

GOVERNMENT RELATIONS DIGEST 2009 YEAR-END EDITION

*A Compendium of Public Policy Initiatives Involving Payment System Issues
As of December 30, 2009 [Version 7.1]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

UPDATED Regulation GG: (Prohibition on Funding of Unlawful Internet Gambling). Final Rule implements the Unlawful Internet Gambling Enforcement Act of 2006.

UPDATED STATUS: NACHA filed comments in December, 2007 seeking several clarifications in the Final Rule. The Final Rule is effective January 19, 2009.

On November 11, 2009, NACHA sent a letter to Chairman Bernanke and Secretary Geithner requesting a delay in the compliance date of the regulation. On November 27, 2009, the Federal Reserve and the Department of Treasury issued a joint rule delaying the compliance date for non-exempt participants in designated payment systems to June 1, 2010.

A copy of the Final Rule can be found at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081112a1.pdf>

NEW Proposed Rule and Request for Comment: Regulation E; Electronic Fund Transfers. Would amend Regulation E to restrict the ability to impose dormancy, inactivity, or service fees for certain prepaid products, primarily gift cards. In addition, the proposal generally prohibits the sale or issuance of such products if they have an expiration date of less than five years. The proposed amendments implement statutory requirements set forth in the Credit Card Accountability Responsibility and Disclosure Act of 2009 that are effective on August 22, 2010.

STATUS: Comments due December 21, 2009. A copy of the Proposed Rule and Request for Comment can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-27717.pdf>

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>

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

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?WALSdocID=g6rZrR/0/2/0&WALSaction=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 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.frb services.org/regulations/operating_circulars.html#4

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?WALSdocID=951828466679+0+2+0&WALSaction=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

UPDATED Final Rule: Regulation E; Electronic Fund Transfers. The stated highlights are:

- Opt-In. Requires consumers to opt in, or affirmatively consent, to the institution’s overdraft service for ATM and one-time debit card transactions, before overdraft fees may be assessed on the account. Consumers are given an ongoing right to revoke consent.
- Consumers Covered. The opt-in right applies to all consumers, including existing account holders.

- Conditioning the Opt-In. Prohibits financial institutions from tying the payment of overdrafts for checks and other transactions to the consumer opting into the overdraft service for ATM and one-time debit card transactions.
- Same Account Terms, Conditions and Features. Requires institutions to provide consumers who do not opt in with the same account terms, conditions and features, including price, as provided to consumers who do opt in.
- Mandatory Compliance Date. The mandatory compliance date is July 1, 2010.
- *NOTE: Coverage does not extend to ACH debit transactions or checks that would result in an overdraft.*

STATUS: A copy of the Final Rule can be found at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20091112a1.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>

DEPARTMENT OF THE 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/tg72.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)

NEW Notice of Proposed Rulemaking and Notice of Public Hearing: Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions. Proposed regulations reflect the enactment of section 6050W and related changes in the law made by the Housing Assistance Tax Act of 2008 relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions. Clarifies that the ACH Network is not considered a third party network

for reporting purposes. “An ACH merely processes electronic payments agreements with payees to use the ACH Network. Accordingly, the proposed regulations reflect that an ACH network is not a third party payment network, and an ACH is therefore not required to report under section 6050W.”

STATUS: NPRM issued November 24, 2009. Comments due January 25, 2009. NACHA intends to comment in support of the proposed rulemaking. A copy of the NPRM can be found at: <http://edocket.access.gpo.gov/2009/pdf/E9-28076.pdf>.

OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

NEW Transparency and Compliance for U.S. Banking Organizations Conducting Cross Border Funds Transfers. Published by OFAC and FinCen and addresses issues that were discussed in a May 2009 paper by the Basel Committee on Banking Supervision on cover payment arrangements (the “BIS Paper”) and cross-border funds transfers, and specifies the Agencies’ expectations for U.S. banks that participate in cover payment arrangements.

STATUS: A copy of the Guidance can be found at: <http://federalreserve.gov/boarddocs/srletters/2009/sr0909a1.pdf>

A copy of the Paper can be found at: <http://www.bis.org/publ/bcbs154.pdf?noframes=1>

IAT Debit Guidance. Authorizes institutions in the United States when they are acting as Originating Depository Financial Institutions/Gateway Operators (*ODFI/IGOs*) 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> **UPDATED** At the request of Members of Congress, FTC delayed enforcement until June 1, 2010. A copy of the press release announcing the delay in enforcement can be found at: <http://www.ftc.gov/opa/2009/10/redflags.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 H.R. 3933 – Foreign Account Tax Compliance Act of 2009 (Rangel, D-NY). (See S. 1934 below). Would amend the Internal Revenue Code to revise and add reporting and other requirements relating to income from assets held abroad, including by: (1) requiring foreign financial and nonfinancial institutions to withhold 30% of payments made to such institutions by U.S. individuals unless such institutions agree to disclose the identity of such individuals and report on their bank transactions; (2) denying a tax deduction for interest on non-registered bonds issued outside the United States; (3) requiring any individual who holds more than \$50,000 in a depository or custodial account maintained by a foreign financial institution to report on such accounts; (4) imposing an enhanced tax penalty for underpayments attributable to undisclosed foreign financial assets; (5) extending the limitation period for assessment of underpayments with respect to assets held outside the United States; (6) requiring certain tax advisors who assist U.S. individuals in acquiring a direct or indirect interest in a foreign entity to file an information return disclosing the identity of the foreign entity and the individual investors; (7) requiring shareholders of a passive foreign investment company to file informational returns; (8) enhancing tax rules and penalties relating to foreign trusts with U.S. beneficiaries; and (9) requiring withholding of tax on dividend equivalent payments received by foreign individuals.

STATUS: Introduced October 27, 2009. Referred to 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:h3933ih.txt.pdf

REGULATORY RESTRUCTURING

UPDATED 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

UPDATED STATUS: H.R. 3126 – Consumer Financial Protection Agency Act of 2009 (Frank, D-MA). Amended version passed the House Financial Services Committee October 22, 2009. Amended version passed Subcommittee on Commerce, Trade and Consumer Protection October 29, 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 H.R. 3996 – Financial Stability Improvement Act of 2009: (Frank, D-MA). Would address systemic risk and the resolution of systemically important financial institutions.

STATUS: Referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, Agriculture, and Ways and Means. Amended version passed the House Financial Services Committee on December 2, 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:h3996ih.txt.pdf

HEALTHCARE

UPDATED H.R. 3962 – America's Affordable Health Choices Act of 2009 (Dingell, D-MI). (See S. 1796 below).

STATUS: Passed House and placed on Senate 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:h3962eh.txt.pdf

NEW H.R. 3590 Service Members Home Ownership Tax Act of 2009 (in the Senate became "The Patient Protection and Affordable Care Act") (Rangell, D-NY) (See S. 1728 below).

STATUS: Passed House and Senate. Passed Senate with an amendment and an amendment to the Title (this became the Senate healthcare bill). A copy of the amendment as passed by the Senate can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590eas.txt.pdf

Section 1104 of the bill specifically addresses administrative simplification, including electronic funds transfers and electronic remittance formats.

OTHER

UPDATED H.R. 3639 - Expedited CARD Reform for Consumers Act of 2009 (Maloney, D-NY). (See S. 1833 below). Would speed up implementation of the remaining Credit CARD Act provisions from February and August 2010 to December 1, 2009.

UPDATED STATUS: Passed House November 4, 2009. A copy of the original bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3639ih.txt.pdf

Additional information on Congressional Actions can be found at: <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdmaDL:@@@S/bss/111search.html>

UPDATED 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).

UPDATED STATUS: Marked up in the Committee on Financial Services on October 22, 2009, and the Committee on Energy and Commerce on October 29, 2009. A copy of the bill (original) can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3126ih.txt.pdf.

Additional information Congressional Actions can be found at: <http://thomas.loc.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdwjsJ:@@X/bss/111search.html>

UPDATED H.R. 2267 – Internet Gambling Regulation, Consumer Protection, and Enforcement Act of 2009 (Frank, D-MA). (See S. 1597 below). 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.

UPDATED STATUS: 12/3/09 Committee hearings held. A copy of the bill can be found at: http://www.house.gov/apps/list/press/financialsvcs_dem/21frank_008_xml.pdf

UPDATED 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.

UPDATED STATUS: 12/3/09 Committee hearings held. 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

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

U.S. SENATE

NEW S. 1833 – Expedited CARD Reform for Consumers Act of 2009 (Udall, D-CO) (See H.R. 3639 above). Among other things, would amend the Electronic Fund Transfer Act to move up to December 1, 2009, as well the effective dates of the Act's: (1) prohibition against the imposition of a dormancy fee, an inactivity charge or fee, or a service fee with respect to general use prepaid cards, certificates, and store gift cards; and (2) the deadline by which the Board must issue final implementing regulations.

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:s1833is.txt.pdf

NEW S. 1597 - Internet Poker and Game of Skill Regulation, Consumer Protection, and Enforcement Act of 2009 (Menendez, D-NJ). (See H.R. 2267 above). Would provide for the licensing by the Secretary of the Treasury of Internet poker and other games that are predominantly of skill, to provide for consumer protections on the Internet, to enforce the tax code, and for other purposes.

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:s1597is.txt.pdf

NEW REGULATORY RESTRUCTURING

NEW S. ??? - Restoring American Financial Stability Act (Dodd, D-CT). Described as “a comprehensive bill to reform our financial system.”

STATUS: A copy of the discussion draft can be found at: <http://banking.senate.gov/public/files/FinancialReformDiscussionDraftRevised111009.pdf>

Testimony and archived videos are posted at:
<http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Home>.

HEALTHCARE

NEW H.R. 3590 The Patient Protection and Affordable Care Act (Rangel, D-NY) (See S. 1728 below).

STATUS: Passed House and Senate. Passed Senate with an amendment and an amendment to the Title (this became the Senate healthcare bill). A copy of the amendment as passed by the Senate can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590eas.txt.pdf

Section 1104 of the bill specifically addresses administrative simplification, including provisions around electronic funds transfers and electronic remittance standards.

UPDATED S. 1796 - America’s Healthy Future Act of 2009 (Baucus, D-MT). (See H.R. 3200 above).

UPDATED STATUS: A copy of the latest news concerning this legislation can be found at: http://finance.senate.gov/sitepages/Americas_Healthy_Future_Act.html. A copy of the bill can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1796pcs.txt.pdf

Placed on Senate Calendar October 19, 2009.

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**UPDATED 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.

UPDATED STATUS: Referred to the Committee on Banking, Housing, and Urban Affairs. Hearings held November 17, 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:s1799is.txt.pdf

Testimony and archived videos can be found at:
http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=4b0d5619-946c-4429-aabd-0a4cee2c513c

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

UPDATED S. 1934 – Foreign Account Tax Compliance Act of 2009 (Baucus, D-MT) (See H.R. 3933 above). Would amend the Internal Revenue Code to revise and add reporting and other requirements relating to income from assets held abroad, including by: (1) requiring foreign financial and nonfinancial institutions to withhold 30% of payments made to such institutions by U.S. individuals unless such institutions agree to disclose the identity of such individuals and report on their bank transactions; (2) denying a tax deduction for interest on non-registered bonds issued outside the United States; (3) requiring any individual who holds more than \$50,000 in a depository or custodial account maintained by a foreign financial institution to report on such accounts; (4) imposing an enhanced tax penalty for underpayments attributable to undisclosed foreign financial assets; (5) extending the limitation period for assessment of underpayments with respect to assets held outside the United States; (6) requiring certain tax advisors who assist U.S. individuals in acquiring a direct or indirect interest in a foreign entity to file an information return disclosing the

identity of the foreign entity and the individual investors; (7) requiring shareholders of a passive foreign investment company to file informational returns; (8) enhancing tax rules and penalties relating to foreign trusts with U.S. beneficiaries; and (9) requiring withholding of tax on dividend equivalent payments received by foreign individuals.

UPDATED STATUS: Introduced 10/27/09 and referred to 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:s1934is.txt.pdf

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.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 CREDIT CARDS: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges (Report to Congressional Addressees, November 2009).

GAO was directed to review (1) how the fees merchants pay have changed over time and the factors affecting the competitiveness of the credit card market, (2) how credit card competition has affected consumers, (3) the benefits and costs to merchants of accepting cards and their ability to

negotiate those costs, and (4) the potential impact of various options intended to lower merchant costs. GAO found:

- According to Federal Reserve analysis, total costs of accepting credit cards for merchants have risen over time as consumers use cards more. Part of these increased costs also may be the result of how Visa and MasterCard competed to attract and retain issuers to offer cards by increasing the number of interchange fee categories and the level of these rates. Concerns remain over whether the level of these rates reflects market power--the ability of some card networks to raise prices without suffering competitive effects--or whether these fees reflect the costs that issuers incur to maintain credit card programs. Issuers, particularly smaller issuers such as community banks and credit unions, report relying on interchange fees as a significant source of revenue for their credit card operations, and analyses by banking regulators indicate such operations traditionally have been among the most profitable types of activities for large banks.
- Some consumers have benefited from competition in the credit card market, as cards often have no annual fees, lower interest rates than they did years ago, and greater rewards. However, consumers who do not use credit cards may be paying higher prices for goods and services, as merchants pass on their increasing card acceptance costs to all of their customers.
- For merchants, the benefits of accepting credit cards include increased sales and reduced labor costs. However, representatives from some of the large merchants with whom we spoke said their increased payment costs outstripped any increased sales. These merchants also reported that their inability to refuse popular cards and network rules (which prevent charging more for credit card than for cash payments or rejecting higher-cost cards) limited their ability to negotiate payment costs. Interchange fees are not federally regulated in the United States, but concerns about card costs have prompted federal investigations and private lawsuits, and authorities in more than 30 countries have taken or are considering taking actions to address such fees and other card network practices.
- Proposals for reducing interchange fees in the United States or other countries have included (1) setting or limiting interchange fees, (2) requiring their disclosure to consumers, (3) prohibiting card networks from imposing rules on merchants that limit their ability to steer customers away from higher-cost cards, and (4) granting antitrust waivers to allow merchants and issuers to voluntarily negotiate rates. If these measures were adopted here, merchants would benefit from lower interchange fees. Consumers would also benefit if merchants reduced prices for goods and services, but identifying such savings would be difficult. Consumers also might face higher card use costs if issuers raised other fees or interest rates to compensate for lost interchange fee income. Each of these options also presents challenges for implementation, such as determining at which rate to set, providing more information to consumers, or addressing the interests of both large and small issuers and merchants in bargaining efforts.

STATUS: Report issued in November. A copy of the Report can be found at:
<http://www.gao.gov/new.items/d1045.pdf>

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. “

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

UPDATED 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. 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. The June 2009 Memo can be found at: http://www.nccusl.org/Update/Docs/Payment%20Issues_June%202009%20report.pdf

- **UPDATED** In October 2009, the Study Committee issued a draft memorandum proposing: (1) the expansion of Articles 3 and 4 of the UCC to cover check conversion transactions; (2) the expansion of Article 4A of the UCC to cover corporate debits; and (3) the ability to opt in to Articles 3 and 4 of the UCC for EFTs under clearinghouse rules. NACHA responded in December 2009, noting:
 1. These three proposals are not based on any clearly identified need of the financial services industry or other stakeholders, or on any deficiency in the governance of EFTs.
 2. The expansion of Articles 3 and 4 to cover EFTs would be severely disruptive to otherwise efficient and well-managed payment systems and re-engineering electronic payment systems to comply with such amendments would be costly.
 3. State-by-state adoption of any amendments would undermine the benefits of adherence to national standards and rules for electronic funds transfers. To the degree that any changes to laws, regulations or rules for electronic funds transfers are necessary or desirable, these should happen at a Federal and/or national level, and not through a state law model.

FFIEC Guidance on Remote Deposit Capture. 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>.