

118TH 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 2023”.

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 Board of Governors of the Federal Re-
14 serve System has created FedNow, an instant pay-
15 ment infrastructure that allows participants to send
16 and receive funds in real time.

17 (5) Financial services providers have a duty to
18 make payments available as soon as it is reasonably
19 possible.

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

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

1 (2) to clarify that financial institutions shall
2 prioritize efficient payments, except in cases in
3 which fraudulent activity is suspected.

4 **SEC. 3. DEFINITION.**

5 In this Act, the term “real-time” has the meaning
6 given the term in section 602 of the Expedited Funds
7 Availability Act (12 U.S.C. 4001), as amended by section
8 4(a) of this Act.

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

11 (a) DEFINITIONS.—

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

15 (A) by redesignating paragraphs (20)
16 through (25) as paragraphs (21) through (26),
17 respectively; and

18 (B) by inserting after paragraph (19) the
19 following:

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

21 “(A) means any time; and

22 “(B) includes a Saturday, Sunday, and a
23 legal holiday.”.

24 (2) TECHNICAL AND CONFORMING AMEND-
25 MENT.—Section 3 of the Check Clearing for the

1 21st Century Act (12 U.S.C. 5002(2)(D)(iv)) is
2 amended by striking “section 602(24)” and insert-
3 ing “section 602(25)”.

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

7 (1) in subsection (a)—

8 (A) in the subsection heading, by striking
9 “NEXT BUSINESS DAY” and inserting “REAL-
10 TIME”;

11 (B) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “Except as provided
14 in subsection (e) and in section 604, in”
15 and inserting “In”; and

16 (ii) in the matter following subpara-
17 graph (B) by striking “not later than the
18 business day after the business day on
19 which” and inserting “in real-time when”;
20 and

21 (C) in paragraph (2), in the matter pre-
22 ceding subparagraph (A), by striking “not later
23 than the business day after the business day on
24 which” and inserting “in real-time after”;

1 (2) by striking subsection (b) and inserting the
2 following:

3 “(b) PERMANENT SCHEDULE.—Funds deposited in
4 an account at a depository institution by a check drawn
5 on a local or nonlocal originating depository institution
6 shall be available for withdrawal in real-time.”;

7 (3) by striking subsections (c) and (d);

8 (4) by redesignating subsections (e) and (f) as
9 subsections (c) and (d), respectively;

10 (5) in subsection (c), as redesignated by para-
11 graph (4)—

12 (A) in paragraph (1)—

13 (i) in subparagraph (A)—

14 (I) by striking “Not more than 4
15 business days shall intervene between
16 the business day a” and inserting
17 “A”;

18 (II) by inserting a comma after
19 “subparagraph (B)”;

20 (III) by striking “is”; and

21 (IV) by striking “and the busi-
22 ness day on which funds from such
23 deposit are available for withdrawal”
24 and inserting “shall be available for
25 withdrawal in real-time”; and

1 (ii) in subparagraph (B), in the sub-
2 paragraph heading, by striking “PARA-
3 GRAPH” and inserting “SUBPARAGRAPH”;
4 and

5 (B) in paragraph (2)—

6 (i) by striking “, (b), and (c)” and in-
7 serting “and (b)”; and

8 (ii) in the paragraph heading, by
9 striking “TEMPORARY AND PERMANENT
10 SCHEDULES” and inserting “PERMANENT
11 SCHEDULE”; and

12 (6) in subsection (d)(2), as redesignated by
13 paragraph (4), by striking “(c), or (e)” and insert-
14 ing “or (e)”.

15 (c) SAFEGUARD EXCEPTIONS.—Section 604 of the
16 Expedited Funds Availability Act (12 U.S.C. 4003) is
17 amended—

18 (1) in subsection (a)—

19 (A) in paragraph (1)—

20 (i) in the paragraph heading by strik-
21 ing “NEXT BUSINESS DAY” and inserting
22 “REAL-TIME”; and

23 (ii) in the matter following subpara-
24 graph (D) by striking “on the business day
25 after the business day on which such cash

1 or funds are deposited or, in the case of a
2 wire transfer, on the business day after the
3 business day on which” and inserting “in
4 real-time after such cash or funds are de-
5 posited or, in the case of a wire transfer,
6 in real-time after”;

7 (B) in paragraph (2)—

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

10 (ii) by striking “603(e)” and inserting
11 “603(c)”; and

12 (C) by striking paragraph (3)(B) and in-
13 serting the following:

14 “(B) any such funds deposited in excess of
15 such amount shall be available for withdrawal
16 in real-time.”;

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

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

22 (4) in subsection (d), in the matter preceding
23 paragraph (1), by striking “(c), and (e)” and insert-
24 ing “and (c)”.

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

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

5 (2) by redesignating subsections (c) through (f)
6 as subsections (a) through (d), respectively.

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

10 (1) in subsection (b)(8), by striking “, pursuant
11 to the study under subsection (f)”;

12 (2) by striking subsections (d) and (f); and

13 (3) by redesignating subsection (e) as sub-
14 section (d).

15 (f) GAO STUDY.—Not later than 90 days after the
16 date of enactment of this Act, the Comptroller General
17 of the United States shall publish a study on the impact
18 of payment delays on disadvantaged communities, includ-
19 ing underbanked communities, and future access to and
20 use of financial services by those communities.

21 (g) FEDERAL RESERVE REPORT.—Not later than 90
22 days after the date of enactment of this Act, the Board
23 of Governors of the Federal Reserve System shall submit
24 to Congress a report on the progress of the FedNow in-
25 stant payment infrastructure, including—

1 (1) any obstacles encountered with respect to
2 institutions opting to utilize FedNow or participants
3 using FedNow; and

4 (2) any challenges anticipated with respect to
5 expanding the utilization of FedNow.