

116TH CONGRESS
1ST SESSION

S. _____

To amend the Expedited Funds Availability Act to require that funds deposited be available for withdrawal in real-time, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. VAN HOLLEN (for himself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Expedited Funds Availability Act to require that funds deposited be available for withdrawal in real-time, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Payments Moderniza-
5 tion Act of 2019”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Families in the United States spend billions
9 of dollars in overdraft fees in part because they are

1 waiting for checks to clear over a weekend or holi-
2 day.

3 (2) The inefficient payment system in the
4 United States drives families, especially those living
5 paycheck to paycheck, to use high-cost financial
6 services to access funds more rapidly.

7 (3) A faster payment system would provide peo-
8 ple of the United States immediate access to funds
9 and relief for those who overdraw their accounts be-
10 cause their deposits are not available in real-time,
11 helping families potentially save billions of dollars
12 each year.

13 (4) The United States lags behind other coun-
14 tries in the speed and efficiency of its payment sys-
15 tem.

16 (5) Central banks around the world have al-
17 ready implemented real-time payment systems, in-
18 cluding in the United Kingdom, Australia, Mexico,
19 Poland, Japan, and South Africa.

20 (6) The Federal Reserve System was created by
21 Congress on December 24, 1913, in response to the
22 financial panic of 1907.

23 (7) Since its beginning, the Federal Reserve
24 System has played a crucial role in the payment sys-
25 tem of the United States.

1 (8) The role of the Federal Reserve System in
2 providing payment services is—

3 (A) to promote the integrity and efficiency
4 of the payment mechanism; and

5 (B) to ensure the provision of payment
6 services to all depository institutions on an eq-
7 uitable basis and in an atmosphere of competi-
8 tive fairness.

9 (9) The Monetary Control Act of 1980 (title I
10 of Public Law 96–221; 94 Stat. 132) provided the
11 Board of Governors of the Federal Reserve System
12 with the authority to oversee the payment system in
13 the United States.

14 (10) The Expedited Funds Availability Act (12
15 U.S.C. 4001 et seq.), enacted on August 10, 1987,
16 provided the Board of Governors of the Federal Re-
17 serve System with full authority to regulate all as-
18 pects of the payment system, including the receipt,
19 payment, collection, clearing of checks, and related
20 functions of the payment system pertaining to
21 checks.

22 (11) In a July 2018 report on financial tech-
23 nology, the Department of Treasury acknowledged
24 the important role of the Board of Governors of the
25 Federal Reserve System in bringing real-time pay-

1 ment settlement services to the United States when
2 the Department recommended the Board of Gov-
3 ernors work to facilitate a faster retail payment sys-
4 tem, in particular, for smaller financial institutions
5 such as community banks and credit unions, noting
6 that such institutions should also have the ability to
7 access the most innovative technologies and payment
8 services.

9 (12) The authorities described in paragraphs
10 (9) and (10) are more critical than ever given how
11 the financial services sector has been defined as a
12 vital component of critical infrastructure in the
13 United States.

14 (13) Role of the Board of Governors of the
15 Federal Reserve System in the financial services sec-
16 tor will ensure the resiliency of the payment system
17 in the United States.

18 (14) The Board of Governors of the Federal
19 Reserve System should develop a real-time interbank
20 payment system to ensure that—

21 (A) consumers are prioritized;

22 (B) consumers and small businesses are
23 protected from fraud and errors, including with
24 respect to a payment initiated by a consumer or
25 small business;

1 (C) the payment system is open to in-
2 creased competition; and

3 (D) outsized entities do not monopolize the
4 financial infrastructure of the United States.

5 (b) PURPOSES.—The purposes of this Act are—

6 (1) to ensure that the United States has a safe,
7 fast, efficient, equitable, and fair payment system;

8 (2) to clarify that the Board of Governors of
9 the Federal Reserve System has the existing author-
10 ity to build a real-time payment system; and

11 (3) to make certain that the Board of Gov-
12 ernors of the Federal Reserve System follows
13 through on implementing the system described in
14 paragraph (2).

15 **SEC. 3. DEFINITION.**

16 In this Act, the term “real-time” has the meaning
17 given the term in section 602 of the Expedited Funds
18 Availability Act (12 U.S.C. 4001), as amended by section
19 4(a) of this Act.

20 **SEC. 4. REQUIREMENT THAT FUNDS DEPOSITED BE AVAIL-**
21 **ABLE FOR WITHDRAWAL IN REAL-TIME.**

22 (a) DEFINITIONS.—

23 (1) IN GENERAL.—Section 602 of the Expe-
24 dited Funds Availability Act (12 U.S.C. 4001) is
25 amended—

1 (A) by redesignating paragraphs (20)
2 through (25) as paragraphs (21) through (26),
3 respectively; and

4 (B) by inserting after paragraph (19) the
5 following:

6 “(20) REAL-TIME.—The term ‘real-time’—

7 “(A) means any time; and

8 “(B) includes a Saturday, Sunday, and a
9 legal holiday.”.

10 (2) TECHNICAL AND CONFORMING AMEND-
11 MENT.—Section 3 of the Check Clearing for the
12 21st Century Act (12 U.S.C. 5002(2)(D)(iv)) is
13 amended by striking “section 602(24)” and insert-
14 ing “section 602(25)”.

15 (b) EXPEDITED FUNDS AVAILABILITY SCHED-
16 ULES.—Section 603 of the Expedited Funds Availability
17 Act (12 U.S.C. 4002) is amended—

18 (1) in subsection (a)—

19 (A) in the subsection heading, by striking
20 “NEXT BUSINESS DAY” and inserting “REAL-
21 TIME”;

22 (B) in paragraph (1)—

23 (i) by striking “Except as provided in
24 subsection (e) and in section 604, in” and
25 inserting “In”; and

1 the business day a” and inserting
2 “A”;

3 (II) by inserting a comma after
4 “subparagraph (B)”;

5 (III) by striking “is”; and

6 (IV) by striking “and the busi-
7 ness day on which funds from such
8 deposit are available for withdrawal”
9 and inserting “shall be available for
10 withdrawal in real-time”; and

11 (ii) in subparagraph (B), in the sub-
12 paragraph heading, by striking “PARA-
13 GRAPH” and inserting “SUBPARAGRAPH”;
14 and

15 (B) in paragraph (2)—

16 (i) by striking “, (b), and (c)” and in-
17 serting “and (b)”;

18 (ii) in the paragraph heading, by
19 striking “TEMPORARY AND PERMANENT
20 SCHEDULES” and inserting “PERMANENT
21 SCHEDULE”; and

22 (7) in subsection (d)(2), as redesignated by
23 paragraph (5), by striking “(c), or (e)” and insert-
24 ing “or (c)”.

1 (c) SAFEGUARD EXCEPTIONS.—Section 604 of the
2 Expedited Funds Availability Act (12 U.S.C. 4003) is
3 amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1)—

6 (i) in the paragraph heading by strik-
7 ing “NEXT BUSINESS DAY” and inserting
8 “REAL-TIME”; and

9 (ii) in the matter following subpara-
10 graph (D) by striking “on the business day
11 after the business day on which such cash
12 or funds are deposited or, in the case of a
13 wire transfer, on the business day after the
14 business day on which” and inserting “in
15 real-time after such cash or funds are de-
16 posited or, in the case of a wire transfer,
17 in real-time after”;

18 (B) in paragraph (2)—

19 (i) by striking “, 603(e), or para-
20 graphs” and inserting “paragraph”; and

21 (ii) by striking “603(e)” and inserting
22 “603(c)”; and

23 (C) by striking paragraph (3)(B) and in-
24 serting the following:

1 “(B) any such funds deposited in excess of
2 such amount shall be available for withdrawal
3 in real-time.”;

4 (2) in subsection (b), in the matter preceding
5 paragraph (1), by striking “(c), or (e)” and insert-
6 ing “or (c)”;

7 (3) in subsection (e)(1), by striking “(c), and
8 (e)” and inserting “and (c)”; and

9 (4) in subsection (d), by striking “(c), and (e)”
10 and inserting “and (c)”.

11 (d) MISCELLANEOUS PROVISIONS.—Section 607 of
12 the Expedited Funds Availability Act (12 U.S.C. 4006)
13 is amended—

14 (1) by striking subsections (a) and (b); and

15 (2) by redesignating subsections (e) through (f)
16 as subsections (a) through (d), respectively.

17 (e) REGULATIONS AND REPORTS BY BOARD.—Sec-
18 tion 609 of the Expedited Funds Availability Act (12
19 U.S.C. 4008) is amended—

20 (1) by striking subsections (d) and (f); and

21 (2) by redesignating subsection (e) as sub-
22 section (d).

23 **SEC. 5. PAYMENTS MANDATE.**

24 The Federal Reserve shall create a real-time payment
25 system that—

1 (1) at a minimum, conforms with the principles
2 outlined in the final report of the Faster Payments
3 Task Force of the Federal Reserve System;

4 (2) allows end users have fast access to funds
5 in real-time;

6 (3) operates as a utility, allowing end users to
7 reach any other end user, including unbanked, un-
8 derserved and cross-border end users, regardless of
9 the solution used by the end user;

10 (4) prioritizes safety and soundness, consumer
11 health, efficiency, and other relevant public interest
12 considerations;

13 (5) provides end users with the confidence and
14 trust in the safety and security of the system by en-
15 suring that—

16 (A) fraud and errors are minimized and re-
17 solved quickly; and

18 (B) the assets, accounts, and information
19 of the end user are protected, even as payments
20 cross different solutions;

21 (6) has transparent operating information; and

22 (7) ensures that there are no volume discounts
23 made that disadvantage smaller financial institu-
24 tions.