

Testimony
Before the U.S. House of Representatives Committee on Financial Services
Subcommittee on Oversight and Investigations
Hearing on “Cashed Out: How a Cashless Economy Impacts Disadvantaged
Communities and Peoples”

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Dear Chairman Green, Ranking Member Emmer, and Members of the Subcommittee:

My name is Todd Zywicki. I’m a senior fellow at the Cato Institute’s Center for Monetary and Financial Alternatives and the George Mason University Foundation professor of law at the Antonin Scalia Law School. It is my pleasure to testify today on the important topic, “Cashed Out: How a Cashless Economy Impacts Disadvantaged Communities and Peoples.” As is well-known, understanding challenges to financial inclusion, innovation, and consumer choice—especially for those traditionally on the margins of the consumer financial system—is a great passion of mine. Not only have I dedicated my scholarly and professional career to an analysis of these questions, but during 2020 I held an Intergovernmental Personnel Act assignment from my university to serve as the Chair of the Consumer Financial Protection Bureau (CFPB) Taskforce on Federal Consumer Financial Law. The primary focus of our final report, which was issued in January 2021, was to understand how to promote financial inclusion, innovation, and competition in ways that can expand access and improve the quality of financial services for traditionally excluded consumers, especially young, minority, and immigrant individuals and families.¹

This hearing on the movement toward a cashless society comes at a propitious time in our nation’s economic history as innovations in consumer payment systems have fundamentally disrupted traditional institutions of banking, payments, and consumer finance. Ubiquitous access to mobile banking, fintech innovations, increased speeds and reduced costs of electronic banking, and changing consumer tastes (including generational change) had been steadily transforming the consumer financial landscape toward greater use of electronic payments.

The pandemic dramatically accelerated this transition. Consumers who never banked or paid bills online suddenly found bank branches shut down, or rarely accessible. ATM use was discouraged. Businesses stopped accepting paper money because of concerns about germ transmission on surfaces as well as a migration to delivery and “grab-and-go” curbside ordering. According to one estimate, the number of merchants going completely cashless quadrupled in

¹ CFPB, “Consumer Financial Protection Bureau’s Taskforce on Federal Consumer Financial Law Report.” *CFPB* (January 5, 2021). Available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureaus-taskforce-on-federal-consumer-financial-law-releases-its-report/>.

the first two months of the pandemic² and many businesses started taking online payments for the first time as a response to the pandemic.³ In addition, the rapid adoption of peer-to-peer payment apps such as Venmo and Zelle, payment dongles such as Square, and apps such as ParkMobile have reduced use of cash even for payments among friends and family, informal transactions (e.g., farmer’s markets), and traditional redoubts of cash payments such as parking tolls.

Yet many consumers will want to continue to use cash for a variety of reasons, such as preserving anonymity, convenience, or budgeting purposes. Many consumers, especially those in rural areas, may lack access to the technological infrastructure necessary to make widespread use of mobile payments and other technology platforms. Many businesses also will want to continue to accept cash, especially larger, older established businesses that have already incurred many of the fixed-costs associated with accepting cash, such as vaults, cash registers, security systems, and the like. Nevertheless, the trends are clear—the economy is increasingly moving toward a predominantly cashless society and the preferences of consumers and businesses are driving these trends. And new businesses and the changing tastes of a new generation of consumers are likely to expedite this migration. These trends are likely irreversible.

Therefore, it is crucial to make sure that no one is left behind in this transition. Failing to do so would leave American citizens unable to access the payment mechanisms they need to acquire goods and services.

And so I strongly support and recognize the concerns behind the topic of this hearing today. I also recognize the legitimacy of preferences by both consumers and businesses to continue to use cash and I am not urging that government policy should override those preferences in order to move toward a cashless economy as an end in itself or that somehow electronic payments are “better” than cash. But while I share the goal of ensuring no one is foreclosed from the economy, I believe the means that have been advocated—banning retailers from voluntarily adopting cash-free policies in order to compel them to continue to accept cash—is not the right way to address this problem.

Propping up cash as a legacy payment system will impose unnecessary social and private costs that will likely end up forcing all consumers to pay more for goods and services. Instead, federal and state legislatures and regulators should aggressively move to adopt policies that allow for the continued innovation and growth of electronic payments as well clearing away counterproductive regulations that exacerbate problems of financial exclusion and handicap efforts to increase inclusion of traditionally excluded consumers and increase their access to a wider array of higher quality financial products.

Within my lifetime, checks went from being one of the most popular and widely-used methods of consumer payments to virtually non-existent today. This transition was difficult for people who still preferred to use checks as a form of payment. But checks were slow, risky, and expensive to process, and so many merchants phased out checks over time. Some industries, such as restaurants, phased out check acceptance long ago. Other industries, such as grocery

² See Chapter 2 in Square, “Making Change” *Square* (June 2020). Available at <https://squareup.com/us/en/making-change>. Square estimated in September 2020 that it would have taken “more than three years” to see a similar shift away from cash usage without the pandemic. *Id.* at Chapter 3.

³ *Id.* at Chapter 4.

stores, still seem to accept checks. And some newer industries, such as e-commerce shopping sites, seem to have never accepted checks at all. But while this migration away from checks was difficult for some, the transition was inevitable in light of the obvious advantages of electronic payments in terms of cost, speed, and risk, and was managed through evolution of consumer and business preferences. Younger generations, such as my daughter's, may never write a check in their lives and may never hold a bank account that has check-writing capacity.

I suggest that a similar migration is underway now with respect to cash. Just as it would have been a mistake to mandate that all businesses continue to accept checks regardless of the cost or risk, it is equally a mistake to impose a mandate on these same businesses today that they must continue to accept cash payments. Unless there is compelling evidence to the contrary, consumer and merchant choice and preference, not government mandates, should be the guiding principle for the evolution of payment systems.

In my testimony I would like to make two overarching points:

1. The trend toward a cash-free economy and the voluntary adoption of cashless payment practices can be best understood as a legitimate and dynamic adaptive response to changing customer preferences and the manifest efficiencies and declining costs of electronic payments. Consumers can be expected to receive a net benefit from these developments in the form of not just lower prices but a superior shopping experience through faster, more convenient, and at least in some cases, safer and more hygienic shopping experience. There is no reason to believe that the movement toward cashless establishments represents a market failure that requires government intervention. Moreover as the usage of cash declines, the relative costs of accepting cash compared to other payment mechanisms will continue to increase, which will place a growing burden on businesses and the economy at large.

2. The side-effects for some consumers that are created as a by-product of the transition to a cashless economy can be best mitigated by adopting policies that promote greater competition and access to electronic payments rather than trying to prop up the existing legacy payments system. While the costs of the transition to a cashless economy will not be equally distributed across society and economy, the benefits of intelligent policies that can expand financial access to traditionally excluded groups also have their greatest potential to benefit the lives of traditionally excluded groups. Adopting constructive policies, however, will require new thinking about how to best facilitate that end.

Benefits to Consumers and Business of Permitting Cashless Establishments

It is unlikely that in the short to medium-run term the United States will move toward a fully cashless society or that even a majority of retailers, especially larger retailers, will opt to be cash-free. Even though consumer preferences are changing rapidly, many consumers continue to want to use cash to shop and for other purposes. Somewhat counter-intuitively, demand for cash actually *increased* during the pandemic as consumers “hoarded” cash as a store of value because of the inconvenience and difficulties of accessing a bank, ATM, or other source to get cash when desired, even though cash transactions generally declined.⁴ Near-zero interest rates on bank

⁴ See Shaun O'Brien, “Consumer Payments and the COVID-19 Pandemic: Findings from the April 2021 Supplemental Survey.” *Fednotes: Federal Reserve Bank of San Francisco* (Sept. 21, 2021). Available at <https://www.frbsf.org/cash/publications/fed-notes/2021/september/consumer-payments-covid-19-pandemic->

savings accounts further discouraged consumers from making bank deposits.⁵ Many individuals, especially part-time and informal workers such as domestic help or yard work, continue to be paid in cash, as do tipped employees, although it is possible even some of these workers started receiving digital payments during the pandemic. Many legacy retailers have already invested in the infrastructure of cash acceptance and management, such as large cash registers, safes, security systems, and other investments.

Moreover, it is important to keep in mind that efforts to adopt cashless payments have been voluntarily-adopted by businesses, not mandated by government rules. This suggests that businesses will be likely to adopt cashless policies only when the benefits to them (and their customers) exceed the costs in terms of lost sales and other effects of rejecting cash.

But there are substantial benefits to consumers, businesses, and society that are driving many of these trends toward reduced cash usage. These benefits are likely to be largest for new and smaller businesses because of the particular cost structure associated with accepting cash, for which many of the costs are effectively fixed costs that do not scale with the size of the business or its economic activity. In addition to varying by size of business, the cost structure of accepting cash also will vary across different industries and geographic regions depending on variables such as prevailing labor wage rates, minimum wage laws, and other factors that affect the relative cost of accepting cash.

Electronic Payments Can be Less Expensive than Cash

A primary reason why businesses adopt cash-free policies is that electronic payments are simply less expensive than cash, especially once the full cost of cash is considered. Moreover, as time goes on, it will become increasingly the case that the relative costs of cash versus electronic payments will tip toward the advantage of electronic payments.

- *Electronic Payments can reduce labor costs:* Handling cash is much more labor intensive for retailers than electronic payments. Cash payments usually require a cashier to receive, count, and make change. Cash must be counted and recorded at the end of each day and at the beginning and end of each employee shift. Cash handling can take several hours of employee time per day.⁶ It has been estimated that cash handling costs may approximate 1% of revenues. The total cost of cash handling, of course, will scale with the labor costs—in higher-wage markets (such as those with higher mandated minimum wage rules), the cost of accepting cash will be relatively higher than in areas with lower prevailing wages.

The cost of employee time spent on handling cash will be expected to be passed through to consumers in higher costs and provide long-run incentives for businesses to replace labor with capital investments. In a tight labor market as we see today around the country, the labor cost associated with counting and

[diary-consumer-payment-choice-supplement-3/](#); Kenneth Rogoff and Jessica Scazzero, “COVID Cash.” *CMFA Working Paper* No. 002, at p. 13 (February 11, 2021) (“We conclude that most of the rapid growth in demand for cash is for hoarding purposes, as opposed to use in consumer payments.”).

⁵ As Rogoff and Scazzero note, in countries that adopted negative interest rate policies this phenomenon of cash hoarding was particularly pronounced. See Rogoff and Scazzero, *supra* note 4.

⁶ See Economists Incorporated, “Retailer Payment Systems: Relative Merits of Cash and Payment Cards.” (November 19, 2014). Available at https://ei.com/wp-content/uploads/2015/01/Cost_of_Cash_Study.pdf.

handling cash instead of helping customers and other useful activities can affect consumer prices and the retail experience. Cash also requires employees to either carry the deposit to the bank themselves or to hire an armored car to collect and transport the cash.⁷ If store employees carry the cash then the costs of travel and waiting at the bank represent time away from helping customers or some other purpose.

- *Equipment costs:* The capital equipment costs associated with accepting cash are significant. These costs include investments such as a cash register that is equipped to receive and store cash payments, a safe or vault, and surveillance equipment to guard against theft, as well as in some instances, additional investments in security such as plexiglass screens, reinforced windows, or even bars. Electronic payments, by contrast, typically do not require such extensive investments. For example, a bulky cash register can be replaced by a simple payments terminal and vaults and other anti-theft protections are also largely unnecessary. Again, however, many legacy businesses have already invested in these costs. For new businesses, by contrast, these fixed capital costs can be avoided, spurring greater entry, more competition, and more choice for consumers.

Requiring stores to accept cash, by contrast, will require them to make these investments, raising costly barriers to entry. Because of increased labor costs in the economy, the relative cost of labor-intensive cash handling has been increasing over time. Moreover, as the number of cash transactions declines, the fixed costs of cash (such as equipment investments) will be amortized over a smaller number of transactions.

- *Security costs:* In addition to in-store security, safely transporting cash often requires a business to hire an armored car or other company to safely transport cash holdings to the bank for deposit or to require an employee to undertake the risk of transporting those funds himself or herself, which can provide risk to the employee against theft or harm. Moreover, much of the cost of armored car services is associated with the flat fee of the service call pickup fee, which is largely independent of the size of the deposit. As a result, the cost of armored car transportation will fall disproportionately on smaller businesses and those with fewer cash transactions.
- *The cost of electronic payments is falling:* By contrast, the decline in telecommunications costs over time has led relative the costs of accepting electronic payments to decline as the cost of cash has increased.

⁷ One recent estimate is the size of the armored car industry in the U.S. is \$2.8 billion in revenues. David Perkins, “Long Live Cash: The Potential Decline of Cash Usage and Related Implications.” *Congressional Research Service* (May 10, 2019). Available at <https://sgp.fas.org/crs/misc/R45716.pdf>.

Electronic Payments Can be Faster and More Convenient than Cash

Many retailers want to adopt electronic payments because they are faster and more convenient than cash, especially for contactless payments. Studies have shown that in some industries in particular, such as fast food, the comparative speediness of electronic payments can dramatically expedite customer throughput, thereby reducing wait times, improving consumer experience, and reducing the amount of time spent by each employee on a given transaction. In those situations, which likely are not universal, adopting cashless payment policies can increase productivity and reduce costs that can be passed on to consumers.

Electronic Payments Can Be More Hygienic than Cash

Many merchants temporarily adopted cash-free policies during the pandemic not because of their economic value but because of the health value associated with it.⁸ It was later determined that the risk of SARS-CoV-2 transmission on surfaces (including dollar bills) was infinitesimal, if at all. Nevertheless the larger concern remains—because cash is passed from person to person, it can be a carrier of microbes, viruses, and other contagions.⁹ This concern can be especially heightened when cash is related to productive sources of bacterial growth or other impurities such as food, social settings, and illegal activities.¹⁰ Researchers have even identified the presence of antibiotic resistant forms of bacteria on coins.¹¹ The cotton/linen material used to produce US currency is highly conducive to the preservation of living organisms for extended periods of time and is resistant to washing.¹² Although perhaps not a necessary safety protocol in most instances, some consumers and businesses in some instances might prefer to avoid the potential safety consequences associated with handling cash transactions.

Electronic Payments Can be Safer than Cash

Cash also raises concerns about theft and security that are not present with electronic payments. Most notable, accepting cash payments raises concerns about theft by employees and third parties, including the risk of armed robbery. According to one estimate, U.S. retail businesses lose about \$40 billion annually in employee cash theft.¹³

⁸ For similar reasons, many merchants also refused to accept reusable grocery store bags during the height of the pandemic.

⁹ See Julia M. Maritz, Steven A. Sullivan, Robert J. Prill, Emre Aksoy, Paul Scheid, and Jane M. Carlton, “Filthy Lucre: A Metagenomic Pilot Study of Microbes Found on Circulating Currency in New York City.” *PLoS ONE* (April 6, 2017). Available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0175527>.

¹⁰ For example, one researcher has estimated that ninety percent of U.S. currency contains traces of cocaine. See David Biello, “Cocaine Contaminates Majority of U.S. Currency.” *Scientific American* (Aug. 16, 2009).

¹¹ Ola Tolba, Anne Loughrey, Colin E. Goldsmith, B. Cherie Millar, Paul J. Rooney, and John E. Moore, “Survival of Epidemic Strains of Nosocomial- and Community-Acquired Methicillin-Resistant *Staphylococcus Aureus* on Coins.” *American Journal of Infection Control* (2007). Available at <https://www.semanticscholar.org/paper/Survival-of-epidemic-strains-of-nosocomial-and-on-Tolba-Loughrey/00d31f4a922f52d2cfea68cae4711e3f9d3d809>

¹² See Frank Vriesekoop, *et al.*, “Dirty Money: A Matter of Bacterial Survival, Adherence, and Toxicity.” *Microorganisms* 4(4): 42 (November 2016). Available at https://www.researchgate.net/publication/310782801_Dirty_Money_A_Matter_of_Bacterial_Survival_Adherence_and_Toxicity

¹³ See Bhaskar Chakravorti, “The Hidden Costs of Cash.” *Harvard Business Review* (June 26, 2014). Available at <https://hbr.org/2014/06/the-hidden-costs-of-cash>.

Accepting cash also raises concerns about accepting counterfeit currency (which banks will not accept) and monitoring costs associated with preventing acceptance of counterfeit currency, which may include contentious, and perhaps even violent, confrontations between customers, store employees, and the police. When a merchant accepts a fraudulent credit or debit card payment, by contrast, the merchant usually can reverse the charge (as can a consumer that has been the victim of theft or a fraudulent charge).

Electronic Payments Can Benefit Society by Reducing Tax Evasion and Crime

In addition to the benefits to merchants from electronic payments, there may also be significant advantages to society at large. For example, because of its largely untraceable nature, cash can facilitate tax evasion, criminal activity, and the shadow economy. Although estimates are hard to come by, losses from tax evasion associated with cash usage may amount to \$100 billion per year or more.¹⁴ Moreover, cross-country comparisons have suggested that the size of a country's shadow economy is correlated with the extent of its economy's cash usage and that greater use of electronic payments can increase tax compliance and reduce the size of the shadow economy.¹⁵

Unbanked and Underbanked Consumers Can Benefit from Greater Access to Electronic Payments Rather than Encouraging Continued Cash Usage

Access to electronic payments is not free, of course. Traditional electronic payments are via payment cards such as credit card, debit card, or a general purpose reloadable prepaid card.¹⁶ Each of these may require some fee from a consumer. New "challenger" fintech companies such as Chime offer free banking services funded by interchange fees generated from payment card transactions, but like traditional general purpose prepaid cards, consumers usually must charge a fee to load money onto these app-based financial service providers. Usually those fees are a few dollars and they can be reloaded at local convenience and drugstores.

On the other hand, it is often overlooked that many individuals must also incur significant costs to access cash, especially if they do not have a bank account. A 2018 analysis by the Congressional Research Service of banks with more than \$1 billion in assets estimated that banks collected \$1.9 billion in ATM fees that year.¹⁷ For 2020, the total cost of an out-of-network ATM withdrawal was \$4.64 per transaction.¹⁸ According to analysis by Bhaskar Chakravorti, it is more expensive for unbanked consumers to access cash than for those with a bank account: Unbanked consumers pay \$4 higher fees per month for cash access than those with access to formal financial services.¹⁹ Check cashers charge anywhere fees from 1%-12% of the value of a

¹⁴ See *id.*; Kenneth S. Rogoff, "Costs and Benefits to Phasing Out Paper Currency." *NBER Working Paper* (May 2014). Available at <https://www.nber.org/papers/w20126>.

¹⁵ See Hugh Thomas and Kevin Mellyn, "Is There Such a Thing as Having Too Much Cash?" *MasterCard Advisors Global Insights* (October 2012).

¹⁶ See Todd J. Zywicki, "The Economics and Regulation of Network Branded Prepaid Cards." *Florida Law Review* (2013).

¹⁷ See Perkins, *supra* note 7, at 6.

¹⁸ See Matthew Goldberg, "Survey: Interest Checking Account Fees Hit Record High, While Average Yield Ties Record Low." *Bankrate* (Oct. 21, 2020). Available at <https://www.bankrate.com/banking/checking/checking-account-survey/>.

¹⁹ Chakravorti, *supra* note 13.

check.²⁰ Others such as Walmart charge less, but even for lower-cost providers their fees are comparable to that associated with reloading fees on a prepaid card.

According to Chakravorti, poorer consumers also have to spend more time to get access to cash. They also face a five times higher risk of paying cash access fees on payroll and EBT cards. Greater reliance on cash also exposes those consumers to elevated risk of crime and loss.

Preserving access to cash payments for consumers, such as by requiring businesses to continue accepting cash, is thus an expensive and suboptimal solution that comes at substantial cost to consumers and businesses, alike. A better approach is to facilitate increased access to electronic payments for these consumers, especially by expanding options outside the traditional banking system.

Increasing Access to Electronic Payments Is a Better Response to the Evolution of Cash-Free Retailing

Most retailers, and especially larger and established retailers, are unlikely to eliminate cash receipt in the near future. Nevertheless, a trend toward cashless retailing is clear and will likely be accelerated by new market entry and generational change among consumers. During our lifetimes we have already seen one major shift in payments practices as checks have largely been eliminated from day-to-day life, having been replaced by electronic payments, particularly debit cards. To be sure, that transition raised fewer issues because both checks and debit cards (their primary replacement) required the consumer to have a bank account. Nevertheless, this dramatic change in payment patterns illustrates the potential for pro-consumer evolution in payment systems when managed well.

Public policies to increase access to electronic payments among traditionally unbanked populations can come about either through regulatory changes that promote access and competition in financial services or through the elimination or reform of current regulatory barriers that hamper efforts to deliver electronic payments to consumers.

There are three well-established types of electronic payments mechanisms: credit cards, debit cards, and reloadable prepaid cards. Most are issued by traditional banks. In addition, many employers pay wages using payroll cards and government benefits are paid on cards, which consumers can use to make payments as with any other type of card. Although fees sometimes are incurred for such use, again it is important to keep in mind that accessing cash for unbanked consumers also incurs fees for use of check cashers, ATMs, and other providers.

General-Purpose Reloadable Prepaid Cards Provide Access to Electronic Payments for Many Consumers

General-purpose reloadable prepaid cards are an especially promising product for unbanked consumers to gain access to electronic payments. General purpose prepaid cards can be obtained easily at drugstores, grocery stores, and Walmart.²¹ Consumers can add money to their cards at similar retail outlets for a fee of a few dollars. Most bank-issued prepaid cards

²⁰ See PersonalFinance.com, “How Much Does Cashing a Check Cost?” *Cashing a Check Cost*. Available at <https://personalfinance.costhelper.com/check-cashing.html#extres1>.

²¹ Pew Charitable Trusts, “Why Americans Use Prepaid Cards” *Pew Report* (February 6, 2014). Available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/why-americans-use-prepaid-cards>.

enable consumers to add value to their cards for no fee, make in-network ATM transactions, and make transactions with no fee. However, bank-issued prepaid cards typically charge a monthly fee, typically of about \$4.95 per month, which is equivalent or lower than the fees for a bank account that is not eligible for free checking. Many consumers who use prepaid cards say they previously or currently have bank accounts but had trouble managing their bank account and ended up incurring overdraft fees.²²

Prepaid debit cards also provide a vehicle for establishing simplified online banking platforms for consumers to pay bills and make online and retail payments.²³ My assessment of the current financial services landscape is that many consumers today do not need the full suite of financial services that is offered by a traditional bank account. Traditional bank accounts bundle a large number of financial products into one package, such as transactions, payments, savings, and credit functions (including checks). Many consumers, however, do not need this full suite of financial services, especially early in their financial lifetimes, and prefer a simplified financial platform that will enable them to make payments, pay bills, and save money.²⁴

Market developments indicate consumers increasingly are “unbundling” their financial services usage. In some instances, this involves the use payment platforms such as Venmo or PayPal, which are used instead of traditional debit or credit cards. Notably, the most recent edition of the FDIC’s “How America Banks” contains, for the first time, survey questions about consumer use of these alternative payment platforms. Fintech providers are also rapidly emerging to provide payments functionality without the need for a traditional bank account. At the same time, the growing popularity of products such as “Buy Now, Pay Later” is displacing traditional credit cards as a form of consumer credit to finance purchases. Consumers increasingly are unbundling the various components of a traditional bank account, a development that has become increasingly easy as many of these providers move online.

Early generations of prepaid cards often had multiple fees and other confusing terms for consumers. But the prepaid card market evolved quickly toward less expensive and more simplified pricing structures.²⁵ In addition, the market for prepaid cards is highly competitive, as consumers generally find it easier to change their prepaid card provider than for credit cards (which require credit approval by the issuer) or debit cards (which require a consumer to undergo the cumbersome process of changing bank accounts).²⁶ Because of their flexibility and ease of access, as well as cost structure comparable to that of cash acquisition and use, general-purpose prepaid cards provide a useful alternative to cash payments for many traditionally excluded consumers, especially in areas where consumers can access bank networks to access no-fee banking services.

²² *Id.*

²³ Zywicki, *Prepaid Cards*, *supra* note 16.

²⁴ CFPB, *supra* note 1.

²⁵ Zywicki, *Prepaid Cards*, *supra* note 16.

²⁶ *Id.*

Congress Should Repeal Section 1075 of the Dodd-Frank Financial Reform Legislation that Imposes Price Controls on Debit Card Interchange Fees

Congress could also facilitate greater access to electronic payments, especially among currently unbanked consumers, by repealing Section 1075 of the Dodd-Frank Financial Reform Act, also known as the “Durbin Amendment.”²⁷ Multiple empirical studies conducted over the past decade have confirmed what was the predicted effect of the Durbin Amendment, namely to reduce access to bank accounts and increase bank fees for consumers, especially lower-income and marginalized consumers. Banks responded to the imposition of the Durbin Amendment by imposing dramatic increases in the minimum balances necessary to be eligible for free checking, reducing access to free checking, and raising the monthly maintenance fees for those who were no longer eligible for free checking accounts. Although the full effect of these changes in price and access are difficult to measure, some have estimated that the impact of the Durbin Amendment may have swelled the rolls of unbanked Americans by as much as 1 million people, leading them to turn to more expensive alternatives such as check cashers, pawnbrokers, and money orders. By being priced out bank accounts, these consumers also lost access to debit card payment capabilities. Debit card users also saw reward programs disappear as a result of the Durbin Amendment, although no similar effect was seen for credit cards.

Although aimed primarily at debit cards issued by large banks, the Durbin Amendment also can negatively impact prepaid cards issued by those same institutions under certain circumstance. In particular, prepaid cards are exempt from the Durbin Amendment’s price controls if they do not provide access to funds by check, Automated Clearing House (ACH), or wire transfer.²⁸ As a result, the Durbin Amendment constrains large banks to only offer prepaid cards with limited functionality, as they cannot offer on a prepaid card such useful services as online bill pay, recurring ACH payments (such as to pay utility bills), or funds-transfer among different accounts, such as between a prepaid card and an interest-bearing savings account, or they will be subjected to the Durbin Amendment’s price controls. Moreover, as noted above, large banks offer many of the more attractive prepaid cards because they offer free ATM service and no-cost card reloading at their branches.

Congress and the CFPB Should Investigate the Sources of Rural Financial Exclusion and Eliminate Barriers to Greater Inclusion

Increased financial inclusion is not just good economic policy it is also a moral imperative. Although much of the public debate has focused on the financial inclusion challenges of urban communities, far less study has been focused on understanding and eliminating barriers to financial inclusion among rural communities.²⁹ Moreover, because access to high-speed Internet and reliable cellphone data services are more limited in many rural communities, it may be more difficult for rural citizens to transition to greater use of digital banking services. At the same time, however, it should be recognized that these issues likely go beyond those of this current hearing—given these realities about their customer base, it seems exceedingly unlikely that many businesses in rural areas will go cashless in the near future until these issues of access are addressed and demand for cash payments is likely to persist for the near future.

²⁷ See 1 CFPB, *supra* note 1, at 586-597 and 2 CFPB, *supra* note 1, at Recommendation 74.

²⁸ See Zywicki, *Prepaid Cards*, *supra* note 16, at 1495.

²⁹ See 2 CFPB, *supra* note 1, at Recommendation 77,

Congress and Regulators Should Investigate the Costs on Banks and Consumers of Anti-Money Laundering Regulations and the Impact on Excluded Consumers

The rationale for anti-money laundering (AML) and bank-secrecy laws is clear and compelling. Nevertheless, many commentators have raised concerns that the cost of compliance with AML laws and rules is excessively expensive in light of the benefits to national security and that these rules can be especially burdensome for banks in dealing with particular consumers, especially those such as immigrants and younger consumers, who lack well-established financial histories. During my time as the Chair of the CFPB Taskforce, we were unable to identify the extent to which this concern is well-founded and whether reforms might be available that would allow the country to meet its legitimate national security needs at lower spillover costs in terms of raising banking costs and excluding consumers from the financial system.³⁰

Congress and Regulators Should Take Steps to Promote Greater Competition in Retail Banking by Promoting Greater Bank Account Portability and Broader Chartering of New Entrants

In the view of the CFPB Taskforce, a significant barrier to greater competition and consumer choice in retail banking is the cumbersome and somewhat expensive process consumers currently face to change their primary bank accounts. While most consumers find it very easy to change their prepaid cards or credit cards, changing bank accounts (and thus their debit card issuer) can be time-consuming and inconvenient. These difficulties in changing accounts have led many consumers to enlist the services of various data companies that can help them to monitor and change their account providers. Although they provide an important and valuable service to consumers, these providers raise their own questions of privacy, security, and cost. Congress and regulators should explore mechanisms to facilitate increased competition and bank account portability so that consumers can more easily change their primary bank account provider.³¹

Congress and regulators should also take additional steps to promote competition in financial services that would likely reduce the cost and increase access to bank accounts. For example, Congress should authorize the National Credit Union Administration broader authority to charter credit unions in underserved areas to promote financial inclusion.³² Congress and regulators should also encourage greater opportunity for chartering industrial loan companies, which traditionally have been very active in reaching out to traditionally underserved consumers.³³ Finally, the full recognition and elimination of uncertainty about the legality and stability of special purpose banking charters for fintech firms would ease access and promote competition from nascent fintech firms, with dramatic benefits to traditionally excluded consumers. Clarification of the existing regulatory structure with respect to use of alternative data for underwriting of financial products would also promote financial inclusion among traditionally excluded consumers.³⁴

³⁰ See 2 CFPB, *supra* note 1, at Recommendation 73.

³¹ See 2 CFPB, *supra* note 1, at Recommendation 11.

³² See 2 CFPB, *supra* note 1, at Recommendation 67.

³³ See 1 CFPB, *supra* note 1, at 409-410.

³⁴ See 2 CFPB, *supra* note 1, at 6-9.

Congress and the Fed Should Move Aggressively to Implement a System of Faster Payments and Granting Non-Banks Access to the Payments System

Although hard data is elusive, some commentators have plausibly argued that one reason why some consumers use alternative financial products, such as check cashers, is to deal with delays in the U.S. retail payments system. When a consumer deposits a check, it can often take several days for the check to clear and to get access to the full funds. A consumer who needs access to those funds in the meantime, however, will likely turn to a check casher or some other alternative financial provider, *even if* the consumer also has a bank account.³⁵ Adopting a system of faster payments would eliminate this latency period that leads some consumers to convert checks into cash and allow them speedier access to their deposited funds.

Financial access can also be facilitated by providing non-banks with access to the payments system. Other countries have well-established non-bank payment ecosystems that enable consumers to shop and pay within a non-bank network.³⁶ Some retailers and other providers have proposed the development of similar non-bank payment networks in the United States.

Conclusion

Recent years have seen a dramatic transformation in the nature of consumer payments and the acceleration of trends away from paper-based forms of payment (checks and currency) to various electronic forms of payment (payment cards, fintech, and online payments). These trends are likely to continue into the future. Cashless retailing offers clear advantages in terms of cost, safety, speed, and public health. These comparative advantages are likely to become more pronounced over time as wage rates continue to increase (thereby increasing the relative cost of cash handling) and payments technology becomes increasingly fast, inexpensive, and convenient.

It is crucial that in this transition toward a more cash-free society that no one is left behind. It is clear that for some time to come, some consumers want to continue paying with cash and that most businesses, especially larger, legacy businesses that have already invested in the capital infrastructure to handle cash, will continue to accept cash payments. But mandating that new businesses make similar investments in the face of declining cash payments would provide an expensive and unnecessary barrier to entry for some new businesses that will be passed on to consumers in higher prices and less competition.

Rather than propping up existing payment technology through government-imposed mandates, Congress and regulators would do better to take steps to eliminate barriers to financial inclusion and greater access to electronic payments for those consumers who want them. For example, some use of alternative financial services such as check-cashing services, likely results from delays in the payment clearing system that could be addressed by adopting a faster payments system. Other consumers who might prefer to a debit card may be unable to afford a bank account because of the cost increases that followed the enactment of Dodd-Frank.

³⁵ See 1 CFPB, *supra* note 1, at 555-56, 608.

³⁶ Kenya's M-Pesa system is one of the most well-known and established but similar ecosystems have emerged in other countries. See 1 CFPB, *supra* note 1, at 613-15.

I do not believe that it should be government policy to directly favor one payment system over another, whether by actively encouraging a movement to a cashless society or by propping-up legacy payments systems such as cash. But I also do not believe it is sensible government policy to indirectly disadvantage one payments system over another, such as through regulatory policies that reduce access to bank accounts, fintech, or possible sources of financial inclusion which thereby pushes consumers toward greater than desired use of cash out of necessity. Consumer choice as manifested through the marketplace should be the starting point for these inquiries unless some market failure emerges that makes government regulation appropriate.

Thank you for the opportunity to provide this information, and I welcome any questions that you may have.