



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

September 24, 2019

Re: *The Future of Real-Time Payments*

Dear Chairman Lynch, Ranking Member Hill, and members of the Task Force:

Consumer Reports¹ thanks the Committee for calling a hearing on the future of real-time payments. As money moves faster there is great promise, but also risks. These risks can be mitigated in a number of ways, not the least of which is Congress updating the law to ensure that every way is safe to pay.

Consumer Reports has a long history of working to make every way safe to pay and to ensure that the payments system is safe. A few examples of CR's work in this area include working for strong consumer-centric policies when the check system was updated,² advocating for legal protections for prepaid cards³ and for mobile payments,⁴ and serving on the Secure Payments Task Force⁵ and the Faster Payments Task Force⁶ Steering Committees.

¹ Consumer Reports is an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves.

Consumer Reports works for pro-consumer policies in the areas of financial services and marketplace practices, antitrust and competition policy, privacy and data security, food and product safety, telecommunications and technology, travel, and other consumer issues in Washington, DC, in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 6 million members and publishes its magazine, website, and other publications.

² See for example CR's efforts to improve The Check Clearing for the 21st Century Act:

https://advocacy.consumerreports.org/research/seven_policies_banks_could_adopt_to_improve_check_2_1_for_consumers/.

³ https://advocacy.consumerreports.org/research/prepaid_cards_second-tier_bank_account_substitutes/

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<https://advocacy.consumerreports.org/research/pay-at-your-risk-how-to-make-every-way-to-pay-safe-for-mobile-payments/>

⁵ <https://securepaymentstaskforce.org/about-the-task-force/>.

⁶ <https://fasterpaymentstaskforce.org/meet-the-task-force/the-contributors/>.

Faster payments may prove both convenient and money saving for consumers. The Faster Payments Task Force identified use cases that could benefit most from faster payments, including person-to-person payments, such as paying a friend; some person-to-business payments, such as emergency bill payments; and some business-to-person payments, such as wage payments.⁷ Paying a friend electronically in real-time saves a run to the ATM, and may help consumers avoid out-of-network ATM fees. Paying a bill the same day it is due and having the money immediately received and applied may reduce the incidence of late fees. Getting paid in real-time could reduce reliance on expensive credit. Some workers cannot wait days or weeks until payday, and instead take out high-cost, short-term loans to carry them until their wages arrive. Real-time wage access could reduce the need for such credit. Real-time payments will give consumers greater certainty about their balance, helping them manage their money and avoid NSF and overdraft fees. FDIC research shows that high or unpredictable fees drive consumers away from traditional checking accounts.⁸ If faster payments are done right, that unpredictability should be eliminated, and may bring un- and underbanked consumers back to the formal financial system.

While faster payments have potential consumer benefits, money moving instantly brings real risks. Faster payments are instant and irrevocable, and are thus an inviting target for scammers. Money mistakes in this environment can lead to consumer losses. Service providers and regulators must do more to ensure consumer safety. When the United Kingdom launched its real-time payment system, fraud spiked.⁹ Some have suggested that consumer education can combat the risk of fraud.¹⁰ While alerting consumers to the risk of fraud is appropriate, it is no substitute for building systems that prevent, detect, remedy and punish fraud, and strong protections under law for consumers. While the risks are real, fear of fraud should not result in undue delays, and unless a payment is flagged for potential fraud or error, providers should guarantee prompt funds availability and prompt application of payments.

The current state of peer-to-peer (P2P) payments is instructive. Consumer Reports investigation of P2P services found that providers were not doing enough to ensure consumers who experienced problems, such as sending money to the wrong person or getting scammed, got

⁷ <https://fasterpaymentstaskforce.org/payment-landscape/benefits-of-faster-payments/>.

⁸ Federal Deposit Insurance Corporation, 2017 FDIC National Survey of Unbanked and Underbanked Households at 4: “As in previous years, higher proportions of unbanked households that previously had an account cited “Bank account fees are too high” (29.9 percent) or “Bank account fees are unpredictable” (24.9 percent) in 2017, compared with unbanked households that never had an account (21.1 and 17.0 percent, respectively).” Available at <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>.

⁹ KPMG New Payments Platform, The industry approach to minimising real-time payments fraud, <https://assets.kpmg/content/dam/kpmg/au/pdf/2018/kpmg-nppa-new-payments-platform-minimising-payments-fraud.pdf> at 9.

¹⁰ One of the three working groups established by the Faster Payments Council is “Education & Awareness” and works to “build an educational and awareness program to foster better understanding of faster payments and confidence among providers and users.” <https://fasterpaymentscouncil.org/>.

appropriate help.¹¹ Victims of fraud should be entitled to error resolution rights even if they were tricked into authorizing a transfer of funds themselves, and service providers, as we have argued previously, have an obligation under the Electronic Funds Transfer Act to assist consumers who mistakenly send money to the wrong person.¹² The Consumer Financial Protection Bureau should clarify procedures to remove any uncertainty and enforce the rule if providers do not comply.

Overdraft should not be permitted for real-time payments. While the potential for faster payments fraud is cause for concern, there is a legal, commonplace practice that causes daily harm to consumers to the tune of \$34 billion per year: overdrafts.¹³ Banks charge overdraft fees to cover overdrawn transactions, meaning these services are effectively short-term loans with extremely high interest rates. Overdraft fees are particularly insidious because they are imposed most often on low income individuals who are already struggling financially. Overdraft fees are \$35 on average.¹⁴ Penalizing these consumers with a fee for each overdrawn transaction isn't just wrong - it can trap them in debt, possibly resulting in involuntary account closure and damaging their credit. If high-cost, short term instant credit extensions are allowed in the faster payments environment it could not only undercut consumer benefits, but also leave some worse off. Quite simply, overdrafts should be prohibited in the faster payments environment.

The Federal Reserve's FedNow plan will hasten the advent of ubiquitous faster payments. The move to same-day ACH and the launch of Clearinghouse's Real Time Payments system are important milestones in the effort to bring the ease and convenience of email to money. However, only the Federal Reserve, due to its unique status in the U.S. banking system, can lead all industry stakeholders forward as well as serve the public interest in a faster and safer way to move money. With its announced intention to build the FedNow faster payments system, the Federal Reserve will ensure safe, reliable, accessible faster payments to all. The benefits of faster payments will not be fully realized if faster payments are not

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<https://www.consumerreports.org/digital-payments/peer-to-peer-payments-are-generally-safe-but-consumers-must-be-aware-of-risks/>. For an example of service provider practices, see this from Venmo's website: "*The moment you send a payment in Venmo, the funds are made available to the recipient. If you sent a payment to another user with a similar name, as a first step, send that user a charge request for the same amount of the payment so they can pay you back. You should include a note asking them to pay you back for the money you sent by mistake, and once they accept the request the payment will be added to your Venmo account. If you don't hear back from them or need help sending a charge request, contact our support team and we'll do our best to help. While we cannot guarantee we'll be able to help recover the money, if you reach out to us, we can provide any available options.*" <https://help.venmo.com/hc/en-us/articles/209681208-I-paid-the-wrong-person->.

¹² <https://www.regulations.gov/document?D=CFPB-2018-0012-0039>

¹³

<https://www.marketwatch.com/story/overdraft-fees-havent-been-this-bad-since-the-great-recession-2018-03-27>.

¹⁴ <https://www.bankrate.com/banking/checking/checking-account-survey/>

ubiquitous, reaching all consumers and even the smallest financial institutions. Only the Federal Reserve can ensure such wide access.

Congress must act to make every way safe to pay. When Congress passed the Electronic Funds Transfer Act (EFTA) in 1978, it did so because it recognized the existing legal framework for payments was insufficient to address the then-new reality of electronic payments¹⁵ and sought to secure consumer rights.¹⁶ The EFTA ensures crucial payment protections for consumers, but it is not enough. As described in detail in the 2008 article “Before the Grand Rethinking: Five Things to Do Today with Payments Law and Ten Principles to Guide New Payments Products and New Payments Law,”¹⁷ while many payment types look the same, protections vary widely and often there is little that consumers can do to ensure their safety.¹⁸ To remedy this mess, the author, Gail Hillebrand (then-CR financial services policy leader), proposed that certain existing consumer protections be expanded to apply to all non-cash payments to create uniform protections.¹⁹ One of these reforms is to extend the chargeback right - the right to reverse payment if goods are not delivered as agreed.²⁰ Congress should adopt this reform.

Congress should pass The Overdraft Protection Act of 2019. As mentioned above, overdraft fees, already harmful, could be disastrous for consumers in the faster payments environment. The Overdraft Protection Act of 2019 can help remedy existing problems and protect all consumers, no matter the payment speed. The bill extends critical protections to consumers, codifies the 2010 overdraft rules that require consumers to opt into overdraft programs, limits the number of overdraft fees that can be charged monthly and yearly, require overdraft fees to be reasonable and proportional, and prohibits banks from posting transactions in order to maximize overdraft fees.

Libra is not the solution to slow payments. In its Libra whitepaper, Facebook positions Libra as an “instant” and “low-cost” way to move money.²¹ In testimony before Congress, the company frequently mentioned the need for speed and efficiency, effectively arguing that Libra is necessary and useful, in part, because the United States lacks a universal faster payments system.²² However, the establishment of Libra is unlikely to solve any problems, and likely to cause more. Congress did much to call attention to issues with Libra in its July hearings, including concerns about competition and market concentration, monetary policy, compliance

¹⁵ 15 U.S. Code § 1693(a)

¹⁶ 15 U.S. Code § 1693(b)

¹⁷ <https://consumersunion.org/pdf/WhereisMyMoney08.pdf>

¹⁸ Gail Hillebrand, Before the Grand Rethinking: Five Things to Do Today with Payments Law and Ten Principles to Guide New Payments Products and New Payments Law, Chicago-Kent Law Review Symposium: Rethinking Payments Law, 83 Chi.-Kent L. Rev. No 2, 769 (2008), available at <https://www.law.berkeley.edu/wp-content/uploads/2019/07/Before-The-Grand-Rethinking.pdf>.

¹⁹ *Id.*

²⁰ *Id.* at 796-799.

²¹ https://libra.org/en-US/wp-content/uploads/sites/23/2019/06/LibraWhitePaper_en_US.pdf

²² <https://financialservices.house.gov/uploadedfiles/hhr-116-ba00-wstate-marcusd-20190717.pdf>

with Know Your Customer and Anti-Money Laundering rules, and other critical issues. There is no mechanism to fix these issues. Even the most basic questions about consumer protections for Libra users remain unanswered, as the US lacks a strong legal framework to ensure consumer protections and marketplace integrity for cryptocurrency. Meanwhile, Facebook itself is an untrustworthy actor. Facebook has repeatedly abused consumer trust, and shown itself unable to meaningfully police itself. And it is useful to remember that many of the problems that Facebook proposes to resolve with its Libra currency can be solved through more traditional means, including through the establishment of a well-structured FedNow faster payments system.

Conclusion

Faster payments have potential consumer benefits, but also potential downsides. While we will look to providers - including the Federal Reserve - to be first line to mitigate the risks, Congress too has a role. Congress can make every way safe to pay by enacting common sense reforms. We applaud the Committee for holding this hearing on the future of faster payments. If we can be of assistance to you or Committee staff, please do not hesitate to contact us.

Sincerely,



Christina Tetreault
Senior Policy Counsel