



To: EFTA Members

From: Kurt Helwig, President & CEO
Dennis Ambach, Legislative & Regulatory Council Chairman

Date: February 5, 2010

Re: Legislative & Regulatory Update

2009 certainly was an action-packed (if not tumultuous) year in financial services and payments. Congress, President Obama and the regulatory agencies all devoted much attention to credit card reform, overdraft protection, interchange, gift cards and comprehensive regulatory reform. The key question for 2010 is whether Congress (specifically, the House and Senate banking committees) possesses the will to further legislate in an election year. We plan to provide greater detail on this question in the upcoming [Legislative & Regulatory 2010 Forecast Webinar](#) on February 24.

The following are some quick hits on issues we are watching for EFTA members:

Benefit Card Fairness Act

Last week, Representative Sander Levin (D-MI) introduced [H.R. 4552](#), the Benefit Card Fairness Act of 2010. The bill was referred to the House Financial Services Committee. H.R. 4552 mandates a number of changes in the way that government benefits are disbursed. Two of these appear to be fairly serious and could have widespread repercussions within the EBT community.

First, H.R. 4552 would eliminate the Reg E exemption for Electronic Benefit Transfer Systems, such as SNAP EBT. As states know, the potential liabilities of such a program could be enormous. It was the threat of such liability that prevented states in the early 1990s from converting to EBT. The State of California then estimated that fraud generated by false Reg E claims could exceed \$800 million per month.

The Reg E exemption, signed into law by President Clinton in 1996 allowed states to enter into EBT contracts with confidence. More importantly for our state members, exempting SNAP or TANF from Reg E could create a mammoth unfunded liability for states since they bear half of the administrative cost of the program. While the Agriculture Department would presumably bear the full cost of the duplicate benefits, states would burn an inordinate amount of resources adjudicating Reg E claims.

This change could reverberate up and down an EBT system and could adversely affect EFTA member financial institutions, transaction processors, and state agencies.

The second change this bill would make would be to direct the Secretary of Treasury in consultation with Secretary of Labor and Secretary of Health and Human Services to request proposals from financial institutions for a standard contract in to which a state or local government agency may enter for government payment account services. This apparently refers to electronic payment cards, otherwise known as network-branded prepaid cards used for issuing government payments such as unemployment compensation or child support enforcement payments.

In other words, states' ability to procure a financial institution that fits its unique contract needs would be preempted by the federal government's choice of a financial institution that could then enter into contracts with the various state agencies around the country.

This is similar to Treasury's push in the early 1990s to designate a lead bank as an EBT processor through a process known as an Invitation to Express Interest, which at the time would have excluded states from contracting with a processor, other non-bank agent or financial institution other than the designee to issue EBT benefits.

The bill mandates a number of other services for EPC cardholders, most of which are already employed by EPC-issuing institutions, such as a direct debit or check option. The way the bill is currently written consumers in effect would have to "opt-in" to an EPC program in a state if they want to receive payment via a debit card rather than direct deposit or check.

The bill also allows a consumer the choice of receiving a government benefit through an existing direct deposit account or check, greater account balance and transaction history access and restricts or prohibits fees on a government payment account for ATM withdrawals, overdraft, including NSF, customer service or inactivity.

EFTA continues to analyze this bill. Part of the problem is that in its current form, the bill seems to confuse EBT cards and Electronic Payment Cards used for government-issued payments. Thus, it is subject to interpretation whether the bill is addressing EBT or EPC cards when it refers to "Elimination of Exemption for Government Electronic Benefits Transfer Systems."

Similarly, it is unclear if states would be forced to contract with the Treasury-designated financial institution for "government payment account services" (presumably EPCs) or if it would be an option.

EFTA's eGovernment Payments Council (eGPC) will take the lead in working with members on the ramifications of this bill. The Council will invite a member of Congressman Levin's staff to address EFTA's concerns at its March 16-17 meeting in Washington, DC.

Overdraft Protection

In December 2009, EFTA and ATMIA jointly produced a position paper detailing the challenges of producing a real-time overdraft notice and fee disclosure at an ATM. The position paper can be found on [EFTA's web site](#). We also forwarded the position paper to House and Senate banking committee members.

We await any announcement of when either banking committee may markup respective overdraft legislation (H.R. 3904/S. 1799).

ATM Surcharging

Senator Charles Schumer (D-NY) called on Federal Reserve Chairman Ben Bernanke to address rising ATM fees during Bernanke's confirmation hearing in December before the Senate Banking Committee. Specifically, Sen. Schumer protested consumers having to pay two fees when using an ATM not owned by his or her financial institution. Chairman Bernanke pledged to work with the Office of the Comptroller of the Currency (OCC) to study ATM fees.