Statement for the Record

On behalf of the

American Bankers Association

before the

Task Force on Financial Technology

Of the

House Financial Services Committee

April 28, 2022

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The American Bankers Association[1] (ABA) appreciates the opportunity to submit a statement for the record for the hearing titled "What's in Your Digital Wallet? A Review of Recent Trends in Mobile Banking and Payments."

Today, the U.S. dollar is largely digital. American companies lead the world in creating the technologies that underpin digital payments, but there are risks to our continued leadership. It is important that Congress remain vigilant and deliberate in its policymaking to ensure that our regulatory environment supports innovation rather than overregulating or replacing private sector innovators. From damaging card "routing"[2] requirements currently proposed by the Federal Reserve Board in a redesigned Regulation II to failing to ensure consistent consumer protections and data security standards, bad policy can undermine the potential for a fairer, more efficient payment system.

Innovation Pays: America's Payment System is Working

Americans are rapidly embracing new payments technology that meets them where and how they live. Smartphones, voice assistants, and wearables have brought financial services from the teller line and desktop computer to the pockets and wrists of consumers. New small businesses have come into being because of mobile phone-based card acceptance solutions and many retailers were able to stay in business

[1] The American Bankers Association is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.7 trillion in deposits and extend $11.2 trillion in loans. Our members, located in each of the fifty states and the District of Columbia, include banks, savings associations, and non-depository trust companies of all sizes. ABA works on behalf of nearly all of the more than twelve hundred FDIC-insured institutions that provide trust and fiduciary services to individual and institutional customers.

[2] ABA, credit union organizations, minority banking representatives, and over 1,000 community financial institutions are calling on the Federal Reserve Board to withdraw its incomplete and arbitrary 2021 Notice of Proposed Rulemaking (Regulation II) to administratively expand the Durbin Amendment beyond the scope anticipated or intended by Congress. This Proposal, which does not comply with administrative law and is implausibly called a 'clarification,' would place community financial institutions at a disadvantage, encourage more fraud, and raise the overall cost of payments. We vigorously oppose adopting this Proposal, unless it is significantly revised and reproposed.

during the pandemic because the payments industry came into the crisis prepared with flexible options. Contactless payments are speeding up turnstiles on the nation's transit, including Washington's Metro and New York's subways.[3, 4] From government benefit cards accepted anywhere to remote check deposits, banks are making payments more inclusive. Increasingly, transactions happen within apps and online, without any physical payment credential being tendered.[5]

In a recent Morning Consult poll, 97% of adults rated their banks' online and mobile app experience as "good" to "excellent." Further, 81% reported that recent tech improvements delivered by their bank are making it easier to access financial services.[6] This month, a report[7] from a merchant technology provider found that 84% of business locations accept contactless payments and 9% of consumers describe digital wallets as their preferred form of payment, with contactless cards at 36%. Nearly three-quarters of consumers say that contactless payment types are convenient and easy to learn.

The U.S. Dollar is Digital

The vast majority of money in the United States is electronic and created by private banks. Though the exact percentages are not known, a study of a similar economy found that **97% of money in use was digital money created by commercial banking** whereas 3% was cash from the central bank.[8] There is not a need to end the issuance of cash, nor is there a looming technological challenge that urgently requires us to convert paper money into public digital currency. Simply put, digital money and paper money do not compete and the continued existence of paper money does not present evidence of our government falling behind. Cash has its own benefits, many of which do not survive when attempts are made to create a digital version of it, and we argue that the distinction between central bank money and electronic bank money should be preserved so that the unique benefits of each be conserved. There has been much made of the need for the central bank to issue a "digital dollar," but once the expensive architecture required is fully explored, the end state for consumers is not much different than what we have today. This realization may be why several central banks have abandoned movement towards a Central Bank Digital Currency (CBDC)[9]. At this time, we do not see the case for a CBDC in the U.S.

Will Tomorrow's Payments Be a Step Forward or Backwards?

New payments options are being broadly adopted in our society. But this revolution is underpinned by technology which, while ubiquitous, may not be available in the same way to all consumers. Questions of equity and access have rightfully been raised for answer by the technology sector, merchants, and financial services companies. The best way to provide access to mobile payments is through a bank account and

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[3] SmarTrip on iPhone & Apple Watch. WMATA. https://www.wmata.com/fares/MobilePay/ApplePay.cfm

[4] Say Hello to Tap and Go, with OMNY. NYC MTA. https://new.mta.info/system_modernization/omny

[5] *The Changing Face of the Payments System: A Policymaker's Guide to Important Issues*. American Bankers Association, 2013. https://www.aba.com/news-research/references-guides/changing-face-payments-system

[6] Morning Consult poll of 2,201 U.S. Adults, Sponsored by ABA. Oct. 1-3, 2021.

[7] *Emerging Trends at Point of Sale*. Hanover Research. 2020.

[8] Mcleay, Radia, and Thomas. *Money Creation in the Modern Economy*. Bank of England, 2014.

[9] *Central Bank Digital Currencies: Policy Issues.* Congressional Research Service, 2022. https://sgp.fas.org/crs/misc/R46850.pdf

ABA's members offer digital-first, affordable options, including Bank On-certified accounts. The Economic Impact Payments (EIP) disbursements leveraged electronic channels, including bank-powered prepaid cards[10] and Direct Deposit, to put money in the hands of people faster and we should strive to further develop the government's use of available private sector conduits to deliver funds without resorting to paper checks that can take weeks to print and to mail. The more efficient and secure provision of government disbursements to citizens is one of the main promises of digital payments that lay in the control of the Congress and the Administration. Our industry stands ready to support these improvements and we urge a whole-of-government focus on better serving recipients and protecting federal funds from fraud or loss.

Mobile and Digital Channels Should Bring High-Quality Banking Services to More Americans

The increasing use of mobile payments can be a force for good, however we should guard against regulatory loopholes that leave Americans with lower quality payments experiences. True innovations deliver the same or better service in new ways rather than by lowering existing standards. Fair and level regulatory playing fields protect consumers, support the stability of the financial system, and mitigate moral hazard that may occur from a race to the bottom. We are concerned by indications that the Federal Reserve may be considering whether to grant entities that have no federal supervision and deposit insurance direct access to its core interbank payment settlement systems.[11] We urge Congress to enact legislation to prohibit such arrangements.

Educating Consumers and Tackling Fraud are Essential

During a prior task force hearing, a consumer group witness rightly stated that "mobile is a platform, not a payment type" and noted that consumer protections for mobile transactions are tied to the underlying payment type. One of the challenges that must be acknowledged is that some new payment products function differently from other well-established payment channels.

Digital transactions tied to payment types like credit and debit cards carry strong protections, in large part due to network rules that require due diligence on who is allowed to accept network payments. Consumers are now using newer payment types that allow them to pay not just vetted merchants but friends, families, and others who have a bank account. To ensure broad access to bank accounts, the criteria for opening a bank account is not as strict as the criteria for accepting card network payments. Thus, these new payment types require a different understanding of risk of loss and the ability to identify fraudulent transactions before they are sent and to recover funds after they are sent. Fraudsters see peer-to-peer payments as a new, additional payment channel and are exploiting this transition and education phase using social engineering on platforms outside the payment system that they then monetize through the peer-to-peer payment channel. While banks are constantly evolving their interfaces to combat fraud that is within their ability to control, the misuse of peer-to-peer and crypto payment systems is, admittedly, an area that requires consistent action by industry.

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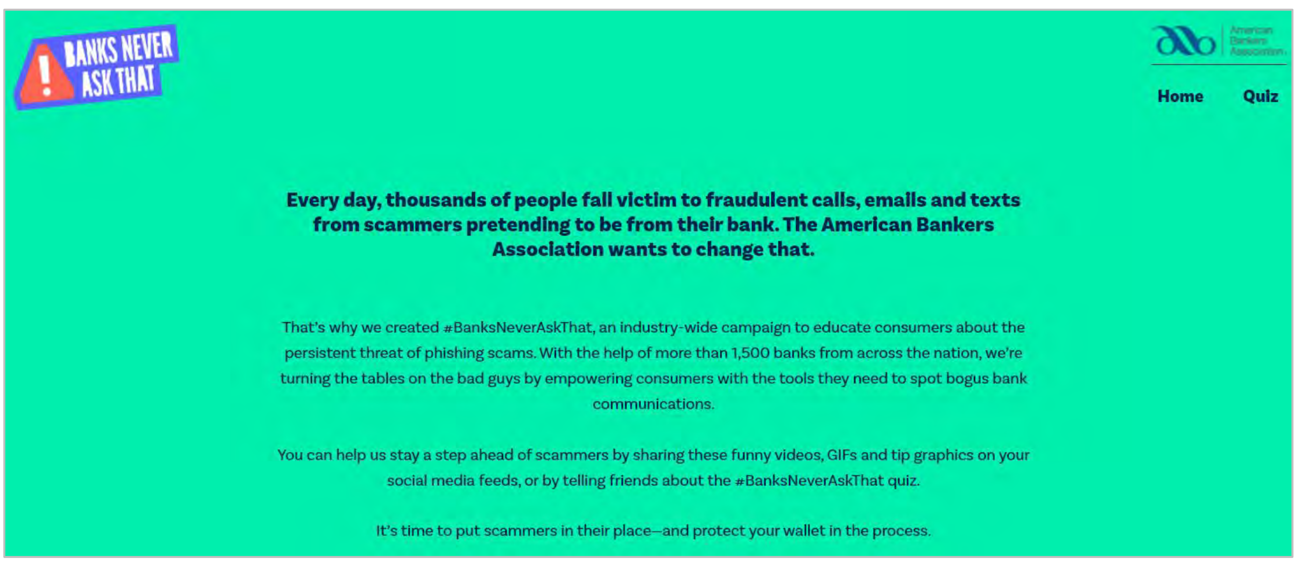
[10] Economic Impact Payment (EIP), Prepaid Debit Cards. Consumer Financial Protection Bureau. https://www.consumerfinance.gov/coronavirus/managing-your-finances/economic-impact-payment-prepaid-debit-cards/

[11] *Re: Guidelines for Evaluating Account and Services Requests*. BPI, 2022. https://bpi.com/wp-content/uploads/2022/04/BPI-Joint-Trades-Comment-Letter-to-Federal-Reserve-re-Fed-Accounts-Supplemental-Proposal-2022.04.21.pdf

At the same time, if peer-to-peer payments are to continue to exist, there should be a pragmatic delineation between *payments fraud* and the myriad types of fraud that might be incidentally facilitated through the peer-to-peer payment systems — which are simply another channel to make payments, and thus will be a target for fraudsters. For example, cash is so commonly used for fraudulent purposes that possessing large amounts of it is a potential marker of wrongdoing and the government takes the balanced approach of regulating certain cash transactions. Yet, the U.S. Treasury does not reimburse consumers if they unknowingly buy a counterfeit item with cash, even though the government's payment system facilitated the transaction. Despite this fact, some still suggest that banks should reimburse consumers for any peer-to-peer transactions that may be associated with fraud, regardless of the circumstances. An overreliance on regulation of payment media is unlikely to reduce overall consumer losses and will merely redistribute them in a different way.

Banks have a strong and clear interest in preventing fraud and protecting their customers. Consumer education coupled with industry efforts to prevent fraud are key. According to a 2020 ABA survey, banks are estimated to prevent about $22 billion a year in attempted fraud.[12] ABA's members are on the front lines of educating consumers about the safe use of payments apps. Most recently, ABA has partnered with the Federal Trade Commission (FTC) in promoting educational materials about payment app scams (see April 2022 infographic on following page). In addition, ABA has launched a consumer education campaign that activates banks and their customers about the social engineering tactics of scammers. Called "Banks Never Ask That!," the campaign includes interactive and social elements to help customers stay ahead of these scams. We also applaud the educational work of the Consumer Financial Protection Bureau (CFPB) and state officials.

We greatly respect the views of consumers groups who (like our members) are working to analyze these complex issues. We welcome dialogue with the Task Force on this point.



[12] *Banks Prevented More Than $22B in Fraud Attempts in 2018.* ABA Banking Journal, 2020 https://bankingjournal.aba.com/2020/01/aba-report-banks-prevented-more-than-22b-in-fraud-attempts-in-2018/

How to Safely Use Mobile Payment Apps and Services

Online payment systems or apps like Zelle, Venmo, and CashApp let you quickly send and receive money. If you link the service to your bank account or debit card, it's almost like handing someone cash. Be sure you know who you're sending money to. Once you send money, it's nearly impossible to get it back.

AVOID SENDING MONEY TO A SCAMMER

Don't click on links in an unexpected email, text message, or direct message that asks you to send money. Don't give any personal or sensitive information like your username, PIN, or password.

Confirm that you know the person you're sending money to.

When sending to someone you know, **double-check their information** before you hit send.

PROTECT YOUR ACCOUNTS

Use multi-factor authentication. This means you need two or more credentials to get into your account: your password plus something else like an authentication code or fingerprint.

Never share your credentials, like a verification code you get via text or authentication app.

Set up alerts in the payment app to get transaction notifications outside of the app environment, such as via email or text.

Regularly check your payment app and bank accounts to make sure no unauthorized payments have been sent from or accepted by your account.

Paid a Scammer Through a Payment App?

- **Report it to the payment app or service and ask to reverse the transfer.**
- **Tell your financial institution.**
- **Report it to the Federal Trade Commission at ReportFraud.ftc.gov.**

Learn more at **ftc.gov/paymentapps** and **aba.com/consumers**

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Private Sector Innovations Shouldn't Be Stifled By Premature Regulation

The mobile wallet marketplace has rapidly scaled up through the collaboration of regulated financial institutions and technology companies, including many startups. This evolution is far from over, likely not even through its first phase. Consumers and merchants have a wide variety of options and the architecture of mobile payments is certain to change as lessons are learned and competition plays out. Proposals to short-circuit this growth by picking "winning" models would be a mistake.

Regardless of the Future of Cash, More Access to Electronic Payments is Key

More than virtually any sector, banks are in the cash business – it is merchants, however, who decide which forms of payment they will accept. Cashless policies matter most when there is not adequate access to electronic payments – one strategy to mitigate underlying cash policy concerns is to work together to grow banking options for the underbanked. In the age of in-app payments, it is possible that access to electronic payment tools like debit cards and payment apps may become as important as basic internet access was at the height of the "digital divide." Unfortunately, access to basic banking accounts and debit cards has been reduced by the archaic and obsolete Durbin Amendment, pushing some consumers to inferior financial services options that are not readily loadable into mobile payment apps. Repealing the Durbin Amendment would allow more people to qualify for free or low-cost, high-quality deposit accounts that support mobile payments. This increased access would reduce the impact of cashless policies chosen by merchants.

Paying with a Bank is Rewarding

Studies consistently show that card rewards programs are extremely popular[13, 14] – America's banks are proud to provide ways to pay that turn into holiday trips, cash back, and other benefits for American families.

While some media commentators have claimed that rewards cards create a "Reverse Robin Hood" effect, they fundamentally misstate the economics of payments and loyalty/rewards programs. In fact, rewards cards are among the most progressive of financial products, and are widely held across risk tiers and card types while providing the consumer with what is effectively a discount versus cash payments or non-rewards electronic payments. Using data from 2020, the Consumer Financial Protection Bureau (CFPB) found that over 60% of subprime credit cards and 70% of near-subprime cards featured rewards. For average risk borrowers (prime tier), 80% of credit cards feature rewards.[15] Since consumers often own both rewards and non-rewards cards, it is likely that these statistics underestimated *people* using rewards.

Last year, an ABA white paper summarized the benefits to consumers and merchants alike, including lower-income consumers, of credit card rewards.[16] Among other findings, the paper concluded households of all incomes benefit from rewards cards, that most interest is paid by higher-income cardholders, and that

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[13] *Emerging Trends at Point of Sale*. Hanover Research, 2020.

[14] *The Value of Rewards*. Electronic Payments Coalition, 2019. http://www.electronicpaymentscoalition.org/wp-content/uploads/2019/03/EPC-Value-Of-Rewards.pdf

[15] *Report on the Consumer Credit Card Market*. Consumer Financial Protection Bureau. 2021

[16] *The Benefits of Credit Card Rewards: How Rewards Provide Value to Merchants and Consumers of All Incomes.* American Bankers Association, 2021. https://www.aba.com/news-research/research-analysis/the-benefits-of-credit-card-rewards

credit card rewards are not a wealth transfer. The paper also found that merchants gain far more from credit card rewards programs than they pay in transaction fees. These benefits accrue through higher purchase values, increased security, lower risks, and avoided costs of cash. Moreover, there is little evidence that merchants pass the costs of card acceptance through to consumers — which is intuitive, given that the benefits of card acceptance outweigh the costs — so lower-income cash and debit users do not subsidize rewards through higher prices.[17]

Some back-of-the-envelope analyses that are critical of credit card rewards use overly-simplified scenarios to model earning and spending habits, with assumptions often at odds with available data on consumer behavior and real reported satisfaction with actual card products.

The reality is that while there is a Reverse Robin Hood effect in the rewards payments marketplace, it is one created by regulation and not banks: the loss of rewards on *debit* cards due to the Durbin Amendment has allowed some large merchants to increase profits. For checking accounts covered by Durbin, the minimum balance required to avoid fees increased 50% after the law came into effect.[18] During the same time period, large merchants received over $50 billion in benefits from the law.[19] Many bank customers can now only access rewards programs if they can qualify for a credit card. This is the definition of Reverse Robin Hood – using the force of law to remove benefits from basic financial products such as debit cards in order to increase profits at large global retailers. Many of the current discussions about the "real value" of rewards are really arguments about the costs to merchants of payment acceptance.

Simply put, electronic payments are ubiquitous, competitive, and advancing faster in the United States than anywhere else in the world. Our innovators produce payments tech adopted the world over.

The Cashless Question

Banks offer their merchant partners a wide range of payment choices. These include, primarily, cash handling and electronic payment services such as payment card acceptance. The choice to accept or not accept a form of payment is one made by merchants, often through consultation with a third-party technology provider that may offer "payment optimization" services. Banks do not press merchants to eliminate cash, and in fact, banks continue to support the nation's cash infrastructure through ATM sponsorship, night cash deposit options, and cooperation with the Federal Reserve and others in the cash handling industry, including armored cars vendors. Some consumers and merchants articulate important use cases for cash. The public policy questions surrounding merchants who choose to not accept cash are complex and emergent. We believe it is important for policymakers and merchants to engage in an authentic and ongoing dialogue about these issues.

As a sector which does not decide for merchants how they will accept payment, it would be difficult for us to use these written comments to address the myriad and quickly evolving questions raised by the decisions of some merchants to not accept cash. The implications for consumers and communities are important and we hope to learn from your work on this issue. While our sector recognizes the complexity

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[17] *ibid.*

[18] Manuszak, M. and Wozniak, K. *The Impact of Price Controls in Two-Sided Markets: Evidence for US Debit Card Interchange Fee Regulation*. Federal Reserve Board, 2017

[19] *Out of Balance: How the Durbin Amendment has Failed to Meet Its Promise*. Electronic Payments Coalition, 2018

of the regulatory and legislative responses to merchants' decisions on payment acceptance, there are closely related policy matters which may bear in your consideration:

- **Merchants value electronic payments.** Mobile payments create exciting opportunities for merchants to increase engagement with their customers through promotions, repeat sales, and new options that improve their shopping cart conversion, like Buy Now Pay Later. The trend of cashless merchants in and of itself bears out what banks have known from decades of partnership with the retail sector: merchants who offer electronic payments do so because they provide some tangible business advantage over cash or checks. For some time, merchant trade associations have asserted that bank card acceptance is not competitively priced, and we offer the cashless trend as further evidence that card acceptance costs (interchange and related costs charged by banks to merchants) are reasonable.

- **Consumers value electronic payments.** When asked why they chose to pay electronically, consumers will cite a variety of reasons, including dispute rights, their ability to earn valuable rewards points or get cash back, easier tracking of expenses, avoiding counterfeit currency, or simply that they can replace a lost card more easily than cash.

- **Merchants make choices for their circumstances.** Excluding checks, cash was the only form of payment accepted by many merchants just a few decades ago. There was then, as there is now, a cost to accept, guard, and transport cash and unique risks associated with it (i.e. counterfeiting). Research shows that today, cash handling costs are at least as high as before electronic payments, and often exceed the cost of card acceptance. U.S. and Canadian retailers spent more than $96 billion in cash-handling activities in 2017.[20] For a variety of reasons, some merchants have chosen to introduce bank cards into their payments mix, some choose to remain cash-only, and some are now choosing to accept only non-cash payment types.

    - It is the experience of our industry that merchants actively manage their payment acceptance costs, balancing a number of factors as they seek to maximize their profitability. We know this most acutely because banks compete to serve merchants and offer them the best support for their choices. In fact, some merchants complain that they receive *too many* competing offers for payment services, stating that they are very satisfied with their current bank's services.

- **Mandates have consequences.** Merchant trade associations have long argued for heavy-handed government mandates on banks relating to card acceptance costs and practices. Despite evidence showing that merchants value electronic payments and receive benefits well above the price they pay to accept cards, a handful of merchant groups continue to seek government interventions ranging from mandating a 4-digit PIN (for purely their economic reasons) on all transactions to imposing price caps on card acceptance costs or routing requirements.

[20] *Cash Multipliers: How Reducing the Costs of Cash Handling Can Enable Retail Sales and Profit Growth.* IHL Group, 2018

Impact of Payments Mandates: the Debit Card Experience

As noted throughout our comments, the signature payments policy accomplishment of the retail lobby has been the Durbin Amendment, which raised financial services costs to consumers and reduced access to free checking and debit card rewards. We have and will repeatedly reference it because its impacts have so thoroughly rippled throughout a web of related issues, from delaying the rollout of secure payment technologies to touching on the most fundamental questions of competition and access. Regrettably, this law resulted in harm primarily to Americans of lower economic status while transferring tens of billions of dollars in benefits from consumers to large merchants, and harming the competitiveness of community financial institutions.

A recent Government Accountability Office report is the latest in a long line of studies outlining the negative consequences of the Durbin Amendment.[21] GAO highlighted several arguments that ABA has long held, including that the law significantly affected the cost and availability of basic banking services. For example, GAO cites a Federal Reserve study which found that noninterest checking account fees at covered banks rose by 20%, and the average minimum balance required to avoid a fee rose by 50% following the implementation of Reg II.[22] Market participants interviewed by GAO auditors also reported that the price cap "limited banks' ability to offer free checking accounts" (p. 25). Elsewhere in the report, GAO found that about 5% of U.S. households are unbanked, and nearly 18% are underbanked. Consumers who have lower incomes, lower socioeconomic attainment, or who are ethnic minorities are more likely to be unbanked or underbanked. Per GAO, unbanked individuals cite lack of funds, minimum balance requirements, and unpredictable or costly fees as the primary reasons for not having a bank account. As such, additional account fees and requirements—like those associated with interchange regulation—exacerbate the problem of unbanked and underbanked households.

We have long argued[23,24] that the Durbin Amendment represented a draconian, regressive step backwards for financial inclusion in basic banking services. Unheard of as an approach in the rest of the world, it was drafted without regular legislative order and passed without real debate. Regrettably, the Durbin Amendment has made it harder for people of modest means to obtain affordable bank accounts that include a bank-issued debit card. The recent dramatic reduction in card compensation for small banks attributable to Durbin suggests that this damage will continue to spread and impact more and more consumers as time goes on. It is impossible to ignore the reality that the cashless question would impact far fewer consumers if the Durbin Amendment had not passed and subsequently limited access to low- and no-cost debit cards.

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[21] *Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved.* GAO-22-104468. U.S. Government Accountability Office, 2022. https://www.gao.gov/assets/gao-22-104468.pdf

[22] See Manuszak and Wozniak. *The Impact of Price Controls in Two-sided Markets: Evidence from U.S. Debit Card Interchange Fee Regulation.* Federal Reserve Board, 2017. As cited in GAO-22-104468.

[23] *Don't be fooled: The Durbin amendment is a costly mistake*. Rob Nichols, President & CEO of the American Bankers Association. The Hill, 2017, https://thehill.com/blogs/pundits-blog/finance/330135-the-durbin-amendment-has-been-a-costly-policy-mistake-for-all

[24] Letter from the American Bankers Association, its State Associations, and Hundreds of its Members to the House of Representatives, for Repeal of Durbin Amendment. 2017. https://www.aba.com//media/documents/letterstocongressandregulators/finaldurbinletter.pdf?rev=bf714577884a49189f184846587cb868

Against that backdrop of reduced access to debit cards due to the merchant-driven Durbin Amendment, merchants now face the specter of a vastly different but similarly consequential mandate being placed upon their own payments acceptance practices. While you diligently examine the core aspects of the cashless question, we believe it is logical to consider seriously whether repealing the Durbin Amendment and restoring access to affordable basic banking services might become one prong of the Task Force's inclusion agenda.

Consumer Protection & Security in Mobile Payments

Technology and Security Standards Protect Consumer Privacy and Increase Access

In a competitive marketplace, standards evolve naturally through the interplay of marketplace, regulatory, and technological factors. In the payment space, banks abide both by voluntary private standards like those developed by EMVCo and the PCI Security Standards Council and government requirements such as data safeguarding rules resulting from the Gramm-Leach-Bliley Act. Payment brand policies are routinely updated to keep up with market realities – for example, many of us have noticed that card companies no longer require signing for card purchases (though some merchants still collect signatures for other reasons).

Banks work closely with regulators to understand best practices for keeping information safe. As chartered, regulated and insured institutions, banks are held accountable for protecting customer privacy, with specific limitations in place to prevent inappropriate data sharing.

Against this backdrop of strong government oversight, the private sector goes further by pursuing responsible growth of the payment system through new technologies while remaining eternally vigilant regarding data security. PCI and EMVCo form the foundation of a globally interoperable and secure payments system, with more opportunities than ever for participation by stakeholders in the merchant community. Often overlooked, private sector standards extend the use cases for mobile payments and pave the way for greater access.

In the age of the mega retailer data breach, banks continue to demonstrate an exceptional record of preventing data breaches. Combined with robust privacy protections, mobile payments made through a bank come with peace of mind that others cannot match.

Core Payment Systems Are Often Overlooked in Mobile Payments Debates

The networks which power mobile payments take a variety of forms. Payment card networks are the most ubiquitous connections between consumers' banks and a merchant's bank. These well-known brands provide for instant messaging of payment data around the globe, using globally-interoperable standards developed in formal consultations with merchants. The credit and debit card "rails" are a modern marvel: capable of processing the world's commerce with zero downtime and enabling transactions across borders in dozens of currencies. A debit card issued at a community bank in Philadelphia can be used in a mobile transaction in Tokyo or London because of private sector incentives for collaboration.

Automated Clearing House (ACH) networks are offering faster options that enable people to be paid more quickly and have access to their funds sooner than ever before. Of particular interest to policymakers concerned about families being able to make ends meet, data show that the use of Same Day ACH for payroll and other direct deposits increased by 105% between 2020 and 2021 (volume of funds processed via same day settlement). About 95% of Americans now receive their paycheck via Direct Deposit,[25] allowing them to have access to funds on the morning of each payday. After hearing from stakeholders asking for faster access to funds for everyday Americans, banks stepped forward to create the *Real Time Payments* (RTP) network, a feature-rich interbank settlement system for faster payments. With RTP, banks and credit unions can instantly settle transactions made across innovative payment products, paving the way for the growth of new payment options. RTP is new kind of payment network based on the same technology used in the United Kingdom, Europe, and selected by central banks around the globe. The Federal Reserve is in a multi-year process of upgrading its payment offerings, including the rollout of their own real-time system, *FedNow*, at sometime next year.

The Interbank Model Protects Consumers and Communities; Direct Fintech Access is Dangerous

These core payment systems are key to the stability of our national economy and the operation of our government. For safety and system stability reasons, only chartered financial institutions and government agencies can access them, creating certainty for payment counterparties about the quality and liquidity of participants in the system. The interbank payments model protects consumers by providing them the assurance that their funds flow through a regulated, insured institution that is regularly examined for compliance with applicable laws. Further, banks are held to uniquely high standards for privacy, data security, community reinvestment, fairness, and preventing the facilitation of criminal activity such as human smuggling, human trafficking, and money laundering.

Standalone technology platforms and the retail sector are not subject to the above-stated obligations, nor are they specialists in managing the capital and risk calculations required to operate a sustainable payments business. Their financial structures are often geared towards research and development or inventory costs rather than meeting the stringent liquidity management practices required at banks. While some payment startups have been successful in injecting new ideas and competition into the ecosystem, there are also examples of elaborate and well-resourced end-to-end payment endeavors floundering. The mixed outcomes are no different than any other part of the tech sector.

Technology firms and retailers often partner with banks to offer mobile and other payment options because of, among other things, banks' access to the payments system, deep experience with payments, and extensive compliance and risk management systems. There are sound public policy reasons why the Federal Reserve, for instance, grants payment service accounts only to regulated banks and credit unions.

But there is a threat to this reliable and safe ecosystem. During the Federal Reserve's comments periods on proposals to upgrade their payment rails, some merchant groups and "big tech" interests (and academics) argued for direct access to these backbone systems.[26,27] This creates personal data privacy concerns for potential users of these big tech payment channels. Big tech has a history of mining transaction data from individuals for the purposes of targeted marketing or resale to third parties. Financial insitutions have strict

[25] *Getting Paid in America Survey.* National Payroll Week, 2021. https://www.nationalpayrollweek.com/wpcontent/uploads/2021/09/2021_Getting_Paid_In_America_survey_results.pdf

[26] Knight, B. *Fed Should Open the Payments System to Fintechs*. Mercatus Center, 2019. https://www.americanbanker.com/opinion/fed-should-open-the-payments-system-to-fintechs

[27] Hoenig, T. *FedNow Portents a More Competitive and Resilient Payments System.* Mercatus Center, 2019. https://www.mercatus.org/publications/monetary-policy/fednow-portends-more-competitive-and-resilient-payments-system

guard rails surrounding what they can do with customer data. Most tech companies and retailers do not seek direct access, recognizing that those sectors long ago left the finance space because of the complexity of participating directly. History shows that while major merchants (such as national department stores) originated the first credit cards, they sold their finance divisions to banks for sound business reasons.

For this reason, we are concerned about a potential shift in tone from the Federal Reserve, indicating an openness to offering new accounts to uninsured, nonbank providers. We understand the reasons why the House Financial Services Committee and Consumer Financial Protection Bureau are looking into the role of large tech platforms in payments and urge the Federal Reserve to observe longstanding policies which give these firms access through regulated channels.

America's Banks Are Working Together to Ensure Universal Access to Payment Choices

For payment networks to work, they need endpoints that reach everyone in the community. America's largest banks understand that and have sponsored the development of tools like RTP and mobile payment tools such as Zelle, for which they provide scale while simultaneously offering access on equal terms to smaller banks and credit unions. Our members are also proud to participate in advising the development of *FedNow*, along with other industries that have stakes in its rollout. Through engagement, small institutions have onramps to the latest payment highways that are being fed traffic by large institutions, building the networks to ubiquity. These products are arguably faster and superior to those developed outside the banking ecosystem because, when fully implemented, they do not require funds to sit with third parties before final settlement of transactions in a bank account. From large to small, the banking sector is working collaboratively to support the viability and sustainability of bank-based payment options.

Community Banks Still Face Unique Obstacles from Poor Technology Provider Choices

However, despite being offered the same technology as larger banks, community banks might still face the prospect of someday having comparatively fewer payment choices. The reason is straightforward: a heavily concentrated group of payment tech providers is failing to keep pace in supplying community banks with access to the best payment apps and online banking tools. Outdated software, poor hardware upgrade availability, and client support that has declined over the years combines to delay some small banks from adding new payment options. ABA members of all sizes are concerned about the impact of technological stagnation at so-called "core providers," especially in light of increasing consolidation – most recently the phenomena of payments processors merging with debit networks.

These Community Institutions Also Face Financial Pressure from the Durbin Amendment

The Federal Reserve recently documented that community banks and credit unions are experiencing sharp declines in interchange revenue, which is compensation received for providing a variety of services related to offering debit cards. While small institutions were supposed to be exempted from most of the Durbin Amendment's price caps on debit card transactions, they are still fully subject to some of the law's most prescriptive mandates. Further, the rules implementing the law deviated significantly from the statute by imposing mandates on financial institutions rather than prohibitions on conduct by payment networks. Neither of these outcomes are surprising given the unworkable design of the Durbin Amendment.

Unfortunately, by transferring revenue from banks to large retailers, the law has reduced the ability of smaller institutions to invest in offering the latest payment technology.[28]

Expanding the Durbin Amendment Would Compound This Harm

Mobile payments rely on robust underlying payment types. Attempts to expand the Durbin Amendment, either through the misguided Regulation II proposal now pending at the Federal Reserve Board, or through legislative expansion to credit cards, will most acutely harm community financial institutions that want to participate in digital and mobile payments platforms.

Digital Assets

Increasingly, consumers are accessing financial services through novel technologies like blockchain. What began with a single type of token (Bitcoin) has rapidly evolved into a complex and interconnected financial services ecosystem. Today, Pew estimates that 16% of U.S. adults have used cryptocurrency.[29] This quick evolution has created opportunities but has also challenged existing regulatory structures and introduced risk. Despite the decentralized origins of cryptocurrencies, the reality is that today most users access digital asset markets through (often large) centralized entities.

There is an increasing recognition of the importance of consistent regulation to ensure consumers remain protected when they engage with these novel assets. As Secretary of the Treasury Janet E. Yellen recently stated, "When new technologies enable new activities, products, and services, financial regulations need to adjust. But, that process should be guided by the risks associated with the services provided to households and businesses, not the underlying technology… Wherever possible, regulation should be 'tech neutral.' For example, consumers, investors, and businesses should be protected from fraud and misleading statements regardless of whether assets are stored on a balance sheet or distributed ledger." ABA agrees. We believe that consumers who choose to access crypto markets are best served when they can do so through a fully regulated financial institution like a bank. This consistent regulation is important in all assets but is critical for stablecoins. The stable nature of these assets mean they are marketed as an alternative to a bank deposit despite offering few of the protections consumers have come to expect from banks. This is why ABA supports the recommendations of the President's Working Group that stablecoin issuers be regulated as insured depository institutions.

Despite high-level agreement on the importance of the bank regulatory framework, it is becoming harder for regulated financial institutions like banks to offer their customers access to digital assets. The same day Janet Yellen gave her speech calling for more consistent regulation of digital assets, the FDIC issued a Financial Institution Letter (FIL) that made it more difficult for banks to offer crypto services. The FIL highlighted the risks of engaging in crypto activities and required banks engaged in any kind of crypto activity to seek prior approval from the FDIC. The FDIC is not alone – in November of 2021, the OCC issued

[28] *Joint Comments of the American Bankers Association, Credit Union National Association, and National Association of Federally-Insured Credit Unions to the Federal Reserve Board of Governors.* Docket: Regulation II Paperwork Reduction Act Information Collection*,* 2019.

[29] Perrin, A. *16% of Americans Say They Have Ever Invested In, Traded or Used Cryptocurrency.* Pew Research Center, 2021. https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/

Interpretive Letter 1179, which similarly required banks to obtain a written non-objection prior to engaging in activities deemed as permissible for banks in earlier interpretive letters.

The banking agencies are not alone in making it more difficult for regulated entities to meet customer demand for crypto services. Recently, the SEC published Staff Accounting Bulletin 121 which may require public companies to bring crypto assets held on a customer's behalf onto their balance sheet. Such a requirement would run counter to the longstanding bank business of safekeeping customer assets (e.g., book entry, physical, and digital assets) and would effectively bar banks from offering digital asset custody and related services.

If policymakers want consumers to be able to access digital assets through regulated financial institutions, they cannot at the same time tell regulated financial institutions not to offer these products. All that will accomplish is pushing non-bank providers and consumers farther from fully regulated markets, exposing them to undue risk.

Policy Recommendations

We urge the Task Force to consider the following public policy priorities on mobile payments:

- **Support the Withdrawal of Regulation II Expansion.** The Federal Reserve Board should withdraw its 2021 Proposed Rule to expand the Durbin Amendment to virtually any kind of debit card transaction, a standard which is so vague and confusing that it threatens to undermine key parts of the mobile wallet ecosystem. Its implicit endorsement of a mandate that community financial institutions accept so-called "PINless" transaction types would fundamentally transform the payments system in a manner not required by Congress, while removing card issuer discretion in preventing fraud – a harsh blow to small banks and credit unions operating payment systems on tight margins. The Proposed Rule was issued without the analyses required by law, including regarding the impacts on small entities. Once withdrawn, it should only be reproposed after all procedural requirements are satisfied and its substantive flaws remedied, and if the Federal Reserve can articulate a compelling justification for continuing to pursue this discretionary rulemaking at the expense of small financial institutions and their customers.

- **Proceed Cautiously With Large Scale Rewiring.** The payments system is complex and has evolved to meet needs of an economy that requires specialized solutions. The urge to start from scratch can lead to unintended consequences. Instead, we urge policymakers to support those prudently-planned fresh starts like the real time payment systems being introduced by the private sector and the Federal Reserve that clear the clutter from transactions and empower new use cases for mobile payments. These solutions are arriving much sooner than a CBDC could. Similarly, radically expanding direct access to the nation's core payment systems would create downside risk without any clear benefit to the economy.

- **Ensure Consistent Expectations.** Bank and nonbank providers should be held to similar standards for consumer protection, security, and liquidity. Mobile payment providers should be subject to common regulatory baselines and we urge Congress to exercise oversight of attempts to circumvent safeguards that consumers have come to expect. No matter where payment-related data flows, it should be protected by the same standards. Nonbanks also should not be able to create moral hazard by operating business models that pool risk and potentially introduce instability into the nation's backbone payment systems.

- **Support Innovation by Regulated Financial Institutions.** For new payment types like crypto to become safe and commonly accepted mobile payments, banks must have consistent guidance from regulators that does not put them at a disadvantage to lesser regulated competitors. Current regulations hamstring banks by requiring and withholding non-objections, making it difficult for customers to access digital assets. We urge Congress to monitor actions by regulators that prevent the kind of harmonization of expectations that would create a predictable, regulated marketplace for new assets.

Conclusion

Once again, ABA appreciates the opportunity to offer this statement for the record and to contribute to the dialogue undertaken by the Task Force. We remain at your disposal to answer your questions and provide further information. ABA looks forward to more Task Force hearings on payments issues in the future.