



November 7, 2019

Ann Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

**Re: Docket No. OP-1670, Notice and Request for Comment, Federal Reserve Actions
To Support Interbank Settlement of Faster Payments**

Dear Chairman Powell, Members of the Board and Secretary Misback:

We, the Center for Responsible Lending,¹ Consumer Reports,² and the National Consumer Law Center (NCLC) (on behalf of its low income clients) comment today on Docket No. OP - 1670, Federal Reserve Actions To Support Interbank Settlement of Faster Payments. We support the Federal Reserve's plan to develop the FedNow faster payments system. Delays in payments can lead consumers to incur late fees, or make them vulnerable to expensive, short term credit in an attempt to cover a liquidity gap. A thoughtfully built FedNow system promises to mitigate these problems, and with concerted effort a new, faster system will be safer for users than existing payment

¹ The Center for Responsible Lending is a non-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices, including student loan debt incurred as a result of fraudulent representations by higher learning institutions. CRL's views on student lending are informed by its affiliation with Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided \$6 billion in financing to 70,000 homebuyers, small businesses and nonprofits and serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago.

² 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. Consumers 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.

services. To ensure these positive developments, we urge the Federal Reserve to build FedNow to the Faster Payments Task Force Effectiveness Criteria and our recommended additional safeguards, ban overdraft and require that any credit offered comply with the Truth in Lending Act as implemented by Regulation Z, and work with regulators and lawmakers to update the law to ensure that every way is safe to pay for consumers.

We support the Federal Reserve in its efforts to build FedNow. Only the Federal Reserve can build a faster payments system available to all and focused on the diverse needs of all stakeholders. The benefits of faster payments will not be fully realized if faster payments are not ubiquitous, reaching all consumers and even the smallest financial institutions, and doing so in a safe and affordable fashion. 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 build a system that will ensure safe, reliable, affordable, accessible faster payments to all. We therefore urge the Federal Reserve to move forward with its plan to build the FedNow faster payments system, and further urge the Federal Reserve to adopt the recommendations below to ensure that the new system is both faster and safer.

To ensure safety and access for all, the Federal Reserve should build FedNow to the Faster Payments Task Force Effectiveness Criteria, and take additional steps to ensure consumer safety and privacy. Thanks to its support of the Faster Payments Task Force, the Federal Reserve already has an excellent blueprint for faster payment systems: the Faster Payments Effectiveness Criteria.³ The 36 Effectiveness Criteria broadly cover six key areas: Ubiquity; Efficiency; Safety and Security; Speed; and Governance. The Effectiveness Criteria reflect the combined wisdom of more than 300 payments professionals, cover all the critical elements needed to ensure basic protections, and were incorporated into the Faster Payments Task Force Recommendations,⁴ one of which led to the Federal Reserve proposal.⁵ While the notice announcing FedNow mentions the Effectiveness Criteria,⁶ it does not make clear

³ <https://fedpaymentsimprovement.org/wp-content/uploads/fptf-payment-criteria.pdf>

⁴ See for example, "Recommendation 2: Recommend and establish faster payments rules, standards, and baseline requirements that support broad adoption; safety, integrity, and trust; and interoperability."

<https://fasterpaymentstaskforce.org/goals-and-recommendations/faster-payments-rules-standards-and-baseline-requirements/>.

⁵ Recommendation 6: Explore and assess the need for Federal Reserve operational role(s) in faster payments. <https://fasterpaymentstaskforce.org/goals-and-recommendations/federal-reserve-operational-roles/>

⁶ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20190805a1.pdf> footnote 28, page 17.

that the Federal Reserve intends to build FedNow to these standards. We urge the Federal Reserve to ensure that this happens.

While the Effectiveness Criteria are essential to the establishment of a Faster Payments system, additional safeguards are needed to protect consumers against certain risks, including predatory practices. When building the FedNow service, we urge that the system, to the extent compatible with fraud prevention, be built to minimize data collection retention and sharing. We also urge the Federal Reserve to require that any financial institution that accesses its systems offer consumers robust customer care to ensure prompt redress should issues arise, including errors made by consumers and scammers who defraud consumers into sending payments.

To maintain the integrity of the “good funds” model, to prevent evasions of credit laws, and to ensure that consumers maintain the control over their accounts that credit push payments provide, the Federal Reserve should ban overdrafts in the FedNow system. FedNow payments will be credit transfers, in which the sender initiates the payment.⁷ Payments may only be sent when there are good funds available. Thus, there is no need for FedNow to protect consumers from overdrafts that can occur in the time-lagged check system and no reason to perpetuate the evasion of credit laws.

Faster payments ensure that account holders maintain control over the funds in their accounts. Banks’ overdraft practices can undercut this control. Overdraft fees are \$35 on average.⁸ 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. 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 if 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 has “traditionally influenced retail payment markets through its role as an operator.”⁹ By prohibiting overdraft for FedNow payments, the Federal Reserve could set the standard for a safer payments ecosystem.

⁷ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20190805a1.pdf> at 72.

⁸ <https://www.bankrate.com/banking/checking/checking-account-survey/>

⁹ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20190805a1.pdf> at 41.

The Federal Reserve should build FedNow to mitigate fraud, and work with regulators and lawmakers to ensure that every way is safe to pay. The plan to make real-time payments on FedNow credit push, with final and irrevocable settlement makes it more important than ever to ensure fraud is minimized in the new system, and that comprehensive consumer protections are in place. We are pleased that the Board “agrees that strong security mechanisms are necessary to support the overall safety of the nation’s payment system,”¹⁰ and urge additional action to consumer safety.

Instant, irrevocable payments are an inviting target for scammers. When the United Kingdom launched its real-time payment system, fraud spiked.¹¹ Some have suggested consumer education to counter fraud. While alerting consumers to the risk of fraud is appropriate, it is an inadequate, old-fashioned approach that is no substitute for building sophisticated systems that are responsible to, and have the incentive to, prevent, detect, remedy and punish fraud. Consumers also need strong protections under law. Receiving institutions should be responsible for the fraud committed by their customers, and participants that repeatedly receive unauthorized payments should be penalized up-to-and-including bans from participating in systems. When there are red flags of potential fraud or error, institutions should have the ability to place a hold on funds, but those will be rare instances that do not result in undue delays or undercut the normal expectation of prompt funds availability and prompt application of payments.

The current state of peer-to-peer (P2P) payments is instructive. A 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 appropriate help.¹² FedNow needs to do better. Consumers should be able to resolve errors and should not have liability if they were defrauded into making a payment even if the consumer initiated the payment; receiving institutions should have a requirement to return fraudulent payments.

¹⁰ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20190805a1.pdf> at 64.

¹¹ 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.

¹² <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->

The notice announcing FedNow states, “The Board views support for faster payments as requiring modernization of, and upgrades to, Federal Reserve services alongside broader modernization of the payment industry as a whole.”¹³ We agree, and urge the Federal Reserve to work with lawmakers and regulators to ensure that the law reflects the way money moves now. We further urge that FedNow rules be developed by a public process, and that such rules be publicly and privately enforceable. Moreover, banks and nonbanks should be subject to the same rules, and universal supervision and enforcement should be conducted by federal regulators.

Conclusion

Since the inception of its efforts to improve the payments system, the Federal Reserve has sought feedback from a wide range of stakeholders.¹⁴ We hope that as the Federal Reserve continues its efforts to improve the payments system, and in particular as it moves forward in building the FedNow system, it will continue with its inclusive approach. Thank you for this opportunity to comment.

Sincerely,

Rebecca Borné
Center for Responsible Lending

Lauren Saunders
National Consumer Law Center

Christina Tetreault
Consumer Reports

¹³ <https://www.federalreserve.gov/newsevents/pressreleases/files/other20190805a1.pdf> at 6.

¹⁴ Strategies for Improving the U.S. Payment System, 24, available at <https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>.