American Banker

April 25, 2011 Monday

Deadline Looms Over Campaign to Delay Durbin

BYLINE: Cheyenne Hopkins

SECTION: WASHINGTON; Pg. 1 Vol. 176 No. 63

LENGTH: 1619 words

WASHINGTON - While the banking industry clearly has momentum on its side in the fight to delay a rule that would limit debit interchange fees, time for Congress to act is rapidly running out.

Most observers said Sen. Jon Tester was still a few votes shy of the 60 needed to ensure passage of a bill, and the Montana Democrat must still find a legislative vehicle that can be enacted before the interchange rule is scheduled to go into effect.

"The million-dollar question is what's the right vehicle," said Jason Kratovil, vice president of congressional relations at the Independent Community Bankers of America. "We have to connect all the dots of something the House and Senate will pass and the president will sign before July 21. The calendar is certainly working against us."

Under the Dodd-Frank Act, a provision by Sen. Dick Durbin, D-Ill., required the Federal Reserve Board to write a rule ensuring that interchange fees for debit cards are "reasonable and proportional." In December the Fed issued a proposal to cap interchange rates at 12 cents. Although the plan ostensibly exempts institutions with assets of less than $10 billion, community banks have said the rule would harm them.

Tester has introduced a bill that would delay the rule, which is to take effect July 21, by two years while regulators study its potential impact on community banks. Rep. Shelley Moore Capito, R-W.Va., has offered a bill that would delay the interchange provision by one year and give the Federal Deposit Insurance Corp. and other banking regulators more discretion to alter the final rule.

While House passage appears likely, the situation in the Senate remains less certain. Tester has said he has the 60 votes necessary to ensure passage, but most observers say he has around 55 votes locked up.

Still, industry observers said Tester is winning more to his side.

"I still think odds are improving every day," said Richard Hunt, president of the Consumer Bankers Association.

"I know the vote count is going up. I also know there is some concentration among some senators between one-year or a two-year delay. ... Those who voted for the Durbin amendment would prefer a one-year delay with a trigger, but if you do a one-year you may lose some votes."

During the Dodd-Frank debate, 64 senators voted to add the Durbin amendment, meaning that at least some of those would need to shift positions and vote for a delay.

But re-election concerns could help Tester's cause, considering the Montana Democrat is in a tight race and Democrats are hoping to keep their majority in the Senate. Observers said Senate Majority Leader Harry Reid has promised Tester a vote if he has the necessary 60 supporters.

"I would be very surprised if the majority leader from Nevada would leave Tester out to dry," Hunt said. "He knows he has a tough re-election."

Brian Gardner, a political analyst at KBW Inc.'s Keefe, Bruyette & Woods Inc., said the fact that Tester is a vulnerable candidate will bring Senate Democratic leadership to his side. But Gardner said Tester still needs some more votes.

"My guess is he's probably a couple votes short," Gardner said. "This is a situation where those senators still sitting on the fence may not make up their minds until they walk over to the Senate floor to make the vote. It is going to be a very close vote."

Tester is also likely to get a free pass from the Obama administration, which so far has resisted efforts to amend Dodd-Frank.

The Durbin provision "doesn't go to the core principles of Dodd-Frank and it's not something the administration worked hard on and actively supported," Gardner said. "I'm sure they don't relish the precedent of amending a provision of Dodd-Frank, but ... I think they would distinguish amending Durbin as other provisions of Dodd-Frank."

In addition to garnering the votes, Tester also needs to attach the measure to a fast-moving bill. He had hoped to attach it to a small-business bill, but that has not panned out. Speculation currently centers on whether he might attach it to an energy bill related to appliance standards.

"This is such a multidimensional challenge," said Charles Gabriel, managing director at Capital Alpha Partners LLC. "You have to have a vehicle, and we don't know how much time the Fed is going to give us."

The Fed was supposed to finalize a rule by April 21 but has delayed it as it considers the 11,000 comments it received on the plan. It is unclear when the central bank will act.

But observers agree a vote must come soon.

"You are never going to have a hard 60," Kratovil said. "At some point you have to call the roll and see where everyone is. That's the nature of this issue. This is one of those unpleasant ones where people would not want to get out and stick their necks out until they absolutely have to."

The industry has until July 21 at the latest to get legislation enacted. Congress is scheduled to take several recesses between May 2, when it returns from Easter break, and that deadline.

"We may think we have three months, but when you look at the amount of time the Senate and House will be in session between now and July, it is broken up by three weeks, and there is little certainty what bills will be offered," said Ryan Donovan, vice president of legislative affairs for the Credit Union National Association. "So we need to a) get the votes and find the vehicle to attach it to by July 21. That's going to be a difficult challenge to overcome."

Some observers said it may even be possible to delay the interchange rule after it has taken effect.

"The thing working for the retailers and working against the banks is the clock," said Mark Calabria, director of financial regulations studies at the Cato Institute. "If this doesn't get done by July it makes it harder to do, but not impossible to do. You could see this get implemented and you see disruptions in the debit card market, and then something happens. ... Implementing this thing is going to be the test."

It is also important to note that the industry has gone further than most observers initially expected. The retailers appeared confident that any attempt to roll back the interchange provision would fail.

But that changed after Fed Chairman Ben Bernanke and FDIC Chairman Sheila Bair expressed doubt at a Senate Banking Committee hearing in February that the exemption for community banks would be effective.

"That was a very strong tipping point," Kratovil said. "Within an hour after that hearing our phones were ringing from [Hill] offices saying, 'Wow, can you come talk to us about this?' It's paved the way for us to talk about this. ... That's given us the opening we needed and the platform to make our case."

Since that time, a growing number of lawmakers have expressed support for a delay, including Rep. Barney Frank, the top Democrat on the House Financial Services Committee.

"The banks got far more momentum than people suggested. ... I think the retailers underestimated how much traction this would get on the Hill," Calabria said.

Ken Clayton, chief legislative counsel for the American Bankers Association, agreed.

"There has been a growing recognition by Congress that there are real potential harms to consumers here that suggest they should step back and look at this more closely," Clayton said. "My sense is where there is a will there is a way. And it's the prerogative of the Senate to decide whether they want to move forward and how to make that happen. It's still unclear what vehicle they will use."

Several industry representatives said that despite the narrowing timetable, they are optimistic Congress will act.

"Though historically a difficult threshold, we believe momentum continues to grow on delaying and studying the price-cap rule," said Dan Berger, senior vice president for government affairs for the National Association of Federal Credit Unions, which has also fought for a delay.

Some observers said that because the industry is angling for a delay - and not trying to scrap the Durbin provision altogether - Congress is more inclined to listen.

"Absent all of the issues on the table, it is in the best interest of the public to delay," said Clifford Rossi, a professor at the University of Maryland. "The Durbin amendment was put together hastily, without a great amount of scrutiny to it. I think people realize good policy doesn't have to be fast policy."

That was Tester's argument last week when he took to the Senate floor to stump for his bill.

"We need to stop," he said. "We need to study. We need to make sure we are doing the right thing. Therefore, I ask my colleagues for their bipartisan support on a responsible bipartisan bill to delay this rule so we can have time to study the consequences of this rule - both intended and unintended. Our economy cannot afford to let this go into effect."

Durbin, the Senate majority whip, is adamantly opposing the delay alongside retailers.

"We did the right thing with interchange fee reform. Let's stand by it and say to Wall Street, major card issuers, Visa and MasterCard, they have had enough," Durbin said in his own floor speech on April 6. "They can get a reasonable fee, but not an unreasonable amount out of our economy."

But many observers see Durbin steadily losing ground, particularly after the Illinois Democrat issued a press release rebutting Jamie Dimon, the chairman and CEO of JPMorgan Chase & Co., who called the provision "idiotic."

"Durbin seems more isolated, given his recent floor speeches," said Gabriel.

"We haven't seen a single other senator stand up to defend the Durbin amendment. Meanwhile, he seems to be locked in a grudge match with Jamie Dimon, who has effectively distilled the banking and card industries' complaint," Gabriel said.

URL: http://www.americanbanker.com/

LOAD-DATE: April 21, 2011

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Newspaper

JOURNAL-CODE: AB