



**Testimony of
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on

**“Cashed Out: How a Cashless Economy Impacts Disadvantaged
Communities and Peoples”**

**Before the
United States House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations**

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Summary

We are pleased to contribute to the subcommittee's examination of the disproportionate impact on low-income communities of financial institutions' and retailers' embrace of cashless payment models and the lack of consumer protections on peer-to-peer ("P2P") payment platforms.

Multi-billion-dollar business models are today built upon the so-called "war on cash." Financial institutions, app developers, and some retailers frequently tout the benefit of a cashless experience. However, it is unclear that those benefits are trickling down to the most vulnerable consumers. What is clearly evident, however, is that a marketplace that penalizes those who depend on cash is one that will disproportionately inflict pain on low-income consumers and marginalized communities. Those vulnerable consumers will pay the price in higher costs for essentials like rent and food, in more surveillance of their daily lives, in fewer protections from fraud and errors, and in less opportunity to access a banking system on which most Americans depend.

The harmful impacts of a cashless society are manifested in the explosive growth of P2P payment apps. The same features that are fueling these services' growth – low cost, nearly instantaneous payments made via a mobile app – have made P2P an increasingly insecure payment technology. Analysts estimate that fraud rates on these platforms are three to four times higher than for traditional payment methods such as debit and credit cards. Loopholes in consumer protection laws like the Electronic Funds Transfer Act allow liability for some errors and fraud on these platforms to be shifted from the banks and P2P payment platforms to consumers themselves.

To address these concerns, we urge Congress to take the following steps:

- Pass federal privacy legislation that safeguards consumer data in cashless payments;
- Extend existing liability protections for debit and credit card transactions to cover fraudulently induced payments;
- Require more stringent investigations of fraudulent transactions;
- Push regulators to enforce banks' error resolution responsibilities for consumer errors on P2P platforms, and
- Mandate more responsive customer service by P2P platforms.

Introduction

The National Consumers League appreciates the opportunity to provide the subcommittee with our views on the impact of an increasingly cashless payments ecosystem on vulnerable consumers, as well as the need to protect consumers from fraud-induced and erroneous payments made via peer-to-peer (“P2P”) payment apps.

Founded in 1899, the National Consumers League (“NCL”) is the nation’s pioneering consumer and worker advocacy organization. Our non-profit mission is to advocate on behalf of consumers and workers in the United States and abroad.¹ For more than twenty years, NCL has worked, via our Fraud.org campaign, to educate consumers about the warning signs of fraud and promote public policies that protect the American public from scams.

Vulnerable Consumer Risk Being Left Behind in a Cashless Economy

The so-called “war on cash” is not hyperbole.² Absent Congressional action, the casualties of that war are likely to be vulnerable consumers. They will pay the price in higher costs for essential purchases, in more surveillance of their daily lives, in greater harm from fraud, and in fewer opportunities to access a banking system on which millions of American depend.

According to a 2019 Federal Deposit Insurance Corporation survey, 7.1 million U.S. households are unbanked.³ These families are disproportionately Black (13.8%) and Hispanic (12.2%), substantially above the rate of unbanked White householders

¹ For more information, visit www.nclnet.org.

² Andriotis, AnnaMaria. “Visa Takes War on Cash to Restaurants,” *Wall Street Journal*. (July 12, 2017). Online: <https://www.wsj.com/articles/visa-takes-war-on-cash-to-restaurants-1499853601>

³ Federal Deposit Insurance Corporation. *How America Banks: Household Use of Banking and Financial Services: 2019 FDIC Survey*. Pg. 1. (October 19, 2020) Online: <https://www.fdic.gov/analysis/household-survey/>

(2.5%).⁴ The number has likely risen during the COVID-19 recession, particularly among historically-marginalized communities who have suffered during the pandemic especially hard.⁵

Cashless payments – credit and debit cards, app-based P2P payments, stored value and reloadable prepaid cards – are not new. The payment industry has been nudging consumers and businesses to embrace these payment mechanisms for decades.⁶ Nonetheless, cash continues to play a critical role in our economy, particularly for unbanked and under-banked consumers, seniors, and immigrants.

Despite the growth of cashless payment systems, cash continues to play a critical role in our economy. According to a (pre-COVID) 2018 Federal Reserve Bank of San Francisco report, cash is the most frequently used payment instrument, representing 30% of all transactions and 55% of all transactions under \$10. And while online shopping has seen a dramatic uptick during the pandemic, most transactions (77%) are still made in-person. Of those in-person transactions, cash accounted for 39% of transactions.⁷

A cashless marketplace excludes many low-income, and especially minority, consumers.⁸ Cashless transactions usually a credit or debit card. To open an account, a consumer must have a credit history, identification (which seniors and low-income consumers often lack), and documents such as a utility bill or other

⁴ *Ibid.* Pg. 2.

⁵ Schroeder, Pete. "Pandemic expected to push poorer Americans out of banking system – regulator," Reuters. (October 19, 2020) Online: <https://www.reuters.com/article/usa-fdic-unbanked/pandemic-expected-to-push-poorer-americans-out-of-banking-system-regulator-idUKL1N2HA105>

⁶ Scott, Brett. "The cashless society is a con – and big finance is behind it." *The Guardian*. (July 19, 2018) Online: <https://www.theguardian.com/commentisfree/2018/jul/19/cashless-society-con-big-finance-banks-closing-atms>

⁷ Federal Reserve Bank of San Francisco. "2018 Findings from the Diary of Consumer Payment Choice." (November 15, 2018) Online: <https://www.frbsf.org/cash/publications/fed-notes/2018/november/2018-findings-from-the-diary-of-consumer-payment-choice/>

⁸ Erlanger, Samuel. *A Cashless Economy: How to Protect the Low-Income*. Cardozo Law Review. (2019) Pg. 168. Online: http://cardozolawreview.com/wp-content/uploads/2019/10/ERLANGER_denovo_2019.pdf

proof of residency. All of these may be difficult to obtain for low-income consumers, particularly those with insecure housing. Banks also charge fees that are steep, especially for those living on the economic margins. As more retailers switch to cashless payment models, they necessarily exclude some consumers at the lower end of the income spectrum.⁹ Recognizing this, many localities, including San Francisco, New York City Philadelphia, and Washington, DC and states such as New Jersey and New York have passed laws requiring retailers to accept cash as payment.¹⁰

Absent Stronger Privacy Protections, a Cashless Economy Will Subject Marginalized Communities to Even Greater Surveillance.

Privacy is a fundamental right. Surveillance is an inherent privacy harm and consumers benefit when they have control over the collection, use, and sharing of their personal information.¹¹ Paying with cash is a privacy-protective way to pay for goods and services. A cash transaction involves two parties – the buyer and seller, who exchange cash in an essentially anonymous transaction. Payments made with cash do not involve data transfers that can be used to build profiles on consumers.

In contrast, a digital payment involves the sharing of data with a merchant, one and more likely two banks and a payments processor. It is not unusual for payment and payment-related data to spread far beyond that minimum baseline, however. Given the lack of a federal privacy law in the U.S., data about consumers' digital payments will likely be shared with advertisers, data brokers, Internet service providers, app

⁹ Stanley, Jay. "Say No to the 'Cashless Future – and to Cashless Stores.'" American Civil Liberties Union. (August 12, 2019) Online: <https://www.aclu.org/blog/privacy-technology/consumer-privacy/say-no-cashless-future-and-cashless-stores>

¹⁰ Nirappil, Fenit. "D.C. Council votes to outlaw cashless stores, allow some prisoners to seek early release," *Washington Post*. (December 1, 2020) Online: https://www.washingtonpost.com/local/dc-politics/dc-council-december-votes/2020/12/01/aafa3e72-334d-11eb-a997-1f4c53d2a747_story.html

¹¹ Brookman, Justin and Hans, G.S. *Why Collection Matters: Surveillance as a De Facto Privacy Harm*. Future of Privacy Forum Big Data & Privacy Workshop Paper Collection. (2013) Online: <https://fpf.org/wp-content/uploads/2013/08/LEGAL-Brookman-Why-Collection-Matters1.pdf>

developers, and more. What those companies do with that data is not well understood by consumers. This is understandable given the light-touch regulatory model that applies to consumers' data in the U.S. Indeed, a significant percentage of unbanked consumers cite trust and privacy concerns as the reason they choose to remain unbanked.¹²

Consumers should not be forced to choose between foregoing a purchase and sharing personal data with a bank, a credit card company or a payments platform provider. Congress should pass a federal privacy law that better protects the financial data consumers share via digital payments. Until this occurs, a cashless economy will necessarily disproportionately harm low-income and minority consumers. The cost of access to digital financial services should not be greater surveillance of marginalized communities.

A Lack of Protections for Payments Made Via Peer-to-Peer Payment Services Leaves Consumers on the Hook for Fraud and Errors

The growing popularity of peer-to-peer (P2P) payment apps is emblematic of the impact of the cashless economy. According to one estimate, roughly 4 in 5 Americans (79%) have used mobile payment apps.¹³ The growth of these apps, such as PayPal's Friends & Family and Venmo services, Square's Cash App, and Zelle, which is owned by a consortium of major banks, was supercharged by COVID-19 and social distancing requirements. In 2021, the volume of payments is expected to

¹² GERALD APAAM ET AL., FED. DEPOSIT INS. CORP., FDIC-038-2018, 2017 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS: EXECUTIVE SUMMARY 9 (2018), <https://www.fdic.gov/householdsurvey/2017/2017execsumm.pdf>

¹³ El Issa. "Most Americans Go Mobile With Payment Apps – Here's How They Roll," NerdWallet.com. February 26, 2020. Online: <https://www.nerdwallet.com/article/banking/mobile-payment-app-survey>

grow by roughly 37%.¹⁴ By 2023, more than \$1 trillion will likely be transacted via P2P platforms.¹⁵

Unfortunately, the features that make P2P services appealing -- low-cost, nearly instantaneous payments made via a mobile app – are also key contributors to high fraud rates. In 2020, the FTC received nearly 62,000 complaints from consumers who sent money to fraudsters via payment apps or similar services, with a total reported loss of \$87 million.¹⁶ Consumer complaints to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) tell a similar story. A recent MASSPIRG Education Fund analysis found that more than 5,200 complaints about mobile or digital wallets were filed with CFPB over the 12-month period preceding April 2021. These complaint statistics, sobering as they may be, are just the tip of the iceberg. Analysts estimate that fraud rates on these platforms are three to four times higher than for traditional payment methods such as debit and credit cards.¹⁷

P2P services are aware that fraudsters use their services to obtain funds from their victims. An NCL review found that all of the major P2P platforms make some effort to educate their users about how to avoid scams. However, voluntary disclosures or consumer education alone are not terribly effective. More than half of consumers surveyed by AARP incorrectly assumed that their payments would be protected if there is an error or fraud associated with the transaction.¹⁸

¹⁴ Ho, Justin. “P2P payment apps are booming, thanks to the pandemic,” *Marketplace.org*. March 15, 2021. Online: <https://www.marketplace.org/2021/03/15/p2p-payment-apps-are-booming-thanks-to-the-pandemic/>

¹⁵ Kats, Rimma. “In 2023, more than \$1 trillion will transact via mobile P2P apps,” *Insider Intelligence*. April 19, 2021. Online: <https://www.emarketer.com/content/breaking-down-mobile-p2p-payments-biggest-players>

¹⁶ Federal Trade Commission. *Consumer Sentinel Network Data Book 2020*. February 2021. Pg. 11. Online: https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf

¹⁷ Popper, Nathaniel. “When Your Last \$166 Vanishes: ‘Fast Fraud’ Surges on Payment Apps,” *New York Times*. October 11, 2020. Online: <https://www.nytimes.com/2020/10/11/technology/fraud-payment-apps.html>

¹⁸ AARP. “AARP Survey Finds Majority of Americans Using Payment Apps Unaware of Danger Posed by Scammers.” Press release. May 12, 2020. Online: <https://press.aarp.org/2020-5-12-AARP-Survey-Finds-Majority-of-Americans-Using-Payment-Apps-Unaware-of-Danger-Posed-by-Scammers>

While P2P services do employ technological measures to stop fraudulent transactions, there is a business incentive not to introduce too many security roadblocks in the payment process. This is because P2P payment platforms, and their sky-high valuations,^{19 20} are dependent on maintaining large transaction volumes. P2P platforms' desire to reduce "friction" in the payments experience is in direct tension with the need to prevent fraud.²¹ Yet if these platforms are making the decision to skew their services towards speed and convenience at the expense of safety and protection, they must take responsibility for those business choices.

While no financial service is immune from fraud, protections for consumers who lose money on P2P apps to fraud are sorely lacking. Compare this to what happens when scammers get a consumer's bank account information and use it to initiate a preauthorized payment through the ACH system, or obtain debit card information and use it to initiate payment for fraudulent purchases. In both cases, consumer have limited liability. This protection is enshrined in the Electronic Funds Transfer Act ("EFTA"), implemented through the Federal Reserve's Regulation E.²² Similar consumer protections for fraudulent credit card transactions exist under the Fair Credit Billing Act ("FCBA").²³ Thanks to these measures, consumers are protected, and credit and debit card issuers and participants in the ACH system have strong incentives to implement stringent anti-fraud countermeasures. The benefits to consumers of these regulatory incentives is clear. Today, it is not uncommon for a card holder whose account has been compromised to be notified by her bank before she even notices a fraudulent charge on her statement.

¹⁹ Hale, Kori. "Hip-Hop's Role in Square's \$40 Billion Cash App Business Success," *Forbes*. September 22, 2020, Online: <https://www.forbes.com/sites/korihale/2020/09/22/hip-hops-role-in-squares-40-billion-cash-app-business-success/?sh=10d7f8ee7489>

²⁰ Rudegeair, Peter. "Cash App's Surge During Covid-19 Pandemic Fuels Square Stock," *Wall Street Journal*. September 2, 2020. Online: <https://www.wsj.com/articles/cash-apps-surge-during-covid-19-pandemic-fuels-square-stock-11599039003>

²¹ Doyle, Ciaran. "Removing friction & fraud from P2P payments," *IBM RegTech Innovations*. December 6, 2018. Online: <https://www.ibm.com/blogs/regtech/removing-friction-and-fraud-from-p2p-payments/>

²² Federal Deposit Insurance Corporation. "Laws and Regulations: Electronic Funds Transfer Act." February 2019. Online: <https://www.fdic.gov/news/financial-institution-letters/2019/fil19009b.pdf>

²³ 15 U.S.C. 1666-1666j

Unfortunately, while P2P platforms are covered by the EFTA, victims of fraud committed via P2P platforms are unable to take advantage of the protections afforded. A big reason for this is a loophole in the EFTA that excludes payments initiated by the consumer from the protection for unauthorized charges (also known as “fraud in the inducement” or “victim-assisted fraud”).²⁴ This allows P2P services and banks to avoid liability for payments sent from consumers’ accounts to scammers, even when such payments are induced by fraud.²⁵

Financial institutions’ and P2P platforms’ unduly narrow view responsibilities under EFTA also harms consumers who send payments erroneously. Consumers, particularly those who may not be familiar with the technology, do make mistakes such as entering the wrong amount or wrong cell phone number for the recipient. When this occurs, many institutions refuse to treat that as an error and decline to investigate or return funds. There is nothing in the EFTA or Regulation E that excludes consumer errors from the definition of “error.” Even if a consumer might ultimately be liable for a payment because it was initiated by the consumer and thus is not “unauthorized,” institutions still have a duty to investigate and try to resolve the matter.

These loopholes have resulted in the liability risk for fraud and error being transferred from P2P platforms and banks to consumers. Yet it is the platforms that have designed systems that make errors more likely and who set the level of fraud they are willing to tolerate. Institutions are far more able to spread the costs of protecting consumers from errors and fraud across the system. By comparison a single error or instance of fraud can be devastating to a consumer. Unfortunately, the only recourse for consumers who lose money via P2P platforms is to throw

²⁴ Cornell Law School Legal Information Institute. “Fraud in the Inducement.” June 2020. Online: https://www.law.cornell.edu/wex/fraud_in_the_inducement#:~:text=Fraud%20in%20the%20inducement%20occurs,damages%20or%20terminate%20the%20contract

²⁵ Mierzwinski, Ed *et al.* *Virtual Wallets, Real Complaints*. MASSPIRG Education Fund. June 2021. Pg. 9. Online: https://masspirg.org/sites/pirg/files/reports/MA_wallets.pdf

themselves at the mercy of the banks, P2P platforms, or even other users and beg to be made whole. Banks and P2P platforms often tell fraud victims and consumers who send payments in error that they are out of luck.

Difficulty in obtaining appropriate customer support on app-based P2P services exacerbates consumer harm when fraud or errors occur. According to Pew, consumers who experienced an issue with a mobile payment were twice as likely as debit, credit, or prepaid card users (39 percent vs. 20 percent) to report that disputes were difficult to resolve and more than four times as likely (23 percent vs. 5 percent) to not know whom to contact.²⁶ App-based services often rely on automated communications and do not make live customer service available or adequately staff customer service lines. Problems that consumers have experienced with neo-bank accounts like Chime show the importance of making human beings available to address problems when things go wrong.²⁷ California's recently enacted AB 1320 addresses this issue by requiring P2P payment apps holding a state money transmitter license to prominently display a toll-free telephone number on their website that a customer may use to reach live customer assistance.²⁸ Congress should consider similar legislation.

New Protections Are Needed to Protect Consumers from Fraud and Errors on P2P Payment Platforms

The lack of consumer protections for users of P2P payment platforms is a glaring problem. Regulatory requirements and incentives are needed. Self-regulation by the P2P services is unlikely to be effective in light of the desire to grow transaction

²⁶ Pew Charitable Trusts. "Are Americans Embracing Mobile Payments?" (October 3, 2019) Online: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/10/are-americans-embracing-mobile-payments>

²⁷ Kessler, Carson. "A Banking App Has Been Suddenly Closing Accounts, Sometimes Not Returning Customers' Money." *ProPublica*. July 6, 2021. Online: https://www.propublica.org/article/chime?utm_source=sailthru&utm_medium=email&utm_campaign=dailynewsletter&utm_content=feature

²⁸ Online: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1320

volumes. NCL has met with P2P platforms and urged them to offer far more robust fraud protection, but so far, we have seen little improvement. Congress needs to step in or the P2P services will continue to rely on marginally effective warnings and disclosures to consumers – an old-fashioned tactic – rather than designing systems for safety and using modern artificial intelligence, machine learning, data analytics and other methods to prevent and remedy fraud and errors.

To ensure that P2P platforms are secure for their users and do not continue to be powerful tools for fraudsters, action by Congress is urgently needed.

Specifically, Congress should:

- Enact legislation to expand the definition of “unauthorized electronic fund transfer” in the Electronic Funds Transfer Act to cover fraudulently induced payments, with ultimate liability resting with the institution that received the fraudulent payment;
- Push regulators like the Consumer Financial Protection Bureau to enforce requirements that P2P platforms investigate errors and fraud, even in cases where the consumer sent a payment erroneously or as a result of fraud in the inducement;
- Urge bank regulators to emphasize fraud prevention and remediation as part of financial institutions’ know-your-customer duties;
- Enact legislation to require P2P platforms to prominently display warning about fraudulent use of P2P payments and how to avoid scams; and

- Require P2P platforms to provide and prominently display a toll-free customer service telephone line that is staffed 24 hours per day and respond to customer service inquiries in a timely manner.

Conclusion

Chairman Green, Ranking Member Emmer and the members of the subcommittee, we thank you for your continuing work to protect consumers and for holding this hearing. On behalf of the National Consumers League, thank you for including the consumer perspective as you consider these important issues.