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TOP STORY

CFPB's Online Privacy Disclosure Option Promises Saving but May Fall Short for Prepaid Providers

By Loraine DeBonis, Editor-in-Chief

The CFPB wants to reward banks and non-banks under its jurisdiction with online privacy disclosures instead of paper, if they agree not to disclose customer information to unaffiliated third parties. GPR and payroll providers, in particular, may be eager to take advantage of what the CFPB estimates will be \$17 million in annual saving across the financial services industry. The proposed [rule](#), however, may not be a real option for prepaid providers.

On the face of it, the rule seems positive—taking advantage of the Internet to help financial institutions save money and administrative

headaches of printing and mailing paper privacy disclosures to every customer. The CFPB says the rule is also good for consumers because it will limit data sharing and help consumers comparison shop.

While the industry welcomes a chance to move from paper to electronic delivery, there's concern about how financial institutions qualify for the online privacy disclosures allowed under the proposed rule. Companies would be required to use the model disclosure form developed by federal regulatory agencies in 2009 under the



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FEDERAL LAWS & REGULATIONS

DOE Revises Title IV Funds Disbursement Proposal

The Department of Education (DOE) recently released a revised draft of proposed changes to 34 CFR Part 668, Subpart K, which regulates management and disbursement of Title IV Higher Education Act (HEA) program funds. Although the revised draft is less extreme than earlier versions (eliminating the provision that would have opened the door for the government to offer its own financial accounts, along with debit or prepaid cards), it still would add nearly prohibitive limitations on sponsored accounts, affecting both checking accounts and prepaid cards.

Meanwhile, U.S. Representatives Alan Grayson (D-Fla.) and Alcee Hastings (D-Fla.) each wrote letters to the DOE expressing concerns about the proposal, specifically about



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LITIGATION NEWS

Walmart Customers Seek Class Action over ZIP Codes

Customers of Walmart Stores Inc. recently [filed](#) for class action certification in a lawsuit against the company for alleged violation of California's Song-Beverly Credit Card Act, which prohibits retailers from requesting and storing personal information during credit card transactions. The plaintiffs contend that since January 2012 the company has been requiring ZIP codes from customers in order to complete credit card transactions. The plaintiffs argue that this practice is in violation of the act, even if customers voluntarily provide the information or if the information is used only for marketing purposes.

It has become increasingly common for courts and state legislators to view ZIP codes as personal information. The 2011 California Supreme Court case, *Pineda v. Williams-Sonoma Stores Inc.*, ruled that requesting and recording only a cardholder's ZIP code in the

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- Spring:** CFPB's proposed prepaid regs expected
- May 25:** FinCEN CTR requirements comments due
- May 27:** CFPB exception rule to Reg E comments due
- June 2:** CFPB whistleblower comments due
- June 12:** CFPB privacy disclosure rule comments due
- July 1:** FATCA withholding in effect
- Aug. 1:** SEPA compliance deadline for direct debits and credit transfers
- Oct. 2015:** Network liability-shift deadline for EMV in the U.S.



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Pending Federal Bills

Permit Treasury Secretary to Rely on State MSB Exams

[US HR 4386](#) passed the House and moved to the Senate, where it was read a second time and referred to the Banking, Housing and Urban Affairs Committee along with its companion bill, [US S 2208](#). The bills allow the Secretary of the Treasury to rely on state examinations for certain financial institutions. Specifically, they permit the Department of Treasury's anti-money laundering enforcement agency, FinCEN, to rely on state agency examinations of nonbank money services businesses (MSBs) that are regulated by the states, such as MSBs that are licensed as money transmitters and provide international remittance transfer services or issue or sell "stored value."

Because many nonbank financial institutions already are examined by state regulators, this new legislation would permit FinCEN to rely on the results of state exams rather than requiring independent federal examinations. Ultimately, this will enhance further the importance of state exams and the relationships between licensed money transmitters and their state regulators.

Provide for Application Process for 'Rural Area' Designation

[US HR 2672](#) passed the House and moved to the Senate. The bill amends the Consumer Financial Protection Act of 2010 to provide for an application process for entities doing business in rural areas with the goal of having these areas designated as "rural" for federal consumer financial law purposes (which encompasses any financial product or service, including stored value and payment instruments). Once designated as "rural," such institutions would be afforded some regulatory relief. The bill establishes various evaluation criteria, a period for public comment on the applications and a decision time frame.

As part of a larger effort to reduce regulatory burden on

banks, this bill attempts to shield smaller financial institutions, such as credit unions and community banks located in rural areas, from onerous regulations imposed by the CFPB.



Require Financial Regulators to Determine if New Regulations are Duplicative

[US HR 4466](#) was referred to the House General Farm Commodities and Risk Management Subcommittee from the Agriculture Committee. The bill requires certain financial regulators—including the CFPB, the Fed, the OCC and the NCUA—to determine whether new regulations or orders are duplicative or inconsistent with existing federal regulations. The bill requires the agencies to attempt to resolve any conflicts and report to Congress within 60 days with their recommendations of how to accomplish this.

The bill is one of several pieces of legislation that aim to relieve the regulatory burden imposed on financial institutions. In this case, certain federal agencies would be required to determine how a proposed rule would interact with the existing regulatory framework during (and not after) the rulemaking process. As reported in the last issue of *Pay Gov*, congressional passage seems unlikely at this time.

Increase CFPB Transparency when Issuing Research Papers

[US HR 4539](#) was introduced to the House and moved to the Financial Services Committee. The bill requires the CFPB to include all studies, data and other analyses related to research papers it releases. Transparency and accountability, two goals often cited by the CFPB itself, have become the newest weapons used by House Republicans in their legislative actions targeting the CFPB. [G](#)



Financial Stability Oversight Council Releases Annual Report

The Financial Stability Oversight Council (FSOC) recently published its annual [report](#) outlining a wide range of topics, including financial regulatory developments during the past year and emerging threats to financial stability of the U.S. The FSOC included cybersecurity and technological vulnerabilities among

its top concerns and specifically mentioned the [Target](#) data breach. The report also focused on developments in financial products, new business practices and migration of certain financial activities outside of regulatory oversight. The FSOC also examined potential risks to U.S. financial stability and economic activity

from financial developments abroad.

The FSOC was established under the Dodd-Frank Act to identify and address risks and threats to the stability of the U.S. financial system. The threats discussed in this report impact all payments systems, including prepaid payments. [G](#)

FEDERAL LAWS & REGULATIONS CONT.

Rep. George Miller Issues Discussion Draft Bill Limiting College Banking Services

Rep. George Miller (D-Calif.) issued a discussion draft bill that builds on his recent letter to House Education and Workforce members calling for strict limitations on college banking services. The draft bill prohibits revenue sharing between schools and financial institutions, requires schools to disclose all marketing agreements with financial institutions and requires financial institutions to provide annual reports to the CFPB that include the terms and condi-

tions of agreements with schools relating to any financial product offered to students. The bill also requires the CFPB to commission a study of financial products that are marketed to students.

The bill defines “preferred banking arrangement” as an agreement between a financial institution and an educational institution under which the latter directly or indirectly promotes,



*George Miller
(D-Calif.)*

recommends or endorses to its students, or requires the delivery of funds to its students through deposit accounts or GPR cards of the financial institution.

The bill’s strict limitations would limit student choice and raise costs for all involved. It is important to note that the bill is still only a draft and has not yet been introduced. The draft bill

has not yet been made public.

Banks Expand Account Closures in Response to Operation Choke Point

As the Department of Justice (DOJ) continues its Operation Choke Point crackdown, banks are becoming increasingly concerned they will become exposed or penalized for providing banking services to industries the DOJ considers high risk—beyond payday lenders. Banks are erring on the



side of caution and proactively closing accounts for businesses, such as telemarketers, gun dealers and adult entertainment, rather than waiting for regulators to take action against them or their customers. Some are criticizing the DOJ, questioning the legality of subtly pressuring banks to close accounts without

formally pressing charges against the account holders or establishing that they are in violation of the law.

Opposition to Operation Choke Point is gaining public momentum, as many question the legal implications of such precautionary account closures prior to involvement by the DOJ or banking regulators.

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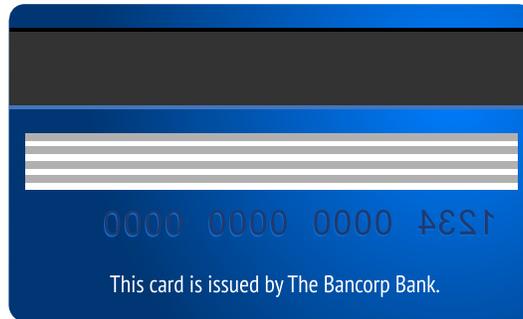
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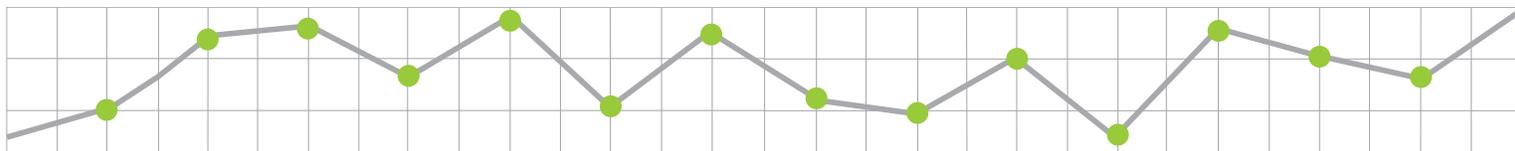
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State Trends

In this State Trends section, we report on recent state legislative and regulatory trends that are developing in a number of areas.



For links to these bills, please view our State Tracker section [online](#).

EBT/Benefit Cards

Many pending state bills and regulations propose to restrict where or how EBT or government benefit cards can be used or where they can access cash at ATMs. The purpose of these bills/regulations is to reduce fraudulent card use and to ensure that cardholders do not use EBT cards at locations deemed inappropriate, such as race tracks or adult entertainment clubs. Many bills/regulations require checking photo ID or for EBT cards to include a photo of the cardholder. The bills/regulations that have been introduced or have recently moved in this area include:

- CA A 2354
- IL S 640
- LA H 1176
- MO H 1861
- NH S 203
- RI H 7941

Government Payments Bills

Many states have pending legislation, resolutions and regulations aimed at actively requiring or encouraging acceptance and use of prepaid cards and electronic payments instead of checks for purposes of government payments, including:

- NY A 1627
- PA H 2223
- TN S 1718

Payday Lending Bills

Payday lending is a hot topic at the state level. While some bills provide for a basic prohibition against payday loans, others focus on consumer protection matters, including disclosures.

- RI S 2309

Credit Card Surcharge Bills

Many states are proposing to prohibit retailers from imposing a surcharge for using a credit card, while sometimes allowing for the offering of discounts to consumers who pay by means other than credit card. Many bills do not specifically mention prepaid, but it is assumed many bills would apply to network branded prepaid cards. One such bill is:

- NY A 9500

Criminalization Bills

States have active pending legislation prohibiting the use of card skimmers, using another person's EBT card or other misuse of prepaid or electronic payment products. One such bill is:

- NJ S 2038 

Newly Passed Legislation/Regulations

Connecticut: CT S 57—Requires Electronic ID for Direct Deposits of Wages

Maryland: MD H 723—Protects the Elderly from Financial Abuse by Money Transmitters

Minnesota: MN H 2405—Adds Checking Account Numbers to List of Protected Information

MN H 2853—Delays Effective Date for Monitoring and Fraud Prevention Requirements

Vermont: VT 1514 2014—Requires Transaction Record Storage for Seven Years

Movement in Pending Bills/Regulations

California: CA A 1614—Requires Support Services for EBT System
CA A 1710—Requires Data Security Breach Notification and Prohibits Data Retention under Certain Circumstances

continued on next page

Bills with a  are thought to be advantageous to the prepaid industry, while those with a  are viewed to be particularly disadvantageous. The  advises caution or a bill to be watched. Bills with a  are particularly of interest to retailers and merchants. Because laws affect different members of the prepaid industry differently, we urge you to evaluate the legislation's specific impact on your business and consult with legal counsel.

STATE TRACKER CONT.

For complete information on state bills, see our coverage [online](#).

● **CA A 1927** and **CA S 845**—Opens Door to Student Cards Meeting Certain Parameters

● **CA A 2209**—Exempts Third-Party Agents of the Payee from Money Transmitter Laws

CA A 2252—Restricts Direct Deposit of Child Support Payments only to “Qualified” Prepaid Accounts

CA A 2742—Adds Issuers of Stored Value to Jurisdiction of Department of Business Oversight

CA S 1351—Extends Effective Date for Legislation Requiring EMV for all New or Reissued Credit and Debit Cards

Delaware: **DE S 215**— Prohibits Commission Payments to Third-Party Auditors

Florida: ● **FL S 1012**—Amends Monetary Instrument Definition to Encompass Prepaid/Stored Value

Hawaii: ● **HI H 1814**—Prohibits Payroll Cards except Under a Slew of Conditions; Dept. Suspension Order Stands

Illinois: ● **IL H 3681**—Exempts Certain Payment Services and Payment Processors from Transmitting Money Definition

● **IL H 5622**—Permits Payroll Cards, but Some Conditions Are Extreme

Kansas: **KS H 2525**—Amends Money Transmitter Act, but Unfavorable Bank Agent Language Remains

Missouri: ● **MO H 1075**—Changes Unclaimed Property Law

MO H 1270—Imposes Specific Disclosures and Fee Limits on Certain Credit Card Processors

New Jersey: **NJ A 3193**—Requires Disclosure of Fees, Charges and Penalties for Deposit Accounts

● **NJ A 3210**—Requires All Prepaid Card Fees to be Disclosed on Packaging

New York: **NY S 606**—Requires Fraud Warnings for Money Transmitters

NY S 2932—Extends Money Transmitter Exemption to Out-of-State Banks

NY A 7284 and **NY S 1420**—Merchants & Other Card Acceptors May Not Require Cardholder Personal Info

Rhode Island: **RI H 8104**—Changes Statutory References in Gift Card Law

State Bills Graveyard

The following bills recently died and are no longer up for consideration.

Connecticut: **CT H 5473**—Required Cash Back of Gift Card Balances below \$5

Florida: **FL H 411** and **FL S 1000**—Allowed Labor Pools to Use Payroll Cards

FL H 1409 and **FL S 1530**—Created Gambling Rewards Card

View bills [online](#).



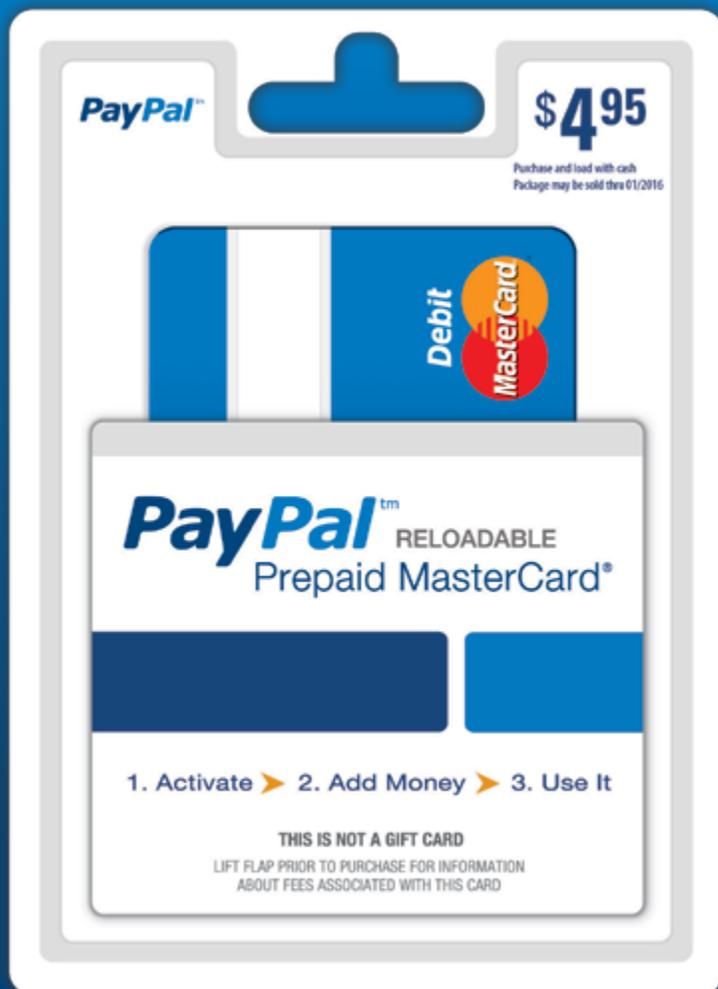
Bills with a ● are thought to be advantageous to the prepaid industry, while those with a ● are viewed to be particularly disadvantageous. The ● advises caution or a bill to be watched. Bills with a 🛒 are particularly of interest to retailers and merchants. Because laws affect different members of the prepaid industry differently, we urge you to evaluate the legislation's specific impact on your business and consult with legal counsel.



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Other TOPICS OF INTEREST

NYDFS Announces Plan for Bank Cybersecurity Audits

The New York Department of Financial Services (NYDFS) recently announced plans to audit banks' cybersecurity systems in response to a [report](#) it published called, "Cyber Security in the Banking Sector." The report outlined an increase in cyberattacks in recent years, primarily from hostile nation states, hackers and



criminals. To address the threat, the NYDFS outlined a new targeted assessment of banks' cybersecurity preparedness as part of the department's regular examination process, including additional questions in the areas of IT management and governance, incident response, event management, access controls, network security, vendor

management and disaster recovery.

New York is known for being at the forefront of consumer protections, including matters of cybersecurity. As risk of cyberattacks grows, and as incidents of breaches increase, heightened oversight such as the NYDFS's plan can be expected. [G](#)

International NEWS

Canada's Prepaid Product Regulations Take Effect

Canada's Prepaid Payment Product Regulations went into effect on May 1. The [regulations](#) cover prepaid cards (physical and electronic) issued by federally regulated financial institutions (domestic or foreign). The law requires financial institutions to make certain standard disclosures, such as all fees in an information box on the outside of the product's package, a summary of terms and conditions of the product, and a

phone number for access to the complete terms and conditions. The regulation includes certain prohibitions, such as fee increases, expiration dates, maintenance fees in the first year after activation, as well as imposing overdraft fees or interest without consent of the cardholder. Finally, the law provides certain excep-



tions to these prohibitions for promotional products, which it defines as a prepaid product distributed as part of a promotional, loyalty or award program. The new law imposes federal guidelines over prepaid products, similar to the CARD Act in the U.S. [G](#)

RBI Pulls Back on Biometric POS Mandate, Launches Prepaid Cashout Pilot

By Loraine DeBonis, Editor-in-Chief

In what may be a bid to resume the rapid expansion of payment card acceptance terminals in India, the central bank has pulled back on a mandate requiring new POS and ATM terminals to include biometric authentication, the *Economic Times India* reported recently. The mandate had been in place to support financial-inclusion efforts around [Aadhaar](#) biometric citizen IDs combined with payment capabilities.

As of March 2014, POS terminals numbered 1.07 million in India, up 25

percent from 854,290 terminals in March 2013.

At the same time it suspended the biometric mandate, the RBI said it would enable prepaid providers, for the first time, to offer cashout at POS terminals with biometric capabilities. Nearly 20 prepaid issuers had been lobbying for a cashout feature, including airtel money, ItzCash, M-Pesa and Money Card, according to the report.

The cashout feature could make prepaid cards more attractive to Indian

consumers, who still rely heavily on cash for transactions. Despite increases in electronic payments and acceptance points, the RBI estimates that 90 percent of all transactions are made in cash.

See related stories:

- [State Bank of India Launches Prepaid Card for Remittances](#)
- [Bharti Airtel, Axis Bank Offer 'Super Account' to India's Unbanked Consumers](#)
- [Vodafone, ICICI Bringing M-PESA to India](#) [G](#)

Fed, State Agencies Issue Bitcoin Alerts

The Securities and Exchange Commission recently issued an [alert](#) regarding bitcoin investments, warning investors that digital currencies are riskier and more likely to be connected to fraud than other investment vehicles. The SEC cautioned that bitcoin does not have an established track record of credibility and trust, its value has been historically volatile, and its exchanges are susceptible to sudden collapse from glitches, hackers and mismanagement. The SEC also pointed out unique risks inherent to the new technology, including limited

regulatory oversight, lack of insurance, and limited means of recovery in case of fraud or theft. Finally, the alert mentioned specific examples of bitcoin risks, including a recent Ponzi scheme involving bitcoins, as well as the Mt. Gox collapse.

Meanwhile, Connecticut's Department of Banking issued a consumer [advisory](#) on the potential risks of purchasing and trading bitcoins. The department warned that digital currency is not backed by



tangible assets, not issued by a governmental authority, and subject to little or no regulation. The advisory echoed the SEC alert in highlighting the Mt. Gox collapse and bitcoins' extreme fluctuations in value.

This marks the second bitcoin alert from the SEC in less than a year and both documents highlight regulators' uncertainty regarding the disruptive new technology. 

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BITCOIN NEWS CONT.

Federal Election Commission Approves Limited Bitcoin Donations

The Federal Election Commission (FEC) recently **announced** its approval of a request for political action committees to accept donations in bitcoin, with certain restrictions. Similar to the IRS's treatment, the FEC will consider digital currency donations as securities and will not allow them to be used to purchase goods or services directly. Instead, the bitcoins will have to be sold

for real currency and the proceeds used to make purchases. There also will be a \$100 limit on bitcoin donations per contributor, per election and any donation will have to include the donor's personal information and an affirmation that the donor is not a foreign national.

The FEC announcement sidesteps a major concern surrounding digital currencies, namely the anonymous nature

of their use.

By requiring donors' personal information, attempts at fraud or abrogating campaign contribution restrictions will be minimized. The FEC historically has regulated the contribution of items of value, such as works of art or rare coins, and the commission has decided to treat bitcoins in the same manner. 

Mt. Gox Creditors Win Initial Settlement Approval

Mt. Gox's U.S. creditors recently won initial approval of a settlement proposal in a U.S. district court, paving the way for them to argue their plan to the Japanese trustee overseeing the defunct exchange's bankruptcy. Under the settlement, the creditors would form a consortium to take an ownership stake in Mt.

Gox, which would continue operations, rather than liquidate as recently directed by the Tokyo court. The consortium also would receive an upfront disbursement of 200,000 bitcoins, or around \$116,000, and other funds currently held by the exchange.

This is the first of many hurdles for Mt.

Gox creditors to achieve any alternative other than the exchange's liquidation. They now face the challenges of arguing their plan before the Japanese trustee, who will hear their arguments, but is unlikely to allow their plan to proceed. 

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Former Assistant Director of Card and Payment Markets at the CFPB



Lauren Saunders
Managing Attorney
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The key government agencies that impact your prepaid business will all be here, including: CFPB, FinCEN, FDIC, Federal Reserve Board, Department of Justice, OCC, FTC, and Department of the Treasury.



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TOP STORY CONT. FROM PAGE 1

CFPB's Online Privacy Disclosure Option Promises Saving but May Fall Short for Prepaid Providers

Gramm-Leach-Bliley Act (GLBA). These notices must describe whether and how the financial institution shares consumers' nonpublic personal information. If the institution shares this information with an unaffiliated third party, it typically must notify consumers of their right to opt out of the sharing and inform them of how to do so. Under this proposal, if a financial institution shares data with unaffiliated third parties in a way that triggers a customer's right to opt out, then that financial institution generally would not be allowed to use the online delivery method, according to the CFPB.

In addition, online delivery would not be allowed if a financial institution has changed its privacy policy in the last year. And, of particular concern to prepaid is the provision that financial institutions would be required to notify their customers, presumably by mail, that the online privacy disclosures are available and will be mailed to customers upon request. For prepaid providers—most of which don't mail out regular statements—it seems they will not be able to take advantage of the primary benefit of the proposed rule, which is avoiding the expense of mailing out annual privacy notices.

"While we applaud the efforts of the CFPB to reduce unnecessary expenses of mailing annual privacy notices when they

haven't changed, unfortunately the proposed rule wasn't drafted to address the unique needs of the prepaid market," says Brad Fauss, executive vice president and general counsel of Brightwell Payments, a payroll card provider. "Prepaid products are designed as a low-cost alternative to bank accounts and other financial services products. As a result, prepaid providers rarely mail any information directly to cardholders but instead make information, such as transaction history, available online and through other electronic means, such as emails and text messages. Hopefully, the CFPB will address the issue in the final rule."

Some experts also suggest clarification is needed around the model disclosure form, as most financial institutions have tailored the form in some way. It's unclear whether the CFPB would allow any modifications under the proposal. In fact, one of the selling points the CFPB is touting is that the rule would enable consumers to comparison shop because financial institutions would be using the same form.

Following the CFPB's proposal, Senators Sherrod Brown (D-Ohio) and Jerry Moran (R-Kan.) called on the Senate to pass their Privacy Notice Modernization Act ([US S 635](#)), which would require banks to alert customers only to changes in their

privacy policies, rather than mailing the entire policy each year as required by the GLBA. The senators believe mailing the entire policy each year is duplicative and encourages consumers to ignore the disclosure.

Meanwhile, the White House announced plans to take steps to increase privacy safeguards after its Privacy Working Group published a [report](#) analyzing the benefits and risks of "Big Data" (i.e., the technological ability to capture, aggregate and process data). The report outlined several policy recommendations, including a consumer privacy bill of rights, national data breach legislation and limiting usage of students' personal data to educational purposes only.

The interplay between consumer privacy and reducing regulatory burdens presents a new twist for banks and may better align priorities between consumers and the banking industry.

Comments on the CFPB rule are due June 12 and must be identified by Docket No. CFPB-2014-0010 or RIN 3170-AA39. Submit comments via email, following instructions on www.regulations.gov or by mail or hand delivery to: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G St. NW, Washington, DC 20552. [G](#)

FEDERAL LAWS & REGULATIONS CONT. FROM PAGE 1

DOE Revises Title IV Funds Disbursement Proposal

limiting student choice and the reduced ability for schools to contract with third parties.

Although the revised draft is a step in the right direction, it falls short of remedying those provisions that will trigger negative repercussions for the campus

card industry and consumers alike.

The most recent revision is not yet available; read the [April revision](#). Copies of the representatives' letters are not yet available. [G](#)



LITIGATION NEWS

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Walmart Customers Seek Class Action over ZIP Codes

course of a credit card transaction is a violation of the act. This is, of course, in contrast to [N.J.](#), which, under current law, will require issuers of "stored value cards" to begin collecting "at a minimum" ZIP codes for gift card sales on or about July 2016. [G](#)



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