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INNOVATIVE PAYMENTS ASSOCIATION

APRIL 2020

Highlighting the Payments Community Amid the Covid-19 Crisis

MSBA
Money Services Business Association

 CardCoalition



AMERICAN TRANSACTION
PROCESSORS COALITION

IPA

Who We Are

The Payments Alliance is a group of trade associations that are the leading voices of our respective corners of the payments industry – fintech, money transmitter, credit cards, and processing. The Payments Alliance is a forum where trade groups can share ideas, identify common concerns, and develop solutions that benefit our respective markets, memberships, and consumer bases. The Payments Alliance is made up of the following trade associations:

- AMERICAN TRANSACTION and PROCESSING COALITION (ATPC)
- CARD COALITION (CC)
- INNOVATIVE PAYMENTS ASSOCIATION (IPA)
- MONEY SERVICES BUSINESS ASSOCIATION (MSBA)

Contributors



Brian Tate
President & CEO,
IPA



H. West Richards
Executive Director
ATPC



Toni A. Bellissimo
Executive Director
Card Coalition



Kathy Tomasofsky
Executive Director
Money Services
Business Association

AMERICAN TRANSACTION and PROCESSING COALITION

First Half of 2021 Observations

The ATPC expects that the first half of 2021 will be overshadowed by two major issues: the COVID-19 pandemic and the outcome of the 2020 election. It will likely take until July or even August before the vaccine has been widely distributed such that states will fully lift lockdown orders and workers will return to their workplaces in significant numbers. From a federal legislative perspective, this will mean there will likely be continued expectations for additional stimulus packages, even beyond the one currently being discussed in Congress. How these stimulus packages unfold, how they will impact businesses and consumers, and how the payments and fintech industry can be involved will remain to be seen. State governments will also be directly impacted by the continuation of the pandemic. As 2020 rounds out, we are seeing that many states are struggling with their budgets due to increased costs and decreased tax revenue. And most states will not be able to expect any relief in the first half of 2021 as the pandemic continues. Therefore, many states will likely turn towards new and creative ways to make up lost revenue, some of which will directly impact the payments and fintech industry, as we are already seeing in some states with discussions around real time sales taxes and interchange fees.

The outcome of the 2020 election will also be a major area of focus for the ATPC in 2021. As the Biden Administration transitions in, they will be appointing leadership to key departments and agencies that oversee the industry. As the ATPC anticipates an increase in regulatory and agency privacy and cybersecurity activity, these new leaders will play an important role in determining how and to what extent the industry is impacted. Another critical dynamic will be the outcome of the Senate runoffs in Georgia, which will determine control of the Senate.

Whether the Democrats or the Republicans control the Senate will, in part, determine the Biden administration's agenda and their appointments in key roles approved by the Senate. Also, we are expecting key legislative reform to the Dodd-Frank Act, Intellectual Property legislation, and others, the outcome of which will likely be drastically different with a Congress controlled by the Democrats (albeit with slim majorities) or split between the two parties. Regardless of the outcome of the Senate races, a key issue for the payments and fintech industry to highlight to Congress and federal agencies in 2021 ought to be financial inclusion. Its importance is picking up steam across the country on both sides of the aisle and will only become more important in 2021.

Given the unique circumstances across multiple spheres and layers of consequence, the first half of 2021 will of course have an outsized impact on the second half of 2021. Another focus of Congress with regard to the payments industry will be around what innovations are being developed to support small business during and also in the aftermath of the pandemic.

CARD COALITION

Plus ça change, plus c'est la même chose

While attention focused on federal races, eleven gubernatorial and a staggering 5827 state legislative seats were on the November ballot. After a \$100 million national effort to take control in anticipation of post-census congressional redistricting, the Democrat “blue wave” failed to materialize.

In Montana, the GOP won its 27th governorship (a pickup). Ten attorney general seats were on the November ballot with the only open seats in Indiana and Montana—both won by the GOP.

In legislative races, the GOP kept the majority in Texas and Arizona (the Democrats needed three Senate seats and two House seats to take control). In New Hampshire, the GOP captured both houses (continuing that state’s habit of changing partisan control in virtually every election cycle). The GOP now has the majority in 60 of the 98 chambers (Nebraska’s bicameral Senate is nominally partisan). The GOP has veto-proof majorities in 15 states, with Democrats holding in seven (counting Vermont independents who generally vote with the Democrats).

Time for a bake sale?

2021 will be a year of states searching for revenue—especially if the pandemic continues. Profligate states with systemic budget challenges, and more thrifty states facing emergency expenditures and tax revenue drops will be looking for revenue—especially if it can be raised from business. The November election showed that even in the Bluest states, voters feel over-taxed. Californians rejected Proposition 15 to increase commercial property taxes to fund schools while Illinois voters rejected the “fair tax” proposal to impose a graduated income tax.

The payment industry is likely to face efforts to enact tax increases aimed at business—especially if Congress fails to bail out states. Look for transaction taxes levied on electronic payments, more aggressive steps to collect taxes on data processing, and continued efforts to enact “real-time sales tax collection by payment processors.

Consumer protection, privacy, and Fintech

While the familiar landscape means the industry is unlikely to face wholesale changes, the social justice movement is likely to press limitations on debt collection (some temporarily imposed during the pandemic) and usury and rate caps.

While 2020 did not bring the anticipated passage of privacy legislation similar to California, look for Washington and others to consider comprehensive privacy regimes. As always, data breach legislation will follow well-publicized data breaches.

Finally, if the new Administration backs away from the current OCC Fintech charter or the FDIC’s recent approval of industrial bank charters, other states may consider variations of Wyoming’s Special Purpose Depository Institution charter.

INNOVATIVE PAYMENTS ASSOCIATION

New President, New Congress, Renewed Oversight

2020 Election Results

The outcome of the November 2020 election signaled the close of the Administration of Donald J. Trump and will result in the swearing in of Joe Biden as the next President and Vice President of the United States on January 20, 2021. However, it is important to keep in mind that the much-anticipated Blue Wave did not materialize. However, based on the results of the January 5, 2021, Georgia Senate elections, it appears the Democrats will likely control the U.S. House and U.S. Senate. – albeit narrowly.

Enhanced Oversight & Enforcement

The incoming Biden Administration is expected to make it a priority to stay, amend, or reverse a number Trump Administration regulatory policies and initiatives. In early December 2020 the Biden transition team has announced that the president-elect will nominate (subject to Senate approval) Janet Yellen to be the next Treasury Secretary. Although at this time the Biden team has not yet released the names of who may lead the Consumer Financial Protection Bureau (CFPB) or the Office of the Comptroller of the Currency (OCC), it is anticipated that whoever eventually ends up leading these agencies will place a heavy emphasis on heightened enforcement and oversight of financial institutions.

New President, New Congress, Stepped Up Review and Oversight

Look for payday lending, overdraft, arbitration, data collection to be at the top of the list of the CFPB's priorities for 2021. The incoming Comptroller will have to decide if he/she would like to continue the current Comptrollers policies on the payments charter, cryptocurrency, and lending. Accordingly, the House Financial Services Committee (HFSC) majority, led by Chairman Maxine Waters (D-CA), is expected to work closely with the Biden Administration on setting financial services policy.

The HFSC to continue to follow their current priorities into 2021, including, but not limited to oversight of COVID-19 related relief payments, fintech products, mobile wallets, and the expansion of technology companies into traditional banking, and enforcing consumer protections. If the results of the Georgia election hold as anticipated, U.S. Senator Sherrod Brown (D-OH) will likely become the next Chair of the Senate Banking Committee.

COVID

The prepaid platform is a vital piece for Fintech innovation and is widely acknowledged as a key enabler of secure and flexible payment solutions. Although prepaid providers are mostly low-key behind the scenes players, the current global health crisis has compelled prepaid products to emerge as critical tools to help people through the pandemic. Prepaid accounts (mobile wallets, P2P, and cards) have and will continue to play a critical role in delivered critical federal, state and local benefits to millions of Americans who have been impacted by the COVID-19 pandemic.

Given the advantages prepaid accounts offer beneficiaries and governments alike, last spring the U.S. Department of the Treasury announced an expansion of its use of prepaid cards to distribute CARES Act related Economic Impact Payments (EIP) to help ensure that Americans in need could receive their EIP as quickly, efficient, and safely as possible.

Accordingly, last month Congress passed, and President Trump signed into law the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 which authorized a second round of EIP's other fiscal stabilization and stimulus programs. Although most recipients will receive these payments by direct deposit, prepaid accounts will again play a critical role in making sure critically needed support payments will reach Americans in a timely manner. Some estimates anticipate that as many as 8 million people may receive their EIP via a prepaid account.

PayPal v. CFPB

On December 30th U.S. District Court Judge Richard Leon released his ruling in PayPal v. CFPB. Judge Leon wrote in his opinion that the CFPB acted outside of its statutory authority by promulgating mandatory disclosure clauses and substantive restrictions on consumers access to or use of credit linked to prepaid products. Thus, Leon vacated the provisions in the Prepaid Account Final Rule related to the short-form disclosure requirement which outlines mandatory disclosure, and the thirty-day credit linking restrictions. While Leon's ruling directly impacts prepaid accounts (mobile wallets, P2P, and cards), his ruling also has implications for the entire payments ecosystem. It is important to note that while the disclosure and credit provisions have been struck down by Judge Leon, the rest of the Prepaid Account Final Rule remains in effect. Please also note that according to the Federal Rules of Appellate Procedure, that the CFPB has 60-days to file an appeal in U.S. Court of Appeals – D.C. Circuit. Further, the 60-day timeframe could be extended by any post-judgment motions filed by one of the parties. More to come...

Money Services Business Association

Sharing One Industry Vision

The Money Services Business Association will continue its efforts in working with the Conference of State Banks Supervisors (CSBS), Money Transmitter Regulator Association (MTRA) and NMLS with a focus on the Uniform Money Transmission Modernization Act and the implementation of the Networked licensing and supervision.

These efforts will streamline the licensing process for new entrants and provide efficiencies to existing licensed companies with common system and reporting processes.

In addition to the policy and system efforts at the state level, we anticipate that several states may look to tax remittances, bill-payments and other money-transmission products to shore up the budget-deficits left in many of the states by COVID.

We will participate in the release of MSB Best Practices in the first quarter of 2021. The practices were formulated as best-in-industry principles to assist any MSB in meeting its regulatory obligations. To this end, these best practices also take into account virtual currency and financial-technology “FinTech” companies recognizing their integration into the financial services landscape and accompanying AML obligations.

In addition to assisting with general regulatory requirements, banks and other financial institutions confidently engage in relationships with MSBs that utilize these best practices. Further, banks and other financial institutions can utilize these best practices to address the regulatory expectations described in the FFIEC Expanded Examination Overview and Procedures for Consolidated and Other Types of BSA/AML Compliance Program Structures.