



To: EFTA Members

From: Dennis Ambach, Legislative & Regulatory Council Chairman

Date: October 23, 2009

Re: Legislative Alert

Dodd Unveils Overdraft Protection Bill

Senate Banking Committee Chairman Christopher Dodd (D, CT) formally introduced his version of legislation to restrict overdraft protection programs this week, [S. 1799](#), the Fairness and Accountability in Receiving Overdraft Coverage Act of 2009 or the FAIR Overdraft Coverage Act.

In recent weeks news reports suggested Sen. Dodd's bill would be "tougher" than the House counterpart [H.R. 1456](#) introduced by Rep. Carolyn Maloney (D, NY). In certain respects this is true particularly for financial institutions. For example, S. 1799 prohibits financial institutions from charging more than one overdraft coverage fee a month and more than six per year. H.R. 1456 includes no such provision. For EFTA's interests, S. 1799 instructs the Government Accountability Office (GAO) to study the feasibility of warning a consumer of an overdraft when using a debit card at point-of-sale. However, S. 1799 is similar to the House bill regarding real time notice at ATMs that a transaction may result in an overdraft, disclosing the fee and allowing the consumer to terminate the transaction.

S. 1799 also includes a "prompt notification" provision when a consumer's overdraft coverage is accessed. The financial institution would have to notify the consumer of the event by email, text message or letter. The notification would have to include six items such as the date of transaction, the overdraft fee and what the consumer would need to do to bring the account to a positive balance. The Senate Banking Committee has yet to start substantive work on financial regulatory reform. Therefore, an immediate action on S. 1799 is unlikely.

House Financial Services Committee Passes Consumer Financial Protection Agency Bill

After several days of debating and voting on amendments, the House Financial Services Committee approved legislation October 21 seeking to create a Consumer Financial Protection Agency (CFPA). The final vote was 39-29. The text of the bill as amended may not be available for several days. Committee Chairman Barney Frank (D, MA) even suggested support for having another Committee hearing on the CFPA bill (as amended) before full House consideration given the complexity of the changes. For example, the Committee approved an amendment by Reps. Mel Watt (D, NC) and Dennis Moore (D, KS) to provide limited federal preemption in consumer law enforcement. Chairman Frank has expressed an intention to have the full House consider the CFPA bill in November.

Credit CARD Act Update

On October 21 The House Financial Services Committee also approved H.R. 3639, the Expedited CARD Reform Act, which seeks to move the effective date of the CARD Act from February 2010 to December 1, 2009. The Committee approved two amendments to keep the original effective date for small issuers (February 2010) and for prepaid cards (August 2010). Even if the full House votes on H.R. 3639 in November, any Senate action before December 1 is unlikely. In a letter to Spencer Bachus (R, AL), Ranking Member of the House Financial Services Committee, Federal Reserve Board Chairman Ben Bernanke warned Congress that moving up the effective date could result in unintended consequences that harm both consumers and business.