

Legislative & Regulatory Update

To: EFTA Members

From: Dennis Ambach, Chairman, Legislative & Regulatory Council

Date: October 27, 2011

Subject: ATM Signage; IRS Merchant Reporting; Protect IP Act (***Action Requested***)

ATM Signage

Yesterday, House Financial Services Committee Chairman Spencer Bachus (R-AL) wrote Raj Date, special advisor to the Treasury Department for the Consumer Financial Protection Bureau (CFPB), to ascertain the Bureau's views on the need for the dual fee notification requirement under Regulation E and whether the Bureau has the authority to amend Reg E to address this issue (see letter [here](#)). Chairman Bachus asks the CFPB to respond to the Committee no later than November 28.

The letter was a result of meetings that Kurt Helwig, EFTA President & CEO, and I had with the majority Committee staff. We believe it is important to officially resolve the issue whether amending Reg E to eliminate the dual fee notice requirement can be accomplished through a regulatory process. While awaiting CFPB's response, we will continue to work with House and Senate staff and other stakeholders (ATMIA, CUNA, ICBA, ABA, among others) to maintain momentum.

IRS Merchant Reporting

Last week EFTA sent a letter to IRS Commissioner Douglas Shulman (see letter [here](#)) seeking a one year delay to the penalty provisions associated with the new merchant reporting rules under section 6050W of the IRS Code. As you may recall, Section 6050W rules require merchant acquirers to file with the IRS annual information returns -- and to withhold in certain cases-- on gross payments made to merchants (credit and debit card revenues).

Yesterday, the IRS acknowledged the concerns of the EFTA and other financial services and merchant associations by providing the following relief from the information reporting requirements:

1. Penalty relief will be provided to those filing 2011 Forms 1099-K who have made good faith efforts to comply with the filing requirements (penalty relief will not, however, extend to entities that failed to file or made no efforts to file 2011 Forms 1099-K as required).
2. Backup withholding will be postponed for one year and will be applied to amounts paid after December 31, 2012.

Protect IP Act/Stop Online Piracy Act

We informed you this summer (see alert [here](#)) of Senate legislation to protect a Web site owner's intellectual property rights against infringers and its troublesome provision requiring "financial transaction providers" to stop or suspend payments within the United States when presented a court order alleging IP infringement while allowing private rights of action should any financial transaction provider fail to comply with the order. The legislation ([S. 968](#)) is still pending Senate Floor action.

Yesterday, House Judiciary Committee Chairman Lamar Smith (R-TX) introduced [H.R. 3261](#), the Stop Online Piracy Act, along with 12 co-sponsors including Ranking Member John Conyers (D-MI). The House version also requires "payment network providers" to take "...technically feasible and reasonable measures" to stop or suspend payments when presented an order from the U.S. Attorney General. Unfortunately, Section 103 of the House bill does allow a plaintiff to file a private right of action against a payment network provider, but only after the parties cannot resolve differences beforehand through a defined process.

The House Judiciary Committee is expected to conduct a hearing on H.R. 3261 on November 16. Kurt and I would appreciate hearing from members with concerns on Section 103 in advance of that hearing. In the meantime, we will continue to monitor these issues closely. Again, please feel free to contact us with any questions.