CSinsiderNewsletter
A U.S. Company Serving U.S. Financial Institutions
March 2019

The Road to Faster Payments

In an effort to meet the needs of a more global, digitally-connected, real time economy, the U.S. financial industry is in the process of developing a new payments system, referred to as "the faster payments system." The faster payments system, which will join more traditional payment infrastructures like cash, checks, cards, wire transfers, and Automated Clearing House (ACH) transfers, is intended to solve for the inefficiencies of these payment rails and the inefficiencies of legacy systems. In order to achieve the vision of this new payment system, a task force consisting of stakeholders from various organizations in the payments community, including financial institutions, nonbank payment providers, businesses, consumer groups, government agencies and regulators ("task force") have been assembled to identify and assess alternative approaches for implementing this new system.

Solving for Inefficiencies

The task force defines faster payments as a payments system that is faster, ubiquitous, broadly inclusive, safe, highly secure and efficient, and is delivered through interoperation among multiple, competing solution operators and service providers.[1]

The primary goal of the system is to provide end-user customers with fast access to funds, approaching real-time availability. Current payment infrastructures do not enable near real-time clearing and settlement: financial institutions behind transactions need to transfer funds to complete payment. As a result, in most circumstances, clearing and settlement occur intraday, at end of day, or next day. The faster payments system intends to leverage technology, such as Application Programming Interfaces, to achieve a faster result.

The faster payments system is also intended to empower end users to reach any other user, including unbanked, underserved, and cross-border end users, while providing an efficient, interoperable network of solutions with transparent features and fees, and the ability to send and receive payments at any time. The faster payments system must enable ubiquitous receipt, which would require all service providers to at a minimum receive and post faster payments on behalf of their end users.

The ultimate goal of this system implementation is the connection to a critical mass of customers. Today, there is no single payments system that provides as broad of a reach that proponents the new system envision. Many smaller financial institutions don't have the money or resources to reach as many users as enterprise financial institutions and while there may be common technical standards among financial institutions, these standards allow for flexible implementation. Many faster payment solutions have focused on providing incentives by payment processors to smaller financial institutions to have faster payments service providers receive and post faster payments on behalf of customers. Solutions have also suggested a common message format and business process standards, as well as directories and routing mechanisms, to provide consistent technical standards and broad access to settlement mechanisms.

It is essential that the faster payments system is safe and secure. The faster payment system must minimize fraud and errors and have a method for quick resolution. End users must feel that their assets, accounts, and information are protected. Strong security needs to be in place to protect data and minimize data breaches and cyberattacks, among other threats. Mitigation of fraudulent and erroneous transactions and the reduction of potential losses to service providers who are unable to meet their settlement obligations is key. Although financial institutions already have

security and risk management procedures, they can never be too safe. Faster payments offer solutions by way of advanced techniques for data protection, authentication, enrollment, and payment identity management, such as end-to-end encryption, tokenization, behavioral biometrics, and device fingerprinting.

The Solutions

There have been many proposed solutions to meet the needs for the faster payments system. These proposals offer a variety of creative solutions, some that use advanced thinking and technologies while others leverage payment systems that are currently in the market. However, many of the challenges the United States face is the broad adoption of the system by service providers and end users. If high investment or use of multiple solutions to reach a larger number of end users is a requirement, the system may be ineffective in reaching its goal. Faster payment systems are already live in 18 global markets and planned in 24 other markets.[2] The United States is looking at these global faster payments systems for guidance to overcome challenges, while recognizing that government mandates and development of a single operator, as a number of countries have implemented, may not the best course of action for our system. Rather, the task force has identified that competition among the solutions and among service providers should be the driving force to achieve the highlighted characteristics and capabilities of our faster payments system.

The hope is that the faster payments system – in which all payment service providers are capable of receiving faster payments and of making those funds available to their end user customers in real time – will be ready by 2020.

[1] Faster Payments Task Force, Final Report Part Two: A Call to Action
[2] Faster Payments Pick Up Steam: A Global Update. Ngenuity Payments Journal.

July 1, 2019, Marks the Beginning of New Flood Insurance Rules

The discussion about private flood insurance is not new. In 2013, a proposed rule was issued to implement provisions of the Biggert-Waters Act, including provisions related to private flood insurance. The proposed rule received some attention, including a number of comments, some expressing concern with the proposed rule and others requesting more guidance.

Shortly after issuance of the 2013 proposed rule, the Homeowner Flood Insurance Affordability Act was enacted, which created new requirements regarding the escrow of flood insurance premiums and fees and created a new exemption from the flood insurance requirements for certain structures. As a result, a new proposed rule was issued in 2014.

Based on the commentary received in response to the 2013 proposed rule regarding the private flood insurance provision, the 2014 proposed rule was finalized without private flood insurance provisions. The private flood insurance rule was proposed again in late 2016, and the final rule was issued in February 2019. Under this final rule, regulated lending institutions will be required to accept private flood insurance and will be allowed to accept other policies on a discretionary basis.

"Private flood insurance" is defined by statute to mean any insurance policy that is issued by a licensed insurance company that provides flood insurance coverage at least as broad as that provided under a standard policy issued under the national flood insurance program, which includes certain statutory requirements, and the cancellation provisions are as restrictive as those in a standard policy under the national flood insurance program. See 42 USCA 4012a.

Under the final rule, institutions are required to accept private flood insurance policies meeting this definition. This can be difficult because the institution would be required to know the provisions of a standard flood insurance policy issued under the national flood insurance program. Such knowledge would include standard provisions regarding deductibles, exclusions and other conditions, as well as the timing of a notice of cancellation.

A compliance aid was incorporated into the final rule which may simplify the duties of an institution when it comes to accepting private flood insurance. This compliance aid will help evaluate whether a flood insurance policy meets the statutory definition of "private flood insurance." In fact, if either the policy itself or an endorsement contains the statements that, "This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation" then the institution need not further review the policy and can conclude, based on this disclosure, that the policy meets the statutory definition of "private flood insurance."

The new rule is effective July 1, 2019.

More information can be found at https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-8.html.

California: On the Forefront of Regulating Emerging Issues

California is often seen as a progressive force in legal and regulatory changes, creating sometimes outlier and other times forward-thinking developments that result in model laws. Two recent developments in California are currently positioned to be such models for future regulation which stands to impact the financial services industry.

California Commercial Financing Disclosures Law

The consumer finance sector has long been accustomed to financial disclosures driven by the federal Truth in Lending Act (TILA) and other regulatory decrees aimed at ensuring consumers receive relevant transaction information in plain terms. The commercial lending sphere, however, has been largely immune from specific disclosure requirements due to their servicing of commercial entities. The modifications that were recently enacted to the California Financing Law for the first time impose "truth in lending" disclosure standards for small business loans offered by non-exempt lenders who provide offers of commercial financing of less than $500,000.

New Division 9.5 of the California Financial Code, effective January 1, 2019, directed the Commissioner of Business Oversight to create regulations that would implement disclosure requirements for certain small business transactions. The disclosure requirements are intended to cover general non-bank small business financial offerings and do not apply to any provider that is a depository institution, lenders under the Farm Credit Act, commercial transactions secured by real property, or certain transactions with automobile dealers and vehicle rental companies. These requirements will, however, apply to lending companies that are funded by a depository institution, such as some online lenders, even though they will not apply to the depository institution directly.

The new regulations will apply to many commercial financing offers, including commercial loans, factoring, asset-backed lending, commercial open-end credit plans, and lease financing. The new regulations may be applicable to a variety of lenders who provide alternative forms of financing, and not just licensed lenders under the California Financing Law (CFL).

The disclosure requirements are similar to those used for consumer lending and include:

(1) Total amount of funds provided.
(2) Total dollar cost of the financing.
(3) Term or estimated term.
(4) Method, frequency, and amount of payments.
(5) Description of the prepayment policies.
(6) Total cost of financing expressed as an annualized rate.

It is not yet clear the manner in which the disclosures will be required for each financial product. The regulations are expected to be fully implemented in 2020 and compliance is not required until the regulations are final.

As the first of its kind, the California small business disclosure regulatory requirements may serve as a model for other states similarly looking to more heavily regulate this section of the industry, which has historically avoided substantial regulation.

California Consumer Privacy Act

In June 2018, California passed California Consumer Privacy Act (CCPA), a sweeping privacy regulation which sets the standard for data security in the United States. Following in the footsteps of the European Union's General Data Protection Regulation (GDPR), the law includes broad requirements for many businesses with personal information. The law requires businesses to disclose what information has been collected, delete personal information at the request of the consumer, and allow the consumer to prohibit the sale of the consumer's information. The law also prohibits discrimination by businesses. The definition of "personal information" subject to regulation in the CCPA is much broader than other privacy laws in the United States, as is the definition of "consumer," which covers any natural person who is a resident of California. Thus, the law may have far-reaching effects outside of the consumer transaction space. The law also provides a private right of action for data breaches involving personal information of California consumers, providing stiff penalties for breaches involving California consumer personal information without the need for a government enforcement action.

Financial institutions have not been granted a categorical exemption from the CCPA. Rather, only a category of "personal information" has been exempted from coverage: information which is "collected, processed, sold, or disclosed" pursuant to the Gramm-Leach-Bliley Act (GLBA) or the California Financial Information Privacy Act (CFIPA). Because the CCPA's definition of "personal information" and scope of coverage is much broader than that of the GLBA and CFIPA, there are certain categories of information which will be subject to the CCPA. The exemption granted also does not apply to the data security provisions under the CCPA. While additional amendments or clarifications may exempt the industry further, the plain text of the law currently provides that certain data maintained by a financial institution, including employee information, commercial client data, and information collected from individuals who are not customers, may be subject to the CCPA's various requirements.

The requirements in the CCPA do not go into effect until January 1, 2020 and the scope of the law continues to change. There are several pending bills that would modify the existing law. For instance, Senate Bill 561 would expand the private right of action under the CCPA, among other items. Additionally, AB 846 and AB 950 would provide clarifications regarding participation in loyalty programs and propose the requirement to disclose of the monetary value of data, respectively.

While the California law only applies to personal information from California consumers, and therefore will not affect businesses operating wholly outside of the state, the push has already begun to propel similar data security regulations on the federal level and across the county. At the federal level, the Government Accountability Office (GAO) has recommended further federal internet privacy regulation, "Internet Privacy: Additional Federal Authority Could Enhance Consumer Protection and Provide Flexibility." (GAO-19-52), https://www.gao.gov/assets/700/696437.pdf. The House and Senate have recently discussed potential federal privacy law at separate hearings on February 26, 2019 and February 27, 2019. Several other states have also introduced new privacy bills using the CCPA as a model in crafting their proposals.

California continues to update and amend its data security laws even outside of the far-reaching CCPA, such as through the proposed AB 1130 which would amend California's data breach notification law to cover passport numbers and biometric information. New developments continue to come out of California, which have the potential to serve as a standard for new regulations throughout the country on emerging issues. Compliance Systems will continue to monitor the developments on these issues in California and elsewhere throughout the country.

Compliance Systems Community Lounge

In an effort to bring more resources to your fingertips, Compliance Systems is in the process of building a client forum called the Compliance Systems Community Lounge. The Lounge offers a wide range of product information and support, including product tips, frequently asked questions, and product news. Compliance Systems has begun adding users and we will continue to rollout access to more user communites throughout the year. Stay tuned!

Compliance Systems • 1575 Arboretum Drive SE, Suite 406 • Grand Rapids, MI 49546
TEL 800.968.8522 • www.compliancesystems.com

Compliance Systems Aquired by CUNA Mutual Group

In January 2019, Compliance Systems was acquired by CUNA Mutual Group. Based in Madison, Wisconsin, CUNA Mutual Group is the leading insurance, financial services and technology company focused on helping people achieve financial security through all life stages. It offers consumer and commercial insurance, retirement and investment solutions; and business solutions including data and analytics, lending capabilities, and marketing services.

"Our vision is to transform and modernize our existing document services, elevating our ability to support the needs of credit unions through a simpler and more accessible solution for our customers," said Robert N. Trunzo, president and CEO, CUNA Mutual Group. "At the same time, Compliance Systems will continue to expand and grow within the banking and lending industry that they serve today."

We will enhance CUNA Mutual Group's document processing and compliance technology capabilities. "We're excited to work alongside CUNA Mutual Group to bring Compliance Systems' technology to credit unions," said Dennis Adama, president and CEO, Compliance Systems. "The opportunity to bring our solutions to more than 5,600 credit unions, on top of our current growth trajectory in the industry, provides us with a path to grow very rapidly."

Compliance Systems • 1575 Arboretum Drive SE, Suite 406 • Grand Rapids, MI 49546
TEL 800.968.8522 • www.compliancesystems.com