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LEGAL ALERT

May 12, 2010

Senate Wall Street Reform Bill Includes Proposed Regulation of Credit and Debit Card Interchange Fees

Using the platform of helping small businesses and working Americans, U.S. Senator Dick Durbin (D-Illinois) proposed three amendments to the Senate Wall Street reform bill that would regulate, and likely reduce, the interchange fees paid by merchants and alter the rules set forth by the bankcard associations. The fees, typically ranging from 2% to 3% of the card user's purchases, compensate the card processors and banks that process the credit and debit transactions.

The first amendment would allow merchants to offer consumers a discount for paying with a method of payment other than with a bankcard. Merchants could also require minimum and maximum transaction requirements for consumers who wished to pay with a bankcard. These practices are currently forbidden by the bankcard associations and can result in fines or termination of the merchant's card processing privileges.

The second proposed amendment would allow the Federal Reserve to set the interchange rates for debit card transactions.

The third proposed amendment would require interchange fees paid by the federal government to be set at the lowest rates available to merchants. Because fees are often negotiated with merchants based on transaction volume, this amendment could represent a substantial drop in the interchange fee rates for smaller government entities.

Bankcard associations (including Visa and MasterCard), large banks, credit unions, and community banks have spoken out against the proposed amendments, stating that such regulation would wreak havoc on the payment industry and would actually hurt consumers by allowing merchants to set their own policies and penalize some cardholders by charging them more per transaction than other consumers. While proposed in the name of protecting small businesses, the bankcard industry suggests that the proposed amendments will actually reduce protection for consumers and offer the consumers less payment flexibility.

Following the consumer bankcard fee cuts implemented by the 2009 CARD Act, interchange fees remain one of the few areas where banks can replace revenue and obtain profitability. Credit unions and community banks are likewise opposed to Senator Durbin's amendments, because the laws would only regulate interchange fees charged by banks, thereby hurting small banks and credit unions that represent merchant accounts and whose own pricing could be severely undercut by reduced interchange fees.

In favor of the legislation are large retailers (that use the largest banks and processors and thus would benefit by interchange fee reductions) and their industry associations, such as the Merchant Payments Coalition.

Senator Durbin's amendments may be formally offered to the Senate this week. Some industry experts suggest that the minimum purchase threshold for credit transactions has a substantial likelihood of passing because it seems relatively benign. However, the real concern is that enacting even minor regulations will open the door to more interchange regulation in the future.

Another proposal to the Senate's Wall Street reform bill would limit ATM fees to $0.50 per transaction from a current average cost of more than $2.50 per transaction. Similar to interchange fee reform, a limit on ATM fees could severely hurt banking industry profits.

In remarks earlier this afternoon, Senator Durbin reiterated his intentions to present the second proposed amendment, regulating debit card interchange fees, for a vote by the Senate as early as this evening.

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If you have any questions about this Legal Alert, please feel free to contact the attorneys listed below or the Sutherland attorney with whom you regularly work.

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