



## SENATE CONSIDERS CREDIT CARD BILL

This week, the Senate has been considering a bill introduced by Senators Dodd and Shelby as a substitute for H.R. 627, the Credit Cardholders' Bill of Rights Act of 2009, which passed the House on April 30. See *Alert* dated May 4, 2009. The substitute bill, the "Credit Card Accountability Responsibility and Disclosure Act of 2009" (S.A. 1058), addresses many of the same issues as H.R. 627, but differs in significant ways. Yesterday, the Senate agreed to a proposal limiting further amendments and scheduling a Tuesday, May 19 vote on a procedural motion that could lead to a vote on passage of the bill.

More than 50 proposed amendments to the substitute bill have been offered and five have been called to a vote. One amendment on guns in national parks passed on May 12. (Some speculate that this unrelated gun amendment could cause the Senate legislation to be rejected by the House, which would delay passage of the card legislation.) Two amendments, one requiring reporting agencies to provide free credit reports in certain non-English languages and one requiring a study on ties between fluency in English and financial literacy, passed on May 13. Two amendments, one establishing a 15% national usury limit and one specifying acceptable forms of identification for credit card account opening, failed on May 13. At least two amendments were pending on May 14, one of which would make the Truth in Lending Act (TILA) applicable to small businesses.

If this bill were to become law, how would it affect existing federal law requirements, such as the new credit card rules? Generally, the bill would elevate some existing agency regulations into statutory law and expand the scope of the TILA, the Fair Credit Reporting Act and the Electronic Funds Transfer Act.

More specifically, the provisions of the bill as it stands today fall into three rough categories: (i) new provisions not already addressed by federal law, (ii) parallel provisions that more or less track existing regulations (although there could be issues reconciling some provisions with existing regulations) and (iii) amendatory provisions that would significantly change existing law.

Differences in parallel provisions with existing regulations would include, for example, (i) calculating "protected balances" on the 14th day (not the 7th day) after notice, (ii) permitting outstanding balances to be subject to penalty rates only after the account is more than 60 days (not 30 days) past due, (iii) requiring billing statements to be mailed 21 days before the due date for calculation of finance charges (not just assessment of late fees) and (iv) requiring that payments in excess of

the minimum due be applied to highest APR balances first and then in order from highest to lowest (not, alternatively, to balances on a proportionate pro-rata basis).

### New provisions include:

- A restriction on the duration of rate increases
- A requirement to review accounts for rate reductions
- A minimum term for promotional rates
- An opt-in requirement for overlimit transactions
- A prohibition on fees related to method of payment
- Limits on penalty fees
- A mandatory 5:00 p.m. payment cutoff time
- A requirement to post credit card agreements online
- Restrictions on prescreened solicitations and card issuance to persons under age 21
- Prohibitions on gift card expiration dates and fees
- A study and report on interchange fees

### Parallel provisions include:

- A requirement to provide 45 days' advance notice of changes
- Restrictions on retroactive rate increases
- A prohibition on double-cycle billing
- A restriction on use of the term "fixed rate"
- Requirements regarding application of payments
- Requirements regarding time to make payment
- Requirements to disclose due dates, late fees and penalty rates on periodic statements

### Amendatory provisions include:

- More stringent fee restrictions on subprime cards
- Different "Minimum Payment Warning" requirements
- Increased TILA penalties
- Different account renewal disclosure requirements

The provisions regarding advance notice of changes and time to make payment would be effective 90 days after enactment. Most other provisions would be effective nine months after enactment, which could be a few months earlier than the July 1, 2010 effective date of the new credit card rules. The (i) interest rate reduction requirement, (ii) penalty fee restrictions and (iii) gift card regulations would be effective 15 months after enactment.

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