

GOVERNMENT RELATIONS DIGEST
A Compendium of Public Policy Initiatives Involving Payment System Issues
As of February 19, 2009 [Version 2.1]

FEDERAL REGULATORY AGENCIES

Current bill regulatory information for all agencies and offices of the Federal Government is available (search on Agency name or key word) at:

<http://www.gpoaccess.gov/fr/>

EXECUTIVE OFFICE OF THE PRESIDENT

NEW

1. Executive Agency Regulatory Review Memorandum to All Departments and Agencies. Rahm Emanuel, Chief of Staff, issued on behalf of the President a directive on January 20, 2009 delaying implementation of new and pending regulations (Presidents Bush and Clinton issued similar directives at the beginning of their terms). This directive could impact the effective date, publication in the *Federal Register*, or comment period deadlines for a number of regulatory actions.

The directive instructs all agencies (subject to the exceptions below) to:

- Withdraw proposed or final regulations not yet published from the FR publication process pending review and approval by the issuing department or agency head
- Consider extending by 60 days the effective date of published regulations that have not yet taken effect, and
 - Add a 30-day public comment period to address issues of law and policy
 - Following the 60-day extension, address any substantial questions of law or policy, as applicable, raised during the comment period.

The directive covers all new and pending regulations except:

- Those involving “emergency situations or other urgent circumstances related to health, safety, environmental, financial, or national security matters” and these excepted regulations must be certified by the OMB Director; and
- Those that have statutory or judicially-mandated deadlines.

A copy of the directive can be downloaded at:

<http://media.washingtonpost.com/wp-srv/politics/documents/emanuel-regulatory-review.pdf>

FEDERAL RESERVE BOARD OF GOVERNORS

1. Final Rule: Regulation GG (Prohibition on Funding of Unlawful Internet Gambling). Implements the *Unlawful Internet Gambling Enforcement Act of 2006*.

STATUS: NACHA filed comments in December, 2007 seeking several clarifications in the Final Rule. The Final Rule is effective January 19, 2009. Compliance by non-exempt participants in designated payment systems is not required until December 1, 2009. A copy of the Final Rule can be found at:
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081112a1.pdf>

On January 12, 2009, NACHA issued an ACH Operations Bulletin describing the obligations of participants in the ACH Network. A copy of the Operations Bulletin can be found on NACHA's web site.

2. OP-1310: (Daylight Overdraft Posting). Proposed Rule aligns posting the times for (i) ACH debit entries and (ii) for Treasury Tax and Loan (TT&L) investments with the Electronic Federal Tax Payment System (EFTPS) with the posting time (8:30 a.m. ET) in place for ACH credit entries.

STATUS: NACHA filed comments in May, 2008, generally supportive of the proposal but (i) calling out adverse impact on certain entities and (ii) seeking implementation alignment with OP-1309 (see below). On December 19, 2008, the Board announced that it will not pursue this proposal. A copy of the Notice can be found at: <http://www.federalreserve.gov/newsevents/press/other/other20081219b1.pdf>

3. OP-1309: (Payments System Risk Policy). Proposed Rule is intended to loosen intraday liquidity constraints and reduce operational risks in financial markets and the payments system. The Board is proposing a new strategy for providing intraday credit to depository institutions and would encourage these institutions to collateralize their daylight overdrafts.

STATUS: NACHA did not file comments, other than referencing interrelationships with OP-1310. On December 19, 2008, the Board adopted changes to the PSR policy that are substantially the same as those proposed for comment. The implementation of the revised PSR policy will take effect in 4Q 2010 or 1Q 2011. A specific date will be announced by the Board at least 90 days in advance. A copy of the Notice can be found at: <http://www.federalreserve.gov/newsevents/press/other/other20081219a1.pdf>

NEW

4. Docket R-1334: (Regulation D; Reserve Requirements of Depository Institutions). Proposed Rule amends Regulation D to direct Federal Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements and on balances held in excess of required reserve balances and clearing balances. The Board is also making associated minor changes to its clearing balance policy and the method for recovering float costs.

STATUS: The Request for Comment was issued January 30, 2009. Comments due March 2, 2009. A copy of the RFC can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr30ja09-14.pdf

UPDATE

5. Final Rule: Regulation DD (Truth in Savings). Implements:

- Disclosure of Aggregate Overdraft Fees. Requires all financial institutions to disclose on periodic statements the aggregate dollar amounts charged for overdraft fees and for returned item fees (for the statement period and the year-to-date).
- Disclosure of Balance Information. Requires institutions that provide account balance information through an automated system to provide a balance that does not include additional funds that may be made available to cover overdrafts.

STATUS: NACHA did not file comments. Final Rule issued. The effective date is January 1, 2010. A copy of the Final Rule can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-14.pdf

A full copy of the regulation can be found at:
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title12/12cfr230_main_02.tpl

UPDATE

6. Docket R-1343: (Regulation E; Electronic Fund Transfers). Request for comment on the following provisions as proposed amendments to Regulation E:

- Replaces proposed amendments under Regulations AA and DD addressing overdraft services.
- *Consumer Choice Regarding Overdraft Services.* Solicits comment on two approaches to providing consumers a choice regarding the payment of ATM and one-time debit card overdrafts by their financial institution.
 - *Opt-out:* Requires financial institutions to provide consumers with notice of the right to opt out of the institution's overdraft service. Notice would generally be provided at account opening or before any fees/charges are assessed.
 - *Opt-in:* Requires financial institutions to provide consumers with notice of the right to opt in to the institution's overdraft service. Notice must be provided and the consumer must affirmatively consent before any fees/charges are assessed.
- *Debit Holds.* Would prohibit institutions from imposing an overdraft fee when the account is overdrawn because of a debit card transaction placing a hold on funds exceeding the actual transaction amount.
- *ACH Transactions.* The FRB specifically proposes not to apply the opt-out or alternative opt-in provisions to overdrafts resulting from ACH debit transactions or recurring debit card transactions, but seeks public comment as to whether such provisions should be applied to these types of transactions.

STATUS: RFC issued. NACHA will be filing a response reinforcing the FRB's justification for not proposing to apply the opt-out or opt-in provisions to ACH transactions. Comments due March 30, 2009. A copy of the RFC can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-19.pdf

A full copy of the regulation can be found at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=244e980d84e7cf88e0237ca64824965d;region=DIV1;q1=regulation%20e;rgn=div5;view=text;idno=12;node=12%3A2.0.1.1.6>

UPDATE

7. Final Rule: Regulation AA (Unfair Acts or Practices – Credit Card Account). Implements:

- *Late Payments.* Prohibits banks from treating a payment as late for any purpose unless it provides the consumer a reasonable amount of time to make that payment. Safe harbor for banks sending periodic statements is at least 21 days prior to the payment due date.
- *Allocation of Payments.* When different APRs apply to different balances on a credit card account (for example, purchases, balance transfers, cash advances), requires banks to allocate payments exceeding the minimum payment to the balance with the highest rate first or pro rata among all of the balances.
- *Increasing Interest Rates.* Requires disclosure at account opening of all applicable interest rates and prohibits rate increases, except in the following circumstances:
 - After initial rate expires if the next rate was disclosed at account opening.
 - When the rate is a variable rate.
 - After the first year for new transactions if institution gives the 45-day notice required under Regulation Z (does not apply to accounts opened prior to July 1, 2010).
 - If the minimum payment is received more than 30 days after the due date.
 - Allows a decreased rate to revert to pre-existing rate if consumer fails to abide by workout arrangement terms.

- *Two-Cycle Billing.* Prohibits banks from calculating interest using “two-cycle billing.” This is when a consumer pays the entire account balance one month, but does not do so the following month, and the bank calculates interest for the second month using the account balance for days in the previous billing cycle as well as the current cycle.
- *Financing of Security Deposits and Fees.* Prohibits banks from financing security deposits and fees for credit availability (such as account-opening fees or membership fees) if charges assessed during the first 12 months would exceed 50 percent of the initial credit limit. The rule also limits the security deposits and fees charged at account opening to 25 percent of the initial credit limit and requires any additional amounts (up to 50 percent) to be spread evenly over at least the next five billing cycles.

STATUS: NACHA did not file comments. Final rule published in Federal Register January 29, 2009, with effective date of July 1, 2010. A copy of the Final Rule can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-13.pdf

A full copy of the regulation can be found at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=244e980d84e7cf88e0237ca64824965d;region=DIV1;q1=regulation%20aa;rgn=div5;view=text;idno=12;node=12%3A3.0.1.1.8>

UPDATE

8. Final Rule: Regulation Z (Truth in Lending). Affects the disclosures consumers receive in connection with credit card accounts and other revolving (non home-secured) credit plans.

- *Applications and solicitations.* Format and content changes to make the credit and charge card application and solicitation disclosures more meaningful and easier for consumers to use. These disclosures are provided in the form of a table that summarizes the key account terms. The changes include:
 - Format Revisions. New format requirements for the summary table include rules regarding type size, the use of boldface type for certain key terms, and the placement of information.
 - Content Revisions. Creditors must disclose the duration that penalty rates may be in effect, simplify disclosures about variable rates and revise disclosures regarding when a grace period is offered on purchases or when no grace period is offered.
- *Account-opening disclosures.* Makes the cost disclosures provided at account opening more conspicuous and easier to read. Certain key terms must be disclosed in a summary table at account opening, which is substantially similar to the table required for credit and charge card applications and solicitations.
- *Periodic statement disclosures.* Revisions to make disclosures on periodic statements more understandable, primarily by making changes to the format requirements, such as by grouping fees and interest charges together. The changes include:
 - Interest Charges and Fees. Interest charges and fees must be grouped separately, with a monthly total for each. Interest charges must be itemized according to the type of transaction (such as interest charged on purchases, and interest charged on cash advances). Separate year-to-date totals for fees and interest charges are also required.
 - Effective APR. The requirement to disclose an “effective annual percentage rate” is eliminated due to the lack of consumer understanding of this term. New requirements to disclose interest and fee totals for the month and year-to-date should more effectively inform consumers of the total cost of credit.

STATUS: NACHA did not file comments. Final rule published in Federal Register January 29, 2009, with effective date of July 1, 2010. The Final Rule can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-7.pdf
Continued on http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-8.pdf
Continued on http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=DOCID:fr29ja09-9.pdf

A full copy of the Regulation can be found at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=244e980d84e7cf88e0237ca64824965d;region=DIV1;q1=regulation%20z;rgn=div5;view=text;idno=12;node=12%3A3.0.1.1.7>

DEPT. OF TREASURY – FINANCIAL MANAGEMENT SERVICE (FMS)

1. **31 CFR 210.** Proposed Rule amends Section 31 of the Code of Federal Regulations by adopting most of the changes to the *NACHA Operating Rules* (“Rules”) that took effect in 2006 and 2007. The Rule would adopt changes to the *Rules* regarding back office conversion, ACH Network administration fees, use of the shorter disclosure language for ARC and POP transactions, and those rules having a minor impact on the ACH Network. The Rule would exempt the Federal government from the self-audit provisions of the *Rules*, which is consistent with FMS’ previous position of exempting Federal agencies from these requirements.

STATUS. NACHA filed comments supporting the regulation in March, 2008. Final Rule issued September 10, 2008. The Final Rule can be found at.

<http://edocket.access.gpo.gov/2008/pdf/E8-20575.pdf>.

A full copy of the Regulation can be found at.

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title31/31cfr210_main_02.tpl

DEPT. OF TREASURY – FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

1. **CTR Exemptions.** Final Rule allows depository institutions to exempt transactions of certain persons from the requirement of filing Currency Transaction Reports (“CTRs”) in connections with transactions in excess of \$10,000. To further reduce the reporting burden on depository institutions, FinCEN has expanded exemptions that are available to depository institutions. Additional exemptions include the following.

- Depository institutions no longer required to review annually or make a designation of exempt person filing for customers who are depository institutions, U.S. or State governments, or entities acting with governmental authority.
- Depository institutions may designate an otherwise eligible non-listed company or a payroll customer (1) after two months (previously twelve months), or (2) after conducting a risk-based analysis of the legitimacy of the customer’s transactions;
- Definition of “frequent” transactions changed to five transactions per year instead of current eight transactions per year.
- Depository institutions no longer required to biennially renew designations of certain exempt customers; an annual review of such customers is required.
- Depository institutions no longer required to record and report a change of control in a designated non-listed or payroll customer.

STATUS. NACHA did not file comments. Final Rule issued December 4, 2008. A copy of the Final Rule can be found at.

http://www.fincen.gov/statutes_regs/frn/pdf/frnCTRExemptions.pdf

INTERNAL REVENUE SERVICE (IRS)

NACHA anticipates the IRS will issue regulations requiring reporting of total reimbursements to merchants by merchant acquirers for card transactions. After reviewing an early draft of the enabling legislation that could have been interpreted to include ACH and other EFT transactions for reporting, NACHA met with Congressional staff. The final legislation prompting this reporting requirement does not include reporting of ACH transactions originated by merchants and therefore addressed NACHA's concerns.

STATUS. No regulations issued as of February 15, 2009. The legislation was enacted in 2008 as part of the Housing and Economic Recovery Act of 2008. Applicable for card transactions made beginning January 1, 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

1. General Counsel's Opinion No. 8. Stored Value Cards and Other Nontraditional Access Mechanisms. Funds underlying stored value cards and other nontraditional access mechanisms qualify as "deposits" under the Federal Deposit Insurance Act, to the extent they have been placed at an insured depository institution. They will be insured up to the insurance limit and subject to assessments. The holders are the owners of the deposits if the FDIC's standard requirements for "pass-through" insurance coverage have been satisfied. Otherwise, the card distributor or other named accountholder will be recognized as the owner.

A copy of this Opinion can be found at.

<http://edocket.access.gpo.gov/2008/pdf/E8-26867.pdf>

U.S. CONGRESS (Current 111th Congress)

Current bill text and status information for all House and Senate legislation is available (search on Bill # or Sponsor) at:

<http://thomas.loc.gov/>

U.S. HOUSE OF REPRESENTATIVES

NEW

1. **H.R. 627—Credit Cardholders’ Bill of Rights Act of 2009** (Maloney, D-NY). To amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

STATUS. Referred to the House Committee on Financial Services. A copy of the bill can be found at.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f.h627ih.txt.pdf

U.S. SENATE

NEW

1. **S. 414** – (Dodd, D-CT). A bill to amend the *Consumer Credit Protection Act*.
 - Regulate interest rate increases and fees charged
 - Ban interest charges on penalty fees assessed and retroactive rate increases on existing debt
 - GAO to study impact of interchange fees on merchants and consumers

STATUS. Referred to the Committee on Banking, Housing, and Urban Affairs. Committee hearing held February 12, 2009.

NEW

2. **S.392** – (Menendez, D-NJ). *Credit Card Reform Act of 2009*.
 - Regulate interest rates and fees charged
 - Opt-in for card solicitations to individuals under 21
 - Ban universal default and retroactive rate increases

STATUS. Referred to the Committee on Banking, Housing, and Urban Affairs.

U.S. CONGRESS (Prior)

The following bills were introduced in the last Congress (110th) and could have impacted the ACH Network/EFTs. Unless the status indicates the bill was enacted into law, the bill died with the end of the 110th Congress. However, based on conversations with staff and Congressional leadership, we believe many of these bills will be reintroduced in the same or a similar form in the 111th Congress and are therefore retained for reference.

HOUSE OF REPRESENTATIVES.

H.R. 5244. Credit Cardholders’ Bill of Rights Act of 2008 (Maloney, D-NY). To amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

See H.R.627 in 111th Congress.

H.R. 946. Consumer Overdraft Protection Fair Practices Act (Maloney, D-NY). Extends the protections of the Truth in Lending Act to overdraft protection programs and services provided by depository institutions, to (i) require customer consent before a depository institution may initiate overdraft protection services and fees, (ii) enhance the information made available to consumers relating to overdraft protection services and fees, and (iii) prohibit systematic manipulation in the posting of checks and other debits to a depository account for the purpose of generating overdraft protection fees.

H.R. 6073. To provide that Federal employees receiving their pay by electronic funds transfer shall be given the option of receiving their pay stubs electronically.

STATUS. Passed the House and Senate; signed into law October 15, 2008.

H.R. 2911. Electronic Funds Transfer Equal Consumer Protection Act (Ackerman, D-NY). Amends the Electronic Funds Transfer Act to provide consumer protections similar to the Truth in Lending Act.

H.R. 6870. Payments System Protection Act of 2008 (Frank, D-MA). To ensure that implementation of the Unlawful Internet Gambling Act “does not cause harm to the payments system.” The bill requires the Dept. of Treasury to compile and maintain a list of unlawful Internet gambling businesses and specifically only requires entities to block or refuse to honor transactions or prohibit the acceptance of any product or service of such person only if included on the list maintained by Treasury. It also suspends the regulations until certain key definitions are clarified (including “unlawful internet gambling”).

H.R. 6312. Credit Union, Bank, and Thrift Regulatory Relief Act of 2008 (“Title IV. Business Checking Fairness Act of 2008) (Kanjorski, D-PA). Of interest to NACHA, amends Regulation J by repealing Section 19(i) of the Federal Reserve Act, which prohibits payment of interest on demand deposits.

H.R. 6871. Expedited Funds Availability Dollar Limits Adjustment Act of 2008 (Maloney, D-NY). Would increase from \$100 to \$175 the amount of funds that must be available the next business day from non-next-day checks; raise from \$400 to \$700 the amount of funds required for cash withdrawal by 5 p.m. on the day specified in the availability schedule; and index these amounts for inflation beginning in six years.

U.S. SENATE

S. 3252. Credit Card Accountability Responsibility and Disclosure Act of 2008 (Dodd, D-CT) (“Credit Card Act of 2008”). This bill amends the Consumer Credit Protection Act, to ban abusive credit practices, enhance consumer disclosures, and protect underage consumers.

See S.414 in 111th Congress.

GOVERNMENT ACCOUNTABILITY OFFICE REPORTS

1. *Financial Regulation. A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System* (Report to Congressional Addressees, January 2009). <http://www.gao.gov/new.items/d09216.pdf>

- The purpose of the Report is “to help policymakers better understand existing problems with the financial regulatory system and craft and evaluate reform proposals.” This report
 - Describes the origins of the current financial regulatory system.
 - Describes various market developments and changes that have created challenges for the current system.
 - Presents an evaluation framework that can be used by Congress and others to shape potential regulatory reform efforts.

2. *Check 21 Act. Most Consumers Have Accepted and Banks are Progressing Toward Full Adoption of Check Truncation.* (Report to Congressional Committees, October 2008). <http://www.gao.gov/new.items/d098.pdf>

- Check truncation has not yet resulted in overall gains in economic efficiency for the Federal Reserve or for a sample of banks while Federal Reserve and bank officials expect efficiencies in the future.
- Most bank consumers seem to have accepted changes to their checking accounts from check truncation.
- To the extent that banks have employed check truncation, bank consumers have realized benefits and costs relating to faster processing and access to account information.

3. *Electronic Payments. Many Programs Electronically Disburse Federal Benefits, and More Outreach Could Increase Use.* (Report to the Ranking Member, Committee on Oversight and Government Reform, House of Representatives, June 2008). <http://www.gao.gov/new.items/d08645.pdf>

- Most federal benefit programs GAO surveyed (34 of 42) reported using 1 or more electronic payment methods, and the majority of those programs also indicated that most of their recipients received their benefits electronically.
- Various options exist for agencies to increase electronic distribution of federal benefits, including (1) mandating that recipients receive benefits electronically, (2) making electronic payment the default option upon enrollment, (3) promoting electronic payments through public outreach, (4) piloting electronic distribution programs, and (5) using electronic payment cards in new ways.
- Treasury has introduced key initiatives in its efforts to support and increase the use of electronic payments, particularly programs for which Treasury disburses payments, such as Social Security benefits. However, Treasury does not disburse payments for all federal benefit programs.
- Treasury’s role as the federal government’s leader for payments and its experience with electronic payment methods suggest that it could provide valuable information and assistance to smaller agencies with less experience or expertise. Regularly scheduled outreach efforts to other agencies could provide increasing their ability to detect suspicious transactions.

4. *Bank Fees - Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking Savings Accounts* (Report to Chairwoman,

Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, House of Representatives, January 2008)

<http://www.gao.gov/new.items/d08281.pdf>

- Data from private vendors indicate that average fees for insufficient funds, overdrafts, returns of deposited items, and stop payment orders have risen by 10 percent or more since 2000, while others, such as monthly account maintenance fees, have declined
- Federal banking regulators address fees associated with checking and savings accounts primarily by examining depository institutions' compliance with requirements, under the Truth in Savings Act (TISA) and its implementing regulations, to disclose fee information so that consumers can compare institutions.
- GAO's visits to 185 branches of 154 depository institutions suggest that, despite the disclosure requirements, consumers may find it difficult to obtain information about checking and savings account fees.

OTHER

1. "Treasury Blueprint". Among other things, recommends creating a federal charter for "systemically-important payment and settlement systems." The Federal Reserve would exercise primary oversight for such systems.
2. Position Paper – Payments System Reform. A draft report of a Study Committee of the Uniform Law Commission recommending to the ULC/NCCUSL a federal/state initiative to, among other things, rewrite the law governing various payments systems, including the ACH Network.

STATUS. NACHA responded to the draft report individually and as part of an industry coalition helping coordinate a collaborative industry-wide response to the paper to present to the ULC's Executive Committee in mid-December.

NEW

3. FFIEC Guidance on Remote Deposit. The Federal Financial Institutions Examination Council (FFIEC) released guidance on managing Remote Deposit capture risk on January 14, 2009. The guidance is to for examiners, financial institutions, and technology service providers and is intended to identify risks, evaluate controls, and assess risk management practices related to remote deposit capture (RDC) systems.

The guidance can be found at: <http://files.ots.treas.gov/482031.pdf>.