

Lead Sponsor of Pay Gov



## TOP STORY

## Gov. Christie Signs ZIP Code Repeal Bill

By Loraine DeBonis, Editor-in-Chief

N.J. Governor Chris Christie (R) on Feb. 5 signed into law [S 2235/A-3480](#), which eliminates the requirement to collect consumer ZIP codes for gift cards purchased at the POS. The law ends an extended legal battle that began in 2010 after significant changes to N.J.'s unclaimed property rules provoked some prepaid providers to threaten to pull their products from the state.

In 2012, Gov. Christie signed into law a bill to further amend the escheat rules, namely, extending the dormancy period from two to five years. But the ZIP code provision remained and was set to go into effect July 1, 2016. Last month, the N.J. Assembly passed the bill to repeal the

ZIP code collection provision by a 73-1 margin.

“Blackhawk Network is pleased the two houses of the legislature sent the Zip Code Repeal Act to New Jersey Governor Chris Christie and that the Governor has signed the act,” says David Durant, secretary and general counsel, [Blackhawk Network](#). “This is a critical step forward for in-state consumers who wish to purchase and use gift cards, and the businesses that offer them.”

[Chuck Rouse](#), chairman, [Card Compliant](#),

*continued on page 11*



## CONFERENCE REPORT

## Will Unintended Consequences Kill Payments Innovation?

By Marilyn Bochicchio, CEO

It's ironic that as the Federal Reserve, see [page 3](#), and others explore modernizing the U.S. payments system, bank regulators continue to bear down on prepaid, arguably the most significant innovation in payments in the past 15 years. The most direct manifestation, of course, is the [CFPB's NPRM on prepaid](#) that, at least in its proposed form, is the most proscriptive consumer protection regulation ever written.

But the CFPB isn't alone in wanting to rein in the innovation and fresh way of viewing financial relationships that prepaid uniquely provides. The FDIC and other regulators and agencies are using their considerable and varied resources to put prepaid into a box—preferably, it seems, the box of a traditional checking account, which is within their comfort zone.

*continued on page 11*

Thoughts from the  
ACI Prepaid Compliance Conference

## WASHINGTON WATCH

## House Passes Bipartisan Bill Curbing CFPB Budget

By Paybefore Staff

The House of Representatives on Feb. 4 passed bipartisan legislation sponsored by Rep. Virginia Foxx (R-N.C.) that she says would require greater transparency in government and would cap the CFPB budget for FY2016 at \$550 million, \$36 million below its expected funding.

The Unfunded Mandates Information and Transparency Act, [HR 50](#), passed by a vote of 250 to 173. The bill, which is expected to have a tougher time in the Senate, would “increase transparency about the costs imposed by unfunded mandates, and would hold the federal government accountable for considering those costs before passing them

This is for show, because President Obama will say no.



Rep. Virginia Foxx (R-N.C.)

*continued on page 12*

## WASHINGTON WATCH

3 Agency &amp; Regulator News

## STATE TRACKER

6 State Trends

7 Newly Passed &amp; Movement in Legislation/Regulation

7 States Bills Graveyard

## LITIGATION NEWS

8 Retailers Continue Interchange Fee Dispute with Fed after Cert Denial

8 Financial Institutions Deemed Foreseeable Victims in Target Data Breach Lawsuit

8 Container Store Settles ZIP Code Class Action

## VIRTUAL CURRENCIES

9 Silk Road Creator Ulbricht Found Guilty

9 NYDFS Releases Revised BitLicense Proposal

## INTERNATIONAL NEWS

9 EU Set to Amend Wire Transfer Regulations

## Dates to Note

**Feb. 16:** Comments due on CSBS's 19 questions on virtual currencies

**Feb. 28:** Applications due for CFPB advisory board positions

**Mar. 16:** Comments due on CFPB's Safe Student Account Scorecard

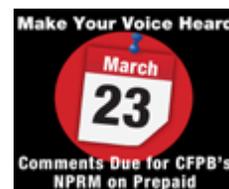
**Mar. 23:** Comments due on CFPB's prepaid accounts NPRM

Extended

**Mar. 30:** Comments due on NTIS proposed rule on Death Master File access

**July 23:** ACH debit postings change to 8:30 a.m.

**Oct. 2015:** Network liability-shift deadline for EMV in the U.S.



# New commerce solutions.

We're at the center of prepaid and payment innovation.



InComm is transforming the shopping experience, continuously driving innovation wherever commerce happens. We're making a difference by creating leading-edge solutions that help retailers build prepaid card destinations, help brands connect with new markets, plus help consumers enjoy a convenient, secure and rewarding payment experience.

**For more information, please visit [incomm.com](http://incomm.com)**



250 Williams Street | Atlanta, Georgia 30303 | 800-352-3084 | [www.incomm.com](http://www.incomm.com)

## Agency and Regulator News

### CFPB Nondisclosure Agreements Aren't a Shield

A [CFPB bulletin](#) warns banks and their nonbank service providers that private confidentiality and nondisclosure agreements do not protect them from their duty to respond to the CFPB's requests for confidential information. The bulletin indicated that failure to respond to requests for confidential information violates the law, and the CFPB would pursue violations with all available remedies.

Banks are becoming more familiar with the CFPB's aggressive approach to oversight, but entities not previously regulated on the federal level may require clarification regarding information sharing and other requirements as the bureau expands its supervision. Critics claim that the CFPB lacks authority to collect confidential information, but the bureau has yet to be challenged on the matter in court.

CFPB requests override nondisclosure agreements between banks and service providers.

### Payday Loan Rules Expected

The AP claims the CFPB is set to issue rules on the payday loan industry in the coming weeks. If the report is accurate, it would be the first time the bureau has used its authority to regulate the industry as a whole. While the bureau isn't authorized to cap interest rates, it is expected to use its UDAAP designation authority, particularly for practices that lock consumers into cycles of debt.

Expect the CFPB to make ample use of UDAAP against payday lenders.

### Federal Reserve Speeding Up Payments

The Fed's recently published paper, [Strategies for Improving the U.S. Payment System](#), makes a case for improving the end-to-end speed, safety and efficiency of the payments system.

The 58-page discussion outlines a plan to establish a task force to advise the Fed on ways to reduce payment fraud and increase the safety, security and resiliency of the payment system through collaboration with payment industry participants, such as businesses, payment card networks, processors, payment technology firms, consumers and financial institutions. The plan's specific goals include working on standards, directories and B2B payment improvements, along with enhancing services the Fed supports for same-day ACH

The Fed keeps payments system modernization on the agenda.



payments, payments risk management and settlement.

The paper assesses nine options for increasing the speed of payments system infrastructure, one of which examines "digital value transfer vehicles," which it defines as decentralized digital stores of value that can be exchanged. Without naming bitcoin explicitly, the paper identifies aspects of the virtual currency technology that merit further exploration and monitoring, but notes the technology is insufficiently mature technology in its present state. The paper outlines the advantages of the distributed network model that bitcoin employs but envisions financial institutions (rather than individual users) comprising the network. In this hypothetical scenario, the Fed might use a centralized ledger to maintain authority over the system, instead of the decentralized public block chain that bitcoin uses.

The paper follows previous publications and research programs from the Fed meant to identify key gaps in the payments system and to learn more about the industry's perspective and priorities for system improvement. For the past 18 months, the Fed and thousands of payments system participants have been in discussions on the topic.

### FDIC FDIC Backs Off Operation Choke Point

*By Paybefore Staff*

Critics of the DOJ's controversial Operation Choke Point, which encourages financial institutions to scrutinize clients that operate certain types of businesses, such as payday lenders and firearms sales, may welcome the latest news from the FDIC. At the end of last month, the agency released a [Financial Institution Letter](#), telling financial institutions to take a risk-based approach in assessing individual customer relationships rather than declining banking services to entire categories of customers.

"Financial institutions that properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customers operating in compliance with applicable laws," the FDIC said in a release. "FDIC examiners must provide notice in writing for any case in which an institution is directed to exit a customer relationship."

The FDIC also announced a new, dedicated toll-free

The FDIC is backing off but the industry remains wary.



## WASHINGTON WATCH

## Agency and Regulator News

number, 800.756.8854, and email address, [bankingservicesOO@fdic.gov](mailto:bankingservicesOO@fdic.gov), for the Office of the Ombudsman for institutions concerned that FDIC personnel are not following FDIC policies on providing banking services.

Communications with the ombudsman are confidential.

U.S. Representative Blaine Luetkemeyer (R-Mo.), who's been an outspoken opponent of [Operation Choke Point](#), praised the agency for making immediate policy changes. "Today is a turning point in the fight against Operation Choke Point," Rep. Luetkemeyer said after meeting with FDIC Chairman Martin J. Gruenberg and Vice Chairman Thomas M. Hoenig. "Not only did the chairman and the vice chairman acknowledge wrongdoing within the organization, but they have accepted many of the policies put forth in my legislation, the Financial Institution Customer Protection Act," he said.

The agency also joined Rep. Luetkemeyer in his call for the FDIC Inspector General to conduct a formal investigation of Operation Choke Point and any staff who have played or may have played a role in the program, he added.

Rep. Luetkemeyer introduced the Financial Institution Customer Protection Act in the last congressional session and reintroduced the bill last week, which would codify the FDIC's policy changes and require other federal regulators follow its lead, namely that agencies cannot request or order a financial institution to terminate a banking relationship unless the regulator has material reason and puts that request in writing.

Critics mark the FDIC's move as a turning point but say more agencies will have to take similar steps before their concerns are put to rest.



Martin J.  
Gruenberg



Thomas M.  
Hoenig

## FSOC SIFI Designation Process

In an open session of the Financial Stability and Oversight Council (FSOC), the agency [proposed](#) changes to the process of designating nonbank entities as systematically important financial institutions (SIFIs). The proposed changes include

Proposal would add transparency to the process of designating SIFIs.

notifying companies earlier in the review process, increasing the specificity regarding the aspects of the firm that are most relevant to the review and working more closely with firms' primary regulators during the process.

FSOC also proposed making the designation process more public, which could present challenges to the agency's commitment to protecting confidential information. FSOC's SIFI designation authority stems from the Dodd-Frank Act and imposes enhanced supervision from the Fed once firms are designated as a SIFI.

The proposed changes come after sharp criticism and several lawsuits by nonbank entities objecting to having been designated as a SIFI and banks alleging that non-SIFI entities are at a competitive disadvantage because regulators do not deem them too big to fail. The proposed changes attempt to increase overall transparency during the review process and increase communication between the FSOC and entities undergoing review.

## OCC Bye Bye to AML Recommendations

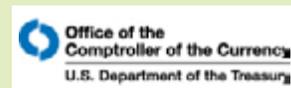
A senior OCC counsel announced at an ACAMS conference that the agency no longer will make recommendations during bank exams about improving compliance with BSA/AML regulations, according to the *National Law Review*.

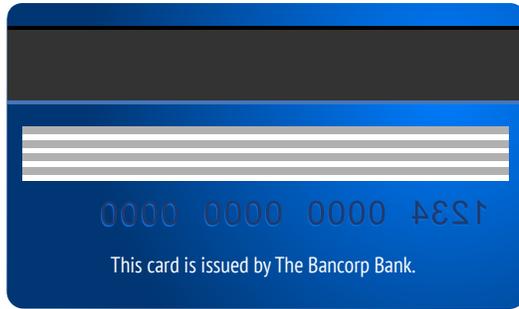
Compliance issues identified during exams now will be designated as matters requiring attention or outright violations of law for the OCC to address immediately.

This new approach alters prior practices, which permitted bank examiners to recommend possible ways to correct compliance problems. Although banks were expected to follow the recommendations generated by exams, banks would not face enforcement actions for failure to do so. The OCC said that in light of the new policy, banks should work more closely with their examiners.

The policy change comes during a period of heightened scrutiny of banks' relationships with MSBs, such as prepaid card providers, payday lenders and other nonbank consumer financial services providers. [G](#)

Those regulated by the OCC won't benefit from exam "recommendations" on AML.





S M A L L P R I N T

# BIG MEANING

Issuer statements may appear in small print, but their meaning is enormous. When one reads “This card issued by The Bancorp Bank,” you know it’s been guided by a recognized industry leader. Offering service solutions in both the U.S. and Europe, we now have more than 70 million branded prepaid cards in distribution.

We maintain memberships with Visa, MasterCard, Discover, Star, NYCE, PULSE, Plus, Maestro, Accell, AFFN and UnionPay. We are also active in NBPCA, NACHA and the Electronic Transactions Association.

**With credentials like these, it’s no wonder some of the most successful companies in the industry continue to choose us as their issuer.**



## 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 benefits 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 ensure that cardholders do not use EBT cards at locations deemed inappropriate, such as racetracks 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:

- AZ H 2051
- AZ S 1329
- CT H 5822
- CT H 5825
- CT H 6156
- FL H 499
- FL S 468
- NH H 219
- NY A 2759
- MO S 230
- OK S 264
- OR H 2392
- OR H 2505
- RI H 5249
- RI S 120
- WA H 1820
- WA H 1908

### Government Payments

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:

- AZ H 2419
- IL H 364
- NC S 8
- OR H 2251
- VA H 2054
- WA H 1815

### Criminalization

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. Such bills include:

- CT H 5813
- KS H 2105
- NY A 2302
- OR H 2504

### Credit Card Surcharge

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 induce payment by a 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. Such bills include:

- AZ S 1242
- CT H 5865
- HI S 869
- MN S 216
- MS H 546
- NJ A 4112
- NY A 3530
- OK S 369

### Payday Lending

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. The bills/regulations that have been introduced or have recently moved in this area include:

- HI H 228
- HI H 744
- HI H 752
- HI H 834
- HI S 731
- HI S 737
- IL H 414
- KY S 32
- MO H 587
- MS S 2572
- MT S 75
- NH H 644
- NY A 3178
- OK SR 3
- OR S 277
- OR S 278
- RI 5842 2015
- UT H 144
- VA H 2191
- VA S 945
- WA H 1922
- WA S 5612
- WA S 5613

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.

**MOVEMENT IN PENDING BILLS/REGULATIONS****Newly Passed Legislation/Regulations**

**New Jersey:** ● NJ A 3480 and NJ S 2235—ZIP Code Repeal Bill Signed by Governor

**Virginia:** ● VA 154161 2014—Amends Money Transmitter Law

**Movement in Pending Bills/Regulations**

**Colorado:** CO H 1154—Prohibits Debit/Credit Card Surcharges on Sales Tax  
CO S 101—Allows for EFT and Adds Conditions to Payroll Cards for Wage Payments

**Connecticut:** CT H 5652—Enabling Undocumented Immigrants to Open Bank Accounts

CT H 5775 and CT S 591—Limits Credit Card Surcharges/Debit Card Rate for Gasoline Purchases  
CT H 5972—Calls for Prohibiting Certain Debit Card Fees  
CT H 6297—Calls for Prohibiting Pawn Brokers from Dealing in Gift Certificates  
● CT H 6691—Calls for Cash Refunds of Remaining Gift Card Balances  
CT S 430—Calls for Prohibiting Payroll Cards as Condition of Employment

**Delaware:** ● DE S 11—Amends Appeal Process of Unremitted Unclaimed Property

**Florida:** FL H 325 and FL S 456—Allows Labor Pools to Use Payroll Cards

**Iowa:** IA HSB 23—Allows Direct Deposit as a Condition of Employment for all Employees  
● IA HSB 94—Provides for Payroll Debit Cards

**Indiana:** IN H 1287—Updates MT and Payday Loan Laws

**Maryland:** MD H 72 and MD S 57—Provides for Abandoned Property Database

**Missouri:** ● MO H 593—Requires ID Check for Mobile Payments

**Mississippi:** MS H 272—Amends Bad Check Law

**North Dakota:** ND H 1101—Amends MT Licensing Exemptions  
ND H 1460—Establishes Time Periods for Debit Card Holds

**New Hampshire:** NH H 356—Exempts Virtual Currency from MT Licensing Requirements  
NH S 188—Updates Banking Law, Expands Commissioner's Oversight

**New York:** NY A 1848 and NY S 2158—Requires Smart Chip Cards  
NY A 2561—Amends Unclaimed Property Notice Requirements  
NY A 2780 and NY S 2480—Requires Money Transmitters to Provide Consumer Fraud Warnings  
NY A 3109 and NY S 2590—Provides for Payroll Debit Cards  
NY A 3366—Limits Credit Card Late Fees  
NY A 3368—Prohibits Debit Card Surcharges  
NY A 4084—Amends International Remittance Disclosure Requirements  
NY A 4198—Requires Two-Day Refund of Voided Debit Card Transactions

**Oklahoma:** OK H 1293 and OK S 455—Allows Payment of Insurance Benefits via Prepaid, EFT

● OK S 243—Requires a Method other than Card Distribution for Income Tax Refunds

**Oregon:** OR H 2543—Adds Unused Gift Cards to Unclaimed Property  
OR H 2580—Prohibits Merchants from Requiring Receipts for Payment Card Refunds

**Pennsylvania:** ● PA S 150—Prohibits Gift Card/Certificate Expiration Dates and Post-Sale Fees

**Tennessee:** ● TN H 156—Requires In-Person Sale/Reload of Gift Cards

**Utah:** ● UT S 24—Enacts the Money Transmitter Act

**Virginia:** VA H 2341—Amends Unclaimed Property Law  
VA S 701 and VA S 1005—Prohibits Income Tax Refund Payments via Prepaid Card

**Washington:** WA H 1469—Prohibits State Data Systems from Holding Cardholder Data

🛒 ● WA H 1551 and WA S 5543—Allows State to Deem Unused “Lawfully Issued” Gift Certificates Abandoned after Three Years

**West Virginia:** WV H 2241 and WV S 292—Amend Money Transmitter License Expiration Date and Notice Requirements

**Wyoming:** 🛒 ● WY H 42—Removes Merchant Stored Value Cards with no Expiration Date or Fees from Unclaimed Property Laws  
● WY H 63—Amends Abandoned Property Notice Requirements

**State Bills Graveyard**

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

**Mississippi:** 🛒 MS H 94—Would Have Required Retailers to Record Debit/Credit Card Transactions  
MS S 2164—Would Have Required Banks to Display Third-Party ATM Owners' Contact Information 📍

For links to these bills, please view our State Tracker section [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.

# Litigation NEWS

## Retailers Continue Interchange Fee Dispute with Fed after Cert Denial



Retailers using a new approach to convince Fed to lower debit interchange.

With the denial of certiorari putting an end to any legal recourse, retailers have switched focus to their last remaining option for lowering interchange fees, that is, convincing the Fed it should make the fees more proportionate to the charges banks and card issuers actually incur when processing debit card payments.

The Merchant Advisory Group (MAG) published a [white paper](#), “Volume and Cost Trends in the Debit Industry,” that examined debit card processing costs, finding that the costs have fallen 42 percent to 4.4 cents per transaction, even as the Fed allowed fees to rise as high as 25 cents per transaction. MAG called on the Fed to set the fee at 14 cents. For their

part, the banks have argued that merchants have not taken all the relevant costs into account, including the increasing cost of data breaches, which, they claim, are often the result of merchants lacking security standards.

With primary litigation now over, it's unlikely the Fed will reopen the issue of its fee swipe regulation again soon. 

## Financial Institutions Deemed Foreseeable Victims in Target Data Breach Lawsuit

The U.S. District Court in Minnesota [denied](#) Target's motion to dismiss all financial institutions' claims against the company for its credit card data breach in late 2013. The card issuing banks alleged that Target was negligent for failing to have sufficient security in place to prevent the hacking, negligently misrepresenting by failing to advise the banks of the insufficient security measures, and neglect per se for violating Minnesota's Plastic Security Card Act, which prohibits business entities in the state from storing security codes, PIN numbers or magnetic stripe data for debit or credit cards for more than 48 hours after a transaction.

Target filed a motion to dismiss these claims, arguing that it had no duty to the banks because there was no special relationship between them and any possible harm was unforeseeable as a result of the hacker's activity.

The court determined that the banks sufficiently alleged that the harm was a foreseeable consequence, either from the hacker's conduct or from Target's alleged disabling of a security feature and failing to react to a warning from its security system. However, the court granted Target's motion to dismiss the negligent misrepresentation claim, since the banks did not specifically claim reliance on the

representation.

As

large-scale breaches become more prevalent, banks likely will continue to push back against the accepted practice of banks covering both the costs of fraudulent charges and consumer remediation efforts. This ruling has important implications for financial institutions' claims for recovery of losses from data breaches, as it allows them to argue that they are foreseeable victims under a negligence theory. 



Important implications for financial institutions' claims for recovery of losses from data breaches.

## Container Store Settles ZIP Code Class Action



Container Store bottled up in ZIP code collection case.

The Container Store Inc. became the latest retailer to settle a proposed class action lawsuit over the collection of consumers' ZIP code information during credit card transactions. In *Monteferrante v. The Container Store Inc.*, the proposed class alleged that the company collected credit card customers' ZIP code informa-

tion, which it used to send them unsolicited marketing materials in violation of Massachusetts law. The Container Store agreed to provide \$10 vouchers to class members who submit a claim form, an estimated \$877,000 settlement. The judge must approve the settlement.

A number of lawsuits over whether ZIP

codes constitute protected personal information has swept the nation, and courts have come out on both sides of the debate. While this case reached a settlement and is, thus, less demonstrative than other cases, it sheds light on the nature of the settlement agreements that may result from such disputes. 



# Follow Paybefore on Twitter

## Virtual CURRENCIES

### Silk Road Creator Ulbricht Found Guilty

Ross Ulbricht, the creator of the online black market the Silk Road, has been **found guilty** on all seven charges against him, which range from money laundering to narcotics conspiracy. In *U.S. v. Ross William Ulbricht*, the court barred testimony that



suggested Mark Karpeles, the founder of Mt. Gox, was the mastermind behind Silk Road's illicit activity. After Ulbricht declined to testify, the defense was left with a weakened case.

The decision may undermine virtual currency's innate anonymity by setting a

precedent for holding liable those caught using them to conduct or facilitate illegal activities. At the same time, it may help establish the nascent technology by outlining how courts will determine the acceptable boundaries of the use of virtual currencies and the consequences of exceeding them. 

 Almost as surprising as the payday lending rules from the CFPB. Not.

### NYDFS Releases Revised BitLicense Proposal

NYDFS released the widely anticipated **revision** to its BitLicense proposal, which follows changes previously publicized by the NYDFS director. These include reduced recordkeeping requirements, a two-year provisional BitLicense with reduced requirements for new virtual

currency entities, an allowance for virtual currencies to be held toward capital requirements, and removal of a requirement for licensees to obtain addresses and transaction information from the parties involved in a transaction.

The revisions are an effort to reach the

NYDFS's oft stated goal of balancing the fostering of innovation with protecting consumers. 

 N.Y. seeks to continue payments innovation with consumer protections.



## International NEWS

### EU Set to Amend Wire Transfer Regulations

The Council of the EU is set to release its compromise **proposal** on the European Commission's proposed wire transfer regulation, which will impose new obligations on PSPs of the payee to ensure that a transfer of funds is accompanied by information on the payee, including the payee's name and account number. PSPs

acting for payees also will be required to verify the information relating to the payee where it has not been already verified for transfers of funds more than €1000 and where the payer's PSP is outside the EU. Transfers of funds for less than this amount will not



have to be verified, unless there is a suspicion of money laundering or terrorist financing.

The wire transfer regulations are designed combat money laundering and apply to firms operating in the financial sector that act as PSPs in the EU. 

 AML move by the EU.



Reach thousands of experienced executives through Paybefore.com's job posting board.  
Visit <http://www.paybefore.com/jobs>.



# FIS IS YOUR COMPETITIVE ADVANTAGE

Keeping you abreast of regulatory impacts for the prepaid industry

## Setting the standard for security and risk

FIS™ is dedicated to helping you mitigate risk relating to your prepaid program.

The experts on our product, compliance, legal, risk and fraud teams work every day to ensure that the solutions we provide are secure and keep your prepaid program in compliance. In fact, we work directly with the prepaid industry on behalf of our clients, monitoring and influencing the direction of developing regulations.

For more information, e-mail [moreinfo@fisglobal.com](mailto:moreinfo@fisglobal.com) or call 800.822.6758.



© 2014 FIS and/or its subsidiaries. All Rights Reserved.



**TOP STORY** CONT. FROM PAGE 1**Gov. Christie Signs ZIP Code Repeal Bill**

adds: "This is an excellent example of government and industry working together to solve a specific issue. We hope that the concept of not collecting consumer information for gift cards at the POS will

continue to be followed nationwide."

See related stories:

• [N.J. Prepaid Sellers Heave Sigh of Relief over Escheat, For Now](#)

• [Mass Exodus: Amex, Blackhawk, InComm Pull Prepaid Product from N.J.](#)

**CONFERENCE REPORT** CONT. FROM PAGE 1**Will Unintended Consequences Kill Payments Innovation?**

Adding to the irony is that network branded prepaid cards are bank-issued products that always have operated in a regulated environment with protections (combining federal, state and payments networks protections) on par with debit cards. Yes, general use prepaid products differ from checkless checking accounts in some ways—permitting greater distribution and loading flexibility, for example—but, when it comes down to it, they're responsibly issued bank products that are a variation on the debit card. Those who put forth crazy outlier prepaid products as examples of the mainstream do nothing more than discredit their research.

**Prepaid Will Adapt and Change**

OK, I'll stop. It's all been said before and it's largely fallen on deaf ears for reasons too complex to explore here. So, the environment in which prepaid operates is what it is and will be what it will be.

While Paybefore encourages all industry members to take advantage of the comment period to [weigh in](#) on the prepaid NPRM in a thoughtful and constructive way, we also must accept that the provisions of the NPRM that make their way into the final regulation will have a significant impact on prepaid providers, the partners with which they do business and the products they offer. It's not crying wolf to predict that as a result, some prepaid products popular with consumers will be withdrawn from the market or will cost consumers more. And, some participants in the prepaid delivery value chain will go out of business (or find it necessary to merge) due to market forces ignited by

regulation. That's just how it is.

Still, regulation isn't new to banks, and prepaid card issuers will find constructive ways to work within the new regulatory structure and enhanced regulatory scrutiny. There will be a price to pay, but they'll make it work and prepaid in its many forms will continue to grow.

**Who Will Drive Payments Innovation?**

But, this gets me back to the topic of innovation. Prior to attending the annual ACI Prepaid Compliance conference, Jan. 29-30 in Washington, D.C., I (now I realize ridiculously) thought I was the only one concerned about how the industry's experience with prepaid might chill future innovation in payments. But, speaker after speaker—mostly payments attorneys and compliance officers with deep in-the-weeds knowledge—shared this concern as they dissected regulation and the application of regulation to prepaid.

So, the question becomes: If innovation in payments is sorely needed, who will be there to provide it? Will traditional financial institutions rush in to innovate at the consumer product level? Based on the experiences of the past few years, it seems likely that many bank boards and executive management will question putting resour-

es in that direction.

But, that's not to say there won't be payments innovators. There will be, because if there's a dollar to be made, someone will fill the void. Econ 101, right? There are a whole host of entrepreneurs who see payments as a business opportunity. Unfortunately, at least in my experience, some of these entrepreneurs don't fully appreciate what it means to operate in

the regulated environment of banking, which is why third-party [oversight](#) is such a hot topic. As much as payments innovation needs to incorporate the fresh thinking of these entrepreneurs and as much as the industry needs to be inspired by their refusal to accept limitations, at some point—when there are funds to be moved—regulated financial

*At issue is clamping down so hard to protect consumers against hypothetical or manageable concerns that the ability to be innovative in a way that helps consumers is quashed, along with the economic incentive to do so.*

institutions, which know and understand the rules of the financial system, must be part of the process. Effectively disintermediating financial institutions from the process of innovation through one means or another, or a combination of means, unleashes unintended consequences whose negative effects will be felt for decades.

If, in 2015, regulators still hold the traditional checking account as the gold standard for a consumer transactional banking relationship, what does the future look like? If regulators don't recognize the benefits of a prepaid card issued by a

**CONFERENCE REPORT** CONT. FROM PAGE 1**Will Unintended Consequences Kill Payments Innovation?**

regulated entity, providing significant consumer protections, how will they view innovations that are likely to take them much farther from their comfort zone? What, then, is the future of the mobile channel, P2P payments, virtual currencies and so much more?

To be clear, it's not regulation per se that chills payments innovation. In fact, I'm pretty sure everyone involved in the evolution of prepaid agrees that regulation makes sense for many reasons—one of which is to remove the taint, however inaccurate, of not being federally regulated. At issue is clamping down so hard to protect consumers against hypothetical or manageable concerns that the ability to be innovative in a way that helps consumers is quashed, along with the economic incentive to do so. The reality is that millions of consumers have *chosen* to purchase GPR cards—although free checking options

have been available. And, according to [research](#) conducted by the Philadelphia Fed's Payment Cards Center, "Millennials with Money," 52 percent of GPR card owners are considered "banked," while 90 percent of GPR card owners actually have a bank account.

Sure, it's complicated—really complicated. And, maybe the horse is out of the barn. But, also, just maybe, there's still time for a constructive meeting of the minds between regulators and industry—for both groups to put aside the desire to win the point and to think about whom they're both serving. This isn't a political issue. We're not on opposite sides here. We both want consumers to end up as the winners. But, the conversations at the ACI conference made

me recognize there's still a long way to go and not much time to cover that ground.

Unintended consequences are a horrible part of any legislation, regulation or regulatory interpretation—and best to be avoided upfront. So, let's think now about the unintended consequence of stifling payments innovation before we find ourselves with paper-based checking accounts that are still the gold standard in 2020 and beyond.

*We're not on opposite sides here. We both want consumers to end up as the winners.*

See related stories:

- [U.S. and Europe Focus on Faster Payments, Quicker Access to Funds](#)
- [Commenting on CFPB's NPRM on Prepaid](#) 

**WASHINGTON WATCH** CONT. FROM PAGE 1**House Passes Bipartisan Bill Curbing CFPB Budget; Veto Expected**

on to local governments and small businesses," according to a Rep. Foxx press release.

The legislation also would expand the scope of the [Unfunded Mandates Reform Act of 1995](#) (UMRA) and "close loopholes [that] allow certain regulatory bodies to escape public reporting requirements and incentivize others to forego publicizing

regulatory proposals."

If the bill passes both houses, the White House has promised a veto, according to a Reuters report. Republicans have made several attempts to change the CFPB's organizational structure and increase oversight of its funding since the agency was created from the Dodd-Frank Act.

See related stories:

- [Congress in GOP Hands: 1st Time since 1995: Does It Matter to Payments?](#)
- [House Financial Services Committee to Examine Payments in New Term](#)
- [CFPB Expands Employees, Budget in FY 2014, Actions Result in \\$4 Billion in Penalties, Compensation](#) 

## Point Your Advertising in the Right Direction

[CLICK FOR 2015 MEDIA KIT](#)

THE PAYBEFORE FAMILY OF PUBLICATIONS offers customized advertising solutions to highlight your business, boost recognition and build your brand—leading to increased sales opportunities.

Advertising in Paybefore showcases your company's products and services to the largest audience of qualified

prepaid and emerging payments industry professionals. With Paybefore, you target and engage thousands of decision makers through efficient, customized sponsorship and advertising opportunities.

For more information on sponsorships or advertising, please contact Marilyn Bochicchio, CEO, at [mbochicchio@paybefore.com](mailto:mbochicchio@paybefore.com) or +1 617.671.1145.



**Marilyn Bochicchio**

CEO  
mbochicchio@paybefore.com

**Loraine DeBonis**

Editor-in-Chief  
ldebonis@paybefore.com

**Bill Grabarek**

Senior Editor  
bgrabarek@paybefore.com

**Kate Fitzgerald**

Emerging Payments Editor  
kfitzgerald@paybefore.com

**Adam Perrotta**

Assistant Editor  
aperrotta@paybefore.com

**Robin Chalmers Mason**

Production Editor  
rmason@paybefore.com

**Doris Kwok**

Marketing Assistant

**Joanne S. Butler**

Graphic Designer

**Contributing Editors**

**Judith Rinearson**

Partner, Bryan Cave LLP

**Linda Odum**

Counsel, Bryan Cave LLP

**John ReVeal**

Partner, Bryan Cave LLP

©2014 Paybefore, P.O. Box 486, Natick, MA 01760 USA. Email: info@paybefore.com. All rights reserved. Copyrighted material. All material contained in Pay Gov is the property of Paybefore. Forwarding or reproduction of any kind is strictly forbidden without the express prior written consent of Paybefore.

Pay Gov is published 20 times a year for Paybefore subscribers. Pay Gov is available only through subscription to registered users of Paybefore.com. For renewals, address changes or reprints, contact info@paybefore.com.

Paybefore™, Paybefore.com™, Pay Gov™, Pay News™, Pay Week™, Pay Op-Ed™, Pay Magazine™, Pay Connect™, Paybefore Awards® and Paybefore Awards Europe™ are the property of Paybefore. All other product and service names may be trademarks of their respective companies.

To subscribe or to advertise, contact Marilyn Bochicchio, CEO, at mbochicchio@paybefore.com or +1 617.671.1145.

Learn more about Paybefore sponsors: [www.paybeforebuyersguide.com](http://www.paybeforebuyersguide.com)



**PAYBEFORE MEDIA PROPERTIES**

