 2008

H.R. 5244 – THE CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2008*(Rep. Maloney – Financial Services) (Subject to a Rule)*

Bill Text: HTML Version, PDF Version
Bill Summary and Status
Rules Committee Meeting: Monday, September 22, 2008 at 5:00 p.m. in H-313 the Capitol, Special Announcement, **Meeting Time:** 5:00pm Monday 9/22, Text of Bill as Reported, Financial Services Committee Report
Committee: Committee on Financial Services
Committee Staff Contact: 5-4247

LEGISLATION AT A GLANCE:

Summary of the Credit Cardholders' Bill of Rights

H.R. 5244, the "Credit Cardholders' Bill of Rights," provides crucial protections against unfair, but unfortunately common, credit card practices.

Ending Unfair, Arbitrary Interest Rate Increases

Problem: Credit card issuers can arbitrarily raise interest rates, even on customers who pay on time and don't go over their credit limit. Fine print in most card agreements allows rate increases for reasons completely unrelated to a customer's use of the card – such as a decline in their credit score, using most of their credit line, default on a different debt, or even "general economic conditions." These increases apply to existing balances as well as future purchases, driving up debt burdens and making it much harder for consumers to pay their bills. The Federal Reserve has concluded that allowing companies to raise rates on existing balances – retroactively changing the deal – is unfair and deceptive, anticompetitive, and stops the forces of the free market from working to reduce rates.

Solution:

- The bill prevents card companies from unfairly increasing interest rates on existing card balances – retroactive increases are permitted only if a cardholder is more than 30 days late, if a promotional rate expires, or if the rate adjusts as part of a variable rate.
- If a consumer becomes more risky, a card company can charge them more for new credit or reduce their line of credit, but the consumer can pay off the old balance at the previous rate.
- The bill also requires card companies to give 45 days notice of *all* interest rate increases so consumers can pay off their balances and shop for a better deal.

Giving Consumers Control Over Credit Limits, Ending Excessive "Over-the-Limit" Fees

Problem: Most card companies currently don't give cardholders the option of setting real limits on their own accounts. Instead, the companies decide what a cardholders' limits should be, allow them to exceed those limits, then hit them with fees and/or rate increases for doing so. Most card companies penalize cardholders who spend beyond their credit ceiling by hitting them repeatedly with "over-the-limit" fees averaging $39 each.

Solution:

- Requires companies to let consumers set their own fixed credit limit.

- Prevents companies from charging “over-the-limit” fees when a cardholder has set a limit, or when a preauthorized credit “hold” pushes a consumer over the limit.

- Limits (to 3) the number of over-the-limit fees companies can charge for the same transaction – some issuers now charge virtually unlimited fees for a single limit violation.

Ending Unfair Penalties for Cardholders Who Pay on Time

Problem: “Double-cycle billing” is a confusing practice some companies employ to unfairly boost interest charges. If a consumer does not pay off a bill in full in a given cycle, the company charges interest on the *entire balance* from the previous cycle, even if the cardholder paid part of it off. Card companies can also slap fees or charge interest on residual interest-only balances of cardholders who pay in full and on time. Cardholders usually don’t realize this remaining interest exists and are surprised when they get a hefty late fee or rate increase for not paying it off.

Solution:

- Ends unfair “double cycle” billing – card companies can’t charge interest on debt consumers have already paid on time.

- If a cardholder pays on time and in full, the bill prevents card companies from piling additional fees on balances consisting solely of left-over interest.

Requiring Fair Allocation of Consumer Payments

Problem: Card companies benefit – and cardholders lose – when cardholders pay off lower-rate balances and let higher-rate balances accrue more interest. Currently most companies allocate payments to lower-rate balances first, and consumers have little say in the matter. The Federal Reserve concluded it was unfair and deceptive to prevent cardholders from paying off any of their high rate balances .

Solution:

- The bill generally requires payments to be allocated proportionally to balances that have different rates, so consumers have a chance to pay down their high-rate debt.

Protecting Cardholders from Due Date Gimmicks

Problem: Currently, card companies are allowed to mail billing statements 14 days before the due date. Mail delays and other problems can leave cardholders with less than a week to get their payment back to their card company, increasing the likelihood of a payment being declared “late” and being hit with a hefty late fee and a retroactive rate increase.

Solution:

- The bill requires card companies to mail billing statements 25 calendar days before the due date (up from the current 14 days), and to credit as “on time” payments made before 5 p.m. local time on the due date.

Stopping Companies from Using Misleading Terms and Damaging Consumers' Credit Ratings

Card companies can currently define the terms "fixed rate" and "prime rate" pretty much as they wish. This can lead to confusion among cardholders and prevents fair competition. In addition, some card companies report cards to credit bureaus before consumers have formally accepted the cards, which can adversely affect their credit reports.

Solution:

- Establishes standard definitions of terms like "fixed rate" and "prime rate" so companies can't mislead or deceive consumers in marketing and advertising.

- Gives consumers who are pre-approved for a card the right to reject that card prior to activation without negatively affecting their credit scores.

Protecting Vulnerable Consumers From High-Fee Subprime Credit Cards.

Problem: Subprime credit cards are marketed to people with poor credit histories and who may have trouble getting a regular credit card. In addition to high interest rates, these cards have hefty fixed fees that often exceed 25 percent of the available credit. Many companies now charge those fees to the card itself, so that before the consumer even makes a purchase, they are in debt and have consumed a large portion of their credit line.

Solution:

- The bill prohibits issuers of subprime cards (where total yearly fixed fees exceed 25 percent of the credit limit) from charging those fees to the card itself.

Protecting Vulnerable Minors

Problem: Card companies increasingly market cards to minors who are ill-prepared to use them, which can place these new consumers in a downward debt spiral before they're even old enough to vote.

Solution:

- The bill prohibits card companies from knowingly issuing cards to individuals under 18 who are not emancipated minors.

House Report 110-857:
HTML Version, PDF Version

Full Committee on Financial Services:
Full Committee Markup: H.R. 6308, H.R. 5772, H.R. 5244, H.R. 6078, H.R. 840, July 30, 2008

- Financial Services Report: Financial Services Panel OKs Credit Cardholders' Bill of Rights

Summary of Committee Votes:

- Rep. Hensarling, R-Texas Repeated Irresponsibility Amendment to the Substitute Amendment —Would have added to the bill a provision allowing credit card companies to raise rates for a repeated history of irresponsibility. The amendment would have allowed credit card companies to institute higher rates after three missed payments over the life of the card. **Rejected by Voice Vote.**
- Rep. Ellison, D-Minn. Payment with Credit Amendment to the Substitute Amendment — Prohibits the payment of any fees by credit from the credit card. **Adopted by Voice Vote.**
- Rep. Hensarling, R-Texas Cards for Minors to the Substitute Amendment — Adds the word "knowingly" to the section of the bill prohibiting credit card companies from issuing cards to minors. **Adopted by Voice Vote.**
- Rep. Ackerman, D-N.Y. Electronic Payments Amendment to the Substitute Amendment — Would have prevented credit card companies from assessing fees to customers for using electronic payments in all cases except express payments. **Rejected 27-39: R 1-28; D 26-11; I 0-0.**
- Rep. Hensarling, R-Texas Predatory Borrowing Amendment to the Substitute Amendment — Would have penalized borrowers for knowingly providing false or inaccurate information to credit card companies in the process of obtaining a card. **Rejected 30-37: R 30-0; D 0-37; I 0-0.**
- Rep. Hodes, D-N.H. Fed Effective Date Amendment to the Substitute Amendment — As amended by the Watt, D-N.C., substitute amendment that would encourage the Federal Reserve to promulgate rules by Dec. 31, 2008, after which the rules would be applied to transactions 30 days after the promulgation, eliminating the possibility of retroactive lawsuits. The amendment would give the Fed until Dec. 31, 2008 to finalize the rules, after which the bill would take effect if the rules had not been finished. If the Fed finalizes rules before that time, the bill would be nullified. **Adopted by Voice Vote.**
    - Rep. Castle, R-Del. Effective Date Second degree amendment to the Hodes, D-N.H., amendment to the Maloney, D-N.Y., substitute amendment — Changes the effective date for the Federal Reserve to promulgate its final credit card rules to Feb. 25, 2009 from Dec. 31, 2008. **Adopted by Voice Vote.**
    - Rep. Watt, D-N.C. Sense of Congress to Fed Substitute amendment to the Hodes, D-N.H., amendment to the Maloney, D-N.Y., substitute amendment — Encourages the Federal Reserve to promulgate rules by Dec. 31, 2008, after which the rules would be applied to transactions 30 days after the promulgation, eliminating the possibility of retroactive lawsuits. **Adopted 58-9: R 31-0; D 27-9; I 0-0.**
- Rep. Hensarling, R-Texas Repayment Failures Amendment to the Substitute Amendment — Would have struck the section of the amendment that states a failure to make a payment would not subject the user to a late fee. **Withdrawn Without Objection.**
- Rep. T. Price, R-Ga. Class Action Liability Amendment to the Substitute Amendment — Would have prohibited any new class action liability under the legislation. **Rejected 30-37: R 30-0; D 0-37; I 0-0.**

- Rep. Castle, R-Del. Substitute Amendment to the Substitute Amendment — Would have required a sense of Congress that credit card rulings and protections be considered upon and studied and the final ruling from the Federal Reserve be supported. **Rejected 28-39: R 28-2; D 0-37; I 0-0.**
- Rep. C. Maloney, D-N.Y. Substitute Amendment — Prevents card companies from retroactively increasing interest rates on the existing balance of a cardholder in good standing for reasons unrelated to the cardholder's behavior with that card, a practice which is sometimes referred to as universal default. The bill also would prohibit the retroactive application of an interest rate increase on existing balances unless the customer is more than 30-days late. The bill also would:
    - Require all of the payment allocated to the higher interest rate balance when a promotional rate applies to a lower interest rate balance.
    - Prohibit the issuance of credit cards to individuals under the age of 18.
    - Place a limit on over-the-limit fees that prohibits an over-the-limit fee when the only reason for the fee was the result of a pre-authorization hold.
    - Require card companies give cardholders 45 days notice of any interest rate increases.
    - Give cardholders the right to cancel their card and pay off their existing balance at the existing interest rate and repayment schedule if they get hit with an interest rate hike.
    - Give cardholders three billing cycles after the rate increase to say no to these new terms.
    - Prohibit card companies from arbitrarily changing the terms of their contract with a cardholder.
    - Prohibit card companies from charging interest on debt that is paid on time during a grace period.
    - Prohibit card companies from placing fees on the remaining interest-only balance of a cardholder who has paid a bill on time.
    - Require card companies to mail billing statements 25 calendar days before the due date (14 days is the current minimum).
    - Require that payments made before 5 p.m. EST on the due date are considered timely.
    - Direct card companies to provide on every statement, a phone and Internet address that a cardholder can access for payoff balances.
    - Prohibit card companies from charging late fees when a cardholder presents proof of mailing his/her bill within seven days of the due date.
    - Prevent card companies from using terms such as "fixed rate" and "prime rate" in a misleading or deceptive manner by establishing single, set definitions of those terms.

- Give cardholders who get pre-approved for a card the right to reject that card up until the moment they activate it without having their credit adversely impacted.
- Require card companies to offer consumers the option of having a fixed credit limit that cannot be exceeded.

- Prevent card companies from charging over-the-limit fees on a cardholder with a fixed credit limit.

- Direct card companies to fairly allocate payments on balances at different interest rates.

- Limit the amount of "over-the-limit" fees card companies are allowed to charge to three.

- Require that all fees for subprime cards, whose total fixed fees over a year exceed 25 percent of the credit limit, be paid up front before the card is issued.

- Improve existing data collection on industry profits, as well as card fees and rates and require this information to be presented to Congress every year. **Adopted by Voice Vote.**

- **Vote to Report:** Favorably Reported to the Full House, as Amended, by a Roll Call Vote of **39-27: R 2-27; D 37-0; I 0-0.**

CRS Report:
RL34393: The Credit Card Market: Recent Trends and Regulatory Proposals

GAO Reports:
(TBA)

CBO Report:
Cost Estimate: Ordered Reported by the Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit Hearing:
The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers>>
April 17, 2008 Hearing — Subcommittee on Financial Institutions and Consumer Credit Hearing, Committee on Financial Services

- Opening Statement: Chair Maloney, Congressman Carson
- Archived Webcast

Witness Testimony:
Panel One

- The Honorable Carl Levin, United States Senator, State of Michigan
- The Honorable Ron Wyden, United States Senator, State of Oregon

Panel Two

- Mr. Steven Autrey, Fredericksburg, VA
- Ms. Susan Wones, Denver, CO
- Mr. Stephen M. Strachan, York, PA

Panel Three

- Ms. Sandra Braunstein, Director, Consumer Affairs Division, Board of Governors of the Federal Reserve System
- Mr. Marty Gruenberg, Deputy Director, Federal Deposit Insurance Corporation
- Ms. Julie Williams, Deputy Director and General Counsel, Office of the Comptroller of the Currency
- Mr. John Bowman, General Counsel, Office of Thrift Supervision \

Panel Four

- Mr. John P. Carey, Chief Administrative Officer and Executive Vice President, Citi Cards, Citigroup Inc.
- Mr. Larry Sharnak, Executive Vice President and General Manager, Consumer Cards, American Express Company
- Mr. Carlos Minetti, Executive Vice President, Cardmember Services and Banking, Discover Financial Services
- Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America
- Ms. Linda Sherry, Director, National Priorities, Consumer Action
- Mr. Ed Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group

The Credit Cardholders' Bill of Rights: Providing New Protections for Consumers>>
March 13, 2008 Hearing — Subcommittee on Financial Institutions and Consumer Credit Hearing, Committee on Financial Services
- Opening Statement: Chair Maloney, Congressman Carson
- Archived Webcast

Witness Testimony:
- Ms. Elizabeth Warren, Leo Gottlieb Professor or Law, Harvard Law School
- Mr. Greg Baer, Deputy General Counsel, Regulatory and Public Policy, Bank of America
- Mr. Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center
- Mr. John Finneran, General Counsel, Capital One
- Mr. Lawrence Ausubel, Professor, Department of Economics, University of Maryland
- Ms. Carter Franke, Marketing Executive, JPMorgan Chase
- Mr. Oliver I. Ireland, Partner, Morrison & Foerster
- Ms. Katherine M. Porter, Associate Professor, The University of Iowa College of

Organization Statements:
(TBA)

Administration Position:
(TBA)

Fact Sheets & Talking Points:
HR 5244 Summary- Financial Services Committee

Press Releases, News Articles & Related Information:
(TBA)

Other Resources:
Cosponsors of H.R. 5244

H.R. 7060 – THE RENEWABLE ENERGY AND JOB CREATION TAX ACT OF 2008 *(Rep. Olver - Appropriations) (Subject to a Rule)*

Rules Committee: Special Announcement, **Meeting Time:** 10:45am Thursday 9/25, Text of the Bill as Introduced, H. Res. 1501 - Rule and Committee Report

LEGISLATION AT A GLANCE:

RENEWABLE ENERGY AND JOB CREATION TAX ACT

Key Points

- Today, the House will consider legislation (H.R. 7060) to extend and expand tax incentives for renewable energy, create and retain hundreds of thousands of green jobs, spur American innovation and business investment, cut taxes for millions of Americans, and close loopholes allowing U.S. executives to avoid U.S. taxes by shipping investment overseas.

- This legislation is critical for American job creation at a time when the U.S. economy is in crisis, and critical for American families at a time when they are being squeezed by rising energy costs, grocery bills, and unemployment.

- To reduce our dependence on foreign oil, this legislation would increase the production of renewable fuels and renewable electricity, and encourage greater energy efficiency. It extends and expands tax incentives for renewable electricity, energy and fuel from America's heartland, as well as for plug-in hybrid cars, and energy efficient homes, buildings, and appliances. These provisions are critical to creating and preserving more than 500,000 good-paying green collar American jobs in the wind and solar industries alone.

- To strengthen the American economy, the bill extends for two years the research and development tax credit, 70 percent of which is spent on U.S. wages on average, to spur American innovation and business investment. The bill also cuts taxes for millions of Americans, including teachers, college students and families in states with no income tax.

- This bill offers the Senate a chance to support a two year extension of tax relief to create jobs and strengthen the American economy, paid for by offsets Senators have already supported in other legislation. Unlike the Senate's proposal, it is does not add to the national debt -- using provisions that passed the Senate on Tuesday by a vote of 93 to 2 and another already passed by the Senate and signed into law by the President to fully offset the cost of extending this critical tax relief. The offsets close loopholes allowing corporations and executives to avoid U.S. taxes by shipping jobs and investment overseas, curtail unnecessary tax subsidies for big, multinational oil and gas companies, and provide for broker reporting of customer's basis in securities.

- Congress can wrap this up today. The Senate should seize this opportunity to pass this bill so we can make law, create and save jobs in a difficult economy, and provide this tax relief to families and businesses, and speed our transition to a clean, renewable energy and energy efficient future.

- It is time for Senate Republicans to join us in extending important energy, business and individual tax incentives in a fiscally responsible way that does not require America to borrow additional tens of billions of dollars from foreign countries. Now more than ever, it is critical that we do not continue to add unnecessarily to the national debt, which has surged to nearly $10 trillion due to the fiscal irresponsibility of the Bush Administration and Congressional Republicans.

Tax Incentives for Renewable Energy to Spur Green Jobs and American Energy Independence ($15 billion; similar to Senate)

- Eight-year extension of the investment tax credit (ITC) for solar energy.
- Multi-year extension of the production tax credit (PTC) for energy derived from biomass, geothermal, hydropower, waves and tides, landfill gas and solid waste (through September 30, 2011).
- One-year extension of the PTC for energy derived from wind.
- Incentives for carbon capture and sequestration demonstration projects.
- Incentives for the production of homegrown renewable fuels, such as biodiesel and renewable diesel, and for the installation of E-85 pumps for consumers to fill up flex-fuel vehicles.
- Tax credits of $3,000 or more toward the purchase of fuel-efficient, plug-in hybrid vehicles.
- Incentives for energy conservation in commercial buildings, residential structures, and energy efficient appliances.

Creating American Jobs & Cutting Taxes for Millions of Middle-Class Families ($46 billion -- $12 billion for individuals, $34 billion for business; 2 year extensions, like the Senate, but fully paid for instead of only partially paid for as in Senate bill)

- Ensures the continued competitiveness of American businesses by extending the R&D tax credit for 27,000 companies and the special rules for active financing income;
- Help families of 13 million children by expanding the child tax credit to those earning $8,500 a year (from $12,050 in current law) in 2009;
- Benefit 11 million families through the State and local sales tax deduction;
- Help 4.5 million families better afford college with the tuition deduction; and
- Save 3.4 million teachers money with a deduction for classroom expenses.

Upholding Fiscal Responsibility

- **Extends Necessary Provisions Without Adding to the Deficit.** Unlike the Senate package, this legislation would not add to the deficit. This <u>legislation would be fully paid for using the revenue-raising provisions that the Senate passed on Tuesday by a vote of 93-2 and another already passed by the Senate and signed into law by the President</u>.

- **Stops an Increase in Taxpayer-Funded Subsidies for Oil Companies.** The bill would freeze a subsidy in the 2004 international tax bill for oil and gas companies, which is currently scheduled to increase in 2009.

- **Closes Foreign Tax Loophole for Large Oil Companies.** To ensure that oil and gas companies are paying their fair share, the bill closes a tax loophole identified by the Joint Committee on Taxation that allows big oil and gas companies operating overseas to game the system by claiming higher foreign tax credits.

- **Closes Tax Loophole for CEO Deferred Compensation Paid by Offshore Companies.** The bill would stop hedge fund managers and corporate CEOs from escaping income taxes by using offshore tax havens, while the rest of American families play by the rules and pay their fair share of taxes. Some highly paid executives operating offshore investment funds can defer unlimited amounts of pay. The bill would immediately tax deferred compensation of executives and employees of U.S. corporations that are offshore in a tax haven.

- **Basis Reporting by Brokers on Sales of Stock.** The bill would enact President Bush's proposal to create mandatory cost basis reporting by brokers for transactions involving publicly traded securities to increase compliance and would provide significant simplification benefits by relieving taxpayers from the often complicated task of calculating adjusted basis to determine gain or loss on the sale of securities.

- **Delaying tax break for foreign interest payments.** The bill delays for six years (through 2016) a questionable tax break enacted in 2004 that would let U.S. multinational companies that have shipped jobs overseas reduce their U.S. taxes by deducting more of their worldwide interest income against their U.S. income. This provision has not gone into effect, and not one company currently utilizes this provision

H.R. 2638 – THE CONSOLIDATED SECURITY, DISASTER ASSISTANCE, AND CONTINUING APPROPRIATIONS ACT *(Rep. Olver - Appropriations) (Subject to a Rule)*

Rules Committee: Special Announcement, Meeting Time 11:00pm Tuesday 9/23, Text of the Amendment, Joint Explanatory Statement, H. Res. 1488 - Rule and Committee Report

LEGISLATION AT A GLANCE:

H.R. 2638 - THE CONSOLIDATED SECURITY, DISASTER ASSISTANCE, AND CONTINUING APPROPRIATIONS ACT

This act includes the following five components:
-Continuing Resolution, funding certain government operations at last year's levels through March 6, 2009
-Disaster Relief Package, which contains $22.9 billion in disaster relief
-FY 2009 Defense Appropriations
-FY 2009 Homeland Security Appropriations
-FY 2009 Military Construction and Veterans Affairs Appropriations
Summaries of each of these components are available at the links below:

Summary: Continuing Resolution
Summary: Disaster Relief Package
Summary: Defense Appropriations
Summary: Homeland Security Appropriations
Summary: Military Construction and Veterans Affairs Appropriations