

Deposit Legislation and Regulation: Are You Ready?

New Administration Takes Charge

Not only did the elections bring a new political administration with a different focus on consumer and financial industry issues, they also brought changes in membership to both House and Senate key committees that address those financial industry and consumer-related issues. How these changes will ultimately impact our industry, it is hard to say. But it is safe to say that certain initiatives that have failed in the past could have the necessary support to be successful this term.

In this Issue

Things are different in Washington. The focus is squarely on the consumer, and initiatives that have failed in the past are now gaining momentum. We decided to take a look at how some of these initiatives might impact the financial services industry.

Do you understand the impact on both your organization and your customer?

What will you do to replace lost revenue?

Do you have a plan in place?

Will you simply absorb the revenue loss or counter with new strategies or products?

During the 110th Congress ending in December 2008, the House of Representatives introduced five legislative bills addressing various changes to deposit services and deposit products. None of these bills made it out of committee prior to the close of the 110th Congress and have expired. Since many of these bills have been repeatedly introduced in some form over the past 8 years, it was reasonable that many of them would again be introduced in the new 111th Congress. Don't let the past history of not reaching a Congressional vote lead you to assume these initiatives will again die in committee during this Congressional session. It is a different ball game in Washington today and the current economic conditions and consumer focus may drive a more positive result in 2009.

Proposed Regulatory Changes: An Immediate Threat

At the same time, the Federal Reserve, Office of Thrift Supervision, and the National Credit Union Administration (collectively, the "Agencies") released a joint request for comment on several proposed regulatory changes that paralleled many of the components in the House bills. These regulatory changes are more of an immediate threat to how you will do business in the future. Comments received from the financial industry were overwhelmingly against the proposed changes as written. Comments (primarily form letters) from the public and consumer advocacy groups were totally supportive of the changes, and those letters numbered in the tens of thousands. What the Agencies will ultimately do is still an open question as several proposals for changes to Regulations AA and DD have now been re-opened for comments under Regulation E.

The Agencies approved some changes to Regulation DD in late December 2008, which addressed the requirement to disclose overdraft and NSF fees on periodic statements and to eliminate the inclusion of available overdraft balance information through automated systems for customer balance inquiries.



Congressional members have already stated the Agencies did not go far enough with their changes and that is evident in the 2009 bills already introduced this quarter.

The theme of the bills and rule proposals mainly address Overdraft Product Administration, Credit Card Administration and fees, and other fee-generation services. Our focus here is on the deposit services proposals; the credit card proposals will be discussed in a future article.

What Was / Is Proposed?

- **Returned Deposited Items (2009)** – No fees assessed to depositor if item is returned NSF.
- **Business Accounts (2008)** – Permits payment of interest on all currently prohibited business account types. Allow up to 24 internal fund transfers per cycle between business accounts without excess transaction fees.
- **Early Withdrawal Penalty (2009)** – Prohibits penalty fees on accounts, other than CDs for early withdrawal of funds, other than stated in IRS Code.
- **Periodic Customer Account Statements (2009)** – Eliminates the requirement to provide periodic statements without prior customer election to receive statements (Opt-In).
- **Deposit Advance Products (2008)** – Attempts to classify fee-based deposit advance products as Payday Loans, which effectively prohibits them.
- **Overdraft (OD) Protection Service (2009):**
 - Customer Opt-In required prior to payment of items into OD.
 - Customer ability to Opt-Out or Opt-In at any time in cycle and revert at any later time.
 - Opt-In/Opt-Out choice by transaction at ATM or POS terminal. Customer decides to reject or accept OD transaction with associated fee. This was not included in current Regulation E proposal, but was in the House bill.
 - Posting Order of checks defined as serial number order only. Customer may Opt-In for any other order but must apply in writing and bank must retain signed record.
 - Prohibits OD fee assessment if fee is due to electronic transaction hold and not actual electronic debit.
 - Cumulative OD fee disclosure on customer statements expressed in form of Annual Percentage Rate after 3 annual OD fees. This was not included in Agencies rules 12/2008.
 - OD fee associated with line of credit is considered a finance charge.
 - Increased disclosure requirements regarding fees, how they are charged, when and what items paid into OD, notice of OD, etc.
 - Elimination of inclusion of OD funds in all customer balance inquiry channels, in-person, electronic, internet, and telephone. Requires screen notifications for all electronic channels including ATM, POD, and PC / Internet. This was included in Agency rules of 12/2008, but only automated channels.
 - Prohibits advertisement of “Free” account if OD service is provided and includes fees.
 - Prohibits the encouragement of use of service to meet short term financial needs.
 - Prohibits statements that FI will honor all checks or other debit items if the FI retains discretion not to honor certain checks or debits.

What Cost to You and Your Customers?

In addition to lost revenue opportunities designed to compensate for product cost and risk mitigation, there will be substantial expenses to convert all the product and customer support system platforms. Bank of America, in its rule proposal comment letter to the Agencies, estimated a cost of \$50 million would be incurred to meet the proposed requirements of Regulations AA, DD, and now Regulation E. All of these proposals, individually or collectively, will also have a negative impact on both your earnings and your customers.

For example, your customers will still incur unavoidable overdrafts due to certain processing timing issues. Customers will experience POS transaction denials at the merchant. Customers may find longer holds on deposited funds; payroll deposits may not be available intraday – only at end of day. Merchant accounts will have more deposited items returned NSF and experience less POS sales due to restricted balances. Customers will ultimately pay more for those returned NSF items than the cost of an overdraft fee.

Planning for the Inevitable

These are just a few things you should be considering for 2009 and 2010. Are you ready? Do you understand the impact on both your organization and your customer? What will you do to replace lost revenue? Do you have a plan in place? Will you simply absorb the revenue loss or counter with new strategies or products?

Here at Profit Technologies, we do not have a crystal ball to know exactly what the future will bring, but we can help you be prepared and provide solutions to mitigate these threats before they arrive. Our business is earnings enhancement, or in this case, earnings preservation. We have the tools and experience to assess the impact on your organization and offer solutions to restore lost revenue you may experience due to these potential legislative changes. Our team is ready to help you now -- while there is still time.