Financial Services Management

Cash-Acceptance Mandate

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H.R. 4395, Payment Choice Act of 2021

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https://www.congress.gov/bill/117th-congress/house-bill/4395

Impact Assessment

- Mandating cash acceptance at stores, restaurants, and similar physical retail facilities increases payment options for low- and even moderate-income households for whom cash remains a critical payment instrument.
- Continuing cash acceptance could slow adoption of alternative retail-banking technologies unless offerings to under-served communities increase and are accompanied by appropriate consumer protections.

Overview

Although states and localities continue to ban merchants from refusing to accept cash, federal legislation is also pending to create a nationwide ban on such practices and govern how cash must be accepted to enhance equality without facilitating money laundering. Although the odds for passage are slim, continued attention to cash acceptance puts more pressure on merchants and buttresses state and local cash-acceptance mandates.

Impact

Cash use as a payment instrument has declined significantly in recent years, leading some merchants simply to refuse to accept it given costs and risks. Many have suggested that these impediments to cash acceptance simply acknowledge the inevitability of a cashless future akin to that already evident in China, Sweden, and other nations in which online, digital-currency, and mobile transactions are increasingly the norm. However, as this legislation makes clear, there is significant opposition to any cashless financial system in the U.S. that does not evolve organically after alternative payment options demonstrate their reach to low-and-moderate households, the elderly, persons with disabilities, children and teenagers working odd jobs, and the undocumented.

A switch from cash also raises privacy considerations. While cash's anonymity facilitates money-laundering, it also protects those who may not want anyone to know their personal preferences, a concern heightened by the increased ability of online and mobile providers outside the reach of privacy regulation to use non-personal information to market their own goods or otherwise make use of the data increasingly seen as a new and even dominant form of market power.[1]

Another important attribute of cash is its instant acceptance. The U.S. has yet to ensure instant payments despite continuing private-sector efforts to do so and FedNow's planned launch in 2023.[2] Although online services such as PayPal facilitate cash-like transactions among households and with merchants, they generally require a regulated bank account and thus pose inclusion challenges. The unregulated nature of these payment channels also poses risks to vulnerable households who may not, for example, be able to manage household expenses if even a small sum goes missing and is not readily reimbursed. The lack of FDIC insurance on funds not housed in banks adds an additional layer of risk, especially when providers portray themselves as "banks."

Non-cash payment options also do not have the $50 liability limit on which consumers have come to rely for credit and debit cards. Thus, requiring cashless transactions could lead vulnerable consumers to pick alternatives that lack the protections required of regulated products.

A regulated digital dollar might provide both the advantages of non-cash transactions with considerably greater access and thus inclusion. However, significant obstacles to a U.S. digital dollar remain including whether the FRB will launch a central-bank digital currency, if the "digital divide" will be bridged, and the regulatory framework for stablecoins and other digital currencies.[3]

What's Next

This bill was introduced on July 9 by Rep. Donald Payne (D-NJ) and thirty cosponsors. The House Financial Services Fintech Task Force held a hearing on the prior Congress' version this of measure as well as on other payment-system questions very early last year.[4] It has since not advanced but may do so in this Congress given strong progressive interest in mandating cash acceptance. Although Sens. Menendez (D-NJ) and Cramer (R-ND) introduced a companion in the last Congress, there is now no like-kind Senate bill nor would one likely be passed given the divided Senate and press of other business. Republicans at the House hearing largely opposed any cash-acceptance mandate.

[1] See FedFin *Policy Paper*, Big-Tech Finance and U.S. Economic Inequality, February 4, 2019.

[2] See **PAYMENT20**, *Financial Services Management*, August 13, 2020.

[3] See *Client Report* **CRYPTO16**, December 28, 2020.

[4] See **PAYMENT19**, *Financial Services Management*, January 30, 2020.

Analysis

A. Requirements

The bill establishes a "sense of Congress" that every consumer has the right to use cash in retail transactions, going on to mandate that retail businesses with a physical presence accept cash. Covered businesses include those accepting payment for communications and Internet services if done in a store or similar facility, with the mandate for all stores covering transactions of less than $2,000. Cash-paying customers also could not be charged higher prices.

Exceptions are provided in cases of a temporary failure of cash-handling capacity, the lack of cash on hand to make change, or when there is an on-premises facility that converts cash to pre-paid cards as long as there is no fee charged for doing so, the device does not require more than a $1 minimum, there is no expiration date on the card, unused cash balances can be redeemed, no personal information is collected, and there are no transaction limitations.

Further, payments need not be accepted in bills of $100 or more for five years following enactment, a provision designed to prevent money laundering that may complicate any cash payments close to the $2,000 mandatory acceptance limit noted above, although Treasury is required to issue rules on large-denomination bill acceptance by the end of this five-year period. At the least, these rules would mandate acceptance of denominations up to $50.

B. Enforcement

Civil actions for preventive relief would enforce this measure when cash is not accepted or there is reason to believe it might not be accepted. Civil money penalties are limited to small amounts but the measure does not make clear if these are on a per-violation basis or for any and all violations addressing the civil action. Court-paid attorneys could provide representation in such cases and the Attorney General is authorized to intervene. Federal actions may not proceed where states or localities mandate cash acceptance and separate enforcement proceedings are established.

C. Preemption

More stringent state or tribal standards are preserved but the bill otherwise preempts other restrictions on cash acceptance.

D. Rulemaking

Treasury may also issue rules implementing the measure as a whole and, in doing so, grant additional exceptions to the cash-acceptance mandate. Cash-acceptance standards are not preempted.

Federal Financial Analytics, Inc.
2101 L Street, N.W., Suite 300, Washington, D.C. 20037
Phone: (202) 589-0880
E-mail: info@fedfin.com Website: www.fedfin.com