

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

January 27, 2020

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: January 30, 2020, “Is Cash Still King? Reviewing the Rise of Mobile Payments”

The Task Force on Financial Technology will hold a hearing entitled, “Is Cash Still King? Reviewing the Rise of Mobile Payments,” on Thursday January 30, 2020 at 9:30 a.m. in room 2128 of the Rayburn House Office Building. This single-panel hearing will have the following witnesses:

- **Ms. Deyanira Del Rio**, Co-Executive Director, New Economy Project
- **Mr. Usman Ahmed**, Head of Global Public Policy, PayPal
- **Mr. Aaron Klein**, Fellow, Economic Studies and Policy Director, Center on Regulation and Markets, Brookings Institute
- **Ms. Christina Tetreault**, Senior Policy Counsel, Consumer Reports
- **Ms. Kim Ford**, Executive Director, U.S. Faster Payments Council

Overview

There are now more ways than ever to make and receive payments. Yet, despite an increase in mobile banking and electronic payment technologies being adopted (i.e., digital wallets and credit and debit card payments), cash is still a popular payment method and financial instrument nationally and internationally. Based on the number of notes in circulation within the United States, estimated to be around \$44 billion,¹ the demand for cash has steadily grown for the past 20 years.² Further, based on the International Monetary Fund’s Currency Composition of Official Foreign Exchange Reserves (“COFER”), the dollar makes up 61% (roughly \$6.7 trillion) of all known central bank foreign exchange reserves.³

Despite the high-demand for cash and the amount of cash in circulation, cash transactions in the U.S. are declining. In 2012, cash was used in nearly 41% of all transactions; six years later that figure fell to 26%.⁴ Some of the main benefits of cash for consumers and businesses include: (1) cash lacking supplemental technology for the most part (transactions are validated and settled by the physical exchange of currency)

¹ The Board of Governors of the Federal Reserve System (“the Fed”), “Volume of Currency in Circulation: Total [CURRVOLALL],” (retrieved from FRED Federal Reserve Bank of St. Louis) Jan. 13, 2020, at <https://fred.stlouisfed.org/series/CURRVOLALL>.

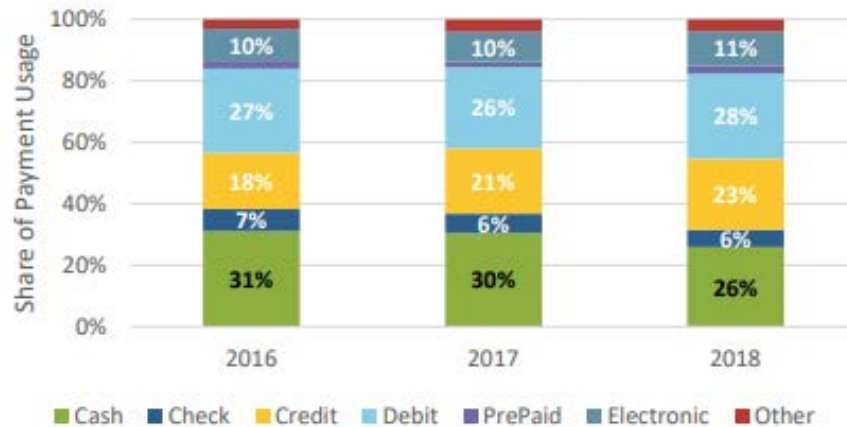
² The Fed, “Currency and Coin Services,” at https://www.federalreserve.gov/paymentsystems/coin_about.htm.

³ International Monetary Fund, COFER (last accessed Jan. 16, 2020) at <http://data.imf.org/?sk=E6A5F467-C14B-4AA8-9F6D-5A09EC4E62A4>.

⁴ Raynil Kumar and Shaun O’Brien, “2019 Findings from the Diary of Consumer Payment Choice Federal Reserve System Cash Product Office,” Jun. 2019, p. 6, at <https://www.frbsf.org/cash/files/2019-Findings-from-the-Diary-of-Consumer-Payment-Choice-June2019.pdf>.

and (2) consumer privacy.⁵ This compares to the complexities cash can bring for consumers and businesses, for example: (1) the fees consumers pay when withdrawing cash from automatic teller machines (ATMs), and (2) broadly, the risks of theft, loss, and destruction of cash.⁶

Figure 1. Share of Payment Instrument Usage by Year⁷



Cash is a popular form of payment for small-value transactions (\$25 or less), as these transactions account for more than 75% of all cash transactions.⁸ At the same time, cash is the most used form of payment for in-person payments like, tipping, gifting and donating, car-related expenses, and for food and nutrition.⁹ Individuals aged 18-25 and over 65 have the highest shares of cash use, 34% and 33% respectively.¹⁰ Households earning less than \$50,000 have been increasing the amount of cash held for the past three years.¹⁰ Subsequently, consumers have not developed an aversion to carrying cash or using it for small value purchases but as new non-cash payment options emerge, consumers are using cash less for higher value transactions and for services primarily offered over the internet (e.g., Uber, Amazon, and Netflix).

Federal and State Roles in Cash and Payments

Federal law provides that U.S. coins and currency “are legal tender for all debts, public charges, taxes, and dues.”¹¹ Although cash is accordingly “a valid and legal offer of payment” for *pre-existing* debts, federal law does not require that private businesses accept cash as payment for goods and services.¹²

⁵ Jay Stanley, “Say No to the “Cashless Future — and to Cashless Stores,” ACLU, Aug. 12, 2019, at <https://www.aclu.org/blog/privacy-technology/consumer-privacy/say-no-cashless-future-and-cashless-stores>; see also James J. McAndrews, “Should We Move to a Mostly Cashless Society?” Wall Street Journal, Sept. 24, 2017, at <https://www.wsj.com/articles/should-we-move-to-a-mostly-cashless-society-1506305220>.

⁶ Nearly 26% of all US robberies took place at some type of retailer, gas stations, convenience stores, or other commercial residences. Claire Wang, “Cash Me If You Can: The Impacts of Cashless Businesses on Retailers, Consumers, and Cash Use,” Aug. 19, 2019 at <https://www.frbsf.org/cash/publications/fed-notes/2019/august/cash-me-if-you-can-impacts-of-cashless-businesses-on-retailers-consumers-cash-use/>.

⁷ The “other” category is the sum of money orders, traveler’s checks, transfers, mobile, and direct deposit payments. See Kuman, *supra* 4 at pg. 6.

⁸ Cash is used 10% of the time for transactions more than \$25. *Id* at pg. 6.

⁹ *Id* at pg. 12.

¹⁰ *Id* at pg. 11.

¹¹ US Department of Treasury, “Legal Tender Status,” Resource Center, at <https://www.treasury.gov/resourcecenter/faqs/currency/pages/legal-tender.aspx>; see also, 31 U.S.C. §5103.

¹² See *Miller v. Madison*, No. 1:12-CV-0874, 2013 WL 2181240 at *5 (N.D.N.Y. May 20, 2013) (explaining that the federal legal-tender statute “applies only to payments to creditors on preexisting debts,” and that “no federal statute mandat[es] that a

Federal law providing consumer protections for payment transactions largely focus on electronic forms of payment instead of cash payments. Specifically, the Electronic Fund Transfer Act (“EFTA”) and the Truth in Lending Act (“TILA”) provide two consumer protections. EFTA protects consumers engaged in electronic fund transfers, like debit card payments, by (1) limiting consumer liability for unauthorized transfers and (2) maintaining procedures for resolving payment errors.¹³ EFTA protections are extended to prepaid accounts if they have been registered. TILA protects credit card users against the liability for unauthorized uses of the account.¹⁴

Recently, an increasing number of commercial entities such as restaurants, retailers, and gas stations have taken advantage of the absence of the federal requirement to accept cash by requiring that their customers pay using credit or debit cards.¹⁵ Some credit card merchants have gone so far as to offer restaurants \$10,000 to stop accepting cash.¹⁶ This trend has led some commentators to worry that such “no cash” policies could disadvantage many low-income consumers who may lack access to bank accounts and credit cards.¹⁷ Also, within the last few years, several states and localities have responded to this concern by introducing and enacting laws that require certain types of businesses to accept cash.¹⁸

Financial Inclusion and the Redlining of Financial Services

While the challenges of accepting cash are well known to businesses, the for vulnerable populations if the U.S. were to move towards a cashless society have been less researched. Access to electronic payments requires a checking or debit account with a financial institution and access to internet-enabled devices. A shift towards cashless payments could present difficulties for vulnerable segments of the population who lack access to the financial system, an electronic network, or the internet (a majority of these individuals are also known as the unbanked and underbanked). Unsurprisingly, 65% of the underbanked and unbanked report using cash at least once within a month and a great deal of the underbanked and unbanked are “lower-income households, less-educated households, younger households, African-American and Latinx

private business, person, or organization must accept legal tender as payment for goods or services”); Legal Tender Status, U.S. Department of the Treasury, <https://www.treasury.gov/resource-center/faqs/currency/pages/legal-tender.aspx> (last accessed Jan. 16, 2020).

¹³ 12 C.F.R. §1005, at <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1005/>; see also Consumer Financial Protection Bureau, “New Protections for Prepaid Accounts: The CFPB’s New Rule on Prepaid Accounts Creates Comprehensive Consumer Protections for Prepaid Accounts,” <https://www.consumerfinance.gov/prepaid-rule/>.

¹⁴ Truth in Lending Act (Regulation Z) 83 FR 6364 (2019) at <https://www.federalregister.gov/documents/2018/02/13/2018-01305/rules-concerning-prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth>.

¹⁵ See Henry Grabar, “No Shirt, No Swipe, No Service,” Slate, Jul. 24, 2018, at <https://slate.com/business/2018/07/cashless-stores-and-restaurants-are-on-the-rise-to-the-delight-of-credit-card-companies.html>.

¹⁶ Andy Newman, “Cash Might Be King, but They Don’t Care,” NY Times; Dec. 25, 2017, at <https://www.nytimes.com/2017/12/25/nyregion/no-cash-money-cashless-credit-debit-card.html>; Visa, “Why three NYC restaurant owners decided to 86 cash,” at <https://usa.visa.com/visa-everywhere/innovation/cashless-restaurants-nyc.html>. Further, retailers and merchants cite credit and debit card swipe fees (better known as swipe fees), which vary but can range from 1.5% to 3.5%, as one of the highest costs behind wages. Visa and MasterCard earned a combined \$43 billion on these fees in 2018. AnnaMaria Andriotis, “Visa, MasterCard near settlement over card swipe fees,” Wall Street Journal, Jun. 29, 2018, at <https://www.wsj.com/articles/visa-mastercard-near-settlement-over-card-swipe-fees-1530193694>.

¹⁷ See Karen Zraick, “This Legislation Could Force Stores to Take Your Cash,” N.Y. Times, Feb. 20, 2019, at <https://www.nytimes.com/2019/02/20/business/cashless-payment.html>.

¹⁸ See for example City of Philadelphia, Pa., Bill No. 180943 (2019); N.J. Stat. Ann. § 56:8-2.33 (2019); Mass. Gen. Laws CH., 255D § 10A (2019). Notably, some of the states and localities that require businesses to accept cash, exempt businesses like parking lots and garages and car rental places.¹⁸ Christian Hetrick, “New Jersey ban will force shops to accept cash; municipal parking lots, car rentals exempted,” The Philadelphia Inquirer, Mar. 18, 2019, at <https://www.inquirer.com/business/new-jersey-cashless-store-ban-amazon-philadelphia-20190318.html>.

households, working-age disabled households, and households with volatile income.”¹⁹ The two main and cited reasons the underbanked and unbanked do not have bank accounts are: (1) not having enough cash to keep in bank accounts and (2) a lack of trust in banks.²⁰ For the underbanked and unbanked to complete electronic transactions when cash is not accepted and acquire cash, they generally turn to prepaid cards, money orders, payday loans, pawnshops, check cashing places, etc.²¹ Also, an important factor the underbanked and unbanked face are the overdraft and account maintenance fees associated with banking.²²

Privacy and Cybersecurity in Payments

Cash can be used anonymously for the most part, and people may continue to use cash for legitimate purposes to ensure their privacy. Certain consumers who are uncomfortable divulging and generating private information, even basic information that a transaction occurred, may prefer cash to any electronic payment methods.²³ Opening a bank account or otherwise using non-cash payment systems, by contrast, generally requires an individual to divulge certain basic personal information, such as one’s name, Social Security number, and birthdate, to a financial institution. Financial institutions store this information and information about the transactions linked to this identity. Under certain circumstances, they may analyze or share this information, such as with a credit-reporting agency. In some instances, hackers have stolen personal information from financial institutions, causing concerns over how well these institutions protect sensitive data.²⁴

The occurrence of successful hacks of banks and other financial institutions, wherein huge amounts of individuals’ personal information are stolen or compromised, illustrates cyber-related risks. For example, in 2014, JPMorgan Chase, the largest U.S. bank, experienced a data breach that exposed the financial records of 76 million households.²⁵ More recently, Capital One announced in July 2019 that a breach of its data exposed the personal information of 106 million individuals.²⁶

In addition, although the electronic payment system is sufficiently fast and convenient to complete many transactions, other transactions can involve problematic delays. For example, one such delay that can be particularly costly for consumers is the lag between when a payment (such as a paycheck) is sent and when the full amount of the funds is available to the individual.²⁷ Depending on factors related to which

¹⁹ Nick Bourke, Tara Roche, and Rachel Siegel, “Rise of Cashless Retailers Problematic for Some Consumers,” Pew, Nov. 8, 2019 at <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/11/08/rise-of-cashless-retailers-problematic-for-some-consumers>; FDIC, “FDIC National Survey of Unbanked and Underbanked Households,” 2017 pg. 2, at <https://www.fdic.gov/householdsurvey/2017/2017execsumm.pdf>.

²⁰ *Id* at pg. 4.

²¹ See Raynil Kumar and Shaun O’Brien, “2019 Findings from the Diary of Consumer Payment Choice Federal Reserve System Cash Product Office,” Jun. 2019, FEDNOTES at <https://www.frbsf.org/cash/files/2019-Findings-from-the-Diary-of-Consumer-Payment-Choice-June2019.pdf>; Nick Bourke, Tara Roche, and Rachel Siegel, “Rise of Cashless Retailers Problematic for Some Consumers,” Pew, Nov. 8, 2019 at <https://www.frbsf.org/cash/publications/fed-notes/2019/june/2019-findings-from-the-diary-of-consumer-payment-choice/>.

²² FDIC, “FDIC National Survey of Unbanked and Underbanked Households,” 2017 pg. 2, at <https://www.fdic.gov/householdsurvey/2017/2017execsumm.pdf>.

²³ See FDIC, *supra* 28.

²⁴ Emily Flitter and Karen Weise, “Capital One Data Breach Compromises Data of Over 100 Million”, NY Times, Jul. 29, 2019, at <https://www.nytimes.com/2019/07/29/business/capital-one-data-breach-hacked.html>

²⁵ Jessica Silver-Greenberg, Matthew Goldstein, and Nicole Perlroth, “JPMorgan Chase Hacking Affects 76 Million Households,” NY Times, Oct. 2, 2014, at <https://dealbook.nytimes.com/2014/10/02/jpmorgan-discovers-further-cyber-security-issues>.

²⁶ See Emily Flitter and Karen Weise, *supra* 32.

²⁷ See generally Task Force on Financial Technology hearing, “The Future of Real-Time Payments,” Sept. 26, 2019, at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404240>.

networks the payer’s and payee’s bank uses to process payments, it can take up to two business days (or more under certain circumstances) after a deposit is made for banks to fully validate, process, and settle the deposit. Settlement delays can create a situation in which an individual has made a deposit that would give enough funds to pay a bill that is due, but nevertheless may overdraw the account because the deposit is awaiting processing. In such a situation, the individual faces a choice between costly outcomes—a late payment penalty on the bill, an overdraft fee on the bank account, or a fee from a check cashing or payday lending service.

These costs are disproportionately borne by low or moderate-income individuals who typically have low balances in their bank accounts. Faster or immediate payment processing could potentially reduce or eliminate costs incurred by individuals facing this situation.²⁸ While delays in the payment system may seem anachronistic at a time when digital messages can be sent and data processed nearly instantaneously, the fact remains that aspects of the systems, networks, and infrastructures used today (including those operated by the Fed) were developed and deployed decades ago. Both the Fed and private institutions are working to increase system speed and efforts are underway to make real-time payments in the United States the norm.²⁹

Legislation

- **H.R. 2650, the Payment Choice Act of 2019**, sponsored by Rep. Donald Payne (D-NJ).³⁰ This legislation would prohibit retail businesses from refusing cash payments, charging higher prices to any customer who pays by cash than customarily is charged to a customer using other forms of payment, and provides a private right of action consumers.

²⁸ Aaron Klein, *How the Fed Can Help Families Living Paycheck to Paycheck*, The Brookings Institution, November 22, 2017, at <https://www.brookings.edu/research/how-the-fed-can-help-families-living-paycheck-to-paycheck/>.

²⁹ Federal Reserve, “Potential Modifications to the Federal Reserve Banks’ National Settlement Service and Fedwire® Funds Service To Support Enhancements to the Same-Day ACH Service,” 84 Federal Register 221223, May 16, 2019, at <https://www.federalregister.gov/documents/2019/05/16/2019-09949/potential-modifications-to-the-federal-reserve-banks-national-settlement-service-and-fedwire-funds>. The Fed sought comments on this proposal in October 2018. See Federal Reserve, “Federal Reserve Board Seeks Public Comment on Potential Actions to Facilitate Real-time Interbank Settlement of Faster Payments,” press release, Oct. 3, 2018, at <https://www.federalreserve.gov/newsevents/pressreleases/other20181003a.htm>. See also, Task Force on Financial Technology hearing entitled, “The Future of Real-Time Payments,” Sep. 26, 2019, at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404240>.

³⁰ H.R. 2650, as introduced, May 9, 2019, <https://www.congress.gov/116/bills/hr2650/BILLS-116hr2650ih.pdf>.