

How to Use This Update

This update brings *The Law of Electronic Fund Transfer Systems* up to date with new and revised information addressing the following areas:

- **Identity Fraud Prevention.** In January 2007, the OCC approved a national bank's investment in an identity fraud prevention firm. See ¶ 10.03[1][b].
- **Policy on Payment Systems Risk.** In January 2007, the Federal Reserve Board revised its Policy on Payment Systems Risk to address minimum standards for central counterparties and to establish an expectation that systemically important systems subject to the Board's authority publicly disclose self-assessments of risk. See ¶ 11.06[2][c].
- **Proposed Model Privacy Notices.** Section 728 of the Financial Institutions Regulatory Relief Act of 2006 requires the federal agencies (including the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), National Credit Union Administration (NCUA), Federal Trade Commission (FTC) and Securities and Exchange Commission (SEC)) to adopt a simplified model privacy form. In March 2007, the federal agencies issued a proposed model form that would consist of two or three pages, depending on whether the financial institution shares information in a manner that requires it to disclose opt-out information. See ¶ 19.02[1][e][v] and Exhibit 19.2.
- **Supervisory Policy on Identity Theft.** In April 2007, the FDIC issued Financial Institutions Letter 32-2007, "Identity Theft: FDIC's Supervisory Policy on Identity Theft" (Apr. 11, 2007), emphasizing a financial institution's duties regarding identity theft. See ¶ 19.02[1][e].
- **Incident Response Programs (IRPs).** The FDIC has recommended that each financial institution develop a formal incident response program (IRP) to mitigate the negative effects of security breaches. See ¶ 19.02[1][e].
- **FCC Telephone Records Rule.** In April 2007, the Federal Communications Commission (FCC) adopted rules in the form of an

order that requires telephone and wireless carriers to adopt safeguards to protect the personal telephone records of consumers from unauthorized disclosure. While this rule generally does not apply to financial institutions, they might consider adapting its procedures and including similar requirements in the security procedures required by the Gramm-Leach-Bliley Act (GLB Act) and the Security Guidelines implemented by the federal banking agencies. See ¶ 19.02[1][e].

- **Court Decisions:**

- **Online Loan Applications.** A federal district court in Alabama exercised personal jurisdiction over an out-of-state lender that approved an online mortgage loan application. *Brannon v. Finance America, LLC*. See ¶ 10.03[2][b].
- **Maritime Attachments.** More New York federal district court decisions have held that defendants who are beneficiaries of an EFT in the hands of intermediary banks have a sufficient property interest for maritime attachment under Rule B(1)(a). *Compania Sudamericana de Vapores v. Sinochem Tianjin Co., Dolco Investments, Ltd. v. Moonriver Development, Ltd., Mediterranea di Navigazione Spa v. International Petrochemical Group; Navalmar (U.K.) Ltd. v. Welspun Gujarat Stahl Roren; Ltd.; and General Tankers PTE. Ltd. v. Kundun Rice Mills Ltd.* See ¶ 13.09[6][c].
- **Arbitration.** A federal district court in California denied a motion to compel arbitration in an EFTA case involving an arbitration clause it found procedurally and substantively unconscionable. *Geoffroy v. Washington Mutual Bank*. See ¶ 17.05[3].
- **State Claim Based on EFTA.** A federal district court in the District of Columbia concluded it lacked jurisdiction over an action a national bank had removed from state court. The bank had premised removal on the plaintiff's negligence claim alleging that the bank owed duties to the plaintiff under the EFTA. *Green v. Wachovia Bank*. See ¶ 17.06[5][b].