

FEDERAL RESERVE SYSTEM

[Docket No. R-1105]

Study of Banking Regulations Regarding the Online Delivery of Financial Services

Agency: Board of Governors of the Federal Reserve System.

Action: Notice; Request for comment.

Summary: Pursuant to section 729 of the Gramm-Leach-Bliley Act (the GLB Act or Act), the Board is conducting a study and preparing a report about its banking regulations with respect to the online delivery of financial services. To assist this review of its regulations, the Board requests comment on whether any of its regulations should be amended or removed in order to facilitate online banking.

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Dates: Comments must be received by August 20, 2001.

Address: Comments should refer to Docket No. R-1105 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 216.14, of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

Supplementary Information:

Background

Section 729 of the GLB Act requires the Board, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (the Agencies), to conduct a study of banking regulations regarding the online delivery of financial services.¹ Section 729 further requires the Agencies to report their recommendations on adapting existing legislative or regulatory requirements to online banking and lending.

¹ Pub. L. 106-102, 113 Stat. 1476 (1999).

In accordance with section 729, the Board is reviewing its regulations that relate to the delivery of financial services to assess their suitability for transactions that are conducted through the Internet. The Board plans to consult with the other Federal banking agencies about the appropriate aims and scope of its review and will coordinate its report with those that will be produced by the other Federal banking agencies.² The purpose of this notice is to invite public comment on a wide range of issues that bear on delivering financial products and services over the Internet to assess whether any Board regulations should be amended in order to facilitate online banking. In addition, the Board requests comment on how particular statutory provisions affect the online delivery of financial products or services.

The Board recently requested comment on five interim final rules to establish uniform standards for the electronic delivery of notices to consumers, namely: Regulations B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings).³ In connection with comments sought on those interim final rules, the Board also requested comment on whether other legislative or regulatory changes are needed to adapt current requirements to online banking and lending. In particular, the Board has requested comment on revising its regulations to facilitate electronic delivery of financial products and services to individual consumers, such as the provisions regarding periodic statements under Regulations E, Z, and DD. (Comments on those interim final rules must be received by June 1, 2001.) Any comments submitted in connection with the review of those regulations to facilitate electronic delivery of financial products and services for individual consumers shall also be considered for the study and report under section 729 of the GLB Act.

Issues for Comment

The Board recognizes that using electronic technology to deliver financial products and services poses distinct challenges to financial institutions and their customers. Much of the legislative and regulatory framework that governs banking was developed based on social, cultural, and technological practices that existed before the advent of widespread computer-based communications. The prospect of conducting banking transactions over the Internet has forced reconsideration of the existing legislative and regulatory framework that governs banking businesses.

The Board invites comment on how particular statutes, regulations, or supervisory policies specifically affect financial institutions and their customers' uses of new technologies. The following discussion identifies topics that the Board believes are appropriate for the design of the study and report required under section 729. Commenters are invited to respond to the questions presented and to offer comments or suggestions on any other issues related to financial products or services delivered online that are not described herein.

² The OCC issued an advance notice of proposed rulemaking and requested comment on a wide range of electronic banking issues to determine whether the OCC's regulations should be changed to facilitate national banks' use of new technologies. 65 FR 4895 (February 2, 2000). The Board notes that the OCC specifically requested comment in connection with its study of its regulations under section 729, and the Board will review those comments in connection with the Board's own study.

³ 66 FR 17779 (April 4, 2001); 66 FR 17786 (April 4, 2001); 66 FR 17322 (March 30, 2001); 66 FR 17329 (March 30, 2001); 66 FR 17795 (April 4, 2001).

Laws and regulations that affect transactions

Do any of the Board's regulations, such as those governing payment transactions, negatively affect the ability of financial institutions to offer certain online financial services? Which regulations, if any, negatively affect the likelihood that an individual or business customer would choose to obtain financial products or services through the Internet?

The ways in which financial institutions themselves obtain services from other financial institutions, including Federal Reserve Banks, significantly affects the products and services that financial institutions may, in turn, provide to their non-bank customers. The Board also requests comment on the specific ways in which laws, regulations, and other supervisory policies affect the online delivery of financial products and services between financial institutions.

Geography and time considerations

Some aspects of the Board's banking regulations, as well as other banking laws, are predicated on conceptions of geography. For example, bank mergers and acquisitions are regulated, in part, by legal standards that have been developed to determine whether a transaction poses anti-competitive consequences in the relevant geographic market for the cluster of banking products.⁴ Similarly, the legal standards that apply to the location of bank branches depend on certain conceptions of geography.⁵ How should these kinds of regulatory provisions be revised (if at all) to more appropriately govern the location of online banking and lending activities?

Other laws or regulations contain concepts of time that may not be relevant in an online environment. For example, the term "banking day" in Regulation CC is defined as that part of any business day on which an office of a bank is open to the public for carrying on substantially all of its banking functions.⁶ Regulation CC requires funds that must be available for withdrawal on a business day to be available at the start of business, which may be as late as 9:00 a.m. local time of the depository bank.⁷ Are these provisions appropriate in the context of a customer that opened an account and performs all banking functions online?

The Board recognizes that these traditional boundaries of geography and time may need to be reexamined in light of online banking practices that enable customers to obtain financial products and services relatively free from customary time or place constraints. Comments are invited on how particular laws and regulations may be modified to accommodate the online delivery of financial products and services under these varying conditions.

Banking and supervisory regulations and policies

⁴ United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963) (In an action challenging a proposed merger of banks under the antitrust laws, the Court held, in relevant part, that the geographic market for the cluster of banking products and services is local in nature).

⁵ 12 U.S.C. 321 (requiring, in relevant part, a state member bank to obtain the Board's approval to establish certain new branches "beyond the limits of the city, town, or village in which the parent bank is located").

⁶ 12 CFR 229.2(f).

⁷ 12 CFR 229.19(b).

The Board invites comment on how particular regulations or supervisory policies specifically affect financial institutions and their customers' uses of new technologies. For example, are there any specific Board regulations that unreasonably interfere with the use of online technologies? Are there any supervisory policies that impose unreasonable burdens on a financial institution's design or adaptation of online technologies? Are there any regulations or other supervisory policies regarding risk management that should be clarified or amended to adequately address any particular risks associated with methods of online banking?

Electronic Signatures in Global and National Commerce Act and other Federal laws that affect online banking

The Board recognizes that the enactment of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) has addressed several important legal and regulatory issues regarding the uses of electronic media in commercial transactions.⁸ For example, the E-Sign Act permits the retention of certain types of records in electronic form (subject to specified conditions) if such records are required by any other law or regulation.⁹ Do any of the Board's regulations or supervisory policies require a banking organization to use or retain written forms, notices, or other records in a manner that hinders its ability to deliver financial products or services over the Internet? The Board requests comment on how particular provisions of the E-Sign Act, or any other law, affect financial institutions and their customers' ability to use (or ease of using) new technologies.

Differing legal requirements

Do certain provisions of Federal law that apply to online banking and lending practices make compliance with other provisions of State law (or laws enforced by foreign states) more costly? Are there particular aspects of conducting online banking and lending activities that could benefit from a single set of legal standards that can be applied uniformly nationwide?

Are there any inconsistencies between Federal and State laws or regulations that impede the electronic provision or use of financial products or services? For example, do State laws or regulations apply differently to state-chartered financial institutions, relative to federally chartered institutions, that conduct online banking and lending? Are there any State laws or regulations, such as licensing provisions for banking and other financial products and services, that affect the nationwide provision of financial products or services over the Internet?

By order of the Board of Governors of the Federal Reserve System, May 16, 2001.

(signed) Jennifer J. Johnson

Jennifer J. Johnson,
Secretary of the Board

⁸ Pub. L. 106-229, 114 Stat. 464 (2000).

⁹ § 101(d), 114 Stat. 466-67.