Dissenting Views on H.R. 627, the "Credit Cardholders' Bill of Rights Act of 2009"

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. It is our view that the Credit Cardholders' Bill of Rights Act of 2009 (H.R. 627) is likely to impose such costs.

In limiting credit card issuers' ability to price for risk, Congress needs to avoid overreacting by forcing responsible card-holders to subsidize irresponsible ones through higher fees and fewer rewards. Moreover, in the midst of an economic downturn, we should not be restricting options for success, especially for small businesses, which are the economic engine and America's number one jobs creator. The Small Business Administration has testified that small businesses rely on credit cards as a tool for their day-to-day operations and often shut down or lay off employees when banks will not provide the necessary credit.

And the Federal Reserve (Fed) has already proffered new rules--due to be implemented on July 1, 2010--to protect consumers who use credit cards. Utilizing its statutory authority under the Federal Trade Commission Act to limit unfair or deceptive acts or practices and its power under the Truth in Lending Act (Regulation Z) to regulate account disclosures, the Fed has issued 1,200 pages of regulations that fully address many of the practices that consumers find offensive and that H.R. 627 purports to remedy. Given the complexity of credit card products and cardholder agreements, the Fed engaged in an extensive rule-writing process and conducted wide-ranging consumer testing to ensure that the new rules could be effective.

Even as it spent more than three years drafting rules, reacting to the concerns that more than 60,000 individuals shared in comment letters and studying the ways that individuals process card disclosures, the Fed acknowledged that its regulations may increase the costs of credit and limit its availability. As former Fed Governor Randall Kroszner said when announcing the new rules, `Unfair practices can impose significant costs on consumers. Likewise, the new rules will have a cost, too. . . . Although consumers might see some costs decline as new business models emerge, consumers might see other costs increase.' The strong possibility that responsible credit cardholders will face higher costs from limitations on issuers' ability to price for risk is all the more reason why layering potentially conflicting statutory directives on top of the comprehensive regulatory regime established by the Federal Reserve is unwise.

Implementing sweeping reforms that might work takes time. In a December 2008 meeting to finalize the rules, the Federal Reserve System's Director of Consumer Affairs explained to Chairman Ben Bernanke that because card issuers will need to rethink their entire business models, reprogram their systems, and redesign their marketing materials, solicitations, periodic statements and contracts, no earlier implementation date than July 2010 would be feasible. Fed representatives have also testified previously 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. The Majority seems to disagree.

Yet the Majority cannot credibly contend that the regulators are stalling or that its solutions are inadequate. H.R. 627 has been designed to address identical consumer concerns. Like the Fed rules, H.R. 627 seeks to prevent card companies from accruing finance charges because of two-cycle billing computation methods; increasing interest rates retroactively; allocating payments to maximize interest rate charges; and providing consumers insufficient time to make payments. Heeding the Fed's warnings that H.R. 627's three-month implementation period was unreasonably short and potentially harmful to consumers, the Financial Institutions and Consumer Credit Subcommittee accepted an amendment to delay H.R. 627's implementation date. But the Full Committee undid the Subcommittee's work, over the regulators' objections, and accepted an amendment offered by Mrs. Maloney and Mr. Maffei to re-accelerate the implementation of certain disclosure rules.

The Committee Majority also defeated--on a straight party-line vote--a second-degree amendment that Mr. Hensarling offered to a provision added by Mrs. Waters requiring the Federal banking regulators to study the ways creditors make credit decisions based on geography and consumer spending patterns. The Hensarling amendment would have simply required the study to also encompass the impact of the legislation on the costs and availability of credit for consumers, yet Democrats voted in lock-step to block it. This suggests that the Majority either does not care about the consequences of the legislation it passes, or fears that the findings of an independent study of such consequences would validate the concerns of those who believe that H.R. 627 threatens to do more harm than good.

Economic anxiety is widespread and Americans do not feel secure. Yet H.R. 627, 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.

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