

GOVERNMENT RELATIONS DIGEST

A Compendium of Public Policy Initiatives Involving Payment System Issues As of October 29, 2009 [Version 6.1]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/>

FEDERAL RESERVE BOARD OF GOVERNORS

NEW Proposed Guidance and Request for Comment: Regulation F; Correspondent Concentration Risks. Issued by: Federal Deposit Insurance Corporation (FDIC); Board of Governors of the Federal Reserve System (the Board), Office of the Comptroller of the Currency, Treasury (OCC); and Office of Thrift Supervision, Treasury (OTS). Outlines the Agencies' expectations for financial institutions with respect to identifying, monitoring, and managing correspondent concentration risks between financial institutions and perform appropriate due diligence on all credit exposures to and funding transactions with other financial institutions.

STATUS: Comments due October 26, 2009. A copy of the Proposed Guidance and Request for comment can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-23208.pdf>

Interim Final Rule; Request for Comment: Regulation Z; Truth in Lending. Implements the provisions of the Credit CARD Act that go into effect August 20, 2009. Implements the requirements in the Credit CARD Act as follows:

- Creditors must provide written notice to consumers 45 days before the creditor increases an annual percentage rate on a credit card account or makes a significant change to the terms of a credit card account.
- Creditors must inform consumers in the same notice of their right to cancel the credit card account before the increase or change goes into effect. If a consumer does so, the creditor is generally prohibited from applying the increase or change to the account.
- Creditors generally must mail or deliver periodic statements for credit cards and other open-end consumer credit accounts at least 21 days before payment is due.

STATUS: Comments were due September 21, 2009. A copy of the proposal can be found at: <http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=g6rZrR/0/2/0&WAIAction=retrieve>

Operating Circular 4 – Key Revisions

- Appendix E (Risk Origination Service). In readiness for the new IAT standard entry class code that becomes effective in September 2009, the amendment adds a parenthetical to the definition of "company identification" noting that for IAT batches the field is called "origination identification."
- Appendix F1 (FedEDI Plus Service). (1) The term "secure email" has been changed to "encrypted email" throughout the appendix. (2) To accommodate a new report for sending

¹ New and updated entries are reflected. Specific updates are also noted.

banks the appendix has been changed so that the service is no longer specific to receiving banks.

STATUS: A copy of the Revisions and Operating Circular 4 can be found at:
http://www.frbervices.org/regulations/operating_circulars.html#4

UPDATED Final Rule: Regulation D; Reserve Requirements of Depository Institutions.

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. Makes associated minor changes to the clearing balance policy and the method for recovering float costs. Increases from three to six the permissible monthly number of transfers or withdrawals from savings deposits by check, debit card, or similar order payable to third parties.

STATUS: The Final Rule was issued May 20, 2009. A copy of the Final Rule can be found at:
<http://frwebgate6.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=951828466679+0+2+0&WAIAction=retrieve>

A full copy of the regulation can be found at: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=635f26c4af3e2fe4327fd25ef4cb5638&tpl=/ecfrbrowse/Title12/12cfr204_main_02.tpl

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 filed a response reinforcing the FRB's justification for not proposing to apply the opt-out or opt-in provisions to ACH transactions. 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=ext;idno=12;node=12%3A2.0.1.1.6>

DEPT. OF TREASURY

Financial Regulatory Reform. Includes systemic-risk regulation and a resolution mechanism for failing large firms, fills in regulatory gaps, creates a new agency to enhance consumer protections, and makes other changes to the nation's financial regulatory framework.

A copy of the related materials can be found at: www.financialstability.gov

Below are highlights taken from Treasury's Press Release on March 26, 2009, that are relevant to the ACH Network:

A Single Independent Regulator with responsibility over Systemically Important Firms and Critical Payment and Settlement Systems: While we strengthen prudential oversight for all firms, we must also create higher standards for all systemically important financial firms – regardless of whether they own a depository institution – to account for the risk that the distress or failure of such a firm could impose on the financial system and the economy. We will work with Congress to enact legislation that defines the characteristics of covered firms; sets objectives and principles for their oversight; and assigns responsibility for regulating these firms.

1) **Defining a Systemically Important Firm:** In identifying systemically important firms, we believe that the characteristics should include:

- The financial system's interdependence with the firm;
- The firm's size, leverage (including off-balance sheet exposures), and degree of reliance on short-term funding;
- The firm's importance as a source of credit for households, businesses, and governments and as a source of liquidity for the financial system.

2) **Focusing On What Companies Do, Not the Form They Take:** These institutions would not be limited to banks or bank holding companies, but could include any financial institution that was deemed to be systemically important in accordance with legislative requirements. These provisions will focus on what companies do and their potential for systemic risk – and no longer on the form they take – to determine who will regulate them.

3) **Clarifying Regulatory Authority Over Payment and Settlement Activities:** Federal authority for payment and settlement systems is incomplete and fragmented. Weaknesses in key funding and risk transfer markets, notably over-night and short term lending markets and OTC derivatives, increased uncertainty as major institutions such as Bear Stearns neared failure. This created a pathway for large financial institutions to spread financial distress between institutions and across borders.

- While some progress was made in the markets for CDS and other OTC derivatives under Secretary Geithner's leadership at the New York Fed, regulators have been forced to rely heavily on moral suasion to encourage market participants to strengthen these markets.
- We need to clarify and expand authority over these systems and activities, giving a single entity the ability to supervise, examine, and set prudential requirements for these critical parts of our financial system.

STATUS: A copy of the Press Release can be found at: <http://www.ustreas.gov/press/releases/tq72.htm>

Congressional Oversight Panel Report on Regulatory Reform. Report recommends action in eight key areas to avoid future financial crises:

1. Better regulation of the way loans are made to consumers
2. Serious regulation of credit rating agencies
3. Better management in dealing with “too-big-to-fail” companies
4. Identifying and regulating financial institutions that pose systemic risk
5. Increasing supervision of derivatives and off-balance sheet entities that have created a shadow financial system
6. Changing executive pay structures to discourage excessive risk-taking
7. Working with other countries to establish basic rules that will apply to companies doing business around the globe
8. Planning now for the next crisis.

STATUS: A copy of the Press Release can be found at <http://cop.senate.gov/press/releases/release-012909-report.cfm>

A copy of the full report can be found at: <http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf>

FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

Notice of Proposed Rulemaking: Money Services Businesses (“MSBs”). Proposal amends current definition of an MSB to clarify which entities are regulated as MSBs. Includes examples of what are/are not considered MSBs. Also requests comment on several issues relating to stored value. Comments were due by September 9, 2009.

STATUS: A copy of the Notice of Proposed Rulemaking can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-10864.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 the date this Digest was issued. 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.

OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

IAT Debit Guidance. Authorizes institutions in the United States when they are acting as Originating Depository Financial Institutions/Gateway Operators (*ODFIIGOs*) for inbound international ACH debit transactions (IAT debits) to reject transactions that appear to involve blockable property or property interests.

STATUS. A copy of the Guidance can be found at [http://www.nacha.org/IAT_Industry_Information/docs/OFAC%20Letter%20IAT_debit_guidance_final%20\(2\).pdf](http://www.nacha.org/IAT_Industry_Information/docs/OFAC%20Letter%20IAT_debit_guidance_final%20(2).pdf)

Additional IAT-related guidance can be found on NACHA’s web site at: http://www.nacha.org/IAT_Industry_Information/

FEDERAL TRADE COMMISSION

UPDATED Identity Theft 'Red Flags' Rule. On June 11, 2009, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the Federal Trade Commission (FTC) (collectively, the Agencies) released a set of Frequently Asked Questions (FAQs) to address certain recurring questions regarding compliance with these rules. It is important to note that some corporate accounts (e.g. small business or sole proprietorship accounts) may be included under the definition of "covered account" since "there is a foreseeable risk of identity theft."

Status: A copy of the press release can be found at <http://www.ftc.gov/opa/2009/04/redflagsrule.shtm>.

A copy of the FAQs can be found at: <http://www.ftc.gov/os/2009/06/090611redflagsfaq.pdf>

A copy of the FTC's Business Alert can be found at: <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm>

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 REGULATORY RESTRUCTURING**

Financial Regulatory Reform: For the latest news on the House Financial Services Committee's actions on Financial Regulatory Reform, please see:

http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/Financial_Regulatory_Reform.html

STATUS: H.R. 3126 – Consumer Financial Protection Agency Act of 2009 (Frank, D-MA). Passed the House Financial Services Committee October 22, 2009. A summary of the bill can be found at: http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/FinancialRegulatoryReform/CFPA_Summary_of_HR_3126.pdf

NEW HEALTHCARE**H.R. 3200 – America's Affordable Health Choices Act of 2009 (Dingell, D-MI)**

STATUS: Placed on Calendar. A copy of the Bill as reported in the House can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3200rh.txt.pdf

OTHER**NEW H.R. 3639 - Expedited CARD Reform for Consumers Act of 2009 (Maloney, D-NY)**

Would speed up implementation of the remaining Credit CARD Act provisions from February and August 2010 to December 1, 2009.

STATUS: Passed House Financial Services Committee unanimously on October 22, 2009. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3639rh.txt.pdf

H.R. 3126 – Consumer Financial Protection Agency Act of 2009 (Frank, D-MA). Would establish the Consumer Financial Protection Agency as an independent executive agency to regulate the provision of consumer financial products or services (products or services).

STATUS: Referred to the Committee on Financial Services and Committee on Energy and Commerce. NACHA believes this bill will not be marked up until after the August recess. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3126ih.txt.pdf.

Hearing on the issue of creating a Consumer Financial Protection Agency was held July 8, 2009 before the Subcommittee on Commerce, Trade, and Consumer Protection. Related materials can be found at:

http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1702:energy-and-commerce-subcommittee-hearing-on-the-proposed-consumer-financial-protection-agency-implications-for-consumers-and-the-ftc&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70

H.R. 2267 – Internet Gambling Regulation, Consumer Protection, and Enforcement Act of 2009 (Frank, D-MA). Would establish a federal regulatory and enforcement framework under which Internet gambling operators could obtain licenses authorizing them to accept bets and wagers from individuals in the United States.

STATUS: Referred to the Subcommittee on Crime, Terrorism, and Homeland Security. A copy of the bill can be found at: http://www.house.gov/apps/list/press/financialsvcs_dem/21frank_008_xml.pdf

H.R. 2266 – Reasonable Prudence in Regulation Act (Frank, D-MA). Would delay for 1 year (to December 1, 2010) the implementation of the Unlawful Internet Gambling Enforcement Act to give Congress a chance to decide its future.

STATUS: Referred to House Committee on Financial Services. A copy of the bill can be found at: http://www.house.gov/apps/list/press/financialsvcs_dem/gambling2.pdf

H.R. 2268 – Internet Gambling Regulation and Tax Enforcement Act of 2009 (McDermott, D-WA). Would require any licensed establishment (for online gambling) to pay a 2% fee on all deposits.

STATUS: Referred to House Committee on Ways and Means. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2268ih.txt.pdf

H.R. 1705 – Financial Product Safety Commission Act of 2009 (Delahunt, D-MA) (See S. 566 below). Stated purpose is to provide consumers with stronger protections and better information in connection with consumer financial products, and to give providers of consumer financial products more regulatory certainty.

STATUS: Referred to 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:h1705ih.txt.pdf

NEW H.R. 1487 – Overdraft Fee Notification Act (Meek, D-FL). Would amend the Electronic Fund Transfer Act to require notice to the consumer before a financial institution may impose any fee in connection with any transaction for any overdraft protection service provided with respect to such transaction, and for other purposes.

STATUS: Referred to 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:h1487ih.txt.pdf

H.R. 1456 – Consumer Overdraft Fair Practices Act of 2009 (Maloney, D-NY). Would amend Truth in Lending Act to include overdraft protection services. Under the legislation, financial institutions must:

- Get customer consent (opt-in) prior to initiating overdraft protection programs and fees
- Increase disclosure requirements explaining overdraft protection services and fees
- Amended to limit requirement that notice of overdraft fee be given only at ATM (removed POS terminal)

The legislation applies to most payment mechanisms, including ACH and check.

STATUS: Referred to House Committee on Financial Services. Subcommittee hearings held March 19, 2009.

A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1456ih.txt.pdf

A webcast of the subcommittee hearing and related materials can be found at: http://www.house.gov/apps/list/hearing/financialsvcs_dem/press031909230.shtml

H.R. 627—Credit Cardholders’ Bill of Rights Act of 2009 (Maloney, D-NY). (See S. 235, S. 414 *below*). Would amend the Truth in Lending Act to establish practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

Among other things, the bill:

- Bars retroactive rate increases
- Prohibits double-cycle billing
- Prescribes a 5 p.m. cut-off time for payment due dates
- Requires payments to be allocated proportionally to balances that have different rates
- Requires a notification system on over-the-limit transactions bringing a fee – including a toll-free number, Web address and consumer opt-out
- Bars the issuance of credit-cards or open-end plans to those under 18
- Effective Date February 2010
- Allows issuers to charge consumers for expedited payments by telephone when consumers request such an expedited payment.

STATUS. A copy of the Enrolled Bill (as agreed to or passed by both House and Senate) can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h627enr.txt.pdf

A history of the Bill and related materials can be found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR00627:@@S>.

May 22, 2009: President Obama signed the Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009 [Public Law 111-24], (which has been merged with the Cardholders’ Bill of Rights), H.R.627, and the new regulations will begin to take effect starting in February 2010.

U.S. SENATE

NEW HEALTHCARE**America's Healthy Future Act of 2009 (Baucus, D-MT)**

STATUS: A copy of the latest news concerning this legislation can be found at:
http://finance.senate.gov/sitepages/Americas_Healthy_Future_Act.html

S. 1679 - Affordable Health Choices Act (Harkin, D-IA)

STATUS: Placed on Senate Calendar. A copy of the bill can be found at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1679pcs.txt.pdf

OTHER**NEW S. 1799 - Fairness and Accountability in Receiving (FAIR) Overdraft Coverage Act (Dodd, D-CT)**. The stated summary of the bill says that it would:

- Require banks to get a customer's consent before enrolling them in an overdraft protection program for ATM and debit card transactions;
- Limit the number of overdraft coverage fees banks can charge to one per month and six per year;
- Require fees be proportional to the cost of processing the overdraft;
- Stop institutions from manipulating the order in which they post transactions in order to rack up extra fees;
- Require customers be notified when they overdraw their account and be given the option of being notified by email, text or traditional mail; and
- Require that customers be warned if an ATM or branch teller transaction will overdraw their account, and be given the chance to cancel the transaction.

STATUS: Referred to the Committee on Banking, Housing, and Urban Affairs. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1799is.txt.pdf

S. 1042 – Illegal Garnishment Prevention Act (Kohl, D-WI). Stated purpose is to prohibit funds appropriated or otherwise made available to the Secretary of the Treasury, the Secretary of Veterans Affairs, or the Commissioner of Social Security for FY2010 or any fiscal year thereafter from being used to promote or otherwise encourage recipients of veterans benefits or benefits paid under title II (Old Age, Survivors and Disability Insurance) (OASDI) of the Social Security Act to use direct deposit for the payment of such benefits until: (1) the Secretary of the Treasury promulgates rules establishing procedures to ensure that such benefits are protected from attachment and garnishment; and (2) at least five of the seven members of the advisory committee established under this Act concur in advising the Secretary that such procedures provide adequate safeguards. Would establish a Social Security Benefits Protection from Attachment or Garnishment Advisory Committee.

STATUS: Referred to the Committee on Finance. A copy of the bill can be found at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1042is.txt.pdf

S. ??? - (Baucus, D-MT) A bill to amend the Internal Revenue Code of 1986 to improve tax compliance with respect to offshore transactions, and for other purposes. The bill would require reporting of cross-border transactions equaling or exceeding \$10,000 (including structured

transactions) to the IRS. The Senate Finance Committee held a hearing giving an update on offshore tax evasion March 17, 2009.

STATUS: A bill has not been formally introduced. A copy of the discussion draft (circulated 3/12/09) can be found at: <http://finance.senate.gov/press/Bpress/2009press/prb031209c.pdf>

A copy of the hearing giving an update on Offshore Tax Evasion Legislation and related materials can be found at: <http://finance.senate.gov/sitepages/hearing031709.htm>

S. 566 – Financial Product Safety Commission Act of 2009 (Durbin, D-IL). Stated purpose is to provide consumers with stronger protections and better information in connection with consumer financial products, and to give providers of consumer financial products more regulatory certainty.

STATUS. Referred to the Committee on Banking, Housing, and Urban Affairs. A copy of the bill can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s566is.txt.pdf

Modernizing Bank Supervision and Regulation a Hearing before the Senate Banking Committee was held March 19, 2009 to “explore ways to modernize and improve bank regulation and supervision to protect consumers and investors and help grow our economy in the decades ahead.” It is expected that Congress will enact changes, potentially sweeping, to the powers and responsibilities of the Federal banking agencies to address systemic risk (see “Department of Treasury” above for more information on regulatory restructuring proposals). Any realignment of powers could also impact the regulation of consumer protections in financial services.

STATUS: A copy of the archived hearing and related materials can be found at: http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=494666d8-9660-439f-82fa-b4e012fe9c0f

S. 414 – Credit CARD Act of 2009 (Dodd, D-CT). Would amend the *Consumer Credit Protection Act*. (See H.R. 627).

- Regulates interest rate increases and fees charged
- Bans interest charges on penalty fees assessed and retroactive rate increases on existing debt
- GAO to study impact of interchange fees on merchants and consumers
- An amendment from Charles Schumer on Gift Cards has been adopted. Its terms could have significant negative impact on issuers of network branded prepaid cards (including gift cards).

STATUS. A copy of the Enrolled Bill (as agreed to or passed by both House and Senate) can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h627enr.txt.pdf

A history of the Bill and related materials can be found at: <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR00627:@@S>.

May 22, 2009: President Obama signed the Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009 [Public Law 111-24], (which has been merged with the Cardholders' Bill of Rights), H.R.627, and the new regulations will begin to take effect starting in February 2010.

S.392 – Credit Card Reform Act of 2009 (Menendez, D-NJ).

- 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. A copy of the bill can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s392is.txt.pdf.

S. 500 – Protecting Consumers from Unreasonable Credit Rates Act of 2009 (Durbin, D-IL). Would amend the Truth in Lending Act to establish a national usury rate for consumer credit transactions.

STATUS: Referred to the Committee on Banking, Housing, and Urban Affairs. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s500is.txt.pdf.

GOVERNMENT ACCOUNTABILITY OFFICE REPORTS

NEW 401(K) PLANS: Several Factors Can Diminish Retirement Savings, but Automatic Enrollment Shows Promise for Increasing Participation and Savings (Testimony Before the Special Committee on Aging, U.S. Senate, October 2009). <http://www.gao.gov/new.items/d10153t.pdf>.

GAO was asked to report on (1) challenges to building and maintaining of savings in 401(k) plans, and (2) recent measures to improve 401(k) participation and savings levels.

Testimony states: “GAO is not making new recommendations as part of this testimony. In a recent report on leakage—actions that reduce savings prior to retirement—we called for measures to improve the information participants receive about the disadvantages of early withdrawals, and for a change in law to permit continued contributions immediately after hardship withdrawals. “

NEW CREDIT CARDS: Fair Debt Collection Practices Act Could Better Reflect The Evolving Debt Collection Marketplace And Use Of Technology (Report to Congressional Requesters). GAO was asked to “examine (1) the federal and state consumer protections and enforcement responsibilities related to credit card debt collection, (2) the processes and practices involved in collecting and selling delinquent credit card debt, and (3) any issues that may exist related to some of these processes and practices.” GAO recommends that Congress “consider modifying FDCPA to (1) help ensure that collectors and buyers have adequate information about debt transferred and have adequate documentation to verify debts, (2) reflect technologies that were not prevalent when the act was written, and (3) provide FTC with rulemaking authority.”

STATUS: Report issued in September. A copy of the Report can be found at: <http://www.gao.gov/new.items/d09748.pdf>

Bank Secrecy Act: Federal Agencies Should Take Action to Further Improve Coordination and Information-Sharing Efforts.

STATUS: A copy of the Report can be found at: <http://www.gao.gov/cgi-bin/getrpt?GAO-09-227>

Financial Regulation: Review of Regulators’ Oversight of Risk Management Systems at a Limited Number of Large, Complex Financial Institutions (Testimony Before the Subcommittee on Securities, Insurance, and Investments, Committee on Banking, Housing, and Urban Affairs, March 2009). <http://www.gao.gov/new.items/d09499t.pdf>. GAO found:

- The banking and securities regulators use somewhat different approaches to oversee risk management practices.

- All regulators have specific tools for effecting change when they identify weaknesses in risk management at institutions they oversee.
- Regulators had identified numerous weaknesses in the institutions' risk management systems before the financial crisis began. However, they did not take forceful actions to address these weaknesses, such as changing their assessments, until the crisis occurred because the institutions had strong financial positions and senior management had presented the regulators with plans for change.
- Regulators also identified weaknesses in models used to measure and manage risk but may not have taken action to resolve these weaknesses.
- Regulators identified numerous stress testing weaknesses at several large institutions, but GAO's limited review did not identify any instances in which weaknesses prompted regulators to take aggressive steps to push institutions to better understand and manage risks.
- Some aspects of the regulatory system may have hindered regulators' oversight of risk management: (i) no regulator systematically looks across institutions to identify factors that could affect the overall financial system; (ii) primary bank and functional regulators' oversee risk management at the level of the legal entity within a holding company while large entities manage risk on an enterprisewide basis or by business lines that cut across legal entities.

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.

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.

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.

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

Position Paper – Payments System Reform. A draft report of a Study Committee of the Uniform Law Commission recommending to the ULCL/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 ULCL's Executive Committee in mid-December. The Study Committee is currently limiting its focus to issues and changes related to UCC Articles 3&4 more narrowly limited to check and electronic check/image. It appears that it will issue an agenda on these issues in Fall 2009. The June 2009 Memo can be found at:

http://www.nccusl.org/Update/Docs/Payment%20Issues_June%202009%20report.pdf

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.

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