

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

October 8, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: Oversight and Investigations Subcommittee Hearing entitled, “Cashed Out: How a Cashless Economy Impacts Disadvantaged Communities and Peoples”

The Subcommittee on Oversight and Investigations will hold a hearing entitled, “Cashed Out: How a Cashless Economy Impacts Disadvantaged Communities and Peoples” on Thursday, October 14, 2021 at 12:00 ET via Cisco WebEx. There will be one panel with the following witnesses:

- John Breyault, Vice President of Public Policy, Telecommunications, and Fraud, National Consumers League
- Beverly Brown Ruggia, Financial Justice Program Director, New Jersey Citizen Action
- Norma Garcia, Policy Counsel and Director, Mission Economic Development Agency (MEDA)-San Francisco
- Representative Alex Valdez, Member, Colorado House of Representatives
- Todd Zywicki, Professor of Law, George Mason University Antonin Scalia School of Law

Overview

This hearing will assess the growing trend toward a cashless, digital-only economy and the adverse impacts on persons who are low wealth, unbanked, underbanked, or otherwise disadvantaged. With the continued surge of more and varied digital payments options, the drive for the efficiency and convenience of going “cashless” threatens to further marginalize those already on the margins: communities of color that live in poverty, unhoused persons with no permanent address, the underbanked and unbanked, elderly persons, and immigrants without documentation, among others. It also affects those who prefer to use cash to avoid overdraft fees imposed by banks, which have grown increasingly onerous in recent years.¹ This hearing will consider the collateral damage caused by cashless systems, the risks to marginalized communities, policy responses of certain jurisdictions to ban cashless businesses, and possible federal solutions to address these adverse impacts. Finally, the hearing will examine the lack of consumer protections for and disproportionate impact on low-income persons when digital payments are misdirected.

At the onset of the COVID-19 pandemic, as governments around the world mandated lockdowns and quarantines that severely limited face-to-face interactions, a new generation of payment solutions proliferated during what some experts refer to as the “death of cash.”² This trend began in the years preceding the pandemic. According to an analysis of Square payment transactions conducted between 2015 and 2019, America’s “cashless trend is clear but nuanced” as consumers increasingly used credit

¹ Brookings Institution, [The future of bank overdraft fees](#) (Jul. 21, 2021).

² Julie Hogan, [BankThink: Financial inclusion is impossible without cash](#), American Banker (Sep. 29, 2021).

and debit cards for smaller purchases.³ In 2018, The Pew Charitable Trusts (Pew) conducted a nationally representative survey of Americans' views on, and experiences with, various payment methods, including cash, checks, cards, and mobile application payments.⁴ The results showed that in any given month in 2018, most Americans used a range of traditional methods to make payments: credit cards (70%), debit cards (61%), prepaid cards (12%), cash (78%), and checks and money orders (37%). In that year, 56%, or roughly 143 million adults, made at least one mobile payment.⁵ Almost 30% of respondents opted not to use mobile payments because of concerns about loss of funds. Those who did make a mobile payment were twice as likely (39%) as credit card users (20%) to report that disputes were difficult to resolve and over four times more likely (23%) to report not knowing who they should contact.⁶

The Exclusionary Impacts of Cashless Commerce

The benefits of peer-to-peer digital payment platforms and mobile applications (collectively “P2P apps”) are understood to provide speed, convenience, and merchant security. Early in the COVID-19 pandemic, some also believed eliminating cash would help prevent the spread of the coronavirus, though medical studies have since demonstrated that cash generally does not spread respiratory diseases, such as COVID-19.⁷ However, the benefits for merchants come at a cost for some consumers that fall into three categories: (1) lost access; (2) lost privacy; and (3) lost security for consumers. According to Pew, cash was the primary payment method for 35 million American adults, or 14% of the U.S. population, with unbanked, lower income, and consumers of color most likely to pay with cash.⁸ While White consumers were more likely to report using cash in the prior month, people of color were nearly twice as likely to report they primarily pay with cash.⁹ For this 14% of the population, eliminating a cash payment option limits or entirely forecloses their ability to engage merchants or conduct transactions in other sectors of the economy where cash is not accepted.¹⁰ In March 2020, during the onset of the COVID-19 pandemic, the Metro Transportation Authority in New York City announced it would no longer accept riders' cash or swap their damaged MetroCards.¹¹ In June 2021, the agency announced that the transition to a cashless system will become permanent.¹² The move has prompted strong pushback, with politicians and unions emphasizing the exclusionary impact this move could have on those without a bank account or credit history.¹³

The Privacy Implications of Cashless Commerce

³ Shelle Santana, [Is the U.S. on Its Way to Becoming a Cashless Society?](#) HARV. BUS. REV. (July 23, 2019). For more on the data and literature and data regarding the use of cash as a means of payment and discussion of why the cash share is falling, see Solomon Tarlin, [The Future of Cash](#), Federal Reserve Bank of Philadelphia (Sep. 2021).

⁴ PEW Charitable Trusts, [Are Americans Embracing Mobile Payments? Survey of consumer experiences finds greater trust in credit, debit cards](#) (Oct. 2019).

⁵ *Id.* at p. 4.

⁶ *Id.* at p. 2.

⁷ Dalvin Brown, Can the coronavirus spread through cash exchanges or live on credit cards?, USA Today (Feb. 19, 2020).

⁸ Bourke, N., et al., Pew Charitable Trusts, [Rise of Cashless Retailers Problematic for Some Consumers](#), Figure 1 (Nov. 8, 2019).

⁹ *Id.*

¹⁰ While it is impossible to know the full impact of an as yet unrealized 100% cashless economy, a Working Paper from the Federal Reserve Bank of Atlanta used a model to simulate the effects on consumer welfare caused by a complete transition to cashless stores. According to the paper's findings, in a purely cashless economy, consumers with no credit or debit cards would bear a seven-fold burden relative to consumers who have both cards. Shy, O., Atlanta Federal Reserve Bank, [Cashless Store and Cash Users](#), Federal Reserve Bank of Atlanta Working Paper Series (revised Feb. 2021).

¹¹ Clayton Guse, [MTA permanently ends cash transactions at subway booths](#) (June 23, 2021).

¹² *Id.*

¹³ Ben Verde, [‘This isn’t the way to cut costs’: Brooklyn pols, union leaders blast MTA cashless payment plans](#) (Aug. 10, 2021).

Credit and debit cards, a common cash replacement, come with privacy concerns that cash avoids.¹⁴ Swiping a credit card provides a retailer with a consumer’s first and last name. Often, the merchant will either request the customer’s zip code at the point of sale or guess at it, as most transactions take place near where people live.¹⁵ With this information, the merchant can use a “data appending” service to match the initial information with an online database that provides the customer’s email, postal addresses, and telephone number.¹⁶ Once a merchant learns a customer’s identity, they can access the expansive databases of the data broker industry and gather a range of demographic information from the customer’s employment, marital, and homeownership status to their interests, hobbies, and medical conditions.¹⁷

Many retailers participate in “data cooperatives” where customer data becomes available to the other companies in the cooperative.¹⁸ Over the past few years, major credit card companies have been converting access to consumer transactions into a new revenue stream. According to the Washington Post, Google now has access to 70% of the nation’s credit and debit card transactions via data-sharing agreements with credit card companies.¹⁹ This proliferation of transactional data leads to the potential for “behavioral scoring” and “financial profiling” where companies can use things like the neighborhood a consumer lives in and their spending patterns to determine theoretical creditworthiness, leading to potentially discriminatory impacts.²⁰

Some large tech companies are beginning to use payment solutions to encourage customers to stay within their corporate ecosystem.²¹ In March 2019, Amazon integrated with Worldpay – at the time of the deal, Worldpay processed more than 40 billion transactions totaling approximately \$1.7 trillion annually, supporting more than 300 payment types across 120 currencies.²² Amazon Pay is expanding from e-commerce to omnichannel – across web, mobile, in-person at its various stores, and on various “Internet-of-Things” devices such as the voice activated Alexa.²³ Voice commerce is an extension of Amazon’s patented, in-house biometric payments technology piloted within its expansive Amazon Go stores, using computer vision, sensor fusion, and advanced machine learning to identify a customer and collect payments without the customer needing to use a credit card or mobile device.²⁴ Amazon is reportedly in talks to sell this biometric payment technology to movie theaters and airport concessionaires.²⁵ Together these technologies and new payment solutions, many of which did not exist five years ago, have created regulatory gaps in which products operate under little to no regulation.²⁶ Additionally, given the increasing

¹⁴ Jay Stanley, [Why Don't We Have More Privacy When We Use a Credit Card?](#), American Civil Liberties Union (Aug. 13, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Elizabeth Dwoskin and Craig Timberg, [Google now knows when its users go to the store and buy stuff](#), The Washington Post (May 23, 2017).

²⁰ See *Supra* FN 17.

²¹ CB Insights Research, [Everything You Need to Know About What Amazon is Doing in Financial Services](#) CB Insights Research (Apr. 15, 2021).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ John Adams, [BankThink: Can regulators keep pace with fintech innovation?](#), American Banker (Sep 29, 2021).

frequency of cyberattacks and data breaches at companies and governments, in a cashless economy, cybercrime will likely continue to increase.²⁷

P2P App-Based Fraud

Under the Electronic Funds Transfer Act (EFTA) and the Federal Reserve's Regulation E, consumers who suffer a hack of their bank account or debit card account and incur fraudulent charges are protected with limited liability for related losses.²⁸ Likewise, under the Fair Credit Billing Act, victims of credit card theft enjoy similar protections.²⁹ However, providers of P2P transfer services, whether offered through bank accounts or through app-based services, do not protect persons who are fraudulently induced to initiate a transfer to a scammer, and scammers who receive funds may escape liability because the transfers fall within an EFTA loophole that excludes transfers initiated by the consumer from the definition of an "unauthorized transfer."³⁰ The provisions in the EFTA and Regulation E create powerful incentives for banks and credit card issuers to implement rigorous anti-fraud measures, but the incentives are weaker to induce P2P Apps to do more to counter fraud.

The consequences of insufficient protections from fraudulent or simply erroneous transfers can be catastrophic, especially for low wealth persons and others living near the margins.³¹ As observed by John Breyault of National Consumers League in recent Senate testimony, "institutions are far more able to handle the costs of protecting consumers from small amounts of fraud in the system, whereas a single instance of fraud can be devastating to a consumer."³² Further, an analysis by U.S. PIRG³³ Education Fund found a recent surge in CFPB complaints regarding P2P apps, which are reported in the category of "mobile or digital wallet" complaints.³⁴ Over the year preceding April 2021, there were over 5,200 complaints in this category (up from 1,000 in 2017), with 970 complaints in the month of April 2021 alone. The majority of complaints related to frauds, scams, and unauthorized transactions, and three companies (*i.e.*, PayPal/Venmo, Square/Cash App, and Coinbase) accounted for over two-thirds of digital wallet complaints as shown in Table 1.³⁵ Data from the Federal Trade Commission (FTC) are consistent with these CFPB complaint data: in 2020, nearly 62,000 complaints were filed with the FTC by consumers who sent money to fraudsters via P2P apps, causing losses of \$87 million.³⁶

²⁷ Jamie, [What happens to your privacy if you go completely cashless?](#) Express VPN (Jul. 2021); *see also* Scott Zamost, et. al, [Criminals launder coronavirus relief money, exploit victims through popular apps](#), CNBC (Nov. 18, 2020).

²⁸ 15 U.S.C. § 1693, *et seq.*

²⁹ 15 U.S.C. § 1666-1666j.

³⁰ Mierzwinski, Ed, *et al.*, [Virtual Wallets, Real Complaints: How digital payment apps put consumers' cash at risk, an analysis of CFPB Complaints](#), at p. 9, U.S. PIRG Education Fund (June 2021).

³¹ *See, e.g.*, Popper, Nathaniel, [When Your Last \\$166 Vanishes: 'Fast Fraud' Surges on Payment Apps](#), New York Times (Oct. 11, 2020).

³² Testimony of J. Breyault, National Consumers League, on "Protecting Consumers from Financial Fraud and Scams in the Pandemic Recovery Economy," before U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection, at p. 11 (Aug. 3, 2021).

³³ U.S. PIRG is the federation of and national lobbying office for the non-profit state Public Interest Research Groups.

³⁴ *Supra*, FN 37 at p. 2.

³⁵ *Id.* at p. 2-4. For a state-by-state listing of these complaints, see Appendix A, Table A-1.

³⁶ Federal Trade Commission, [Consumer Sentinel Network Data Book 2020](#), at p. 11 (Feb. 2021).

Table 1: Ten Most-Complained-About Companies

Company	Digital wallet complaints	Top complained-about issue	Notes
PayPal	4,431	Managing, opening, or closing your mobile wallet account	Owns Venmo
Square	1,202	Unauthorized transactions or other transaction problem	Owns Cash App
Coinbase	755	Managing, opening, or closing your mobile wallet account	Platform for buying and selling cryptocurrency
PNC Bank	594	Problem adding money	A co-owner of Zelle app's parent Early Warning Systems
JPMorgan Chase	324	Fraud or scam	A co-owner of Zelle app's parent Early Warning Systems
Bank of America	262	Fraud or scam	A co-owner of Zelle app's parent Early Warning Systems
Synchrony Financial	224	Unauthorized transactions or other transaction problem	Issues PayPal Credit ¹⁴
Early Warning Services	212	Fraud or scam	Parent of Zelle
Wells Fargo	211	Fraud or scam	A co-owner of Zelle app's parent Early Warning Systems
Google Compare Credit Cards Inc.	138	Unauthorized transactions or other transaction problem	Some associated complaints contain mentions to Google's P2P app, Google Pay

Source: U.S. PIRG Education Fund, “Virtual Wallets, Real Complaints (June 2021)

Federal, State and Local Responses

The foregoing concerns about economic access, privacy, and security have led policymakers in some states and municipalities to propose – and in many cases – enact limits on merchants who would go entirely cashless. For example, Colorado recently passed a law barring retailers from adopting no-cash policies after observing the rising numbers of cashless businesses during the height of the COVID-19 pandemic.³⁷ The state measure was enacted with bipartisan support.³⁸ New Jersey and Massachusetts have similar laws, while cities from San Francisco to New York, Washington, DC and Philadelphia have also implemented measures to preserve the cash option at in-person retail establishments.³⁹ At the federal level, H.R. 4395, the Payment Choice Act of 2021, would prohibit retail businesses from refusing cash payments, prohibit retail businesses from charging higher prices to any customer who pays by cash than customarily is charged to a customer using other forms of payment, and provide a private right of action to consumers. In addition, the Committee has advanced legislation to reduce the number of unbanked and underbanked persons, which would help reduce the deleterious impacts of a trend toward cashless.⁴⁰

³⁷ Sophie Quinton, [Paying with Cash? Retailers Must Take Your Dollars in These States](#), PEW Trust Magazine (Sep. 9, 2021).

³⁸ Alex Burness, [Colorado retailers must accept cash under new law](#), Denver Post (May 12, 2021).

³⁹ *Id.*

⁴⁰ *See, e.g.*, H.R. 1711, the Financial Inclusion in Banking Act; *see also* discussion drafts of H.R. _____, the Access to No-Fee Accounts Act; the Public Banking Act of 2021; the Expanding Financial Access for Underserved Communities Act.

Appendix A

Table A-1. Digital wallet complaints by state

State	Digital wallet complaints	Most complained-about company (company complaints)
AK	10	Coinbase (5)
AL	73	PayPal (42)
AR	42	PayPal (20)
AZ	174	PayPal (74)
CA	1045	PayPal (464)
CO	132	PayPal (72)
CT	94	PayPal (54)
DC	55	PayPal (17)
DE	33	PayPal (16)
FL	606	PayPal (254)
GA	341	PayPal (140)
HI	12	PayPal (7)
IA	26	PayPal (14)
ID	25	PayPal (14)
IL	355	PayPal (134)
IN	108	PayPal (39)
KS	31	PayPal (14)
KY	76	PayPal (30)
LA	68	PayPal (21)
MA	170	PayPal (86)
MD	223	PayPal (85)
ME	18	PayPal (12)
MI	228	PayPal (73)
MN	85	PayPal (43)
MO	102	PayPal (47)

State	Digital wallet complaints	Most complained-about company (company complaints)
MS	49	PayPal (25)
MT	9	PayPal (4)
NC	248	PayPal (87)
ND	8	PayPal (5)
NE	14	PayPal (6)
NH	29	PayPal (12)
NJ	286	PayPal (103)
NM	32	PayPal (12)
NV	96	PayPal (52)
NY	624	PayPal (318)
OH	292	PayPal (110)
OK	49	PayPal (26)
OR	94	PayPal (47)
PA	395	PNC Bank (141)
RI	13	PayPal (5)
SC	76	PayPal (33)
SD	8	PayPal (6)
TN	101	PayPal (61)
TX	583	PayPal (237)
UT	45	PayPal (24)
VA	216	PayPal (89)
VT	9	Coinbase (3)
WA	158	PayPal (63)
WI	76	PayPal (32)
WV	21	PayPal (6)
WY	10	PayPal (5)

Source: U.S. PIRG Education Fund, “Virtual Wallets, Real Complaints (June 2021)”