Consumer Finance Monitor (Season 6, Episode 42): Understanding the Credit Card Competition Act a/k/a Durbin 2.0

Speakers: Alan Kaplinsky and Zarik Khan

Alan Kaplinsky:

Welcome to the award-winning Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer finance and what they mean for your business, your customers, and the industry. This is a weekly podcast show brought to you by the Consumer Financial Services Group at the Ballard Spahr Law Firm, and I'm your host, Alan Kaplinsky, the former practice group leader for 25 years, and now Senior Counsel of the Consumer Financial Services Group at Ballard Spahr and I will be moderating today's program.

For those of you who want even more information, don't forget about our blog, which also goes by the name of consumerfinanemonitor.com. We've hosted our blog since July 21st, 2011. That was the very same day that the CFPB became operational, and there is a huge amount of content on our blog. We typically post two to three articles a day each weekday.

We also regularly host webinars on subjects of interest to those in the consumer finance and banking industries, including FinTech of course. So to subscribe to our blog. Or to get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, please let us know about it. You can leave us a review on Apple Podcasts, Google, Spotify, or wherever you access your podcast shows. Also, please let us know if you have ideas for any other topic that we should consider covering, or any speakers that we should consider inviting as guests on our show.

So what are we going to talk about today? This is a topic that we haven't really covered on our podcast show. You could say it's a fresh topic. It's not anything that just popped up in the last couple of days or a week or so. It's been around percolating for a while. Those of you that are in the consumer finance industry may recall that many years ago, can't give you the exact number, although I'm sure our guests can. Senator Dick Durbin was responsible for getting through or passing the enactment of a statute that put a very severe limit on interchange fees for debit cards. That was very harmful to the debit card industry, but very lucrative to the retailer industry. Well, Senator Durbin's back at it again, this time he wants to put a cap on interchange fees on credit cards. Well, we're going to delve into this subject in quite a bit of detail today. The name of the bill that he has introduced, of course, goes by the name of Credit Card Competition Act. At least he thinks that it's going to foster competition. Not sure the banking industry agrees with that. We'll find out about that in a minute.

But now let me introduce our guest today who is an expert in this area and a lot of other areas pertaining that relate to FinTech compliance. And so without further ado, our guest is Zarik Khan. Zarik is the founder of Finsolute Advisors, an independent consulting organization focused on providing audit and compliance expertise in the financial services space. Prior to this, he spent over 15 years as an internal auditor working in various companies, including Google, and Discover Financial Services. At Google, he had responsibility for auditing the company's payments business, including assessing AML-related compliance for their numerous payment licenses. And in his almost nine years at Discover, he was responsible for auditing the entire card issuing business, including assessing regulatory compliance risk, spending time with various banking regulators and participating in their examinations.

He also writes a weekly newsletter, which recently got renamed, used to be called FinTech Horror Stories. It's now called FinTech Compliance Chronicles. He has a CPA, a CAMS, a CFE, and an MBA. That's a lot of initials for sure. But Zarik, very warm welcome to our show.

Zarik Khan:

Thank you, Alan. Really appreciate the intro. And I have to say, really honored to be here. I've been a huge fan of Ballard Spahr and specifically the Consumer Finance Monitor, the webinar version, the podcast version, the blog version, for quite a number of years, and I have to say when I was at Discover, the work that you and the team did really informed a lot of our understanding of the space over the years. So I'm very happy to pay it forward and have this conversation with you today.

Alan Kaplinsky:

Well, that's very, very kind of you, Zarik, really appreciate that. So let's dive right into the subject. Let's set the stage a little bit. So some people would say the topic today is on credit cards and specifically the future of rewards programs. Well, I didn't mention that in my introduction, but you'll explain that. Before we get into that, for those in the audience who may not be familiar, can you walk us through the various parties that get involved when a credit card transaction occurs?

Zarik Khan:

Yeah, so in the payment world, there was an acronym, which surprisingly as I've looked it up several times over the years, I've noticed it's not very well known. So perhaps I'm letting a little secret out of the bag here. But there's an acronym called MANIC, which is what I think of when trying to remember the various players that are involved in any payment transaction or credit card related transaction.

So the first player that comes as part of that acronym is the merchant. So this is a merchant that is going to be, can't just be a merchant that's going to be taking cash only. It's got to be a merchant that does accept credit cards as any form of payment. And it's a merchant that a consumer, which is at the end of the acronym, is transacting with.

Then the A is actually for acquiring banks. So here sometimes they're called merchant banks, think of an acquiring bank having a number of different merchants in its portfolio. Many times these acquiring banks, they provide all sorts of things to merchants like the software. They're involved heavily in the card processing decisions. So specifically they take the funds from the credit card sales and deposit it into the merchants account. And they also work with various third parties that we'll talk about a little bit as well. Then you've got the payment network, which I think many folks are familiar with. So the acquirer examples of those are FIS, Fiserv, Adyen, the network we're talking about, the names you probably know it's Visa and MasterCard. And then the other two, which are number three, number four are Discover and American Press, at least in the US.

So it's important to note Visa, MasterCard, the other two in this case, they're not bank, they don't issue the cards. Essentially, they're the rails on which a credit card transaction rides upon, and they drive a lot of the transaction and they make a profit by actually getting back some of the interchange fees that the issuing bank, which is the next player in the equation, actually levy onto the various merchants.

So the issuing bank, an example of those is Chase, Bank of America, and even as small as some credit unions, they can classify as issuing banks. So when you have a, let's say your credit card for many people, this could be where you have a Chase credit card, happens to be a Visa. So in that case, your network is Visa, your issuing bank is Chase. And so they're the ones who actually give out the credit card to consumers. They're the ones who come up with the interest rate. They're the ones who get the late fee revenue if you happen to pay late, and they're the ones who also come up with the credit card agreement. And pertinent in this conversation, they're the ones who charge the interchange fee to the merchant, and then they're the ones who pay back a percentage of that interchange fees that they collect to the network. So the credit card agreement that you see is all under the issuing bank.

And then the last piece in the MANIC acronym is the consumer. That's the individual who's going to be getting the card from the issuing bank. They'll present the card at the merchant and they'll have the transaction.

Interestingly, there is a additional player in the equation, which as transactions have evolved and become more online, more mobile, you see a lot more about payment service providers. So some examples of these are PayPal, Stripe, Google and Apple Pay aren't technically payment service providers because they just have wallets, but they certainly work with two of the examples that I mentioned earlier, like the Stripes and PayPal, and Square, is another popular one.

So those are the various players involved. And when you think about a transaction and how it goes through, I think these are many of the names that you'll be hearing in the rest of this conversation.

Alan Kaplinsky:

Okay. And just give us an idea or give our listeners idea of the interchange fees that are charged by the issuing bank. How much are they? I assume it's a percentage of whatever the amount of the transaction is at the retailer.

Zarik Khan:

Yeah. So it actually varies depending on the issuer, but there's interchange fees issues with the debit card, which we'll talk about, and you gave a brief introduction to that. And there's interchange fees for credit cards as well. So average in the US it's about 0.3% for debit cards and then 1.8% for credit card. So this is for each transaction, each swipe essentially, depending on the dollar amount of that transaction.

Alan Kaplinsky:

And I take it's something that could be negotiated between the issuing bank and the merchant?

Zarik Khan:

Yeah, I mean it's not like a hard set amount. I think there's various factors that definitely influence it. Now, as you alluded to in the beginning with the Durbin Amendment, there is a specific, not even percent, there's a specific cent cap, it's 22 cents depending on the size of the issuing bank in the case of debit card that the issuing bank cannot go past. With credit, even with this new potential regulation, there isn't a hard and fast amount. So there's more that is part of this new regulation that is going to essentially indirectly try to bring down the interchange fees.

Alan Kaplinsky:

Yeah. Okay. So this background is very helpful, Zarik. Now we know who the various players are that are involved. I think everybody is familiar with Visa and MasterCard, and probably Discover an AmEx, but Visa, MasterCard have a really dominant presence in the world of credit cards. Can you take us through the history of how the US government has been looking at Visa and MasterCard in particular? Have they been considered Monopoly? Has there been litigation over the years regarding that?

Zarik Khan:

Yeah. Let's take a step back and look at maybe two what I would call flashpoint in how the US government has thought about Visa, MasterCard, and it is important to note that there's many other smaller milestones, so to speak, that have come up over the years. Many in fact before this, but we'll stick to the last 10 to 15 years because that's relevant to this conversation.

So in 2010, you had alluded to it in your introduction, we had the Durbin Amendment, which Senator Dick Durbin was the main sponsor for, is actually part of the Dodd-Frank Act. A lot of this came out of the 2008 financial crisis, a greater desire to have a lot more oversight over financial institutions. And so here the idea with this amendment was just to regulate debit card interchange fees, and the text actually says reasonable and proportional to the cost incurred by the issuer with respect to the transaction. So the minutia of it is actually that the interchange fees actually get capped at 22 cents per transaction. So it's not even a percentage, it's actually a specific amount. And then five basis points multiplied by the value the transaction. So it gets even more technical in that sense.

Alan Kaplinsky:

So the cap of 22 cents, is that in the Durbin Amendment or did that get put into the regulation issued by the Federal Reserve Board?

Zarik Khan:

That is in the Durbin Amendment, the 22 cent. So the caveat there is that these rules, technically they only apply to debit card transactions if the issuing bank has over 10 billion in assets. So on the surface you could say, "Oh, it's not a big deal." So with the Durbin Amendment, the intent was certainly to benefit retailers and in turn benefit consumers, but what ended up happening actually was that even though those interchange fees were capped, and you would think in theory that this great merchants are going to pass the savings on to consumers, there was a study that was done by the Richmond Virginia Fed, and they found that actually post-Durbin, 22% of retailers actually raise prices on consumers. So not only did they see it as, "Hey, we're getting a bit of relief," but they said, "Hey, let's take a little bit more for ourselves." And it's interesting as this study is actually being done by a regulatory body, which I think attributes to its legitimacy.

And then beyond that, even though as mentioned earlier, the amendment was really supposed to have no effect on any of those issuing institutions with less than 10 billion in assets. They're even getting indirectly caught up in some of these revenue losses as well. And a separate study that was done by the Fed itself, US Federal Reserve, found that even community banks saw their entertained fee revenue decline from 2011, 2019. So there's other fallout pieces that can happen, including fewer loans, less access capital, fees on deposit products, et cetera. And then certainly from the merchant side, I mean it's been great for them. So the consumer isn't really in a better place than they were before, and obviously now we're dealing other than an inflationary environment. So Durbin 1.0, I think there's a lot to be said about maybe what the intent was and how effective it's actually been.

And then the other piece I'll also mention is that the federal government has been involved in more or less refereeing this dispute, but Discover Finance Services was actually the plaintiff in a lawsuit that they filed against Visa, where basically Visa had this pricing practice called Fixed Acquirer Network Fee. And the idea there is essentially Visa says it's just an incentive for merchants to do more business with Visa. And so Pulse claimed that this was, Pulse, which is Discovers debit network, claimed that this was an anti-competitive practice. Visa said it's just free market pricing.

So that lawsuit was filed in 2014. And interestingly in 2018, there was a judge in Texas who threw it out, but just last year actually, there was a appeal court that ordered a new judge to be assigned to the case. So this case is back now in circulation just as things are starting to heat up with potentially the Credit Card Competition Act. So more to come on that.

Alan Kaplinsky:

This case has been ongoing for how long? How many years?

Zarik Khan:

So this is now year nine, technically, if you don't count the four-year lull when it was thrown out. And Discover has had some lawsuits against Visa and I believe MasterCard as well pre-2010 as well. So view that Visa, MasterCard, monopoly is certainly not shared by some pockets of the government. It's also held by Discover and AmEx, which obviously makes sense from their perspective given their number three, number four, trying to find ways to compete. But that's a little bit of the background about the government involvement, some of the oversight.

Alan Kaplinsky:

Well, this is a great background, Zarik. And now let's get to the main attraction here. The Durbin 2.0, or it's formerly called the Credit Card competition Act. What's happening with this bill and how does it fit into everything that you've described already?

Zarik Khan:

Yeah, well, the unpleasant impact, if you will, of Durbin 1.0 hasn't really deterred Senator Durbin. So he's been one of the co-sponsors of Credit Card Competition Act to become law, and the idea is basically this act would do for credit, what Durbin 1.0 was the debit. So there's a few differences here which we can talk through, but the bill has also, in a way, without directly saying it, acknowledge perhaps some of the shortcomings of Durbin 1.0 with trying to add a specific cap. And so rather than just coming out and mandating a specific cap, they've actually incorporated a mandate into the bill saying that issuing banks would now actually have to offer not just one network on the card, which is pretty standard practice. We were talking about credit card issuing, but actually have two networks that merchants would have the option of choosing. And then the other caveat is that one of those key networks has to be a network other than Visa and MasterCard, which essentially just leaves it at, it has to either be Discover or AmEx.

So this would obviously be great from the perspective of Discover Fin Services, American Express, as we mentioned earlier, Discover in particular has been at war with Visa on the debit side. So the clicker also is that because Discover and AmEx happened to also be issuers and networks because they're not cited as one of those two networks, they wouldn't need to offer a second network to merchant. And if they were, let's say the issuing bank themselves, they could just keep it all in house and not have to do what in theory, the issuing banks that wants to use Visa or MasterCard would've to do so.

Let's use an example to make this a little bit easier. In a post-CCCA world, you would have a scenario where a merchant has a customer come to them with Chase as they're issuing bank. And initially, let's just say that card issued is just Visa, but then because Chase has to issue cards now that let's say also support Discover. So then when the merchant gets that, let's say whole network branded card, which is maybe hard to conceptualize given we haven't really seen this before, but let's just say in a future world this would happen. The merchant will actually, in theory here, should be able to choose which network they can use to process the transaction.

And so, looking at how interchange fees are offered by the various issuers, Discover is technically has a lower average interchange fee compared to its peers. So if I'm a merchant and I look at that, I'm going to say, "Well, yeah, I'm going to go with Discover as the network in this case."

So coming back to Durbin, as I mentioned, this is credit instead a debit. They're really using the competition angle here instead of just outright capping the interchange rate. And so when we're talking about the small bank and credit union, there is another minimum involved here where instead of the 10 billion that was a Durbin, there's now 100 billion minimum for the issuing bank to have to comply with this. Which in theory should be great for small banks and credit unions, but even there could potentially be some loopholes where let's say Visa and MasterCard may decide that, hey, we're not going to get as much competition from smaller credit unions fighting off with issuing banks, but hey, we're still just going to increase our prices for how much we claw back across the board for issuing banks anyway.

And so then in this case, the small banks credit unions, which technically on paper aren't subject to this, they may have the choice of just sucking it up and paying more to Visa and MasterCard, or they might have to then put in extra time, extra effort, extra cost to switch to or even just create support for Discover, AmEx, et cetera.

So it's again, there's a scenario where even though the intent is to not involve credit union, small banks, they would just by means of Visa and MasterCard trying to make up some of what they're not getting from the issuing bank. They might try to get it from smaller banks and credit union. As they call back some of the inter fees that the issuing bank have collected.

Alan Kaplinsky:

Okay. Now if this bill passes, and I'd like to get your thoughts on the politics here and whether it's likely that anything's going to happen this year or even next year, what are the implications here? The model that you discussed earlier, how would that look different in a post-Credit Card Competition Act world?

Zarik Khan:

Yeah, so there's I think a couple of scenarios which could come into play. We can talk through what it would look like from the perspective of each of those players. So the first scenario is that major issuing banks like the Chases, the Bank of Americas, Wells Fargos, et cetera, they would have to now step outside their Visa, MasterCard exclusive essentially relationship. Conversely, Discover and AmEx would actually have to figure out how to deal with other issuing banks because their whole model has just been very insular. Where they are the issuing bank, they are the network, they don't deal with anyone else.

So then from a end user perspective, we were talking about the cards, alluded to this earlier, but all the cards that are currently in circulation, and granted, we are moving as a consumer base more from this credit card, physical plastic exclusive model to now where we have tap and pay, we have more online payments than ever, but even with that said, there's still a lot of plastic cards in issuance. And so a lot of these plastic cards would have to be reissued for that two network card support model to work. You're not going to be able to be able to transact effectively because that issuer is basically going to just end support for those cards in this scenario.

The earliest that the bill could get passed, if it'll get passed, and we'll talk more about that as well, would probably be at the rate that discussions are going. And given, I think Congress has just come back into session, probably be maybe 2024 at the earliest, and even then I doubt it's going to be effective immediately. So you could say maybe there's a compliance timeline, issuing banks, big issuing banks particular negotiate with the government to kind of just set past the point of effect free for a lot of their current plastics. But again, it's a heavy, heavy effort and I've witnessed how much work it takes sometimes when issuing banks make a change to their terms to have some major change the backend and they have to reissue for a good chunk of their card member base. It does take time. Sometimes you have to do it in wave. So just practically speaking, there'd be difficulties on that end.

Then the third piece, let's go to the acquirer, which is responsible for the terminals, and this involves the merchants. We're going to be the ones who have those terminals in stores, and even if you include the online marketplace as well that many of these merchants have, which again, they work with their acquirers and sometimes with the payment service providers who have these, that would all need to be updated as well. So e-commerce companies would have to do a lot of work here. Payment processors have to do a lot of work. The merchant acquiring bank would've to do a lot of work as well. So even though we've seen a lot of changes over the years, like chip-and-PIN, tap and pay, this is not uncharted territory where massive changes have swept the industry and then acquiring banks have had to quickly tap dance to implement those with their merchants. It's still, again, a lot of work to be done on the side of these parties as well.

And then of course, the big one for consumers, in theory, we've mentioned all these players having to do all work, it is all being done for making the consumers experience a little bit more seamless and easier, and they wouldn't see anything other than hopefully lower prices ultimately in what they're purchasing that maybe a merchant isn't passing on. But again, it depends on how issuing banks and merchants and even networks are going to respond if this law does go into effect.

And the big one, which is I think the main gist of what we'd like to talk about a little bit more here is the rewards program. So this piece with rewards has been the main conversation point that has really energized, I would say, both sides of the debate on whether this potential bill, potential law is a good thing or a bad thing, and we'll talk about it later. There's actually some websites that have popped up on both sides of the equation advocating for consumers. Some saying like, "Rewards are going to go away," others saying, "Hey, we need to fight back against the big banks."

But if I'm a customer and I have a Discover card or an AmEx card that's issued by Discover and AmEx, then my merchant accepts those and I don't have any other card, which to be honest is not that common. But let's just say you have that rare customer. In theory, yeah, that Bill might not have an impact on that very minority type of customer. And in that case, Discover and AmEx would probably even more be able to tout their rewards programs as a differentiation point, especially if because of these fees, the conversation has been that Visa and MasterCard issued cards from those issuing banks would potentially have their rewards program at risk.

So in that case, you could argue, well, yeah, saying rewards are going to go away isn't entirely true. But in general, again, like I said, not everybody is just going to have a Discover card or just a MasterCard. They have a number of cards. It's more about cards and wallet rather than just your one credit card. I think with that, that's a little bit of an overview of the various parties and some of the changes we could see in a post-CCCA world.

Alan Kaplinsky:

So maybe it seems fair to say that while the odds are currently pretty slim that a bill like this is going to pass this year, with the political scene in Congress, you never know who really holds power one day to the next and it can't be entirely written off. So how are the various parties involved shaking out over this? Maybe let's start with the networks themselves and maybe you can talk a little bit about some of the claims they're making as well. I mean, you've already talked about the rewards programs and that the major banks are basically telling Congress if you enact something like this, you're really going to be hurting consumers because we're going to have to cut back on or eliminate rewards programs. And everybody knows how popular those programs are with consumers. Not a really attractive side for any senator or representative to be in favor of. So how does this all shake out?

Zarik Khan:

Yeah, so I would say just touching quickly on the point about likelihood, I do agree that in the current formation of Congress, it's not very likely that this bill is going to pass. However, with the makeup of the government perhaps leaning one way or the other, you just never know what could happen. If you suddenly go from a, right now it's a Republican majority House of representatives, suddenly that turns the Democrat House of representative. You never know, maybe this bill suddenly sees new light. Even though it is worth noting that this bill is a bipartisan sponsored bill. Senator Durbin is the main sponsor, but Senator Marshall is also the Republican co-sponsor.

So with that said, it's essentially those in favor, so to speak, are Visa and MasterCard, the major credit card networks. And then you've got the big issuing bank and the credit unions and small banks, many of them at least.

And then interestingly, also, a lot of these rewards promo sites like NerdWallet as one of those examples of credit card reward promo sites, bankrate is another one that comes into play as well.

In fact, I would say just to show how much on the same page these parties are, one of the sites that they started, it's called handsoffmyrewards.com. So the idea is basically on that page, it's got a nice pre-made little form you can fill out and send it to your representatives and Congress people essentially saying to oppose the Credit Card Competition Act, and they will help you find out your Congress person, then submit it, and it's got a little bit of their perspective of the facts, the video and some voices. So that shows in terms of parties that are behind it, how they're lining up.

In terms of claims, there's a couple that come through and come, we won't go too much in detail on the nitty-gritty about how valid they may or may not be, but from their perspective, this side that's against the CCCA, they say that this zero fraud liability, which is actually a very big deal, will be at risk. And they don't really go into detail for this view. And some of this comes out in various opinion pieces that have been put in some locations. Sometimes there are research studies that have been commissioned by some of the issuing banks providing perspective, but the claim about zero fraud liability being at risk is essentially claiming, which isn't really, I think, very fair to Discover an AmEx as issuing bank, but essentially claims that while most of your consumers have been dealing with the fraud management of the Chase, the Bank of America, and the bank, we know how to handle it.

It's essentially indirectly saying, yeah, Discover an AmEx, they don't directly refer to them. They're not going to be able to provide the same zero fraud liability that you know and love from us. So that's going to be at risk. Which they don't go into that detail, but that's essentially what's implied by that claim.

But then they also say that merchants will see lower sales because the fact that the programs are going to be at risk to being cut again from a Visa and MasterCard issued card perspective, that certainly may be true. From a Discover and AmEx perspective though if they continue to offer rewards, they continue to have success with their insular model, potentially those may continue. On the other hand, maybe Discover Card and AmEx say, "Why are we putting on additional expense to offer this rewards program when our competitors aren't anymore? Maybe we can just get rid of it too." So there very well could be validity to that claim.

And then the last point, which again comes in the same vein as the claim about fraud liability is that one of the rewards promo articles says that there's no guarantee that these competitors would be as reliable or as secure as the card networks we know and trust. So again, some indirect shade being thrown the way of Discover and AmEx essentially saying that, hey, their data security is unreliable. And I would say that's a pretty bold claim to make regarding two pretty longstanding publicly traded companies. But again, it's what the major network and major issuing bank alliance, so to speak, is claiming. So there's many other claims they make, but I think those are three of the ones that definitely stood out to me.

Alan Kaplinsky:

And what about the merchants? How are they feeling all about this? I would guess pretty good, right?

Zarik Khan:

Yeah. I mean they are very much in support of the bill. Interestingly, there are some consumers who I've found the perspective on as well, we'll talk about that a little bit. But the National Retail Federation, which is the main representative of merchants globally, they have 3.8 million members worldwide. They have put out their own pieces pushing back against some of the criticism of the bill, and they have a bunch of claims that they make of their own. So they say that, "Hey, the Credit Card Competition Act, just look at the name, it's going to have more competition in the market. It's going to have great savings for merchants and consumers." But again, what it doesn't reference is what we talked about earlier, the scenario where, because some of these players are just going to have to raise their cost to continue to be competitive, or we talk about Visa and

MasterCard, they may actually claw back more from issuing banks, even if they're not subject to that 100 billion minimum thresholds, those credit unions and local regional banks are not necessarily going to have a better go at it. And so this claim about increased competition isn't necessarily true. It certainly could be, but there's a scenario where it isn't.

Then the other claim that is made is that Visa and MasterCard are focusing on entrenching their share, and then they use the patriotic element here. They say that, "Well, hey, look, these MasterCard have even allowed China UnionPay to have a seat on the industry bodies that set security standards. And oh my goodness, this granting Chinese government controlled entity access to consumer data, that is not good."

So you can see one side is throwing the security argument, the other side is throwing the security argument. And again, here, the body that they're referencing is EMVCo. And the thing about EMVCo is that it does set some recommendations, but there's no mandate of any specifications. And while it does have some degree of an influence about how the industry is going to operate from a technical perspective, EMVCo is also co-led by not just Visa and MasterCard, but Discover and AmEx along with JCB and China UnionPay. So it's a large body of numerous players.

And the other thing to point out is China UnionPay cannot get access to consumer data unless a customer is actually using a China UnionPay card and China UnionPay isn't issued outside of China. So that scenario is probably not as likely.

And then the last point is saying that not a single community bank or credit union would be affected by this legislation. I think we've talked about that before. That isn't necessarily true. So I think both sides are throwing some of these claims. I mean, there is some validity, which I think the nature of the bill and what we talked before stands for itself, but it's definitely a noisy time as the merits and the issues with this act are being debated.

Alan Kaplinsky:

Right. So perhaps the most important priority, the one that's supposed to be benefited one way or another. Both sides seem to be saying they're fighting for the consumer here, of course. What's the actual consumer saying? I mean, is there any way to get a sense of whether consumers want the bill? For example, there are a lot of consumer advocacy groups, National Consumer Law Center, and there was a whole bunch of public citizen, public justice. Have they come out one way or another?

Zarik Khan:

Yeah, so I think on the surface, a lot of these groups, sometimes they potentially claim to speak for a subset of consumers, et cetera. I wasn't able to find any specific instances of some of those advocacy groups. But what I love doing sometimes is just poking around in various places on the internet to see what the general conversation is on places like LinkedIn, Twitter, YouTube, Reddit, et cetera.

Interestingly, I've seen conversations that lean towards both favorable and unfavorable. Sometimes you look at folks on Reddit, for example, again, you generally tend to be a little bit more left-leaning. There, you see folks who are mostly saying like, "Hey, we get it. That rewards generally are mostly a benefit for folks who happen to be maybe a little bit more affluent. But some of the best programs are typically targeted to folks who fall in that bucket."

And then those folks have the luxury of some of these folks chimed in themselves to say, "Hey, I will have the luxury to maybe just cut down the spending a little bit and lean more to investments. When I think about rewards, it's more subconscious." And then some are saying, "This isn't necessarily the end of credit card."

The general theme I saw with a lot of these promises, I think these big institutions tend to not really give the consumer as much credit as perhaps they deserve. I think the average consumer is pretty smart and can see through a lot of the noise, just given how much the usage of whether you're talking about the card itself or the reward is impacting their daily life, especially if they're not necessarily affluent, but even more middle class.

And then in other cases on YouTube, you have some folks who are actually more singing the doom and gloom, like, oh, hands off my rewards. This is not fair. And just another example of government overreach. So again, it's not necessarily, I would say like a necessarily left-right issue. I mean certainly it could feel that way in very pockets, but I don't think there's a general consensus. But the theme I would say is that consumers in general a lot more aware and are able to take a step back and think about the pros and cons a lot more than perhaps either side of the argument would give them credit for.

Alan Kaplinsky:

Yeah. So let me ask you this. Has the Biden administration taken a position as far as you know?

Zarik Khan:

Yeah. So the Biden administration has not made a specific statement to my knowledge. It's certainly possible that they may come out and make a comment on this. The Biden administration is supportive of the Durbin Amendment, which is the predecessor of the CCCA. Interestingly, it's also worth noting that the Biden administration has also put out a couple of executive orders around junk fees in and outside of financial services. So reading between the lines, this could very well be something that they may be in support of, just given the theme of they're wanting to target some of these fees. But formally there has been nothing said around this. I think given the fact that the general consensus, the bill may not even make it for a vote in the current state, it may be just politically safer to just not say anything. But if it becomes more serious and it actually does start to look like it could pass, there may be then a moment where we may get the perspective of the administration.

Alan Kaplinsky:

Now, is the bill self-executing or does it require the Federal Reserve Board issue regs?

Zarik Khan:

So the Fed would actually have the opportunity to actually issue regulations within one year. So that is actually coming out of one of the provisions of the act. Specifically, the regulations applying to those banks that have over 100 billion in act.

Alan Kaplinsky:

Okay. But as far as the Fed has not taken a position and DOJ has not been involved?

Zarik Khan:

No, neither side from my understanding has given any perspective. Although it's interesting, some of the perspective on Durbin has come out of the research done by the Federal Reserve Bank of Richmond, as I mentioned earlier, and then even the US Fed had given some perspective on the increase in cost.

Alan Kaplinsky:

All right, well, we've reached the end of our program. And Zarik, thank you very much for being on our program today, and you certainly have enlightened me and I'm sure you've enlightened a lot of our listeners as to what this bill is all about. Again, the Credit Card Competition Act introduced by Senator Richard Durbin, a Democrat senator from Illinois. And we'll have to follow this thing very closely. My own view is next year probably isn't going to go anywhere because an election year, and I think both Democrats and Republicans are going to be very, very careful about what side is going to benefit them or benefit the administration during a presidential election. But in any event, thank you very much.

Zarik Khan:

Yeah, thank you. It's been an absolute pleasure and I would love to come back and talk more about this if there's some breaking development. It'll be very interesting to see if and when this bill moves to the next step, if at all. But it's been an absolute pleasure talking about this with you and really appreciate the time.

Alan Kaplinsky:

Well, thank you, Zarik. And to our audience, to make sure you don't miss any of our future episodes, please subscribe to our show on your favorite podcast platform, be it Apple Podcast, Google, Spotify, or whatever platform you use. Don't forget to check out our blog, consumerfinancemonitor.com, for daily insights on the financial services industry, including of course

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