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TOP STORY

Congress in GOP Hands: 1st Time since 1995

Does It Matter to Payments?

By Marilyn Bochicchio, CEO

The 2014 mid-term elections put Republicans in control of both houses of Congress—for the first time since Newt Gingrich's 1995 "Republican Revolution." As of Jan. 6, Republicans hold a 54-46 advantage in the U.S. Senate (formerly 55-45 in favor of Democrats) and 247 to 188 in the U.S. House. The House already had a Republican majority as a result of the 2010 mid-term elections, but the GOP expanded its advantage by 13 seats, its largest majority since 1928, for the start of the 114th Congress. See page 15 for "Who's on the 114th Congress's Banking Committees?"

As a result of their majority, Republicans have two extra seats on the Senate Banking Committee and also control the chairmanship, filling it with longtime committee member, 80-year-old Richard Shelby (R-Ala.), who also served from 2003 to 2006 as Banking Committee chair and has been critical of the CFPB's structure and power. Most important to Republicans, they're in control of the committee's agenda—a significant advantage.

But, even though there are fewer Democrats on the committee, those that serve won't be a

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WASHINGTON WATCH

Mark Your Calendars: Important Industry Q1 Deadlines

Two important dates are approaching quickly regarding NPRM comment periods.

68 Days Left

The CFPB's [NPRM](#) on prepaid accounts was published in the Federal Register Dec. 23, 2014. Comments must be received within 90 days, by **March 23, 2015**, assuming a [request for an extension](#) made by the NBPCA and ETA isn't granted.



16 Days Left

The National Technical Information Service (NTIS) [published its NPRM](#) in the Federal Register Dec. 30, 2014. This proposal would create a certification program to replace the temporary certification program in place now to access the Death Master File (DMF), used by many industries to thwart fraud. See page 6 for more. Comments are due by **Jan. 29, 2015**. [G](#)



FDIC Issues Guidance on Brokered Deposits

The FDIC issued guidance in the form of [FAQs](#) on "Identifying, Accepting and Reporting Brokered Deposits" to promote consistency by insured depository institutions. The acceptance of brokered deposits (i.e., any deposit obtained, directly or indirectly, from or through a "deposit broker," defined broadly to encompass any person engaged in the business of placing or facilitating deposits of third parties with insured depository institutions), are subject to restrictions under the Federal Deposit Insurance Act.

The issue raised in the context of prepaid is whether the sale or distribution of network branded prepaid cards by third parties (such as program managers or retailers) would result in the pool of funds underlying these prepaid cards being considered "brokered deposits" instead of "core deposits." If the FDIC determines they are brokered deposits, then there are

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More on Brokered Deposits & Prepaid

Check tomorrow's issue of *Pay News* for a Viewpoint by Judith Rinearson and John ReVeal, Bryan Cave LLP.

This is a must-read for all industry participants. Don't miss it.

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Washington WATCH

Agency and Regulator News

CFPB

Credit, Debit or Prepaid on College Campuses



Credit cards are being supplanted on college campuses by prepaid and debit cards. But for how long?

In its most recent [annual report](#) on college credit card agreements, the CFPB found prepaid and debit cards are replacing credit cards on college campuses—largely as a result of the 2009 CARD Act's restrictions on marketing credit cards on campus to persons under 21. Since the act's passage, on-campus credit card offers have declined 70 percent and the number of agreements between issuers and institutions of higher learning has dropped 57 percent. The CARD Act's credit card requirements include public disclosure of terms. While these requirements are credit card-specific, the CFPB has encouraged schools and financial institutions to similarly disclose their prepaid and debit agreements.

For more details, read Paybefore's Dec. 16, 2014, [article](#): "CFPB Calls for Greater Transparency in Campus Card Agreements."

ABA Criticizes Proposal for No Action Letters

The American Bankers Association (ABA) isn't thrilled with the CFPB's no action letter proposal.



The gigantic banking trade association commented that the bureau's proposal, which allows payments innovators to submit their proposed product plans to the CFPB for a no action letter, doesn't do enough to reduce regulatory uncertainty because it applies only to a single set of circumstances for a limited time—rendering such letters, if issued, fairly meaningless. The ABA's [comment letter](#) also pointed out that innovators would have no incentive to request a no action letter, citing the likelihood of requests being turned down and the lack of confidentiality.

The CFPB proposal calls for issuing no action letters when

the bureau has no present intention to recommend enforcement or supervisory actions based on a proposed financial product. The proposed policy includes a description of how companies planning to launch a new product can request no action letters and possible ways the CFPB might respond to these requests. The proposal indicates the letters would not waive existing law or regulation nor would they constitute official CFPB interpretive guidance. The CFPB also says the letters could be revoked at any time.

Although the CFPB's proposal intends to reduce regulatory uncertainty about how it would treat innovative financial products that don't fit easily within the existing regulatory framework, the ABA's letter highlights the limited practical value of no action letters.

eRegulations Platform Launches

The CFPB launched its [eRegulations platform](#), an interactive Website to make regulations easy to read and navigate. Its features include a table of contents, organized by subpart and section; easy to access related information (such as defined terms, official interpretations and a section-by-section analysis); and a regulation timeline with recent revisions organized by the latest effective date. The tool also includes a method of comparing regulation revisions and proposed amendments, as well as a search function. The CFPB currently is testing the platform's features with Regulations E and Z. The platform is expected to be expanded to other regulations.

New Enforcement Director

The CFPB appointed Tony Alexis to replace Kent Markus as its director of enforcement. The move promotes Alexis from deputy assistant director of enforcement. He previously was assistant U.S. attorney in Washington before becoming a partner at the Mayer Brown law firm. Alexis joined the CFPB in 2012. [↻](#)

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WASHINGTON WATCH

PENDING Federal Bills/Regulations**US HR 5786—Provides Regulatory Relief for Community Banks**


[US HR 5786](#) was introduced to the House and referred to the Financial Services Committee. The bill exempts community banks (banks under \$10 billion in total assets) from certain federal banking statutes, includes a requirement for one member of the Board of Governors of the Federal Reserve System to have had community banking experience and creates a process for a county to be designated as a rural area. The bill provides an exemption for all financial institutions that have not changed their disclosure policies from annual disclosure notices as required by the Gramm Leach Bliley Act. The bill's sponsor is Rep. James Lankford (R-Okla.).

The bill follows a trend of recent legislation to reduce the regulatory burden on smaller community banks.

US 78046 2013—Corrects NACHA Final Rule

The Treasury Department's Bureau of the Fiscal Service issued a final rule [correction](#), implementing technical fixes to the

rule that approved amendments to NACHA's operating rules to improve ACH network quality. The rule reduced the number of unauthorized debit entries by half, from 1.0 percent to 0.5 percent. According to NACHA, this reduction in the ACH Network Risk Enforcement rule strengthens NACHA's ability to target and implement its operating rules regarding "outlier originators" of exceptions and returns. Concerns, however, were raised that lowering the return threshold so significantly would make it difficult for higher-risk merchants to do business and for any merchants to offer "no questions asked" returns and other consumer-friendly policies. The rule's effective date was Dec. 12, 2014.

The rule correction does not practically change the rule, which had good justifications for its changes, despite the impact on banks serving as ODFIs and difficulty for some businesses to access the ACH system. 

**NTIS Publishes NPRM for Permanent DMF Certification Program**

The National Technical Information Services published a [notice of proposed rulemaking](#) to create a permanent certification program for access to the Death Master File (DMF) that would replace the current temporary program. Many prepaid card issuers rely on the DMF to prevent fraud. Comments are due Jan. 29, 2015.

The program will require




certification for access to the "Limited Access DMF," which discloses personal information during the three years following an individual's death. Certification, which will be mandatory for continued access to the DMF, will require a legitimate fraud prevention interest or a legitimate business purpose pursuant to law, government rule, regulation or fiduciary duty.

The NTIS's temporary rule recognized

the immediate need to grant certification to avoid or minimize DMF access interruptions until the permanent rule goes into effect.

For more information, see related Paybefore story:

- [NTIS Expected to Publish Death Master File NPRM in Federal Register Tomorrow \(Dec. 23, 2014\)](#) 

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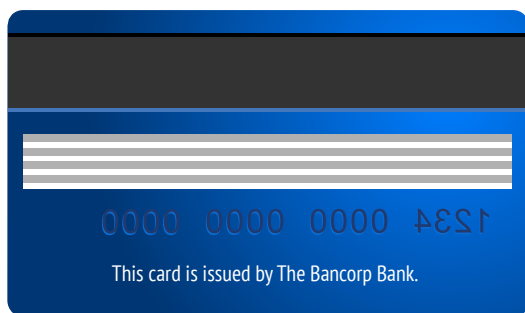
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State Trends

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](#).

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/regula-

tions 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:

- FL H 107
- LA 14188 2014
- ME 10693 2014
- MS 14286 2014
- MS 14300 2014

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:

- NJ A 2925
- NY A 1627 (vetoed) [G](#)

Newly Passed Legislation/Regulations

California: ● CA 22047 2013—Requires State Health Exchanges to Give Equal Treatment to Prepaid Cards

Puerto Rico: No. 136-2014—Adds Charge on Money Transmissions

Movement in Pending Bill/Regulations

New Jersey: ● NJ A 3480 and NJ S 2235—Eliminate Data Collection Requirements

NJ A 2924—Creates Default Distribution Method for Tax Refunds

New York: NY S 575—Requires Study of Banking Services for Low Income Communities

South Carolina: SC S 218—Prohibits Payday Loans

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

Virginia: VA H 1346 and VA S 701—Make Checks the Income Tax Refund Default [G](#)

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

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 [G](#) 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

NACS: All Eyes on Supreme Court

By Paybefore Staff

Retailers and payments executives who were hoping to get an answer from the Supreme Court this week on whether the court will hear *NACS et al v. Board of Governors of the Federal Reserve System*, relating to debit interchange fees, will be waiting a bit longer. The case was listed on the court's docket for conference on Jan. 9, but it has been relisted for a conference on Friday, Jan. 16.

The U.S. Court of Appeals for the District of Columbia last March reversed a lower court's ruling that the Fed had set too high a cap on interchange fees in 2011, affirming the Fed's existing caps in

Regulation II, which were based on the Durbin Amendment in the Dodd-Frank Act. The merchant association appealed the unanimous U.S. Court of Appeals decision, requesting the Supreme Court to hear the case.

If the Supreme Court doesn't grant [certiorari](#), the Court of Appeals decision will be enforced, the current regulations generally will stay in place and the case will be remanded to the trial court to determine the lone remaining issue in the case, i.e., the cost of transaction monitoring of the fee cap. If the Supreme Court grants certiorari, the possibility exists that

Reg. II's caps on interchange fees may be lowered.

The Court of Appeal's decision also overturned a network-routing rule requiring card issuers to provide merchants with up to four routing options for debit and prepaid cards.

See related stories:


- [Appeals Court Interchange Ruling a Big Win for Fed](#)
- [Interchange Case's Next Stop: Supreme Court?](#) 

Google Latest to Sue Visa, MasterCard after Interchange Fee Settlement Opt-Out

After opting out of the massive interchange fee settlement with Visa and MasterCard, Google Inc. has independently sued the networks on substantially the same anticompetitive grounds of the original interchange fee lawsuit. The settlement's focus was limited to interchange fees and other restrictions,

whereas the original case focused on collusion between the networks to artificially inflate interchange fees. Google's lawsuit retains this claim, alleging a violation of the Sherman Act.

Google joins Walmart and other merchants that opted out of the settlement and then brought their own lawsuits


against the networks. Twenty-five percent of those involved in the original case, around 8,000 merchants, opted out of the case, although many smaller merchants chose to settle independently, leaving the larger players to expend considerable resources on separate trials. 

Insurers Ordered to Cover Bank's Overdraft Fee Settlement

The U.S. Minnesota District Court ruled that two insurance companies must pay \$30 million of U.S. Bancorp's recent \$55 million class action settlement over improperly charged overdraft fees. In *U.S. Bank National Association and U.S. Bancorp v. Indiana Harbor Insurance Company and ACE American Insurance Company*, the bank allegedly reordered customers' debit card transactions from largest to smallest, rather than chrono-

logically, to maximize overdraft fees. Customers brought a class action lawsuit for restitution. After settling, the bank sued its insurers to obtain coverage for part of the settlement costs. The insurers argued against coverage, citing language in the policy that excluded suits for restitution. The court granted the bank's motion for summary judgment and held that its loss was covered, since the policy excluded coverage for restitution resulting

from a final adjudication, but not restitution from a settlement.

As banks' potential liability grows as a result of increased regulation and fraud, their relationship with insurers will take on new importance. This case speaks to this changing relationship, as well as how courts may interpret policy language moving forward. 



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LITIGATION NEWS CONT.


 Delaware Unclaimed Property Lawsuit Sent Back to State Court

A Delaware federal judge remanded *State of Delaware v. Card Compliant LLC et al.* back to state court. The court determined that the long-established “well pleaded complaint rule” applied here, which holds that federal defenses are insufficient to confer federal subject matter jurisdiction. Because the case was remanded to state court, the federal judge did not rule on the merchants’ and card issuers’ motions to dismiss the case. Those motions documented that, among other grounds to dismiss, the claims are contrary to decisions of the United States Supreme Court. It now will be up to the state court to decide whether the complaint should be dismissed.

The unclaimed property whistleblower lawsuit filed by a former gift card services

company employee (and later joined by the state of Delaware) alleges that merchants and gift card issuers have withheld hundreds of millions of dollars in unused gift card balances, rather than transferring the funds to Delaware under its unclaimed property law, in violation of the Delaware False Claims and Reporting Act. The retailers and card issuers maintain that no amounts are due to Delaware, for a broad range of reasons under federal and state law, including that because the card issuers are not incorporated in Delaware, Delaware has no right to escheat, that unused balances on gift cards redeemable only for goods and services cannot be subject to escheat and that nothing was concealed from Delaware. In their motion to dismiss, the retailers and

card issuers argued that the complaint admits that Delaware reviewed and approved the retailer-issuer agreements in an audit.

This high-profile, high-stakes litigation may increase audit activity by the states as the special purpose gift card model continues to be scrutinized. Gift card and prepaid card issuers relying on special purpose card entities as a lawful way to reduce their abandoned property exposure may want to review their existing card programs in both form and substance to help mitigate the risks associated with the practice. 

**Bitcoin** NEWS

CSBS Publish Draft Model Regulatory Framework


The Conference of State Bank Supervisors (CSBS) **published** a draft model regulatory framework for state virtual currency regimes. The draft framework is a product of the CSBS Emerging Payments Task Force, formed to examine the intersection between state supervision and payments developments, as well as to identify areas for consistent regulatory approaches among states.

Specifically, the task force recommended that activities involving third-party control of virtual currency—including for the purposes of transmitting, exchanging, holding or otherwise controlling virtual currency—should be subject to state licensure and supervision. Its model framework was designed to remain sufficiently flexible to adapt to the nascent and evolving nature of virtual currency

technology and business models. The draft framework outlines broad requirements for states to follow when drafting their own virtual currency regulation, including:

- Licensing requirements with credentials for business owners and key personal, as well as details on the banking arrangements for the business;
- Licensing systems that allow states to share data in real time;
- Financial strength and stability requirements, such as net worth and capital requirements, surety bonds and disaster recovery plans;
- Consumer protections such as a reserve amount of virtual currency held in trust, insurance coverage and public disclosure of licensing information;
- A cybersecurity program; and
- BSA/AML compliance.

Along with the draft framework, the CSBS published 19 questions for public comment, ranging from the licensing process, to technical innovations, to escheatment. Comments are due Feb. 16, 2015.

The prepaid industry remains interested and concerned as we witness the development of new laws and regulations governing virtual currencies. State regulations on virtual currencies remain a patchwork of often conflicting regulations, interpretations and open questions, delaying any national virtual currency business plan implementations. The CSBS model framework is the first major attempt to standardize the approach to virtual currencies. 




BITCOIN NEWS CONT.

Shrem Sentenced to Two Years in Prison

A New York federal court sentenced Charlie Shrem, the now infamous Bitcoin entrepreneur, to two years in prison after he agreed to a plea deal regarding an unlicensed money transmitting business that involved bitcoin and the now-defunct online black market, Silk Road. Shrem originally faced up to five

years in prison and a charge of conspiracy to commit money laundering, the latter of which was dropped as part of the plea deal. He did not receive the lower sentence of probation that his attorney requested.

The case demonstrates the risks taken by unlicensed sellers or exchangers of virtual or digital currencies. It also may


increase the legitimacy of bitcoin and other virtual currencies in the eyes of the court as it becomes more common for bitcoin-connected transactions to qualify as money transmission. 

Mt. Gox Hack: Inside Job?

A major Japanese newspaper reported that the loss of 650,000 bitcoins at the Mt. Gox bitcoin exchange last year may have been the result of an insider's "internal system manipulation," rather than from external hacking as previously thought. The paper claims that only 1 percent, or 7,000, of the missing bitcoins were tied to hacking from outside the

company. This contrasts with Mt. Gox's explanation of the loss, which it said was the result of gradual theft due to an underlying vulnerability in bitcoin's code. The company's CEO was not implicated in the article. The newspaper cited as its source an unnamed party involved in the ongoing police investigation.

Increased concerns regarding cyber-

crime impact across many payment products. Rumors about the Mt. Gox losses had spread at the time of the theft that the loss was the result of an inside job and their resurfacing now may indicate they have some validity. 


Lawsky Comments on Revised BitLicense Proposal

NYDFS Superintendent of Financial Services Benjamin Lawsky *spoke* about New York's revised BitLicense proposal before the Bipartisan Policy Center, noting that the revisions provide increased flexibility to virtual currency startups,



Benjamin Lawsky

while still allowing the NYDFS to protect consumers. Specifically, the proposal now offers a two-year transitional BitLicense for startups and small firms to serve as an "on-ramp" for building virtual currency enterprises. He also spoke about the broadened category of assets that now qualify for capital requirements, as well as the reduced requirements for recordkeeping and identification of third-party

counterparties in virtual currency transactions. Lawsky said the growth of virtual currencies eventually may force banks to innovate, which, he said, was necessary particularly for the "1970s era" ACH system. He said if banks do not adapt to changing technologies, it may be up to regulators to push for or mandate improvements. 



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International NEWS

EU Agrees to Cap Interchange Fees

The European Union's Economic and Monetary Affairs Committee and the European Union Council agreed to cap interchange fees on cross border and domestic card transactions. They will cap cross-border debit card transactions at 0.2 percent of the value of the transaction, while domestically a more complicated annual weighted average of the value of all domestic debit card transactions will apply for the first five years of the agreement, after which a simpler method of either 0.2 percent of the transaction value or a set fee maximum of five cents will go into effect. Credit card transactions will

be capped at 0.3 percent of the transaction value.

The agreement is the next step in the process to pass into law Visa and MasterCard's current legally binding fee cap agreement. EU member states still must vote on the deal, after which the EU parliament must then approve it. The new rules would go into effect six months after the legislation is enacted.

The "interchange wars" between payment systems and merchants are global. EU regulators justify their position on the hope that the lower fees will translate into lower prices for consumers.

However, even as the card companies welcome the standardized fee structure, they continue to point out that history shows there's no guarantee retailers will pass on the savings to consumers.



For more information, read Paybefore's article:

• [EU Officials Agree to Cap Interchange Fees](#) 

EU VAT Law Aimed at Leveling Playing Field Goes into Effect

By Paybefore Staff

The start of a New Year also brings a new EU law into effect that's intended to stop companies from undercutting their competition by setting up in low-tax countries. However, the law also could increase the tax on purchases of digital content like mobile applications, music downloads and e-books, according to reports. The new law requires companies to charge VAT (which is similar to sales tax in the U.S.) depending on which country the buyer lives in, not where companies' European headquarters are located.

"There inevitably will be a price change," Richard Mollet, CEO of Publishers Association, a British trade association, told the *New York Times*. "The question is whether retailers, publishers or customers will have to take on board any increase."

Companies such as Apple, Amazon and Microsoft have been criticized for basing their European operations in low-tax countries like Ireland and Luxembourg, according to the report. The VAT rate in Luxembourg, for example, can be as low as 3 percent for e-book purchases,

compared with Britain where companies charge 20 percent for e-books purchases.

Smaller entrepreneurs likely will struggle with the intricacies of the new law, possibly forcing them out of business, according to London's *Daily Mail*. "Businesses must now record which European country each customer is from and charge their national VAT rate. They must also keep hold of customers' home and bank addresses for 10 years," the report said.

See related story:

• [EC Revises VAT Rules for Voucher](#) 



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TOP STORY CONT. FROM PAGE 1

Congress in GOP Hands: 1st Time since 1995

silent minority. Sherrod Brown (Ohio) is now the committee's ranking member, and he's ably backed by fellow outspoken liberals Charles Schumer (N.Y.), Robert Menendez (N.J.) and Elizabeth Warren (Mass.), the force behind the origination of the CFPB.

In the House, Jeb Hensarling (R-Texas) continues as chair of the House Committee on Financial Services—so fewer changes there. Rep. Hensarling is an avowed conservative and, like Sen. Shelby, has not hidden his disapproval of various aspects of the Dodd-Frank Act. Continuing to keep Rep. Hensarling on his toes are liberal Rep. Maxine Waters (D-Calif.), the ranking member, and Rep. Carolyn Maloney (D-N.Y.).

What It Means to Payments

A civics review is all well and good, but where the rubber hits the road is what the shift in Congress might mean to payments.

We asked a number of prominent players in emerging payments to give us their opinions. The consensus: The Republican majority in the House and Senate is interesting but unlikely to make a big splash in payments.

If change comes to the payments industry as a result of a Republican-led House and Senate, it will be subtle. As David Beam, partner at K&L Gates, reminds us, the GOP has a majority but not a veto-proof majority. So, don't expect any big-time rollbacks of anything, least of all the CFPB or legislation that paved the way for prepaid-focused regulation.

Still, Republicans may pull the reins in a bit on regulators, including the CFPB. For example, there's been a well-documented appetite in the House to replace the CFPB director with a commission, to increase the CFPB's accountability for its expenditures and to more clearly define the CFPB's scope of authority. In one way or another, several respondents suggest that bills proposing structural changes to the CFPB now may receive a warmer reception in the Senate, although Sen. Elizabeth Warren (D-Mass.),

who's recently been credited with blocking President Obama's nominee, Antonio Weiss, for the third highest post in the Treasury Department, may be a persuasive voice against any such change—period.

But, regardless, the point on which there was tremendous consensus is not to get too excited about who's in the majority, because the majority party today is the minority party tomorrow, and success is measured in the long run. What's important is to educate and build allies among Democrats and Republicans, because playing partisan politics is a game that can't be won.

Industry Views



Judith Rinearson, Partner,
Bryan Cave LLP

"Generally, I doubt the change is going to make much difference—at least from a pure legislative standpoint.

For example, I doubt major changes to Dodd-Frank will be passed by both Houses and then signed by the President. But, I do think there's likely to be more subtle impacts: a higher level of scrutiny on regulatory or law enforcement actions, such as Operation Chokepoint; congressional hearings on what constitutes regulatory abuse and costs of compliance; a closer look at how to tighten the purse-strings of various agencies in order to influence policy; and more delays in executive appointments, of course."



Michael Sheridan, Attorney,
Butler Snow LLP

"The funding, structure and operations of the CFPB are obvious subjects that may find an increased appetite among members of Congress. With Republicans in the Senate majority, House members, like Rep. Randy Neugebauer (R-Texas), who have shown interest in the CFPB, may find Senate allies for CFPB restructuring.



"You can't love jobs and hate business!"
—Kasim Reed,
Mayor of Atlanta

"With this shift in power, much of the day-to-day change will reveal itself in subtle, small ways. Each member of Congress comes to Washington with his or her own interests of particular importance to him and his constituents; that is, issues that are focused on and worked on almost daily. Certain topics will now be deemphasized in the workings of Congress; replaced by new interests. It is here in the day-to-day work of congressional staff, against the background of the shift in individual priorities brought by the 2014 election, that the payments industry will find both opportunities and challenges."



Steven Kane, Group President,
Gift Sales and Business
Development, Spafinder
Wellness Inc.

"On the surface we would look to an all-Republican Congress as a positive for the payments industry. The general assumption, of course, is that Democrats regulate and Republicans deregulate. As we've seen all too frequently, however, there's no blanket rule here, and, depending on current politics, economics or the way the wind blows, Republicans can regulate with the best of them.

"We only need to look at the ongoing struggle in New Jersey as evidence. In this case, with direction from the Republican governor, the state looks to take the role of acting on its citizens' behalf to claim unredeemed gift card funds, even though expiration dates have long been a thing of the past and the owners of those gift cards actually hold the funds. Additionally, New Jersey looks to prove it has a claim on those cards by requiring registration (raising privacy con-

INDUSTRY VIEWS CONTINUED

What Does a GOP Congress Mean to Payments?

cerns)—not your typical Republican game plan. Finally, in this case, Democrats in the state look to strike this down, which appears the more pro-business approach.

“Perhaps, the real outlook with an all-Republican Congress, at least as long as we still have a Democrat in the White House, is more gridlock and, therefore, no real action either.”



Doug Bower, President and Executive Director, Network Branded Prepaid Card Association

“Many of my colleagues express their optimism that a Republican-led 114th Congress will mean less regulation for our industry. While it’s way too early to say what might happen over the next few years, the safest bet is a firm dedication to the fundamentals that work in Washington: We need to work both sides of the aisle!

“Payment products play an important role in our economy, and both Republicans and Democrats can and should be champions for this industry. It’s our responsibility to tell our story to Congress so it understands how important payment products are to our financial infrastructure and the millions of Americans who rely every day on these unique financial tools.”



Drew Edwards, CEO, Ingo Money

“Since 2009, financial recovery and regulatory compliance have consumed overwhelming mindshare and resources in the banking industry. This reality, while influenced by politics, is primarily a consequence of the broader economy and business cycle. With economic recovery underway, now is the time for the financial services and payments industry to renew its focus on customers and innovation. It’s incumbent upon all of us in industry and government to create an

environment conducive to helping people meet their financial obligations and achieve their financial goals.”



Bob Skiba, EVP, Regulatory and Government Affairs, InComm, International and Chairman, Network Branded Prepaid Card Association

“As the 114th Congress convenes this month, with Republicans holding a majority in both houses, it’s critical to remember how big the payments industry is and how it cannot continue to be innovative and grow unless we work with both sides of the aisle.

- The U.S. payments industry is estimated to generate \$50 billion in revenue—as of FY 2014 and is projected to grow to \$65 billion in revenue by 2016.

- In InComm’s home state of Georgia alone, 70 percent of all U.S. payments are processed, and 40,000 employees work directly for more than 70 Georgia-based transaction processing companies in-state, generating approximately \$30 billion in revenue as of FY 2014. (An estimated additional 100,000+ employees work for these Georgia-based processing companies worldwide.)

“Georgia is a model of how federal and state Republicans and Democrats can work together to promote and champion the payments industry, stressing how much revenue, taxes and jobs are created by the payments industry—locally and worldwide!

“As Atlanta Mayor Kasim Reed recently said at a Georgia processors’ town hall meeting, ‘You can’t love jobs and hate business!’

“If the payments industry engages with both political parties, congressional leaders can promote, advocate and influence key decision makers on the merits and benefits of prepaid products, which will enable the creation of new products and additional sales, taxes and jobs.

“In my opinion, the prepaid payments industry should support state and congress-

sional leaders—regardless of their political party—who collectively champion the payments and prepaid industry to regulators and government agencies.”



David Beam, Partner, K&L Gates LLP

“Republican control of Congress probably will not have a dramatic impact on the payments industry in the near term. Republicans have solid majorities in both houses, but they aren’t veto-proof majorities. Some Republicans would like to replace the CFPB director with a commission and put the CFPB’s budget directly under congressional control. However, the President likely will veto any bill that limits the CFPB’s independence. Congress might try to use its oversight authority to influence the direction of CFPB rulemaking on prepaid accounts or other subjects of interest to the payments industry, but it’s hard to predict how much of an impact they will have.”



Kim Ford, Vice President—Public Affairs, First Data

“All things being equal, a GOP majority may be sympathetic to payments issues, but it won’t be anti-consumer either. Issues like cybersecurity and data breach notification transcend party lines, and we will undoubtedly see activity there. While we will not see any new, comprehensive reform law like the Dodd-Frank Act, a GOP majority may succeed at reforming aspects of the CFPB. However, that will only occur if President Obama feels he needs to negotiate with the GOP in order to get other elements of his agenda passed. Generally, Congress seems more interested in payments than ever before. This interest is unlikely to translate to new legislative measures, but they will be watching the industry closely.”

INDUSTRY VIEWS CONTINUED**What Does a GOP Congress Mean to Payments?****Jason Oxman, CEO, Electronic Transactions Association**

“Policy issues that are top priorities of the payments industry are not partisan issues, so the change in

control of the Senate will see the Electronic Transactions Association continue to drive industry priorities forward. For example, national data breach notification standards have support on both sides of the aisle. Our industry is deploying new mobile payments technology, and federal agencies must

ensure that legacy regulations and enforcement activities don't hinder consumer and merchant-friendly secure commerce solutions. As the trade association of the payments industry, ETA will continue to work with Congress to ensure federal agencies are supporting innovation.”

**Jeremy Kuiper, Managing Director, The Bancorp Payment Solutions**

“I'm always hopeful that, irrespective of party in

control, the test of reasonability will win the day. As the payments industry continues the very necessary and ongoing process of educating our legislators and their staffs on the importance and validity of electronic payments—even those that may seem untraditional—we must reach out to both sides of the aisle. Reasonability isn't defined by party affiliation, but by a willingness to keep an open mind and fairly and objectively evaluate differing points of view. I look forward to working with many in the 114th Congress with those qualities.”

WASHINGTON WATCH CONT. FROM PAGE 1**FDIC Issues Guidance on Brokered Deposits**

significant implications for the issuing banks, including:

- Higher FDIC insurance assessments for brokered deposits. Many banks don't hold brokered deposits at all because of the high costs—as much of 10 basis points higher.

- Should the bank ever become less than “well capitalized” (for example, “adequately capitalized”), *then the bank must close all brokered deposit accounts* unless the bank is both “adequately capitalized” *and* the FDIC grants a waiver (which doesn't happen often). A bank that is less than adequately capitalized cannot even obtain a waiver.

- Having brokered accounts may create significant liquidity problem if the bank

has a significant volume of brokered deposits.

Prepaid products are specifically mentioned in three FAQs, two of which address the “primary purpose exception.” The primary purpose exception exempts agents or nominees whose primary purpose is not the placement of funds with depository institutions but to promote another goal. Even though most in the prepaid industry do not believe that the “primary purpose” for the sale and distribution of prepaid cards is to place funds at depository institutions, the FAQs indicate that the FDIC takes a different position. The guidance clarifies that the primary purpose exemption:

- Generally does not apply to companies that distribute financial products, such as prepaid cards.

- Does not apply to companies that sell or distribute GPR cards, such companies are classified as deposit brokers.

A third FAQ clarifies that a company that distributes prepaid cards as part of a rebate program is an example of a prepaid card provider that would not be classified as a deposit broker (although, the FAQ further clarified that a third party involved in the placement of the company's funds into the account at the insured depository institution would qualify as a deposit broker.

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Who's on the 114th Congress's Banking Committees



All politics are local, so check to find if your senator or congressman is a member of the Senate or House Banking Committees.

| Senate Banking Committee | |
|--|--|
| Richard Shelby, Alabama, <i>Chairman</i> | |
| Republicans | Democrats |
| Mike Crapo, Idaho | Sherrod Brown, Ohio, <i>Ranking Member</i> |
| Bob Corker, Tennessee | Jack Reed, Rhode Island |
| David Vitter, Louisiana | Charles Schumer, New York |
| Pat Toomey, Pennsylvania | Robert Menendez, New Jersey |
| Mark Kirk, Illinois | Jon Tester, Montana |
| Jerry Moran, Kansas | Mark Warner, Virginia |
| Tim Scott, South Carolina | Jeff Merkley, Oregon |
| Tom Cotton, Arkansas | Elizabeth Warren, Massachusetts |
| Mike Rounds, South Dakota | Heidi Heitkamp, North Dakota |
| Ben Sasse, Nebraska | Joe Donnelly, Indiana |
| Dean Heller, Nevada | |

| House Committee on Financial Services | |
|--|--|
| Jeb Hensarling, Texas, <i>Chairman</i> | |
| Republicans | Democrats |
| Peter T. King, New York | Maxine Waters, California, <i>Ranking Member</i> |
| Edward R. Royce, California | Carolyn B. Maloney, New York |
| Frank D. Lucas, Oklahoma | Nydia M. Velázquez, New York |
| Scott Garrett, New Jersey | Brad Sherman, California |
| Randy Neugebauer, Texas | Gregory W. Meeks, New York |
| Patrick T. McHenry, North Carolina | Michael E. Capuano, Massachusetts |
| Stevan Pearce, New Mexico | Rubén Hinojosa, Texas |
| Bill Posey, Florida | Wm. Lacy Clay, Missouri |
| Michael G. Fitzpatrick, Pennsylvania | Stephen F. Lynch, Massachusetts |
| Lynn A. Westmoreland, Georgia | David Scott, Georgia |
| Blaine Luetkemeyer, Missouri | Al Green, Texas |
| Bill Huizenga, Michigan | Emanuel Cleaver, Missouri |
| Sean P. Duffy, Wisconsin | Gwen Moore, Wisconsin |
| Robert Hurt, Virginia | Keith Ellison, Minnesota |
| Steve Stivers, Ohio | Ed Perlmutter, Colorado |
| Stephen Lee Fincher, Tennessee | James A. Himes, Connecticut |
| Marlin A. Stutzman, Indiana | John C. Carney, Jr., Delaware |
| Mick Mulvaney, South Carolina | Terri A. Sewell, Alabama |
| Randy Hultgren, Illinois | Bill Foster, Illinois |
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| Scott Tipton, Colorado | |
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| Bruce Poliquin, Maine | |
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