Banking and Finance Law Daily Wrap Up, INTEREST-USURY—Depository groups urge Senators to keep lid on fee, interest rate cap proposal, (Jul. 26, 2021)

Banking and Finance Law Daily Wrap Up

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By Jeff Williams

The groups argue capping fees and interest rates at 36 percent would result in fewer credit card and loan options for consumers, especially subprime and under-served borrowers.

Several association representing depository institutions sent a letter to Senate Banking, Housing, and Urban Affairs Chairman Sherrod Brown (D-Ohio) and the Ranking Member of the committee, Sen. Pat Toomey (R-Pa), asking them to reject legislation that would impose a national 36 percent "fee and interest rate" cap. "We urge you to oppose pending fee and interest rate cap legislation because it will reduce access to credit for millions of consumers, particularly subprime borrowers who rely on affordable small dollar loans, credit cards, and other depository institution products for short-term financing needs," the groups said. "Fee and interest rate caps will also discourage development of innovative products, especially those designed for the under-served market." The letter was signed by the American Bankers Association, the Bank Policy Institute, the Consumer Bankers Association, the Credit Union National Association, the Independent Community Bankers of America, the Mid-Size Bank Coalition of America, the National Association of Federally-Insured Credit Unions, and the National Bankers Association.

The baking groups disputed the notion a cap on fees and interest would help consumers by limiting the amounts they would have to pay for payday loans and other less-regulated short-term credit. "Small dollar loans, credit cards, and other forms of short-term credit are critical to help people meet emergency expenses, disruptions in pay, and misalignments in the timing of their expenses and income," the groups said. "The proposed 36 percent fee and interest cap would make it more difficult for many consumers to obtain credit, thereby harming the very consumers the legislation seeks to protect."

"In reality, its impact would extend far beyond payday lenders to the broader consumer credit market to cover affordable small dollar loans (including 'accommodation' loans) that depository institutions are being encouraged to offer, credit cards, personal loans, and overdraft lines of credit," they added. "As a result, many consumers who currently rely on credit cards or personal loans would be forced to turn elsewhere for short-term financing needs, including pawn shops, online lenders—or worse—loan sharks, unregulated online lenders, and the black market."

Regardless of how it is calculated, the groups argued, depository institutions would be unable to profitably offer affordable small dollar loans because they would not be able to recover all of the costs associated with such loans, including the cost of funds, compliance, customer service, IT, underwriting, administration, and defaults. "Depository institutions could choose either not to offer small dollar loans or, to comply with the cap, increase the minimum amount of the loan, which would force consumers to borrow more than they want or are able to manage," the depository institution groups wrote.

The groups cited an example showing that costs for a three-month, $500 loan generally amount to $55, or a 44 percent rate, which would be prohibited by the legislation. In addition, they said, including annual fees and other fees in the cap calculation would lead to credit cards exceeding the cap and result in the "elimination or reduction of popular and valued credit card features," such as cash-back and other rewards.

A fee and interest cap would also limit the "innovative credit cards with non-credit features" offered to underserved groups because even nominal fees would result in an "all-in" rate that exceeds 36 percent, the

groups said. "History has shown that fee and interest rate caps reduce access to credit, especially for those with no or marred credit histories," they said. "They also limit consumer choice and shrink competition."

The depository institutions also argued it would be a mistake to use the "military annual percentage rate" (MAPR) defined in the Military Lending Act Rule to calculate the cost of credit. "In addition to including fees not included in the familiar federal rate calculation used today to measure and explain the cost of credit (i.e., the annual percentage rate or APR), the MAPR of that rule is flawed, i.e., mathematically incorrect, and overstates the cost of credit—as it assumes a fee imposed once a year is imposed 12 times a year," the groups said.

Companies: American Bankers Association; Bank Policy Institute; Consumer Bankers Association; Credit Union National Association; Independent Community Bankers of America; Mid-Size Bank Coalition of America; National Association of Federally-Insured Credit Unions; National Bankers Association

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