Government Relations Working Group
Government Update

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Working Group Chair:
Brian Tate, President and CEO, IPA
Working Group Co-Chair:
Grant Hannah, Director of Government Relations, IPA

I. ASSOCIATION UPDATE

IPA & Ogilvy Government Relations Post Election Analysis

As you are aware, the results of the 2020 election will not only determine our country's next President, but also the composition of the 117th Congress, where 35 U.S. Senate seats and all 435 U.S. House of Representatives seats were up for re-election.

This year has been filled with surprises and challenges, and the election is shaping up to be no exception. Votes in many key states are still being counted due to record numbers of mail-in ballots and early votes. As a result, the winners of the races for the White House and Senate Majority have not been determined.

At this time, Vice President Biden leads President Trump (238-213, according to CNN) in the race to 270 electoral votes. Pennsylvania (20 electoral college votes), Michigan (16), Georgia (16), North Carolina (15), Arizona (11), Wisconsin (10), Nevada (6), Maine (4), and Alaska (3) have not yet been called. Varying deadlines to receive ballots and millions of still-uncounted votes in these states, in addition to impending legal challenges, could extend the timeline for final results for days, if not weeks.

In the race for the Senate Majority, Democrats have a net gain of one at this point (Colorado and Arizona pickup, Alabama loss), with Sen. Peters' race in Michigan still not called. On the Republican side, Sen. Collins' and Sen. Tillis' elections have not been called. The Georgia special election for Sen. Loeffler is headed to a runoff, and Sen. Perdue's lead is right at 50% and has not been called either. If that were to slip below 50%, there could be a second runoff. Control of the Senate may ultimately be determined by the January 5th Georgia runoff. Democrats will need two of these seats plus a Biden win, or three seats without Biden, to take control of the Senate.

The one area where there is clarity is the U.S. House of Representatives. Democrats retained their majority in the House, but Republicans have exceeded expectations with a current net gain of at least four seats.

To help make sense of this all, our partners at Ogilvy Government Relations have prepared a 2020 post-election analysis, which provides an excellent overview of the current state of play and the potential impacts of the 2020 election. In addition, to explain the impacts of the election in more detail and provide an update on where things stand in the presidential and Senate races, the IPA will host a members-only Post Election Analysis Call on Thursday, November 5th at 3 PM ET. On the call, political consultants from Ogilvy GR will provide an analysis of the election including a discussion of (i) the results of the election and insight into who might occupy key congressional leadership positions, (ii) how the election results may impact the priorities of the 117th Congress, and (iii) potential executive-level appointments. To join the November 5th Post Election Analysis Call, please register here.

II. AGENCY AND REGULATORY NEWS

FEDERAL RESERVE

Federal Reserve Releases Detailed Data on Noncash Payments

On October 29, the Federal Reserve released detailed data about noncash payments in the United States from 2012 to 2018. This release supplements top-line data from the 2019 Federal Reserve Payments Study (FRPS), previously reported in December 2019.

The FRPS Detailed Data Release includes new information about core noncash payments and some evolving areas of payments:

- The estimated number and value of checks for 2018 are revised to 14.0 billion and $26.8 trillion, respectively. As a result, the estimated decline in the number of checks from 2015 to 2018 is revised to 8.2 percent per year, steeper than the previously reported 7.2 percent per year decline. The estimated decline in the value of checks is revised to 2.8 percent per year, less steep than the previously reported 4.0 percent per year decline.
- Use of alternative payment methods and services continues to grow. For example, according to estimates from processors, the number of payments via person-to-person and money transfer services more than doubled from 2015 to 2018.
- Wire transfers originated by consumers grew at double-digit rates by both number and value from 2012 through 2018.

Details on the following highlights, previously reported in December, also are provided:

- Prepaid debit card payments accounted for 10.5 percent of all card payments in 2018 by number, a decrease from 11.1 percent in 2015. The number of prepaid debit card payments increased to 13.8 billion with a value of $0.35 trillion in 2018, an increase of 2.6 billion and $0.06 trillion from 2015.
- The number of ACH credit and debit transfers grew by 6.0 percent per year between 2015 and 2018, exceeding the 4.9 percent per-year growth rate recorded for 2012 to 2015.
- Debit and credit card payments grew at an accelerated rate of 8.9 percent per year between 2015 and 2018, up from the 6.8 percent yearly rate of increase from 2012 to 2015.
- For general-purpose cards overall, the value of remote payments in 2018 nearly equaled that of in-person payments.

The detailed data include a spreadsheet with 11 tabs for accounts, cards, and payment instrument use as well as a release note describing the data sources and allocations. The December report of the 2019 Federal Reserve Payments Study, glossaries, and questionnaires also are posted.

The detailed data and the December report can accessed here.

MULTI-AGENCY

Financial Regulatory Agencies Propose Regulation on the Role of Supervisory Guidance

On October 29, five federal financial regulatory agencies today released a Notice of proposed Rulemaking (NPR) inviting comment on a proposed rule that would codify the Interagency Statement Clarifying the Role of Supervisory Guidance issued by the agencies on September 11, 2018. The Statement clarified that, unlike a law or regulation, supervisory guidance does not have the force and effect of law and, as such, does not create binding legal obligations for the public.

According to the NPR, the proposed rule is intended to confirm that the agencies will continue to follow and respect the limits of administrative law in carrying out their supervisory responsibilities. The proposal would also clarify that the 2018 Statement, as amended, is binding on the agencies.

The five agencies that are party to the NPR include:

- The Office of the Comptroller of the Currency, Treasury;
- The Board of Governors of the Federal Reserve System;
- The Federal Deposit Insurance Corporation;
- The National Credit Union Administration; and
- The Bureau of Consumer Financial Protection

Comments will be accepted for 60 days following publication in the *Federal Register*. The full NPR can be accessed here.

III. CONGRESSIONAL NEWS

Reps. Tlaib & Ocasio-Cortez Introduce Public Banking Legislation

On October 30, Congresswomen Rashida Tlaib (D-MI) and Alexandria Ocasio-Cortez (D-NY) introduced the Public Banking Act (H.R. 8721), which allows for the creation of state and locally administered public banks by establishing the Public Bank Grant program administered by the Secretary of the Treasury and the Federal Reserve Board which would provide grants for the formation, chartering and capitalization of public banks. It also codifies that public banks may be members of the Federal Reserve. The legislation also creates a pathway for state-chartered banks to gain federal recognition and provides a framework for public banks to interact with Fed Accounts, postal banking, and Digital Dollar platforms.

It also:

- Allows the Secretary of the Treasury and the Federal Reserve Board to provide public banks grants for: bank formation, capitalization, developing financial market infrastructure, supporter operations, covering unexpected losses, and more without the requirement to provide matching funds.
- Allows the Federal Reserve to charter and grant membership to public banks, and in conjunction with the appropriate federal agencies, establish a separate regulatory scheme with respect to these.
- Establishes public banking incubator program to provide technical assistance to public member banks to develop technologies, practices, and data that promote public welfare.
- Establishes new liquidity and credit facilities at the Federal Reserve to provide direct federal support to state and local public banks and their communities;
- Prohibits investment in fossil fuel projects.

The legislation currently has nine co-sponsors, all of whom are Democrats, and has been referred to the Committee on Financial Services, and in addition to the Committee on Oversight and Reform. Additional information can be found here.

It is unlikely that this legislation will be considered in the 116th Congress. However, this proposal and others like it (postal banking, FedAccounts, pass-through wallets, etc.) will likely be priorities for Democrats in the 117th Congress.

IV. MISC.

None.

V. STATE NEWS

It's a Jersey Thing: Earned Wage Access Bill Gets Amended

By: Steve Middlebrook, Of Counsel, Womble Bond Dickinson

California, New York and New Jersey all have earned wage access (EWA) legislation pending, although nothing much has happened with these bills for months. Last week, however, a New Jersey Assembly committee amended one of these bills, AB 3450, and sent it to the floor for further consideration. Some of the changes made by the committee are helpful but some of them are not.

We've written about earned wage access products before as well as legislative initiatives to regulate them. New Jersey's Assembly Bill 3450, introduced in late February 2020, would regulate EWA products in several ways. The bill requires EWA providers to have contracts with the employers, verify the employee's earned income before making an advance and to secure the employee's consent before obtaining information about the employee from the employer. The amended version also requires providers to register with state regulators and to base the amount of an advance on the employee's net wages rather than gross wages. These modifications seem appropriate and beneficial.

This original bill essentially killed direct-to-consumer business models because it prohibited the provider from recouping the advance directly from the consumer's bank account. The amended bill strikes this provision and allows for direct-to-consumer products as long as the provider does not charge the consumer a "mandatory fee." The ban on "mandatory fees" presumably allows providers to collect "voluntary fees." One provider in the marketplace operates on a business model where it does not assess fees but does collect "tips" from consumers who use the service. This amendment would allow that provider's tip business model but would prohibit all other direct-to-consumer products. It seems inappropriate and unfair for legislation to pick winners and losers in the competitive and evolving marketplace for EWA products. This is especially true when the provider who relies on tips has been sued over whether the voluntary payments really are voluntary. More on that litigation below.

Another problem with the ban on mandatory fees for direct-to-consumer models is that given the way the provision is written, it arguably applies to all EWA providers and not just direct-to-consumer services. The actual provision states that a "provider that contracts directly with a consumer shall not charge a mandatory fee to the consumer." The issue with this wording is that employer-integrated providers typically interact with employees through mobile apps or websites that require the user to agree to Terms of Service that are technically a contract. This means the prohibition could be interpreted to apply not just to direct-to-consumer business models but to all to EWA providers.

Most employer-integrated providers allow an employee to receive an advance without charge via electronic fund transfer. Those transfers take two to three days to arrive, however, so providers commonly also offer a real-time payment option at a nominal fee which makes the advanced funds available to the worker in a few minutes. Real-time payments are more expensive than old-fashioned ACH and the fee is necessary if providers are going to offer this option. If providers cannot offer real-time payments, EWA products become less useful to employees. AB 3450 should be further amended to clarify that the prohibition on mandatory fees does not apply to employer-integrated services. This bill appears to have some momentum and we expect additional legislative action in the near future. Stay tuned for more developments.

We mentioned above the class action litigation filed against Earnin back in 2019. Those cases were recently settled. While the complaints had alleged a number of causes of action, including violations of federal and state lending laws as well as unfair and deceptive acts and practices, the settlement focuses on consumers who were charged an overdraft or insufficient funds fee by their bank due to an Earnin withdrawal.

The settlement provides for up to $12,500,000 in relief. That amount includes $3,000,000 to cover compensation to class members, attorney's fees and class administration costs. Earnin is also required to forgive certain unpaid advances up to an aggregate amount of $9,500,000. In addition, Earnin agreed to provide consumers with disclosures regarding the risk of third-party fees, to refund subsequent overdraft and NSF fees for a year, to not consider individual tipping behavior when determining a consumer's advance limit, and to otherwise comply with all applicable state and federal law. All providers in the EWA space should review the settlement in detail to glean some valuable lessons learned.

VI. 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. 3% 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. 3% 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. 3% 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. 3% 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, 3% 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. 3% 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. 3% 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; 3% 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; 3% 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

H.R. 6241— Touchless Transactions Act of 2020

Summary: The bill would eliminate signatures for swipe, dip, or tap point-of-sale transactions.

Introduced: March 12, 2020

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

Sponsor: Rep. French Hill (R-AR); 10 co-sponsors; 3% chance of enactment (according to govtrack).

Details: https://www.congress.gov/bill/116th-congress/house-bill/6241?q=%7B%22search%22%3A%5B%22hr+6241%22%5D%7D&s=2&r=1

H.R. 8721— Public Banking Act of 2020

Summary: The bill would which allows for the creation of state and locally administered public banks by establishing the Public Bank Grant program administered by the Secretary of the Treasury and the Federal Reserve Board which would provide grants for the formation, chartering and capitalization of public banks. It also codifies that public banks may be members of the Federal Reserve. The legislation also creates a pathway for state-chartered banks to gain federal recognition and provides a framework for public banks to interact with Fed Accounts, postal banking, and Digital Dollar platforms.

Introduced: October 30, 2020

Status: Referred to the Committee on Financial Services, and in addition to the Committee on Oversight and Reform, 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.

Sponsor: Reps. Rashida Tlaib (D-MI) and Alexandria Ocasio-Cortez (D-NY); 9 co-sponsors; % chance of enactment not yet available (according to govtrack).

Details: https://www.congress.gov/bill/116th-congress/house-bill/8721?s=1&r=1

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, 3% 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: Passed the Senate on June 16, 2020 by unanimous consent and was sent to the House of Representatives for further consideration.

Sponsor: Sen. Robert Casey (D-PA); 2 co-sponsors, 83% 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, 3% 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. 3% 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. 3% 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

S. 3962— Asset Growth Restriction Act of 2020

Summary: The bill would strike the current legal framework for brokered deposits and replace it with an authorization for the FDIC to limit the asset growth of financially troubled banks by regulation, rule, or order.

Introduced: June 15, 2020

Status: The bill was referred to the Committee on Banking, Housing, and Urban Affairs on June 15, 2020.

Sponsor: Sen. Jerry Moran (R-KS); 0 co-sponsors. 1% chance of enactment (according to govtrack).

Details: https://www.congress.gov/bill/116th-congress/senate-bill/3962?s=7&r=9

S. 4159 — E-SIGN Modernization Act of 2020

Summary: The bill would remove the requirement that consumers " reasonably demonstrate" that they can access the disclosures that are the subject of the consent, through a website or e-mail, for example, after they've specifically asked to go paperless.

Introduced: July 2, 2020

Status: The bill was marked-up and approved by the Commerce Committee on September 16, 2020.

Sponsor: Sen. John Thune (R-SD); 3 co-sponsors. 15% chance of enactment (according to govtrack).

Details: https://www.congress.gov/bill/116th-congress/senate-bill/3962?s=7&r=9

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

Editors: Brian Tate, President and CEO, IPA
Ben Jackson, COO, IPA
Grant Hannah, Director of Government Relations, IPA

Please address comments and suggestions to: gr@ipa.org.