


TOP STORY

End of the Line for First Bank of Delaware

 FinCEN/FDIC Hit Bank with \$15 Million in Penalties for BSA/AML Violations

Hot on the heels of FinCEN's advisory on risks associated with third-party payment processors ([see Paybefore Legal, issue XVIII](#)), FinCEN and the FDIC assessed concurrent \$15 million civil money penalties against First Bank of Delaware for violations of Bank Secrecy Act (BSA)/anti-money laundering (AML) laws and regulations. Among other things, FinCEN and the FDIC found that the bank "failed to

adequately oversee third-party payment processor relationships and related products and services commensurate with associated risks."

The bank also settled related [civil claims](#) with the Department of Justice (DOJ), which alleged it "established direct relationships with several fraudulent merchants and third-party payment processors working in

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FEDERAL LAWS & REGS

Sen. Blumenthal Introduces Restrictive Gift Card Protection Act

U.S. Sen. Richard Blumenthal's (D-Conn.) Gift Card Consumer Protection Act ([US S 3636](#)) was introduced on Nov. 26 in the Senate and moved to the Senate Committee on Banking, Housing and Urban Affairs. The bill, which mirrors the draft bill he authored [late last year](#) but never formally introduced, proposes to amend the CARD Act provisions of

the Electronic Fund Transfer Act to, among other things, completely ban expiration dates and dormancy, inactivity and service fees on gift certificates, store gift cards and general-use prepaid cards. The bill also would require companies that file for bankruptcy to accept and honor unredeemed gift cards, as well as prohibit

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Post-Election Fallout

As the dust settles from the recent U.S. elections, discussion on how the results will impact the banking industry continues. All hopes of changes to lessen current regulatory burdens have vanished, with many political and industry observers agreeing that the primary

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Issue Update

This issue's Viewpoints recap N.J.'s escheat litigation (page 3) and highlight the need for consumer education in light of the Durbin Amendment's upcoming effect on health care card acceptance (page 6).

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- Nov. 30** Mobile apps must include privacy policy in Calif.
- Dec. 3** FinCEN roundtable on CDD in Miami
- Jan. 2013** CFPB registration of nonbanks ANPR expected
- April 1, 2013** Fed regulations become effective to implement the Durbin Amendment's network non-exclusivity provisions
- Oct. 2015** All four major card brands require most U.S. merchants to accept EMV chip-based cards



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Viewpoint

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Gift Card Amendments Redraw Legal Battle

By James M. Burns and Jennifer Borek, Genova Burns Giantomasi & Webster¹

In a scene that could play out in other states, New Jersey is just now coming out of a two-year legislative and legal battle over the right to custody of dormant gift card balances. In [June 2012](#), as part of the FY13 state budget process, New Jersey made key amendments to a 2010 law that had pit the state in a legal battle against the retail industry. The 2010 law, designed to generate state budget revenue, reversed longstanding state policy and made New Jersey the most aggressive state in the nation with regard to the escheat of unused gift card balances from the retail industry. After two years of successful challenges, the June 2012 amendments, while postponing some aspects of the bill and softening others, mostly defers—but doesn't resolve—several issues of major importance to the retail and gift card industries.

The 2012 amendment extended the period of abandonment from two to five years, effective July 1, 2010, and withdrew the retroactive application of the 2010 statute. The amendment still requires retailers to register gift cards by obtaining and keeping a purchaser's ZIP code at the point of sale, but this

requirement will not become effective until July 1, 2016.

Although retailers can now breathe a sigh of relief that the day of reckoning on gift card escheat has been forestalled for a period of time, the ultimate requirement to register gift cards and escheat to New Jersey still exists. However, with at least three years before escheat will be required (depending on whether a company is incorporated in New Jersey), retailers and third-party issuers presently can shift their focus toward developing a business strategy that will minimize, if not negate, the requirement to escheat.

2010 Gift Card Law

In a move that stunned the retail industry, New Jersey, as part of the FY11 budget cycle, radically changed the state's unclaimed property laws to require transfer into the state's coffers of unused gift card balances on the books of New Jersey's retailers. Retailers were caught by surprise because New Jersey, to that point, had specifi-

cally excluded gift certificate (and, by implication, gift card) balances from the definition of unclaimed property. The reason for such exclusion was that New Jersey courts had recognized that gift certificates could never be re-

deemed for cash. Accordingly, such balances were not like the typical savings passbook account or other forms of historically recognized abandoned property. Retailers were additionally caught off guard by the manner of the bill's

passage: The legislation was introduced, passed by the legislature and signed by the governor within a matter of days at the end of June 2010. The scant legislative history of the bill recognized what was clearly the state's main objective: seizure of an estimated \$80 million in revenue by forcing retailers to transfer gift card balances into the state's Unclaimed Property fund.

The bill that passed in June 2010 also departed from New Jersey policy and nationwide unclaimed property norms in several other notable respects.



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First, the bill was retroactive, applying to all gift cards—even those sold before the bill was passed—for which no activity had occurred for at least two years as of July 1, 2010.

The bill required retailers to transfer to the state the entire balance, in cash, remaining on gift cards that had yet to be used. As a first in the nation, retailers going forward were required to collect from the gift card purchasers in New Jersey data that included either the person's address or the purchaser's ZIP code. Retailers were subject to fines and penalties for failing to collect such information. As another first in the nation, New Jersey said that where a retailer did not have the last known address of a card purchaser, such address would be "assumed" to be New Jersey if the card was sold in New Jersey (known as the "place of purchase" rule). For reasons discussed below, the last known address of a gift card purchaser is an important factor determining rights among competing states to claim abandoned property.

Court Challenges to 2010 Law

Soon after the bill's passage, challenges were brought in United States District Court by the New Jersey Retailers Merchants Association (NJRMA) and other retailer entities. In November 2010, the United States District Court issued an injunction against the State of New Jersey from enforcing key aspects of the law. First, the District Court found that a preliminary injunction was warranted on the basis that the retroactive application of the law was unconstitutional under the Contracts Clause of the United States Constitution. The court reasoned that



the contract made between the retailer and the purchaser at the time of purchase was impaired by the requirement that the retailer transfer to

the state the entire amount of the unused balance.

Such a transfer, in cash, was never part of the contract between the retailer and the gift card purchaser and denied to retailers any profit margin from the sale.

The district court further found that, in the absence of having an address of a card purchaser, it violated existing U.S. Supreme Court decisions for the state to simply "presume" that, for a card bought in New Jersey, the purchaser lived in New Jersey.

Finally, the District Court rejected New Jersey's plan to escheat card balances in which other states were involved. Long-standing U.S. Supreme Court decisions said that in the case of intangible property, arguably connected to more than one state, the states must use a priority scheme to determine which state can escheat funds. First, the property would go to the state of the last known address of the last known owner of the property. If that information was not known, or if that state did not escheat such property, the state of corporate domicile of the holder of the property had the right to escheat. The U.S. Supreme Court did not provide for any third step if the second priority state did not claim the property. New Jersey, through a "Guidance" issued by the New Jersey Treasurer, sought to fill this "third priority" gap. The District Court flatly disagreed, holding that New Jersey did not have the authority under the U.S. Supreme Court decisions to create a

so-called third priority rule. The court ruled, however, that the data collection provision (i.e., requiring collection of the address and/or ZIP code of the purchaser) could stand on its own and was not enjoined for gift card purchases going forward.

The United States Court of Appeals for the Third Circuit, in a decision issued in January 2012, affirmed the District Court in all respects. First, the appeals court agreed that the statute's requirements that retailers retroactively escheat 100 percent of the unused balance, in cash, violated the Contracts Clause of the United States Constitution. Secondly, the court of appeals rejected the place of purchase rule. Also, like the District Court, the Court of Appeals held that the state was not at liberty to fashion a rule that enabled it to take by default unredeemed gift card balances simply because the state of incorporation of the retailer did not escheat gift card balances. The right of such state to escheat gift card balances from retailers included the right to choose to not do so and the entire priority system established by the U.S. Supreme Court would fall apart were New Jersey allowed to escheat by default.²

The Takings Clause Argument Remains Unaddressed

One unfortunate aspect of the U.S. District Court and Third Circuit decisions is that both courts saw fit to uphold the injunction without addressing the Retailers' Takings Clause argument. This is important given that, whereas the Contracts Clause operates retroactively, the Takings Clause could prevent state governments from treating gift card balances as unclaimed property on a prospective basis. Under the laws of all states, and

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under the terms of the contract made at the cash register, gift cards are redeemable for services and merchandise only and never for cash (except for a few states, including New Jersey, which require cash refunds of small balances). Put another way, the purchase price of the gift card immediately becomes the property of the retailer at the time the gift card is purchased. The retailer does not hold such money in trust or as a custodian for the card purchaser to reclaim it later. The retailer, at the time of gift card sale, keeps the cash but carries forward an obligation to honor the card for goods or services when presented.

There are several benefits retailers receive from the sale of gift cards, including the expectation that a customer will come to the store to redeem a gift card because they must spend it there and the anticipation that more than the face value of the card ultimately will be spent at the retailer. Additionally, even in those instances when gift card balances go unredeemed, called “breakage” in the industry, retailers realize profit. Such breakage is never the property of the original purchaser. Indeed, the Internal Revenue Code treats gift cards as “advance sales” and requires that entire unredeemed balances be recognized as income for tax purposes within the second tax year of receipt. Accordingly, the argument of the state of New Jersey that gift card balances are some forgotten class of property being held in trust for a customer is false. From the moment of sale, the purchase price of a gift card belongs to the retailer. While the amount paid for the gift card belongs irrevocably to the retailer, what



remains undetermined at time of purchase is the amount of profit that the retailer will derive from the gift card sale. Both the U.S. District Court and Third Circuit did not address the Takings Clause argument because the 2010 New Jersey law, which pursued escheat retroactively, violated the Contracts Clause and, in each courts’ view, that was sufficient grounds to sustain the grant of an injunction.


While the above legal challenges were working through the courts, the retail industry also was lobbying for changes in the law. A major issue in contention was the burdensomeness of the data collection requirements to retailers. Notably, several major gift card issuers and third-party gift card vendors **notified** the state that, unless the data collection provision was dropped, such issuers/vendors would have no choice but to pull their gift card business out of the New Jersey retail market. Retailers also pointed out that the data collection provision argument conflicted with other state laws restricting retailers from requiring that customers provide such personal information.

N.J. Retreats in 2012 Law

The course of the litigation and lobbying efforts were changed when, on June 29, 2012, New Jersey amended the 2010 gift card law in ways that are likely to at least postpone the legal challenges that had been lodged against the bill. First, abandoning the retroactive nature of the 2010 law, the new bill only applies to gift cards issued after July 1, 2010. Second, rather than two years, the new bill requires that a gift card that is inactive

for a period of five years becomes “unclaimed property.” In another major concession to the legal challenges, the new bill requires retailers to escheat in cash 60 percent of the value of the card, rather than the entire balance, at the time the card is deemed abandoned. Last, the state abandoned the central provision of the 2010 bill, the so-called place of purchase rule. And the controversial data collection provision was postponed to July 2016 (the 49th month after enactment).

Conclusion

While the 2012 bill may defer pending legal challenges, several issues remain unresolved. First, the data collection provision promises to be a great hindrance to conducting gift card business in the state of New Jersey and, arguably, conflicts with other statutes prohibiting point-of-sale collection of such data. Second, by reducing the escheat requirements to 60 percent of gift card balances, the new law certainly modifies, but does not cure, the Takings Clause problem created by the statute. Just as the New Jersey Appellate court ruled prior to the passage of the 2010 act, gift certificates and gift cards were not defined as “unclaimed property” because the same could never be converted to cash and were only redeemable for goods and services. The New Jersey law certainly will elicit a constitutional challenge, under the Takings Clause, that even the proposed escheat of 60 percent remains an unconstitutional taking to that extent. 

1 The authors, of the firm Genova Burns Giantomasi & Webster (www.genovaburns.com), represent the NJRMA in *New Jersey Retail Merchants Association v. Sidamon-Eristoff, et al.* (Docket No: 10-cv-5059-FLW-LHG).

2 The state of New Jersey filed a Petition for Certiorari asking the United States Supreme Court to reverse this “third priority” aspect of the Third Circuit decision. This petition was denied on Oct. 29, 2012.

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Durbin Amendment Rules Threaten Seamless Acceptance of Health Care Cards

By Matt Dallahan, Evolution1

With the Federal Reserve Board compliance deadline for network non-exclusivity provisions related to the Durbin Amendment set to go into effect April 1, 2013, a popular prepaid product that makes accessing funds in health accounts simple may face some additional complexities as consumers begin to see PIN prompts at some points of sale and not others. As the merchant community grapples with whether or not to implement PIN for health benefit card transactions, consumer education about the PIN option (or not) will be required to smooth the transition.

The Background

The introduction of prepaid cards with a defined amount of funds on the card is the most significant innovation in card-based payments since the debit card. While the volume of prepaid card transactions is still low in comparison to debit cards, consumers loaded \$184 billion onto all network branded prepaid cards in 2011—24% more than the year before—and that number is

expected to jump to \$271 billion by 2013, according to the [Mercator Advisory Group](#). One of the most popular uses of prepaid card technology is in the area of consumer-directed health care. Mercator research estimates that loads in the payroll card/benefits category will reach \$47.5 billion in 2013, and HSA/FSA card loads will make up about a quarter of the total.

In response to the increase in consumer-directed health plans (CDHPs)—such as flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs)—during the past 10 years, health care technology providers set about to create a way to marry CDHPs to prepaid cards to facilitate paying for health-related products and services. The goal was to make it easy for consumers to pay for health-related products and services using their tax-favored benefit accounts. Introducing a prepaid card as the access tool to these accounts could avoid tedious collection and submis-

sion of paperwork by consumers, not to mention out-of-pocket double payments until they received reimbursement. And on the health care provider/merchant side, prepaid cards could provide a convenient way to collect funds directly from consumers. With deductible-based plans, this is an increasing source of collections for providers.

Regulation Part 1

With the number of CDHP participants on the rise, in 2007 the IRS decided it needed a way to ensure that consumers used FSA and HRA prepaid cards only for eligible purchases—namely health-related expenses. In the first wave of regulation, the IRS provided a series of safe harbors that described acceptable uses of cards in conjunction with these accounts and processes required to verify the eligibility of expenses paid using the card. One of the most notable methods is known as the Inventory Information Approval System (IIAS). IIAS is a process that enables merchants to allow



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card usage only for those goods and services that are qualified under the plan. Items consumers purchase are compared to a listing of eligible items and authorization is approved only for those items. Grocery and discount stores that wanted to accept prepaid health care cards were required by the IRS to implement IIAS in 2008. In 2009, the second phase took effect when the IRS required freestanding pharmacies to comply with IIAS.

IIAS represented a win-win for retailers and consumers. For retailers, it enabled them to continue to accept these popular cards and offer convenience to the consumers. For consumers, IIAS facilitates the use of FSA/HRA prepaid cards, enabling the withdrawal of FSA and HRA generally without need to provide documentation verifying the eligibility of the purchase. Now, consumers simply swipe their prepaid cards when paying for eligible items, provide their signature (depending on the merchant's signature threshold) and the card does the rest.

Looming Deadline on the Horizon

Like many other prepaid card programs, cards accessing CDHP accounts will be impacted by the Dodd-Frank financial overhaul and the network non-exclusivity provisions of the Durbin Amendment. A provision in this amendment requires card issuers to provide merchants with the option to accept and process FSA and HRA card transactions on at least two unaffiliated networks. Since it's not possible to have two signature networks on a single card, PIN is really the only practical answer to fulfill the two unaffiliated network obligation.

Compliance with this network non-exclusivity provision by the April 2013 deadline to some extent reopens the IIAS discussion and leaves industry anxiously evaluating two key issues:

- **Adoption of PIN among merchants that have implemented IIAS.**

The original IIAS standard applied only to signature-based transactions. It

but only on a signature basis.

- **Consumer experience at the point of sale.** One of the biggest consumer benefits of IIAS has been the consistency of the experience from one merchant to the next. With variance in adoption of PIN by the merchant community, this benefit may be minimized. More importantly, though,

Network Non-Exclusivity Provisions Deadline


The April 2013 deadline for non-exclusivity covers:

- Prepaid cards that use transaction qualification or substantiation systems, such as certain health or other benefit cards;
- Nonreloadable general-use prepaid cards sold on or after April 1, 2013;
- Reloadable general-use prepaid cards sold on or after April 1, 2013, must comply by May 1, 2013.
- Reloadable general-use prepaid cards sold prior to April 1, 2013, do not need to comply with the network non-exclusivity provisions unless and until they are reloaded.
- Nonreloadable general-use prepaid cards sold prior to April 1, 2013, are not subject to the network exclusivity provision.

has since been expanded to incorporate PIN, but the question of merchant adoption of the PIN standard remains. There will be work required by merchants and their acquirers to implement added support for PIN transactions.

It seems to boil down to a cost-benefit analysis of the costs of implementation vs. the potential savings associated with a PIN-based transaction. At this point, larger and some mid-market stores surely will make the switch. But what about smaller merchants, arguably those least able to incur the transition cost and those for which payback will be the longest? This group of merchants is left with two choices: (1) to incur the cost of adopting PIN for IIAS or (2) to accept health care cards,

how will consumers react when prompted to enter a PIN when they previously have not? If consumers aren't aware of their PINs, how will they respond?

As with any POS change, consumer education will be important to minimize disruption and to ensure that consumers are able to access their account funds as conveniently and seamlessly as they do today. Ultimately, the burden of educating the consumers will fall to the third-party administrators and health plans that administer these accounts. As a program manager, we will work closely to educate our third-party administrator clients and develop materials for consumers, so they know what to expect at the POS. 



CFPB News

CFPB Strengthened in Wake of Election

President Obama's reelection and a continued Democratic majority in the Senate will bolster the Consumer Financial Protection Bureau (CFPB), which is likely to define "larger participants" in the prepaid industry before it issues rules related to [GPR](#) cards, according to industry observers. Nov. 6th's election results mean it's "full speed ahead" for the CFPB, says [Alan Kaplinsky](#), a partner with law firm Ballard Spahr LLP and chair of the firm's consumer financial services group. During his campaign, Republican presidential candidate Mitt Romney said he would work to repeal the Dodd-Frank financial reform act, which led to the CFPB's creation. While it's unlikely that Romney would have been able to disband the CFPB itself, according to most observers, he could have appointed a new director in 2014, after the term of current agency head Richard Cordray is set to end. "As things now stand, it is unlikely that there will be any significant change in direction at the CFPB throughout Obama's next term," Kaplinsky wrote on his blog, unless a court were to rule that Obama's [recess appointment](#) of Cordray was invalid or Congress opts to amend Dodd-Frank to replace a single CFPB director with a five-member commission. But the latter possibility is unlikely, says Kaplinsky, especially since Elizabeth Warren—one of the main architects of the CFPB—was elected to a Massachusetts Senate seat.

'Larger Participant' Definition for Prepaid Likely Before GPR Rules

While the CFPB currently is in the process of formulating proposed regulations for the prepaid card industry, the agency also is likely to establish a "larger participant rule" for prepaid, which would establish exactly which firms in the prepaid industry fall under the CFPB's supervision. "I believe that sometime next year, the CFPB will get around to proposing a larger participant rule applicable to the prepaid card industry," Kaplinsky tells Paybefore, noting that the agency has already issued [such rulings](#) for the consumer reporting and debt collection industries, and prepaid is now "near the top of the list." Kaplinsky predicts the CFPB will aim to first establish a larger participant rule before proposing any specific regulations governing

prepaid. Prioritizing the larger participant rule "would give the CFPB the right to examine prepaid card companies," he says, thus enabling the agency to better identify the issues in prepaid that might need to be addressed in the eventual regulation.

Misleading Mortgage Ads Warning



Recent CFPB activity impacting other industries may be instructive as to how the bureau will deal with prepaid-related issues in the future. Recently, the CFPB's Office of Enforcement sent letters to approximately a dozen mortgage lenders and mortgage brokers advising them to "clean up potentially misleading advertisements, particularly those targeted towards veterans and older Americans." The Federal Trade Commission (FTC) sent similar letters to 20 real estate agents, home builders and lead generators. These warning letters advise that the recipients' ads may violate federal law and that they should review all their marketing materials to ensure compliance with laws. The CFPB also has initiated formal investigations into six companies that it believes may have committed more serious violations of law.

The CFPB and the FTC reviewed about 800 randomly selected mortgage-related advertisements from across the country that appeared in newspapers, online and in mail solicitations, as well as from consumers who complained about them. The review identified a number of *potential* issues, including potential misrepresentations about government affiliation; potentially inaccurate information about interest rates; potentially misleading statements about the costs of reverse mortgages; and potential misrepresentations about the amount of cash or credit available to a consumer.

In a [press release](#) regarding the review, CFPB Director Richard Cordray stated, "Baiting consumers with false ads to buy into mortgage products would be illegal. We will conduct a fair and rigorous investigation into these issues and will take appropriate action for any violations we find." The press release also notes, however, that the bureau's opening of an investigation is not an accusation of wrongdoing, and its investigations are "fair and reasonable inquiries into a matter and may exonerate the subject of the investigation."

CFPB News *continued*

On a related note, the FTC and CFPB recently held a press call for credentialed members of the press to announce a coordinated effort to protect consumers, setting the stage for future joint-agency investigations and enforcement actions.

Also read the CFPB's related [blog post](#), cautioning consumers against potentially deceptive mortgage ads, and the FTC's [press release](#).

'Project Catalyst' Aims to Encourage Innovation, Shape Policy with Data

The CFPB's towering role in enforcing financial services rules will not overshadow its power to encourage innovation, if the agency's new [Project Catalyst](#) succeeds. Through its initiative, which the CFPB announced earlier this month, the agency aims to open up communication with financial services product innovators; study new and emerging financial services products to ensure regulations are written to address them; and to actively "engage with" innovators to explore new ideas that may benefit consumers. In the process, the CFPB may end up rethinking some core regulations that are slowing development of mobile payments, observers say.

"This project may be a way for the CFPB to see where regulatory changes are needed in mobile payments, for example, and gather fuel to go to Congress to request changes," Aaron McPherson, practice director with IDC Financial Insights, tells Paybefore. Two obstacles that often surface in mobile payment development are the lack of an easy way for entrepreneurs to comply with the various money transmitter laws in each state, as well as the limitations of the ACH for emerging payments, McPherson notes. "A lot of existing financial services regulations were designed when most payments were based on checks and it took longer to clear transactions. Because all that has changed, some rules would need to change to accommodate mobile payments' capabilities," he says.

As part of the project, three financial services compa-

nies have agreed to share anonymized data with the CFPB. They include BillGuard, which helps consumers resolve billing disputes, along with [Plastyc](#) and Simple, two companies offering alternative banking services. For the CFPB, shaping policy with fresh data that provide insight into present-day consumer behavior could go a long way toward reducing uncertainty for entrepreneurs, Paul Tomasofsky, president of Montvale, N.J.-based Two Sparrows Consulting, tells Paybefore. "Uncertainty in future regulations makes product development and capital-gathering much harder for financial services entrepreneurs," Tomasofsky says.

Collaboration between the CFPB and startups could "help accelerate the speed with which new initiatives go to market," says Preeti Mehta, director of project innovation with the nonprofit D2D Fund Inc. "Not only must regulation evolve to keep pace with innovation, but innovators must be in lock-step with regulation ... and stay in constant communication with regulators," she says.

Raj Date Leaving CFPB



Raj Date, the deputy director of the CFPB, announced he will be leaving the bureau the end of January. Date, a former banker, has been viewed by the banking industry in a relatively favorable light as a representative with industry experience who understood banking industry concerns. Date joined the bureau in fall 2010 as a top adviser to Elizabeth Warren, and subsequently led the agency from August 2011 to early January 2012 before Richard Cordray's recess appointment as director.



Raj Date

The bureau will finalize several new mortgage regulations prior to his departure, but Date's exit will precede the bureau's next focus on non-bank rules. The CFPB has not yet announced Date's successor. At this time, Date has not indicated his plans after departing the CFPB. ↻

FinCEN Update

FinCEN Forms ‘Delta Team’ on Regulatory Policy

FinCEN Director Jennifer Shasky Calvery [spoke](#) at the American Bankers Association/American Bar Association Money Laundering Enforcement Conference about her vision for “the FinCEN of the 21st Century.” Shasky Calvery discussed FinCEN’s Bank Secrecy Act IT Modernization Project and its data analytics work, as well as her views on compliance and enforcement and regulatory policy.

Shasky Calvery acknowledged the speculation that her move to FinCEN from the Department of Justice might have been meant to signal a significant ramp-up in enforcement, but that it’s not her only concern. Mirroring some themes we’ve heard from the Consumer Financial Protection Bureau (CFPB) recently, she went on to say:

“FinCEN’s work in BSA compliance and enforcement is critically important and we have a strong and increasing role to play in this area. And, to be frank, this is a role that you should want us to play. We are working to level the playing field. We want to make sure everyone is playing by the same rules, which not only improves the overall AML system in the United States and makes the United States safer from organized crime and terrorism, but also rewards those actors who do put in the time and money to get it right by forcing those that have decided to cut corners to pay a price for that choice.”

Shasky Calvery discussed the “Delta Team” whose purpose is “for industry, regulators, and law enforcement to come together and examine the space between compliance risks and illicit financing risks” with the goal of reducing the gap between the two.

Shasky Calvery posed a number of questions for the Delta Team, including the financial system’s greatest illicit financial risks and future vulnerabilities, the greatest AML/counter terrorist financing risks and breakdowns/challenges and the most (and least) effective illicit financing risk identification and mitigation processes and measures financial institutions are implement-

ing (or being required to implement). Interestingly, Shasky Calvery also asked whether and how some regulatory obligations might be lessened for lower risk customers, products and transactions.



Final CDD Roundtable Slated for Miami

FinCEN announced it will hold its fifth *and final* [roundtable discussion](#) in its series of outreach events on the advanced notice of proposed rulemaking (ANPR) published in March 2012 on customer due diligence (CDD) and beneficial ownership requirements for financial institutions. FinCEN is seeking further clarification on a number of issues and engagement with representatives from affected financial institutions through a roundtable discussion.

This roundtable discussion on the ANPR is scheduled for Dec. 3, 2012 (separate sessions will be held 9:30 a.m. to 12:30 p.m. and 1:30 p.m. to 4:30 p.m.), at the Miami Branch of the Federal Reserve Bank of Atlanta, in Miami.



Registration Renewal Deadline for MSBs

FinCEN released a [notice](#) reminding money services businesses (MSBs) that registered as an MSB for the first time during 2011, or that last renewed their registration in 2010, are required to renew their registration by Dec. 31, 2012. Registration renewals must be submitted electronically via FinCEN’s BSA E-Filing System.



Former Director’s Next Move

Former FinCEN director Jim Freis will be [joining](#) the international law firm of Cleary Gottlieb Steen & Hamilton LLP as counsel in its Washington, D.C., office as part of the firm’s international banking and financial institutions practice. Freis left FinCEN in September and was replaced by Jennifer Shasky Calvery. [G](#)

Federal LAWS & REGULATIONS

FFIEC Updates IT Exam Handbook

The Federal Financial Institutions Examination Council (FFIEC) recently revised part of its information technology examination [handbook](#). The *Supervision of Technology Service Providers* booklet reviews the regulators' authority to supervise third-party service providers, details its risk-based

supervisory program and includes the uniform rating system that the agencies use to assess banks and their third-party service providers.

The federal banking regulators also issued related new examiner [guidelines](#) on the supervi-



tion of third-party service providers, which describe the process that the agencies follow to implement the interagency programs. The guidelines also include the reporting templates that examiners use throughout their supervision. [↻](#)

State LAWS & REGULATIONS

Mobile App Developers Face Calif. Privacy Law Deadline

Scores of mobile application developers and companies are nearing the deadline to comply with a California privacy law that requires operators to develop and post appropriate privacy policies on their Websites by Nov. 30, or face steep fines. The crackdown by California's Attorney General on some 100 U.S. companies underscores the ubiquity of mobile apps and the potential risk mobile processes pose for protecting consumer data. The dead-

line follows the formation this year of the California Privacy Enforcement and Protection Unit, which is charged with enforcing the California Online Privacy Protection Act.

California Attorney General Kamala D. Harris on Oct. 30 announced the deadline for compliance with the online privacy law, which requires companies to conspicuously post a privacy policy within their app informing users of what personally

identifiable information about them is being collected and what the companies plan to do with that data. Harris sent letters to up to 100 non-compliant companies as the first step in a process that could lead to violators being forced to pay a \$2,500 fine each time a non-compliant app is downloaded in violation of California law. [↻](#)



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State Laws & REGULATIONS

Newly Passed Legislation/Regulations


New Jersey

 **Executive Order 107** prohibits insurance companies from imposing “costly hurricane deductibles on New Jersey homeowners.” The order, among other things, allows property and casualty insurers to make claim payments using methods other than those permitted under current regulations, including via prepaid debit card, electronic transfer or other comparable alternative payment method. To make payments in this manner, however, the following conditions must be met: (1) the claimant must agree to receive a claim payment via an alternative

payment method; (2) the alternative payment method must not be subject to any fees that would result in the insured receiving less than the full amount due; (3) the insured must be permitted, at any time, to convert the remaining balance into cash; and (4) the claimant must be notified of applicable terms and conditions. Read the [press release](#).


New York

NY DFS-47-12-00001-E was adopted on an emergency basis. Similar to NY DFS-12-00001-E, which expired on Oct. 31, the regulation relates to annual assessments for money transmitters

and other entities regulated by the Department of Financial Services’ supervision. The regulatory flexibility analysis accompanying the rule states that “all regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division’s assessment methodology.” Some issuers, program managers and distributors of prepaid cards are licensed money transmitters in New York. The regulation states that it is effective immediately and is applicable to all state fiscal years starting on April 1, 2011, although this version of the regulation expires on Jan. 28, 2013, because it is an emergency rule. 


Movement in Legislation/Regulations

Michigan


MI S 1281 moved to the House Committee on Banking and Financial Services. Current law permits payment of wages via payroll debit card, provided certain disclosures are made and a number of specific conditions are satisfied. As previously reported, the bill amends the definition of “payroll debit card” to mean a stored-value card issued *by or on behalf of* a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of ATMs (italicized language is new). 

Ohio

OH S 365 was recommended for referral by the Senate Committee on Rules and Reference, read a second time in the Senate and referred to the Senate Committee on Ways and Means and Economic Development. As previously reported, the bill directs the state tax commissioner to establish a program to pay income tax refunds via prepaid debit card. The commissioner must enter into agreements with one or more prepaid debit card issuers for this purpose, which must, among other things, specify that any fees associated with the use of such a card shall be

incurred by the taxpayer. In income tax return form instructions, the commissioner must describe the features of the prepaid debit card program, including any fee(s) that may be charged to the taxpayer in accessing his/her refund. 

Wyoming

WY D 85 (2013) was filed. This draft bill authorizes use of the Nationwide Mortgage Licensing System and Registry (NMLS) for licensing activities under the Wyoming Money Transmitter Act, and requires money transmitter license applicants to undergo fingerprinting and background checks. 

Judge Grants Preliminary Approval to Merchants' Interchange-Fee Settlement

A U.S. judge on Nov. 9 gave preliminary approval to the proposed [settlement](#) of the merchants' antitrust case against [Visa](#) and [MasterCard](#), but retailers are not giving up on efforts to block the settlement's final approval. The \$7.25 billion [settlement](#), announced in July to resolve a long-running dispute over credit card interchange fees, has [sparked objections](#) from hundreds of retailers, including Wal-Mart Stores Inc., Target Corp. and several retail trade groups. In addition to the payout, the settlement would release the card networks from future liability and merchants would gain the right to impose a [surcharge](#) on credit card transactions.

One of the merchants' key objections is that the settlement provides the card networks with too broad a release from future interchange-related lawsuits and is too narrow a solution for a class as diverse as U.S. merchants, a spokesperson for the National Retail Federation (NRF) tells Paybefore. Another concern is that if merchants accept the settlement they'll have no recourse if the card networks eventually impose higher interchange rates on emerging and mobile payments, he says. The NRF filed a brief supporting merchants named in the case that reject the settlement.

The decision to grant [preliminary approval](#) to the settlement represents "a big step" toward finalizing the case, which dates back to 2005, K. Craig Wildfang, a partner at Minneapolis-based Robins, Kaplan, Miller & Ciresi LLP and co-lead counsel for the plain-

tiffs, tells Paybefore. Merchants' objections are "a lot of smoke but not much fire," he says, noting that the card networks would remain subject to future antitrust lawsuits based on any new conduct. "If Visa or MasterCard did one day do something to interfere with mobile payments through interchange, merchants could challenge that," he says.

The settlement is "a fair and reasonable compromise for all parties," Visa said, noting that its lawyers believe the settlement will eventually receive final approval. U.S. Judge John Gleeson is expected to set a date soon for a hearing to scrutinize the case more closely before considering final approval, providing an opportunity for merchants to air their objections. [G](#)

DOJ Argues No Standing in Case against Dodd-Frank and CFPB

The Department of Justice (DOJ) recently attacked a Texas community bank's claims against the Consumer Financial Protection Bureau (CFPB) and Dodd-Frank Act, arguing in a recent filing that State National Bank of Big Spring does not have legal standing in the case. The bank filed a lawsuit this past summer in the U.S. District Court for the District of Columbia, challenging certain provisions in the Dodd-Frank Act as unconstitutional, with a focus on the creation of the CFPB. The bank [claims](#), among other things, that it had to exit the mortgage business and stop remittances as a result of the CFPB's jurisdiction. The DOJ counters, however, that the bank has not demonstrated that it has been harmed (a necessary element in the bank's case to establish legal standing), one reason being that it falls outside of the CFPB's jurisdiction as a bank with less than \$10 billion of assets.

The bank's case also been joined by conservative groups Competitive Enterprise Institute and the 60 Plus Association, as well as attorneys general from Michigan, Oklahoma and South Carolina. The DOJ claims, however, that none of the parties has legal standing to challenge the Dodd-Frank Act. [G](#)

Other TOPICS

American Banker Article Presents Strong Case against Effectiveness of Cross-Border Regs

Judith Rinearson, partner at Bryan Cave LLP and chair of the Network Branded Prepaid Card Association's Government Relations Working Group, and Michael Flores, chairman and CEO of Bretton Woods Inc., a specialty management consulting firm, published an [article](#) in *American Banker* outlining the limitations and unintended negative consequences that are likely to result from FinCEN's soon-to-be-finalized cross-border regulations. In "FinCEN Plan to Make Travelers Declare Prepaid Cards Is Unfair," the authors argue that FinCEN's regulatory effort "will impose a burdensome and misguided solution that will be ineffective in preventing actual criminal money-laundering activity." [G](#)



MoneyGram Settles with DOJ

MoneyGram has agreed to forfeit \$100 million and enter into a deferred prosecution agreement with the Department of Justice (DOJ), admitting that it criminally aided and abetted wire fraud and failed to maintain an effective anti-money laundering (AML) program. The [DOJ alleged](#) that MoneyGram “knowingly turned a blind eye to scam artists and money launderers who used the company to perpetuate fraudulent schemes targeting the elderly and other vulnerable victims.” Many con artists require their victims to send them money via remittance companies, because such payments are difficult to reverse. Despite thousands of complaints from victims of fraud schemes, MoneyGram allegedly failed to terminate the agents involved.

The DOJ alleged that MoneyGram’s AML program was deficient in a number of areas, including that it *failed* to do all of the following: (1) implement policies and procedures for (a) terminating agents involved in fraud and/or money launder-

ing and (b) filing SARs on fraud reported by victims; (2) file SARs on agents the company knew were involved in fraud; (3) conduct effective AML audits of its agents and outlets; (4) conduct adequate due diligence on its prospective and existing agents by verifying that a legitimate business existed; and (5) sufficiently resource and staff its AML program. DOJ also alleged that MoneyGram’s Bank Secrecy Act/AML failures resulted from, among other things, MoneyGram’s fraud and AML compliance functions failure to share information, and the fact that disagreements between the sales and fraud departments were regularly resolved in the sales department’s favor.

As part of the deferred prosecution agreement, MoneyGram has agreed to a number of enhanced compliance obligations and structural changes. MoneyGram will, among other things:

- Create an independent compliance and ethics board committee, which will have direct oversight of MoneyGram’s



chief compliance officer and compliance program.

- Adopt a worldwide anti-fraud and AML standard to ensure that all MoneyGram agents worldwide will, at a minimum, be required to adhere to U.S. anti-fraud and AML standards.

- Adopt a bonus system that rates all executives on success in meeting compliance obligations (with failure resulting in bonus ineligibility).

- Adopt enhanced due diligence for agents deemed to be high risk or operating in high-risk areas.

MoneyGram also must retain a corporate monitor for the next five years, who will regularly report to DOJ. The \$100 million forfeited by MoneyGram will be used to compensate victims.

If MoneyGram fully abides by the terms of the deferred prosecution agreement, in five years the DOJ will recommend dismissal of the criminal information filed in the Middle District of Pennsylvania. [G](#)

OTHER TOPICS OF INTEREST

Recent Surveys/Reports

Mercator Advisory Group and the American Bankers Association recently conducted a [study](#) investigating banks’ usage or expected usage of GPR cards, gift cards and payroll cards. Among some of the interesting findings in “Prepaid Cards: A Survey of Bank Attitudes, Adoption Rates and Deployment Plans,” 34 percent of banks surveyed stated that they did not offer prepaid products because of concerns regarding compliance requirements.

The Center for Financial Services

Innovation and Core Innovation Capital recently released the Underbanked Market Sizing Report, which highlights trends and changes in the prepaid industry. The [report](#) notes that the market share of prepaid cards is increasing relative to cash-driven payment products, such as check cashing, money orders and walk-in bill pay.

A new report issued by Mercator Advisory Group projects that closed-loop gift card sales will reach \$43.2 billion this holiday season, an increase

of 13.7 percent from last year’s numbers. The report expects in-store card malls to account for \$7.51 billion of gift card sales, and e-gift cards to make up \$330 million sales.

A new survey from the National Retail Federation projects \$28.79 billion of funds to be loaded onto gift cards this holiday season, with eight out of 10 shoppers expected to purchase at least one gift card. The survey showed 59.8 percent of consumers want to receive a gift card, an increase from 57.7 percent last year. [G](#)


Other TOPICS OF INTEREST

Sandy Scrambles Delivery of Social Security Checks, Highlights Benefits of Electronic Disbursement

Hurricane Sandy prevented Social Security checks from reaching some recipients in affected areas, but the U.S. Postal Service (USPS) and the Social Security Administration (SSA) provided various options for people without access to their usual mail channels to get their payments. More than 94 percent of recipients receive Social Security benefits electronically, but mail service outages and evacuations the storm caused meant recipients still receiving checks did not receive benefits payments mailed out Nov. 2. The administration publicized its toll-free telephone number where recipients could make alternative arrangements to receive their checks or an emergency payment. USPS also publicized alternative post office loca-

tions where recipients could pick up undelivered checks. The SSA on its Website is keeping consumers informed of their options to get help and assistance with payments, including status reports on six of its offices in New York and New Jersey that remain closed due to the storm.

Social Security checks typically are mailed out in four separate waves each month, but the largest mailing is on or around the third of each month, which meant the storm interfered with delivery of an unknown number of payments, Web Phillips, senior legislative representative for the National Committee to Preserve Social Security and Medicare, tells Paybefore. The Washington, D.C.-based organization

continues to promote the movement to distribute government benefits electronically, which hits a major landmark next year. Beginning March 1, all Social Security checks will be sent electronically except to recipients age 90 and above, who may opt to receive a paper check. "Hurricane Sandy demonstrates the importance of shifting payments to direct deposit and electronic channels because in case of storms or fires, recipients still have many ways to get to their money," Phillips says. "Electronic distribution of benefits ensures there will be no economic crisis for individuals if the mail can't get through or if payments are lost in the mail, which sometimes happens for other reasons." 

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TOP STORY CONTINUED FROM PAGE 1

End of the Line for First Bank of Delaware

cahoots with a large number of additional fraudulent merchants.” On behalf of those entities, the bank originated hundreds of thousands of debit transactions against consumers’ bank accounts, many of which originated via remotely created checks (RCCs). The DOJ also alleged that the bank was aware of “significant red flags warning the bank that the debit transactions were tainted by fraud.” The DOJ’s \$15 million penalty is concurrent with those of FinCEN and the FDIC. The bank also is required to maintain an account with \$500,000 to pay consumer claims arising from its alleged conduct.

The amount of the penalty pales in comparison with the financial penalties assessed and refunds required recently by the CFPB on Capital One (\$165 million), Discover (\$214 million) and American Express (\$85 million) for consumer protection violations related to oversight of third-party relationships, but the penalty is huge for what is essentially a small community bank, perhaps signifying the regulators’ zero tolerance for banks that ignore blatant risky behavior by their third-party payment processors and such processors’ clients. Several weeks prior to the public announcement of the FinCEN/FDIC orders and the DOJ settlement, First Bank of Delaware shareholders voted to dissolve the bank.

FBD’s BSA/AML Failings

FinCEN’s [order](#) details a litany of the bank’s BSA/AML failings, most of which are related to the bank’s lack of an effective system of internal controls to ensure ongoing compliance. FinCEN found that the bank did not “effectively assess and implement policies and procedures to mitigate potential money

laundering risks, given its high-risk products and clients, and failed to detect and timely report suspicious activity to FinCEN.” These are FinCEN’s key findings:

FinCEN’s order details a litany of the bank’s BSA/AML failings, most of which are related to the bank’s lack of an effective system of internal controls to ensure ongoing compliance.

- Regarding third-party payment processors, FinCEN found the bank failed to adequately assess AML risks associated with providing banking services to such customers; consistently ignored red flags associated with particular processors; and failed to collect sufficient information to anticipate those processors’ normal range of transactions and activities, resulting in a failure to take into account heightened risk factors in its transaction monitoring. In addition, FinCEN found the bank failed to detect and act upon “significant risk indicators” regarding its third-party payment processor customers, including those offering RCC services or servicing merchants paid through the ACH network. For example, merchants using the bank’s third-party processor customers’ RCC services were responsible for total return rates of more than 60 percent, which vastly exceeded any reasonably expected rate for such activity.

- Regarding money services business (MSB) customers, FinCEN found the bank did not effectively perform individual risk assessments for its high-risk MSB customers (one of which, for example, facilitated almost

\$22 million in banking services for a foreign located customer), and the risk analyses that were prepared were not provided to appropriate bank personnel. In contravention of its own policy, the bank did not conduct on-site visits for out-of-state, high-risk MSBs and other potentially high-risk MSB customers.

- Regarding an MSB customer that offered prepaid cards to foreign persons, FinCEN found that the bank relied on the MSB to perform BSA/AML functions related to this product but failed to collect adequate information from the MSB about the foreign cardholders. The FDIC directed the bank to update its policies and procedures related to MSB’s activities, enhance its risk assessment, perform an independent review of the MSB’s AML program and conduct a suspicious activity look back review.

FinCEN’s order also discusses deficiencies related to transaction monitoring, independent testing, day-to-day management of the bank’s AML program, training for appropriate personnel and suspicious activity reporting.

In the [joint press release](#) announcing the action, FinCEN Director Jennifer Shasky Calvery said: “To make money, First Bank of Delaware entered into risky lines of business and chose to disregard its Bank Secrecy Act responsibilities. ... As a result of its failure to implement systems and controls to identify and report suspicious activities, as required by the BSA, financial predators were able to victimize consumers.”

This is not the first time First Bank of Delaware has run afoul of the FDIC, having been the subject of a number of orders over the last several years on a variety of issues, including BSA/AML and third-party oversight. [↻](#)

FEDERAL LAWS & REGULATIONS

CONTINUED FROM PAGE 1

Blumenthal Introduces Restrictive Gift Card Protection Act

such companies from selling or issuing gift cards after filing for bankruptcy protection. “This bill bars absolutely Draconian deadlines and abusive fees and charges that unfairly confiscate consumer gift card cash,” Blumenthal said in an announcement on Black Friday, Nov. 23.

Noting that now-defunct merchants, including Circuit City and Linens ‘n Things, sold gift cards to consumers after filing for bankruptcy, Blumenthal said his proposed bill “assures that consumers get their money’s worth, no matter when they use the gift card.”

Blumenthal’s Gift Card Consumer Protection Act also proposes to eliminate the exemption for loyalty,



Senator Richard Blumenthal (D-Conn.)

award and promotional gift cards, thereby subjecting all such cards to the restrictions and prohibitions of the CARD Act, Margo Hirsch Strahlberg, an associate with Bryan Cave LLP and *Paybefore Legal* contributing editor, tells Paybefore. “Blumenthal’s bill appears to ignore parts of federal law that were purpose-

ly carved out to recognize the economic realities of different types of prepaid cards, and eliminating them would trigger major operational problems, interfere with certain fraud protections, and potentially eliminate these products from the marketplace,” Strahlberg says. The provision to eliminate expiration dates on reward and promotional cards would be

devastating for companies that use these cards for marketing purposes, she says. “Reward cards are a marketing tool; they are not holding consumer-paid funds.”

Lawmakers have pushed for new gift card protection laws for each of the last four years, but other than the CARD Act itself, no proposed bills have been passed. Sen. Robert Menendez (D-N.J.) last year introduced the [Prepaid Card Consumer Protection Bill](#), echoing similar bills introduced in [2010](#) and also in [2009](#). The timing of Blumenthal’s announcement was clearly geared “to get consumers’ attention,” Strahlberg says. But it is unclear how far Blumenthal may get with the proposed bill before the Congress recesses in December. “Blumenthal could be laying the groundwork to make a serious push for this legislation next year,” Strahlberg suggests.

OTHER TOPICS OF INTEREST

March toward EMV Migration Continues with Discover Liability Shift

U.S. payment card networks continue to make preparations for the coming transition from magnetic stripe cards to EMV. [Discover](#) is the latest network to take a major step toward the switch, introducing a fraud liability shift, which will include its Discover and Diners Club International cards throughout North America and its PULSE debit/ATM cards in the U.S.

Scheduled to take effect for POS terminals on Oct. 1, 2015, and automated fuel dispensers two years later, the liability shift will benefit “the entity that leverages the highest level of available payments security,” Discover said. The network had previously put a liability shift into place for Diners Club cards—scheduled to take effect on Dec. 1, 2012—but the newly announced shift will bring all of Discover’s card types

under one policy. Discover also will begin granting annual PCI audit waivers to merchants that process three-quarters of Discover transactions on terminals that support both contact and contactless payments. Additionally, the network said it will look to start gradually replacing its magnetic stripe cards with EMV chip-equipped cards, with initial outreach to be targeted toward frequent travelers.

Discover’s announcement is the latest in a series of moves by the four major card networks in preparation for the switch from magnetic stripe cards to EMV. In September, MasterCard [announced](#) its own liability shift, covering all transactions made with its cards at ATMs across the U.S., beginning in October 2016. Over the past 15 months, the networks have all set out

“road maps” for the switch to EMV. [Visa](#) was first out of the gate, unveiling [its plan](#) in August of 2011; [MasterCard](#) followed in January 2012, with Discover and [American Express](#) releasing plans this past [March](#) and [July](#), respectively.

While the networks are getting their ducks in a row for EMV migration, U.S. retailers may be lagging behind, according to some observers. A recent [study](#) by Javelin Strategy & Research predicted that only about 60 percent of U.S. merchants are likely to be compliant with EMV technology by October 2015, when the majority of liability shift policies are scheduled to take effect. Currently, just 10 percent of payments terminals in the U.S. are EMV-ready, and a mere 1 percent of payment cards comply with EMV standards, the report found.

FEDERAL LAWS & REGULATIONS

CONTINUED FROM PAGE 1

Post-Election Fallout



focus of the federal government now will be on the preservation and advancement of the Consumer Financial Protection Bureau (CFPB) and the Dodd-Frank Act.

The following is a brief summary of the most significant changes in Washington, many of which will influence future laws and regulations governing the financial services industry.

Senate

The Democrats picked up two more seats in the Senate, which is now comprised of 53 Democrats, 45 Republicans and two independents. Sen. Harry Reid (Nev.) will continue to serve as majority leader and Sen. Richard Durbin (Ill.) as majority whip.

The Senate Banking Committee lost two of its members, Herb Kohl (D-Wis.) and Daniel Akaka (D-Hawaii), who opted not to run for another term. Meanwhile, Banking Committee member Jon Tester (D-Mont.) narrowly defeated Rep. Denny Rehberg (R-Mont.), and Bob

Corker (R-Tenn.) and Robert Menendez (D-N.J.) were re-elected. Senator Tim Johnson (D-S.D.) will continue as chairman of the committee. Sen. Richard Shelby (R-Ala.) will rotate off as the ranking Republican due to conference term limit rules; Sen. Mike Crapo (R-Idaho) is expected to take his place. Finally, Sen. Charles Schumer (D-N.Y.), a senior member of the Banking Committee, will remain on the committee.

The committee vacancies likely will pave the way for Senator-elect Elizabeth Warren (D-Mass.) as a new committee member. Warren also has been mentioned as a possible member of the Senate Judiciary or Finance Committee. If appointed to the Banking Committee, Warren likely would thwart proposed changes in certain CFPB processes (e.g., subjecting the CFPB to the appropriations process), as well as the possibility of revising Dodd-Frank to provide for a five-person commission. While many fear Warren would be an aggressive addition to the committee, especially in light of some speculation that she may run for president in 2016, others believe that as a first-time senator she will have

to build alliances and gain more seniority before having a significant impact.

House of Representatives

Republicans will continue to control the House of Representatives. Two races remain undecided as of press time: a recount is pending in North Carolina's 7th congressional district; and a runoff will be held in Louisiana's 3rd congressional district on Dec. 8.

Meanwhile, the House Financial Services Committee will have new leadership, since current Chairman Spencer Bachus (R-Ala.) is term limited and Ranking Democratic Member Barney Frank (D-Mass.) is retiring. Many expect Jeb Hensarling (R-Texas), the current vice chairman of the committee who also serves in the House Republican leadership, to be the new chairman of the committee. Overall, six House Financial Services Committee members lost re-election bids: Judy Biggert (R-Ill.), Nan Hayworth (R-N.Y.), Robert Dold (R-Ill.), Francisco Canseco (R-Texas), Frank Guinta (R-N.H.) and Joe Baca (D-Calif.).

INTERNATIONAL

China Issues Regulations Governing Closed-Loop Prepaid Cards



The Ministry of Commerce of the People's Republic of China recently issued administrative measures for "single-purpose commercial prepaid cards" (closed-loop prepaid cards). Among other things, the regulations create a licensing scheme for various entities involved in offering closed-loop prepaid cards and require issuers to maintain reserves based upon a percentage of their revenue from their principal business of the prior fiscal year. The regulations also set forth certain requirements for terms and conditions, establish maximum load limits, require cards purchased above a certain threshold to be registered, prohibit expiration dates for registered cards and prohibit expiration dates of less than three years for anonymous cards. The regulations took effect on Nov. 1, 2012.

Paybefore works with professionals throughout the prepaid and emerging payments industry as well as service providers to the sector to create insightful opinions on topics of interest. If you're interested in working with us on a Viewpoint, please contact [Marilyn Bochicchio](#).

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