



Government Relations Working Group Government Update

A Publication for IPA Members
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I. ASSOCIATION UPDATE

CFPB Makes it Easier for Consumers to Receive Pandemic Relief Payments

On April 13, the Consumer Financial Protection Bureau (CFPB) announced that they are taking affirmative steps to make it easier for consumers to receive pandemic relief payments, including the economic impact payments authorized in the [CARES Act](#), via prepaid accounts. According to the CFPB's statement, the agency's release of an [interpretive rule](#) outlines that "if certain conditions are met, certain pandemic-relief payments are not "government benefits" for purposes of Regulation E and thus these payments are not subject to the compulsory use prohibition in EFTA and Regulation E."

The CFPB's announcement also specifically states "government benefits do not include payments from federal, state, or local governments if those payments: (1) are made to provide assistance to consumers in response to the COVID-19 pandemic or its economic impacts; (2) are not part of an already-established government benefit program; (3) are made on a one-time or otherwise limited basis; and (4) are distributed without a general requirement that consumers apply to the agency to receive funds." The CFPB goes on to note that while accounts that are not government benefit accounts per its interpretive rule may still meet another definition of "prepaid account" under the CFPB's prepaid account rule, accounts that are established directly or indirectly through a third party and receive **only** qualified disaster relief funds are excluded from coverage under the prepaid account rule.

Lastly, the CFPB highlights that the disbursement of COVID-19 support funds to "newly-issued prepaid account, may be faster, more secure, more convenient, and less expensive—for both the government agency and the consumer—than making disbursements through other methods such as paper check."

This announcement by the CFPB was in response to a recommendation made by the IPA to the CFPB in response to the agency's COVID-19 industry outreach to the IPA and other groups. The IPA's recommendation was based on the feedback we received directly from IPA members that a variety of government entities were reaching out to prepaid account providers seeking their assistance in quickly disbursing COVID-19 related relief payments to people in need of financial support during the current national emergency. The IPA is proud of the work of our member companies who are helping their customer bases, local and state communities, and other essential workers – who are the true American heroes - during this national emergency.

A copy of the CFPB's announcement can be found [here](#) and a copy of the CFPB's Prepaid Account Final Rule can be found [here](#).

IPA Op-Ed Published in Bloomberg

On April 10, an op-ed that was authored by the IPA's CEO, Brian Tate, was published in Bloomberg Law. The op-ed outlines how prepaid accounts enable governments at all levels to help their citizens in good times and bad, the benefits prepaid accounts offer to government and consumers, and consumer protections that are in place via the CFPB.

Given, that Treasury and IRS have begun to disburse Economic Impact Payments, some of which will be disbursed through prepaid cards or end up on prepaid cards, the IPA believes it is more important than ever to promote a greater understanding of prepaid products, how they work, and the regulations in place to protect those who choose to utilize this safe and convenient product.

The op-ed can be accessed [here](#).

IPA Webinar: Innovation in a Crisis and Beyond

Join the IPA for a webinar as we talk with Krista Tedder, from Javelin Strategies and Research, about how the COVID-19 pandemic could lead to payments innovation and change strategies to address the needs created by crisis and how the payments landscape might look as we return to normal. We will consider innovations across the payments spectrum and talk about how companies can approach fostering innovation and setting priorities.

This webinar will take place on April 23 at 3 PM ET. Additional information and registration can be found [here](#).

II. AGENCY AND REGULATORY NEWS

CONSUMER FINANCIAL PROTECTION BUREAU

CFPB Files Response in PayPal Lawsuit Challenging the Prepaid Rule

On April 13, the CFPB filed its [response](#) to PayPal's [complaint](#) in their lawsuit challenging the CFPB's [Prepaid Account Final Rule](#). Based on our initial reading of the CFPB's response it appears the CFPB is defending the Prepaid Rule and is denying all of the allegations PayPal outlined in their complaint. It is important to note that at numerous times in their response, the CFPB refers the Court to definitions specifically detailed in the Final Rule, including, but not limited to, when PayPal attempts to describe their General Purpose Reloadable products or digital wallet in ways that may be inconsistent with the Final Rule's definition.

As a reminder, PayPal asserts in their complaint that the Final Rule's mandated disclosures require references to fees not actually charged, misrepresents the fees PayPal charges for certain products and services for most consumers, conflict with PayPal's own disclosures, and that the Final Rule places unreasonable restrictions on consumers' abilities to link certain credit products to PayPal's digital wallets. As a result, the Bureau's rulemaking has resulted in consumer misunderstandings and confusion and has deprived PayPal's customers of access to benefits offered by PayPal, according to the company.

PayPal additionally states that digital wallets are fundamentally different from GPR cards and, despite presenting evidence to the CFPB that PayPal's digital wallet offerings differed in significant ways from GPR cards and warning of negative consequences to consumers, the CFPB unreasonably dismissed PayPal's evidence and finalized a Rule that treats identically GPR cards and PayPal's very different digital wallet products.

PayPal finally argues that the Rule violates PayPal's constitutional rights by forcing it to convey the government's chosen message without regard for whether that compelled speech meaningfully advances the government's professed interests.

PayPal asks the Court to provide relief by:

- Declaring the Final Rule arbitrary, capricious;
- Declaring the Final Rule Unconstitutional;
- Enjoining the CFPB from enforcing the Final Rule; and
- Declaring the Rule unconstitutional as applied to PayPal’s constitutionally protected commercial speech

The IPA will continue to analyze the CFPB’s response, but in the meantime, if any questions or concerns arise, please contact Brian Tate (btate@ipa.org), Eli Rosenberg (erosenberg@bairdholm.com), or Grant Hannah (ghannah@ipa.org).

DEPARTMENT OF THE TREASURY/INTERNAL REVENUE SERVICE

Treasury & IRS Launch Web Portals for Coronavirus Relief Payments

On April 10, the Treasury Department (Treasury) and the Internal Revenue Service (IRS) launched a new [web tool](#) allowing registration for Economic Impact Payments for those who don’t normally file a tax return. This tool, called “Non-Filers: Enter Payment Info”, is designed to provide a free and quick option for people who did not file a tax return for 2018 or 2019 and who don’t receive Social Security retirement or disability benefits or Railroad Retirement benefits. A full list of those the tool is designed for can be found in the [press release](#) announcing the launch.

The IRS also notes in the press release that Economic Impact Payments will be distributed automatically to most people starting the week of April 13. Eligible taxpayers who filed tax returns for 2019 or 2018 will receive the payments automatically. Automatic payments will also go out in the near future to those receiving Social Security retirement or disability benefits and Railroad Retirement benefits.

To help everyone check on the status of their payments, Treasury and IRS also [announced](#) the launch of a second new tool on April 15. This tool, called “[Get My Payment](#)”, provides people with the status of their payment, including the date their payment is scheduled to be deposited into their bank account or mailed to them.

An additional feature of Get My Payment allows eligible people a chance to provide their bank account information so they can receive their payment more quickly rather than waiting for a paper check. This feature will be unavailable if the Economic Impact Payment has already been scheduled for delivery.

Additional information on the IRS’ coronavirus response can be found [here](#).

FEDERAL DEPOSIT INSURANCE CORPORATION

IPA Files Comments in Response to FDIC NPR on Brokered Deposits

On April 2, the IPA filed its comment letter responding to the FDIC’s [proposed rulemaking](#) (“Proposed Rule”) on Brokered Deposits. In brief, the IPA’s [comment](#) thanks the FDIC for releasing their proposal and creating exceptions to their current brokered deposit regulations. However, the IPA’s comment urges the FDIC to expand and modify their proposal by:

- Establishing a bright line test to determine who qualifies for the Enabling exception for transaction accounts without an application process.
- If the FDIC proceeds with an application process IPA requests that the FDIC:
 - create a transparent application process with an objective list of factors;
 - ensure that all decisions are put in writing; and
 - allow banks to appeal if they are denied
- Make it clear that the 2016 FAQs will no longer be in effect once the final rule is published.

As a reminder, the Proposed Rule clarifies the definition of "Deposit Broker," what it means to be "engaged in the business of placing deposits, or facilitating the placement of deposits," and when an agent or nominee meets the "primary purpose" exception to this "Deposit Broker" definition.

Accordingly, the Proposed Rule defines what sorts of activities are considered to be "facilitating" with respect to the placement of deposits, including:

- Directly or indirectly sharing third party information with an insured depository institution (IDI);
- Having the legal authority to close an account or move the third party's funds to another IDI;
- Involvement in setting rates, fees, terms, or conditions for the deposit account; or
- Acting as an intermediary between a third party placing deposits on behalf of a depositor and an IDI other than in a purely administrative capacity.

The Proposed Rule creates three exceptions to the definition of "Deposit Broker" via the "primary purpose" exception. The primary purpose exception applies when an agent or nominee's primary purpose is not to place deposits. The Proposed Rule contains the following exceptions:

- **The Less Than 25% Test:** If less than 25% of an agent or nominee's total assets that it has under management for a particular business line are placed at IDIs, then the agent or nominee qualifies for the "primary purpose" exception. The FDIC notes that where an agent or nominee for a particular business line places 75% or more of the assets at non-banks, then the agent has demonstrated that its primary purpose for that business line is not the place deposits.
- **The Enabling Test:** Under the Proposed Rule, If an agent or nominee places 100% of its customer funds into transaction accounts at IDIs and no fees, interest, or other remuneration is paid to the depositor, then the agent or nominee would meet the primary purpose exception of "enabling payments." In such a case, the FDIC views the agent or nominee's primary purpose as to enable payments and not to place deposits.
- **The Other Business Relationships Test:** Finally, the Proposed Rule also notes that other business relationships may meet the "primary purpose" exception, subject to an application process. The FDIC would consider a number of factors as part of this process including the revenue structure for the agent or nominee, whether the marketing activities of an agent or nominee were aimed at opening a deposit account or providing some other services, and whether the opening of the deposit account was incidental to that other service.

Recommending changes to the FDIC's rules on Brokered Deposits has been priority issue for the IPA since they were first released by the FDIC in 2015 (the most recent version was issued on [June 30, 2016](#)). A complete timeline of regulatory activity since 2015 and the IPA's involvement is below:

FDIC Brokered Deposits FAQ Timeline:

- FDIC releases initial FAQ on [January 5, 2015](#).
- Revised FAQs released on [November 13, 2015](#).
- Second Revision released on [June 30, 2016](#).
- The IPA (NBPCA) unsolicited [comment letter](#) and white paper on Dec. 23, 2015.

- U.S. Rep. Tipton (R-CO) [introduces](#) Protect Prepaid Accounts Act (2016)
- IPA meeting with FDIC Chair Jelena McWilliams (July 24, 2018).
- IPA Op-ed: Taking a [Second Look](#) at the FDIC’s Brokered Deposit Definition (Sept. 7, 2018).
- FDIC releases [ANPR](#) on Brokered Deposits in December 2018
- IPA [comment](#) responding to the ANPR on Brokered Deposits on April 18, 2019.
- IPA meeting with FDIC General Counsel Nick Posiadly on July 24, 2019.
- IPA Op-ed: For the Sake of [Payments Innovation](#), Deposit Insurance Must Enter the 21st Century (Nov. 11, 2019).

Thank you to all who provided feedback throughout the process of drafting these comments.

IPA Finalizes Comment Letter in Response to FDIC RFI on Signage and Advertising

The IPA has finalized and received approval to file its [comment letter](#) responding to the FDIC’s RFI on “[Sign and Advertising Requirements](#) and *Potential Technological Solutions*.” In short, the FDIC is seeking public feedback regarding potential modernization of its sign and advertising rules to reflect that deposit-taking via physical branch, digital, and mobile banking channels continues to evolve since the FDIC last updated its rules in 2006.

The IPA’s very brief comment details our recommendation, consistent with current FDIC regulations, that where FDIC insurance is being offered for a product or service, consumers should receive explicit and clear statements regarding the deposit insurance coverage. In addition, while the IPA recommends continued compliance with the current marketing/advertising rules, the draft expresses the association’s willingness to work with the FDIC on any potential changes to its regulations to keep up with changes in the marketplace.

The IPA expects to submit the comment letter to the FDIC this week.

III. CONGRESSIONAL NEWS

None.

IV. STATE NEWS

None.

V. FEDERAL BILLS, AND LAWS

NEW FEDERAL LAWS

None.

PENDING FEDERAL BILLS

H.R. 189—Financial Institution Customer Protection Act of 2019

Summary: This bill specifies that a federal banking agency cannot request or order a financial institution to close a customer account unless the agency has a valid reason for doing so, and that reason cannot be only reputational risk.

Introduced: Jan. 3, 2019

Status: The bill was referred to the House Committee on Financial Services on Jan. 3, 2019.

Sponsor: Rep. Blaine Luetkemeyer (R-MO); 0 co-sponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/189/all-actions?q=%7B%22search%22%3A%5B%22hr+189%22%5D%7D&s=2&r=1>

H.R. 758—Cooperate with Law Enforcement Agencies and Watch Act of 2019

Summary: The bill would protect institutions from regulatory action for keeping accounts open at the request of law enforcement.

Introduced: Jan. 24, 2019

Status: The bill was received in the Senate, read twice, and referred to the Committee on Banking, Housing, and Urban Affairs on March 12, 2019.

Sponsor: Rep. J. French Hill (R-AR); 2 co-sponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/758/cosponsors?q=%7B%22search%22%3A%5B%22hr+758%22%5D%7D&r=1&s=1>

H.R. 907—To Clarify Exclusions from the Definition of a Deposit Broker

Summary: The bill would amend the Federal Deposit Insurance Act (“FDIA”) to clarify the exemptions from the definition of a “deposit broker.” Specifically, the bill would amend FDIA Section 29(g)(2)(I) to provide that a deposit broker does not include an agent or nominee (i) whose primary business purpose is not the placement of deposits with an insured financial institution; or (ii) who is an exclusive agent of an insurance company or insured depository institution affiliated with an insurance company, provided that the agent or nominee is, among other things, contractually prohibited from placing funds with any other unaffiliated depository institution.

Introduced: Jan. 30, 2019

Status: The bill was referred to the House Committee on Financial Services on Jan. 30, 2019.

Sponsor: Rep. Darin LaHood (R-IL); 2 co-sponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/907/text?r=55&s=1>

H.R. 1423—Forced Arbitration Injustice Repeal (FAIR) Act

Summary: The bill would prohibit forced arbitration agreements and any agreements that would preclude class action lawsuits.

Introduced: Feb. 28, 2019

Status: Received in the Senate and Read twice and referred to the Committee on the Judiciary on September 24, 2019.

Sponsor: Rep. Johnson, Henry C. “Hank,” Jr. (D-GA); 222 cosponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/1423>

H.R. 2514—COUNTER ACT OF 2019

Summary: This bill would make changes to the Bank Secrecy Act and anti-money laundering laws. It would require the financial regulators and Financial Crimes Enforcement Network to each appoint a civil liberties and privacy officer who would need to consult on any new regulations. It would create a public-private information sharing program between FinCEN and the financial services industry, and it would require AML training for examiners.

Introduced: May 3, 2019

Status: The bill passed the House of Representatives on October 28, 2019 and was received in the Senate and referred to the Senate Banking Committee on October 29, 2019.

Sponsor: Rep. Emanuel Cleaver (D-MO); 2 co-sponsors, 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/2514?q=%7B%22search%22%3A%5B%22hr2514%22%5D%7D&r=1&s=2>

H.R. 2630—CASH ALWAYS SHOULD BE HONORED (CASH) ACT

Summary: This bill would make it unlawful for any physical retail establishment to refuse to accept cash as payment.

Introduced: May 9, 2019

Status: The bill was referred to the House Committee on Energy and Commerce on May 9, 2019.

Sponsor: Rep. David Cicilline (D-RI); 10 co-sponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/2630>

H.R. 4501— CONSUMER TRANSACTION ACCOUNT PROTECTION ACT OF 2019

Summary: This bill would specify that consumer transaction account deposits of an insured depository institution shall not be considered to be funds obtained through a deposit broker.

Introduced: September 26, 2019

Status: The bill was referred to the House Committee on Financial Services on September 26, 2019.

Sponsor: Rep. Roger Williams (R-TX); 1 co-sponsor. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/4501?r=11&s=1>

H.R. 4767—FINANCIAL SERVICES INNOVATION ACT OF 2019

Summary: The bill requires federal regulators to create Financial Services Innovation Offices (FSIOs) within their agencies to foster innovation in financial services. Companies would also be able to apply for an “enforceable compliance agreement” with the FSIOs that, if accepted, will allow them to provide an innovative product or service under an alternative compliance plan.

Introduced: Oct. 21, 2019

Status: The bill was referred to the House Financial Services Committee and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. On Nov. 11, 2019 it was referred to the Subcommittee on Commodity Exchanges, Energy, and Credit of the Committee on Agriculture.

Sponsor: Rep. Patrick McHenry (R-NC); 1 co-sponsor; 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/4767?q=%7B%22search%22%3A%5B%224767%22%5D%7D&s=1&r=1>

H.R. 6116— CONSUMER FINANCIAL PROTECTION COMMISSION ACT

Summary: The bill would convert the leadership structure of the CFPB from a sole director to a commission. The commission would be made up of 5 members who are appointed by the president and approved by the Senate to serve 5-year terms. No more than 3 members of the commission would be allowed to be from the same political party. The name of the Bureau would also be changed to the Consumer Financial Protection Commission.

Introduced: March 5, 2020

Status: The bill was referred to the House Financial Services Committee.

Sponsor: Rep. Blaine Luetkemeyer (R-MO); 25 co-sponsors; 5% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/house-bill/6116/cosponsors?r=4&s=1&searchResultViewType=expanded&KWICView=false>

S. 142—The American Data Dissemination Act

Summary: The bill would impose privacy requirements on providers of internet services similar to the requirements imposed on federal agencies under the Privacy Act of 1974.

Introduced: Jan. 16, 2019

Status: The bill was referred to the Senate Commerce, Science, and Transportation Committee on Jan. 16, 2019.

Sponsor: Sen. Marco Rubio (R-FL), 0 co-sponsors, 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/senate-bill/142/text?q=%7B%22search%22%3A%5B%22S.142%22%5D%7D&r=1&s=3>

S. 149—Stop Senior Scams Act

Summary: The bill would establish an advisory council made up of federal regulators and industry representatives from, among others, gift card and prepaid card companies, to collect and review information in the development of model materials to provide to retailers, financial services companies, and wire-transfer companies to be used to educate employees on how to identify and prevent scams affecting seniors.

Introduced: Jan. 16, 2019

Status: The Senate Commerce, Science, and Transportation Committee ordered the bill to be reported with an amendment in the nature of a substitute favorably on July 10, 2019. It was reported out of the Commerce Committee on December 19, 2019.

Sponsor: Sen. Robert Casey (D-PA); 2 co-sponsors, 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/senate-bill/149/text?q=%7B%22search%22%3A%5B%22S.149%22%5D%7D&r=1&s=2>

S. 189—The Social Media Privacy Protection and Consumer Rights Act of 2019

Summary: This bill requires online platform operators to inform a user, prior to a user creating an account or otherwise using the platform, that the user’s personal data produced during online behavior will be collected and used by the operator and third parties.

Introduced: Jan. 17, 2019

Status: Read twice and referred to the Committee on Commerce, Science, and Transportation on Jan. 17, 2019

Sponsor: Sen. Amy Klobuchar (D-MN); 3 co-sponsors, 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/senate-bill/189/text?q=%7B%22search%22%3A%5B%22S.189%22%5D%7D&r=1&s=1>

S. 453—A Bill to Amend the Consumer Financial Protection Act of 2010 to Subject the Bureau of Consumer Financial Protection to the Regular Appropriations Process

Summary: The bill would amend the Consumer Financial Protection Act of 2010 to subject the Consumer Financial Protection Bureau to the regular appropriations process.

Introduced: Feb. 12, 2019

Status: Read twice and referred to the Committee on Banking, Housing, and Urban Affairs on Feb. 12, 2019.

Sponsor: Sen. David Perdue (R-GA); 18 cosponsors. 2% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/senate-bill/453>

S. 3108— CONSUMER TRANSACTION ACCOUNT PROTECTION ACT OF 2019

Summary: This bill would specify that consumer transaction account deposits of an insured depository institution shall not be considered to be funds obtained through a deposit broker.

Introduced: December 19, 2020

Status: The bill was referred to the Committee on Banking, Housing, and Urban Affairs on December 19, 2019.

Sponsor: Sen. Doug Jones (D-AL); 2 co-sponsors. 4% chance of enactment (according to [govtrack](#)).

Details: <https://www.congress.gov/bill/116th-congress/senate-bill/3108?q=%7B%22search%22%3A%5B%22brokered+deposits%22%5D%7D&s=4&r=2>

The *Government Update* is issued by the Innovative Payments Association twenty times a year as a service to members.

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