



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 31, 2008

H.R. 5546 **Credit Card Fair Fee Act of 2008**

As ordered reported by the House Committee on the Judiciary on July 16, 2008

SUMMARY

H.R. 5546 would provide limited immunity from antitrust laws to merchants and financial services organizations that negotiate an agreement setting the terms for using electronic payment systems to process transactions using credit cards. A representative of the Department of Justice (DOJ) would be required to attend all negotiation sessions. The department would be required to make any agreements that result from the negotiations available to the public and to prepare an analysis and report of the results of the negotiations.

Based on information from DOJ, CBO estimates that implementing H.R. 5546 would cost about \$6 million in 2009 and \$33 million over the 2009-2013 period, assuming appropriation of the necessary amounts. Enacting H.R. 5546 would not affect direct spending or revenues.

H.R. 5546 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state antitrust laws. CBO estimates that because the preemption would only limit the application of state law, the mandate would impose no costs on state, local, or tribal governments.

H.R. 5546 would impose private-sector mandates, as defined in UMRA, on certain issuers for, acquirers for, and owners and operators of covered electronic payment systems as well as certain merchants using covered electronic payment systems. The bill also would prevent individuals from seeking damages under certain antitrust laws for negotiations authorized under the bill. CBO expects that the direct costs to comply with those mandates would not be significant and would fall below the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5546 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars					2009- 2013
	2009	2010	2011	2012	2013	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	7	6	7	7	7	34
Estimated Outlays	6	6	7	7	7	33

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill would be enacted near the start of fiscal year 2009 and that spending would follow historical patterns for similar activities.

H.R. 5546 would provide limited immunity from antitrust laws to merchants and financial services organizations that enter into voluntary negotiations to set terms for using electronic systems for clearing credit card transactions. The bill would require the Antitrust Division of the Department of Justice to collect information about the parties' schedule for negotiation and any agreements that would result from such negotiations. Further, a representative of the Antitrust Division would be required to attend all negotiation sessions.

Because H.R. 5546 would provide broad authority for merchants and providers of electronic payment services to join together to negotiate rates and terms for access to a payment system, it is unclear how many negotiations may be initiated as a result of the bill. For example, a large number of small groups may form—that is, gas station owners, businesses with fewer than 50 employees, or retail merchants—or a smaller number of fairly large groups may form. Based on information from DOJ regarding the additional workload in the face of such uncertainty, CBO estimates that the agency would require an additional 35 staff positions to attend negotiation sessions for as many as 500 such groups, monitor the information submitted by the participating parties, and meet the bill's reporting requirements. CBO estimates that implementing H.R. 5546 would cost \$6 million in 2009 and \$33 million over the 2009-2013 period, assuming appropriation of the necessary amounts. The costs would be incurred mostly for salaries and benefits, as well as for start-up costs in the first year to set up information-collection systems.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 5546 contains an intergovernmental mandate, but CBO estimates that the mandate would impose no costs on state, local, or tribal governments. By exempting agreements between merchants and credit card companies from state antitrust laws, the bill would preempt state law. That preemption would be a mandate as defined in UMRA, but the bill would impose no duty on states that would result in additional spending.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5546 contains private-sector mandates, as defined in UMRA, because the bill would impose requirements on the 10 largest entities in each of the following categories:

- Financial institutions that issue electronic devices such as credit cards and debit cards for use in an electronic payment system, or acquire access to electronic payment systems for merchants to use in accepting credit cards and/or debit cards for payment;
- Owners and operators of electronic payment systems that have been used for at least 20 percent of the combined dollar value of U.S. credit; and
- Merchants using certain electronic payment systems.

Those entities would be required to provide information to the Antitrust Division of the DOJ. According to industry representatives, the costs to comply with those mandates would be small. In addition, the bill would exempt financial services organizations and merchants from certain antitrust statutes when negotiating access rates using the process authorized by the bill. As a result, private entities would be prevented from seeking damages under certain antitrust laws from entities participating in the negotiation process under the bill. Based on information from industry experts, the cost to comply with this mandate would likely be small as no such suits have been filed or are expected to be filed under current law. Therefore, CBO estimates that the aggregate cost of the mandates would fall below the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation).

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