Date of Hearing: April 22, 2013

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Roger Dickinson, Chair
AB 1300 (Hernández) – As Introduced: February 22, 2013

SUBJECT: Credit cards: oral disclosures.

SUMMARY: Requires a credit card issuer on or near the campus of an institution of higher education or at an event sponsored by or related to an institution of higher education to orally disclose to a first-time cardholder between 18 and 26 years of age certain information. Specifically, this bill:

1) Provides, pursuant to certain criteria, that a credit card issuer, shall, at or prior to the time of the issuance of a credit card, orally disclose the following to a first-time cardholder between 18-26 years of age:

    a) Annual percentage rate (APR);

    b) Penalty rates;

    c) Cash Advance fee;

    d) Late payment fee;

    e) Over-the-limit fee; and,

    f) Any event specified in the credit card agreement that would trigger an increase in the cardholder's APR.

2) Requires the issuer to orally disclose how long it would take the cardholder to pay off the average credit card debt if the cardholder only makes the minimum payments.

3) Mandates that the issuer, subsequent to providing the oral disclosures, but prior to issuance of the card, shall provide the cardholder with a written document containing each oral disclosure example and the cardholder must initial each disclosure. Additionally, requires the cardholder to sign the written disclosure stating that he or she was provided with the oral disclosures.

4) Provides that the oral disclosures must be provided in terms easy-to-understand and non-technical language.

EXISTING LAW

The Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, provides numerous requirements for the issuance of credit cards and disclosure of the terms. Specifically, the CARD Act provides for the following:

1) Requires issuers extending credit to young consumers under the age of 21 to obtain an application that contains: the signature of a parent, guardian, or other individual 21 years or older who will take responsibility for the debt; or proof that the applicant has an independent means of repaying any credit extended;

2) Limits prescreened offers of credit to young consumers;

3) Prohibits increases in the credit limit on accounts where a parent, legal guardian, spouse or other individual is jointly liable unless the individual who is jointly liable approves the increase;

4) Increases protections for students against aggressive credit card marketing, and increases transparency of affinity arrangements between credit card companies and universities;

5) Requires a credit card issuer who increases a cardholder's interest rate to periodically review and decrease the rate if indicated by the review;

6) Prohibits credit card issuers from increasing rates on a card holder in the first year after a credit card account is opened;

7) Requires promotional rates to last at least 6 months;

8) Prohibits issuers from charging a fee to pay a credit card debt, whether by mail, telephone, or electronic transfer, except for live services to make expedited payments;

9) Prohibits issuers from charging over limit fees unless the cardholder elects to allow the issuer to complete over-limit transactions, and also limits over- limit fees on electing cardholders;

10) Requires penalty fees to be reasonable and proportional to the omission or violation;

11) Requires payments in excess of the minimum to be applied first to the credit card balance with the highest rate of interest;

12) Prohibits issuers from setting early morning deadlines for credit card payments;

13) Requires credit card statements to be mailed 21 days before the bill is due rather than the previously required 14 days;

14) Prohibits interest charges on debt paid on time (double-cycle billing ban);

15) Prohibits late fees if the card issuer delayed crediting the payment;

16) Requires that payment at local branches be credited same-day;

17) Requires credit card companies to consider a consumer's ability to pay when issuing credit cards or increasing credit limits;

18) Requires card holders to be given 45 days-notice of interest rate, fee and finance charge increases;

19) Requires issuers to provide disclosures to consumers upon card renewal when the card terms have changed;

20) Requires issuers to provide individual consumer account information and to disclose the period of time and total interest it will take to pay off the card balance if only minimum monthly payments are made;

21) Requires full disclosure in billing statements of payment due dates and applicable late payment penalties;

22) Requires each credit card issuer to post its credit card agreements on the Internet, and provide those agreements to the Federal Reserve Board (FRB) to post on its website;

23) Requires the FRB to review the consumer credit card market, including the terms of credit card agreements and the practices of credit card issuers and the cost and availability of credit to consumers;

24) Requires Federal Trade Commission rulemaking to prevent deceptive marketing of free credit reports.

FISCAL EFFECT: None

COMMENTS:

AB 1300 would require a financial institution that issues a credit card to someone between 18-26 years old at higher-education institutions to provide oral disclosures of key terms and conditions relating to the credit card at, or before the time of issuance of that card.

According to the author,

> *As college tuition continues to rise, college students are depending more on credit cards to pay for their expenses. According to the Institute for College Access & Success' Project on Student Debt, the average student of the 2011 class owed $26,600 upon graduation. A 2009 national survey by Sallie Mae reported 84% of undergraduates have at least one credit card. Of those students, 92% report paying textbooks, school supplies, or other direct education expenses with credit cards.*
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> *According to the same survey, credit card usage and debt increases by year in college. The National Foundation for Credit Counseling found that almost one-half of college students graduate with more than $3,000 in credit card debt. One in ten students accumulates over $7,000 in credit card debt by graduation.*
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> *AB 1300 allows students to become well informed consumers. Sallie Mae's 2009 national survey revealed "one-third of students rarely or never discussed credit card use with parents." These students were "more likely to pay for tuition with a credit card and were more likely to be surprised at their credit card balance when they received the invoice."*

The Federal Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009 prevents students under age 21 from applying for credit cards without proven income or a co-signer. However, the requirements for getting a credit card are still lax.

As many college students begin to process credit for the first time, it is vital they receive appropriate credit card counseling to understand the terms of their contract.

AB 1300 would require a credit card issuer, on or near a college campus, to orally explain, in easy to understand language, certain terminology found in the application. The bill would also require the card issuer to provide an example of how long it would take the student to pay off the average credit card debt if the student only makes minimum payments. The card issuer would also be required to explain how credit card interest rates are compounded and potential adverse effects of late credit card payments. The student would then initial and sign a document indicating they received credit card counseling.

This bill is consistent with the federal and state laws providing protections for young credit card holders and with the intent for college students to receive counseling on credit cards and debt.

AB 1300 helps empower college students with financial literacy with respect to credit cards.

The relationship between credit card issuers and colleges and universities has been an ongoing issue of controversy. Many colleges and universities have affinity marketing relationships with card issuers that have historically been significant sources of revenue. These arrangements have been the subject of criticism as college students have incurred significant credit card debt that can add to student loan debt creating great financial difficulties for students and graduates. Statistically, college students have shown a propensity to run up credit card debt at rates exceeding the general population, often due to higher living expenses, lower wages, and a general lack of financial literacy.

In 2009, Sallie Mae reported that 91% of undergraduates have at least one credit card, up from 76% in the same study conducted in 2004. The average number of cards has grown to 4.6%, with half of college students having four or more cards. In 2012, credit card usage among college students declined to 35%, down from 40% in 2011 and 42% the year before, with the sharpest drops among sophomores and juniors. Of those with a card, the average balance was $755. Thirty-three percent reported carrying no balance on their credit card. Furthermore, Sallie Mae found that the dollar amount of college expenses financed by student credit cards had declined from $2,542 in 2008 to $2,169 in 2012.

Clearly, the usage and indebtedness of credit cards has declined from 2009. This is not a coincidence as passage of the federal CARD Act occurred in 2009. Among the numerous provisions of the CARD Act are prohibitions on anyone under 21 acquiring a credit card unless they have a co-signer or can document income. These restrictions apply to every person under 21, not just college students. Additionally, credit card issuers can no longer give free gifts in exchange for a student signing up for a card.

While the CARD Act has had some impact, and may continue to do so, on the use of credit cards by students, financial literacy remains a contributing factor to increased debt.

The Inceptia National Financial Capability Study surveyed 962 first-year students from five colleges and universities across the United States between September 2012 and November 2012. Students answered 50 knowledge questions, based on five core competencies specified by the U.S. Department of the Treasury Financial Literacy and Education Commission: Earning, Spending, Saving, Borrowing, and Protecting.

- None of the students scored in the "A" range (45 to 50 correct); only 11 percent scored in the "B" range; 22 percent in the "C" range; and 67 percent either "D" or "F". A sampling of results showed:

- Four in 10 students did not know what the definition of "Net Pay" was.

- Too many students could not correctly identify the kinds of items that appear on a paycheck stub.

- Only 45 percent of students said they understand their credit score may have an impact on their ability to get a job.

- Most students knew that the credit card companies are not the source of credit reports, but only half or less could correctly identify the credit reporting agencies.

This lack of basic financial literacy raises a host of issues and questions. For example, is it the terms and conditions of a credit card that lead to debt, or a lack of understanding of those terms and conditions? Would orally providing those disclosures have any impact on understanding the product in greater detail?

Discussion.

The requirements imposed by AB 1300 lack specificity and could lead to further confusion in regard to credit cards. Various terms are undefined and lack description, making it difficult for a credit card issuer to know when they are in compliance with the requirements. For example, if the card issuer is on campus, or "near" the campus of a college or university they would be required to provide the oral disclosure. No guidance or definition is provided as to the meaning of "near" the campus. Furthermore, the requirements become active if the card issuer is at an "event sponsored by or related to" the college or university. It may be possible to easily determine when an event is sponsored by the college or university, but what constitutes an event that is "related" to those institutions? Some colleges and universities may have satellite offices in urban areas that are located in the same building as a bank or credit union. Would that be considered on or near the campus?

Due to the lack of clarity in the bill, it could be interpreted that all credit card issuances by that financial institution to first time cardholders between 18-26 years of age would have to comply with the provisions of AB 1300 because the issuer has one branch or kiosk on or near the campus. The requirements do not specify when the obligation to provide the oral disclosure ends. If Bank of ABC has a kiosk at UCLA, then they would have to provide the disclosure at the location of all Bank of ABC's to first time cardholders because the language of the bill doesn't specify the time and place when the requirements end.

Furthermore, does the term "first-time" cardholder mean that they are receiving a credit card for the first time from one specific issuer, or does it mean that it's the sole credit card they have. Additionally, what if the credit card is acquired by joint applicants? Are both applicants to receive the disclosure at the same time?

Based on the wording of AB 1300, the issuer, if they meet the criteria, would provide the oral disclosure at, or prior to the issuance of the credit card. This means that the first-time card holder between 18-26 years of age could apply for the card at one point and time, subsequently be approved for the card, and then the card issuer would have to either go to the cardholder's address, or request that the cardholder visit the card issuer's location in order to provide the oral disclosures. The language of the bill assumes that all credit card decisions would occur instantaneously and not involve a delay between application and decision.

Among the required oral disclosures, is the requirement that the issuer inform the card holder of how long it would take the cardholder to pay off the average credit debt if the cardholder only makes the minimum payments. If the card has just been issued, one could assume that no debt exists on the card yet making this provision difficult to comply with. On the other hand, if this is assuming a disclosure of an average that is independent of the individual card holder, that metric is not referenced.

According to information supplied in the committee background, the intent of this bill is to provide counseling on debt and credit cards for college students. Counseling young adults on the ramifications of credit utilization is not only a worthy goal, but vital for their future financial success. Unfortunately, as worthy as this goal may be, this bill does not require counseling. Instead it requires credit card issuers to orally disclose confusing and complicated credit card terms and conditions.

Finally, the CARD Act, already discussed at length provides key protections for those persons under 21 in regarding to credit cards. Without a co-signer on the account or proof of income to cover the credit obligation those under 21 cannot acquire a credit card. Additionally, card issuers are prohibited from offering gifts in exchange for applying for a card. Given these protections do the provisions of AB 1300 provide any additional benefit?

Federal Preemption.

AB 1300 raises potential federal preemption issues as the provisions of the bill would apply to federally chartered financial institutions. Federal preemption is an issue decided by the courts, however, it is important to note how the courts have viewed these issues in previous cases. In *American Bankers Association et. Al. v Lockyer*, (239 F. Supp. 2d 1000 E.D. Cal. 2002) the United States District Court, Eastern Division of California determined that a civil code provision (1748.13) that required credit card issuers to provide certain state mandated disclosures was preempted. The court concluded that while states are not without any power to regulate national banks in regards to "contracts, debt collection, acquisition and transfer of property, and taxation, zoning, criminal , and tort law" the "court finds the statute is constitutionally inapplicable in its entirety to all federally chartered credit card issuers.

In *Parks v MBNA* (54 Cal. 4th 376 2012) the California Supreme Court found, in a unanimous decision, that Civil Code section 1748.9 was preempted by the National Bank Act (NBA). Civil code section 1748.9 required specific disclosers for convenience checks which are preprinted

check drafts sent to credit card holders by their credit card issuer. Section 1748.9 required a credit card issuer "that extends credit to a cardholder through the use of a preprinted check or draft shall disclose..." various terms and conditions concerning the use of the convenience checks. The California Supreme Court found that states have some latitude to regulate the activities of national banks in those cases in which the regulation does not interfere or stifle the national bank's exercise of its powers. However, the court found that Section 1748.9 was a significant impairment of a national bank's power under the NBA. Furthermore, the court found that even if one could assume that the disclosure requirement imposed by Section 1748.9 was not onerous, other preemption case precedents established that preemption analysis must also consider "the burden of disclosure." Due to analogous provisions present in AB 1300 and those that were found in Section 1748 a direct quotation from the *Parks* decision is necessary.

> *Summarizing the principles established in Franklin and Barnett Bank, the high court in Watters said: "In the years since the NBA¨s enactment, we have repeatedly made clear that federal control shields national banking from unduly burdensome and duplicative state regulation. [Citations.] . . . [¶] We have" "interpret[ed] grants of both enumerated and incidental „powers¨ to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law." [Citations.] States are permitted to regulate the activities of national banks where doing so does not prevent or significantly interfere with the national bank's or the national bank regulator's exercise of its powers. But when state prescriptions significantly impair the exercise of authority, enumerated or incidental under the NBA, the State's regulations must give way." " (Watters, supra, 550 U.S. at pp. 11-12.)…*
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> *…Requiring compliance with section 1748.9 as a condition of "loaning money on personal security" (12 U.S.C. § 24, par. Seventh) through convenience checks "significantly impair[s] the exercise of authority" granted to national banks by the NBA (Watters, supra, 550 U.S. at p. 12). Section 1748.9 prescribes the content of the disclosures by specifying what must be disclosed on each convenience check. Section 1748.9 prescribes specific language that a credit card issuer must use ("use of the attached check or draft will constitute a charge against your credit account"). (§ 1748.9, subd. (a)(1).) In addition, section 1748.9 prescribes the manner and format of the disclosures: the disclosures must appear "on the front of an attachment," the attachment must be "affixed by perforation or other means to the preprinted check," and the disclosures must appear "in clear and conspicuous language." These requirements as to the content, language, manner, and format of disclosures seem no less prescriptive than the New York law in Franklin that prohibited banks other than the state's own chartered savings institutions from using the word "saving" or "savings" in their advertisements or business. (See Franklin, supra, 347 U.S. at p. 374 fn. 1, citing N.Y. stat.) The New York law did not bar national banks from receiving deposits or soliciting deposits through advertisements. It simply required national banks operating in New York to use other words to entice people to deposit their money for safe-keeping and to describe the business of protecting, growing, and lending those deposits. (See Franklin, at p. 378 ["[The state] does not object to national banks taking savings deposits or even to their advertising that fact so long as they do not use the word „savings.¨ "].) Nevertheless, the high court held that the state law impermissibly interfered with the federally authorized business of national banks. (See id. at pp. 377-378.)…*

> *…Section 1748.9 is not a generally applicable law similar to California's law against unconscionable contracts. It is a law specifically directed at "credit card issuer[s]" and at offers of "credit to a cardholder through the use of a preprinted check or draft." (Ibid.) Section 1748.9 does not state a background legal principle against fraudulent, deceptive, or unconscionable practices. It prescribes specific and affirmative conduct that credit card issuers must undertake if they wish to lend money through convenience checks.*

The court further ruled that the disclosure requirements of Section 1748.9 impose a "condition on the federally authorized power of national banks to loan money on personal security." Federal law authorizes the lending of money by national banks without subjecting them to local restrictions. The restriction on lending, unless providing the disclosure was viewed as a significant impairment to the authorities granted to national banks by the NBA.

Committee staff does not propose to predict how the courts may view AB 1300 if it becomes law. However, previous efforts mandating California specific disclosures for national banks (most credit card issuers are national banks) have been struck down in the courts thereby creating unhelpful preemption case law that only weaken future efforts at consumer protection.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Bankers Association
California Credit Union League
California Independent Bankers (CIB)

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