

MEMORANDUM

To: Subscribers to *Electronic Fund Transfers: Regulatory Compliance*

From: Sheshunoff Information Services

Subject: 2009 Update No. 2

Enclosed you will find your 2009 Update No. 2 to *Electronic Fund Transfers: Regulatory Compliance*. This update contains new and revised information addressing recent regulatory developments and recent court decisions.

Specifically, new material in this update addresses the following areas:

Recent Regulatory Developments

- ***Emergency PIN Technology.*** Section 508 of the Credit CARD Act of 2009 requires the Federal Trade Commission (FTC), in consultation with the Attorney General of the United States and the United States Secret Service, to conduct a study on the cost-effectiveness of making available at ATMs technology that enables a consumer under duress to electronically alert a local law enforcement agency that an incident is taking place, including an emergency personal identification number (PIN) that would summon a local law enforcement officer to an ATM when entered into the machine and a mechanism on the exterior of an ATM that, when pressed, would summon a local law enforcement to the machine. The study is required to include an analysis of any technology currently available or under development, an estimate of the number and severity of any crimes that could be prevented by the availability of the technology, the estimated costs of implementing the technology; and a comparison of the costs and benefits of not fewer than three types of technology. The FTC is required to submit its report not later than February 22, 2010. See Chapter 3.
- ***Advertising.*** Suggestions regarding the advertisement of “free ATMs” have been added to Chapter 3.
- ***Remote Deposit Capture.*** In January 2009, the Federal Financial Institutions Examination Council (FFIEC) issued guidance entitled “Risk Management of Remote Deposit Capture” to help financial institutions identify the risks of remote deposit capture and evaluate the adequacy of their controls and risk management practices. See Chapter 8.
- ***Study on Interchange Fees.*** Section 501 of the Credit CARD Act of 2009 requires the Comptroller General of the United States to conduct a study on the use of credit by consumers, interchange fees, and their effects on consumers and merchants. In conducting the study, the Comptroller is required to review the extent to which interchange fees are required to be disclosed to consumers and merchants, whether merchants are restricted from disclosing interchange or merchant discount fees, and how those fees are overseen by Federal banking agencies or other regulators. The Comptroller is also required to investigate the ways in which the interchange system affects the ability of merchants of varying size to negotiate pricing with card associations and banks; the costs and factors incorporated into interchange fees, such as advertising, bonus miles and rewards, and how those costs and factors vary among cards; the consequences of the undisclosed nature of interchange fees on merchants and consumers with regard to prices charged for goods and services; how merchant discount fees compare to credit losses and other costs that merchants incur to operate their own credit networks or store cards; the extent to which the rules of payment card networks and their policies regarding interchange

fees are accessible to merchants; other jurisdictions where the central bank has regulated interchange fees and the impact on retail prices to consumers in those jurisdictions; whether and to what extent merchants are permitted to discount for cash; and the extent to which interchange fees allow smaller financial institutions and credit unions to offer payment cards and compete against larger financial institutions. The Act requires the Comptroller to submit its report not later than November 18, 2009. See Chapter 9.

- **Electronic Gift Certificates.** Store Gift Cards and General-Use Prepaid Cards. The Credit Card Accountability Responsibility and Disclosure Act of 2009, also known as the Credit CARD Act of 2009, Public Law 111-24, was signed into law by the President on May 22, 2009. Section 401 of this statute inserts a new Section 915 into the Electronic Fund Transfer Act and renumbers existing Sections 915 through 921 as 916 through 922. New Section 915 imposes two prohibitions: (1) a general prohibition on dormancy fees, inactivity charges or fees, or service fees with respect to electronic gift certificates, store gift cards and general-use prepaid cards; and (2) a general prohibition on expiration dates on electronic gift certifications, store gift cards and general-use prepaid cards. An exception to the first prohibition allows fees after 12 months of inactivity if upfront disclosures have been provided. A limited exception to the second prohibition applies if the expiration date reaches at least five years into the future. The Federal Reserve Board must enact regulations by February 22, 2010, to take effect on August 22, 2010. See Chapter 10 and Appendix 1.

Recent Court Decisions

- **Failure to Stop Preauthorized Debit.** A Louisiana state appeals court held a bank liable for failing to stop payment of electronic insurance payments. *Savoie v. St. Landry Bank & Trust Co.* See Chapter 8.
- **Do-Not-Call Settlement.** A federal district court in Pennsylvania entered a stipulated judgment that assessed a \$900,000 penalty against a firm that caused its internal call centers and third-party telemarketing vendors to make over 900,000 outbound telephone calls to consumers who had previously stated that they did not wish to receive telephone sales calls. *United States v. Comcast Corp.* See Chapter 11.
- **State EFT Privacy Act Applied /Only to EFT Accounts.** The Supreme Court of New Jersey held that the State's EFT Privacy Act applied only to EFT accounts, not any account whether or not EFTs were involved. *Hirl v. Bank of America.* See Chapter 11.
- **EFT Overdrafts.** A federal district court in California denied a bank's motion for summary judgment in a case alleging that the bank had violated state law by re-sequencing overdrafts resulting from ATM or debit card transactions so as to impose higher fees. *Gutierrez v. Wells Fargo & Co.* See Chapter 12.
- **ATM Surcharge Class Action.** A federal district court in Illinois certified a class in a case alleging that a bank had failed to post a sign disclosing a \$2.00 ATM fee. *Flores v. Diamond Bank.* See Chapter 12.
- **ATM Balance Inquiry Fee.** A federal district court in New York dismissed an action alleging that an ATM operator had failed to disclose that an ATM balance inquiry fee would be charged by the customer's own bank. *Azose v. Washington Mutual Bank.* See Chapter 12.
- **Credit Card Interchange Fees.** A federal district court in New York dismissed an antitrust action in which a group of merchants alleged that member banks, by virtue of their control of MasterCard and Visa, dictated the amount of interchange fees for each network. *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation.* See Chapter 9.

Incorporating these pages into your copy of *Electronic Fund Transfers: Regulatory Compliance* will ensure that it remains a reliable source in this critical area of banking. If you have any comments or questions about this product, or want information about other Sheshunoff products, please call our customer service representatives at 1-800-456-2340. Please visit us online at www.sheshunoff.com.