We Keep Us Safe, Venmo Doesn't: The Impact on Peer-to-Peer Payment Apps on Mutual Aid and Community Organizing

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We Keep Us Safe, Venmo Doesn’t: The Impact of Peer-to-Peer Payment Apps on Mutual Aid and Community Organizing

I. INTRODUCTION

Mutual aid organizations and bail funds, although longstanding, gained broad recognition during and after the 2020 Black Lives Matter protests in response to the killings of George Floyd, Breonna Taylor, and Ahmaud Arbery.¹ These grassroots organizations rely heavily on peer-to-peer payment applications (“apps”) such as Venmo, Cash App, and PayPal, to quickly raise and disburse funds to cover rent, groceries, and medical bills, as well as to post bail and fund jail support.²

This Note considers the impact of peer-to-peer payment apps on mutual aid and community organizing. Venmo, Cash App, PayPal, and other platforms provide a seemingly simple and quick avenue to raising and disbursing funds.³ However, banking regulations, in-app policies, and tax legislation—which prioritize fraud prevention, minimize platform liability, maximize profits, and tax organizers and mutual aid recipients—can hinder mutual aid and community organizing.⁴ Such policies lead to account flags and freezes that block low-income communities and people of color from accessing vital funds for housing, healthcare, transportation, bail, and other life necessities.⁵

Short term regulatory solutions that force these apps to be transparent regarding hold and freeze policies—and to release frozen funds while accounts are under investigation—will help to limit instances where low-income people cannot access their funds.⁶

³ Infra Part IV.
⁴ Infra Part V.
⁵ Infra Part V.
⁶ Infra Part VI.
Additionally, reversing a recent tax rule that would increase third-party reporting to the IRS will decrease instances where mutual aid is inadvertently taxed. Ultimately, because these apps provide robust opportunity for communities to support each other, workarounds need to be implemented to encourage and protect mutual aid activity on these apps.

This Note proceeds in six parts. A definitional section, part II answers the questions: what is mutual aid, and what are peer-to-peer payment apps? Part III provides a brief history of the mutual aid groups interviewed for this project and their processes for collecting and disbursing funds. Part IV discusses how peer-to-peer apps contribute positively to mutual aid. Part V reviews the negative impacts of these apps on mutual aid, organized by general policies in four subparts: transfer caps, holds and freezes, barriers to access, and taxes. Finally, part VI identifies potential solutions, such as policy transparency, Consumer Financial Protection Bureau (“CFPB”) regulations that protect users’ access to peer-to-peer payment accounts, and organizer and movement-friendly tax legislation.

II. DEFINITIONS: MUTUAL AID AND PEER-TO-PEER PAYMENT APPS

A. What is Mutual Aid?

Mutual aid is a tool that people have used for centuries to support their communities. It is a broad, historic practice that steps outside of government assistance programs and rejects the nonprofit model, which may not be efficient and often mandates eligibility requirements, to fill in government service gaps and create thriving communities: “Mutual aid [is the] collective coordination to meet each

7. Infra Part VI.
8. Infra Part VI.
9. Infra Part II.
10. Infra Part III.
11. Infra Part IV.
12. Infra Part V.
13. Infra Part VI.
14. See Dean Spade, Solidarity Not Charity: Mutual Aid for Mobilization and Survival, 38 Soc. Text 131, 135–136 (2020) (“There is nothing new about mutual aid—people have worked together to survive for all of human history.”).
other’s needs, usually from an awareness that the systems we have in place are not going to meet them.”

Mutual aid takes many forms, but they are all rooted in the idea that political systems will not change by relying on “symbolic acts” or “putting pressure on . . . representatives,” but by creating community networks that support each other. It is the “communal commitment to meet one another’s needs through channels that do not rely on the state.”

This can look like donating funds to grassroots organizations through Venmo for a protestor to make bail or for a community member to pay rent. More often communities demonstrate it by: maintaining one-on-one relationships; visiting incarcerated people or people in hospitals; providing emotional support to people in crisis; making sure people have rides to work, medical appointments, or school; sharing community meals, or babysitting for a friend so they can go grocery shopping. (For an example, see Exhibit 1 in the Appendix).

The most prevalent and crucial time for mutual aid is during widespread community crises, particularly natural disasters. An unprecedented winter storm and failure of the state’s power grid caused millions to be without power and clean water for weeks during the 2021 Texas Freeze. Dallas mutual aid groups such as Dallas Stops Evictions and Feed the People Dallas mobilized to house homeless people staying in a “tent city” when the city council officials shut it down a week before the winter storm was scheduled to hit the region. During the aftermath of Hurricane Maria in 2017, Puerto Ricans who owned solar panels let people charge their medical devices after the

17. Zoom Interview with ZN, Organizer, Barnett Cmty. Fund (Sept. 5, 2022).
18. Id.; Interview with JM, Organizer, Queen City Revolution (Aug. 31, 2022); Zoom Interview with IP, Organizer, Barnett Cmty. Fund (Aug. 29, 2022).
19. Interview with JM, supra note 18; Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17; Spade, supra note 14, at 135–136.
storm wiped out residents’ access to power.\textsuperscript{23} In the wake of extreme disaster and destruction, swift and effective community organizing can help meet neighbors’ immediate and crucial needs.\textsuperscript{24}

The COVID-19 pandemic spurred unprecedented engagement in mutual aid activities including communities paying local restaurants to cook and deliver hot meals to healthcare workers, offering to go grocery shopping for immunocompromised folks, collecting and distributing electronic devices and internet hot-spots so students who lacked access to these devices could continue school online, and much more.\textsuperscript{25}

Mutual aid also operates as a mode through which broad-scale social change can be achieved. The Civil Rights Movement and the Black Panther Party created mutual aid networks run for and by Black people as a tool to dismantle white supremacy.\textsuperscript{26} The Black Panthers’ survival programs, including the free breakfast program, free ambulances, and free medical clinics, “broke stigma and isolation, met material needs, and got people fired up to work together.”\textsuperscript{27} During the Montgomery bus boycotts, activists provided rides to those who typically relied on the segregated buses to get to work.\textsuperscript{28} This demonstration of collective care ensured people could meet their basic needs while also furthering the broader goal of the boycotts.\textsuperscript{29}

\begin{footnotes}
\item[23] Spade, supra note 14, at 139.
\item[24] Id.
\item[25] Jeongwon Jo et al., COVID-19 Kindness: Patterns of Neighborly Cooperation During a Global Pandemic, 10 INT’L CONF. CMTY’S. & TECH. 1, 5-6 (2021); see also Simon Springer, Caring Geographies: The COVID-19 Interregnum and a Return to Mutual Aid, 10 DIALOGUES HUM. GEOGRAPHY 112, 112 (2020) (arguing the COVID-19 crisis opened the door to mutual aid as an “older, enduring, and infinitely more integral to our wellbeing” practice beyond reliance on the state for action and support); Dominguez, supra note 20, at 909 (“COVID-19 [is] an unprecedented catalyst for social transformation that underscores the need for multilevel and cross-sectoral solutions to address systemic change.”).
\item[26] See Spade, supra note 14, at 136–137 (“Effective social movements always include elements of mutual aid. The most famous example on the left in the United States is the Black Panther Party’s survival programs.”).
\item[27] Spade, supra note 15, at 13.
\item[28] Derek H. Alderman et al., Reexamining the Montgomery Bus Boycott: Toward an Empathetic Pedagogy of the Civil Rights Movement, 65 THE PRO. GEOGRAPHER 171, 177 (2013). “[T]he Montgomery Improvement Association Transportation Committee [developed] an intricate, free carpool system . . . . [M]embers of the Transportation Committee mapped out the routes for the carpool system and devised a spatial network of pickup and dispatch stations. Each day, approximately 325 private cars operated by volunteer drivers picked up passengers from forty-three dispatch stations and forty-two pick-up stations.”
\item[29] See id. at 177–78 (discussing the motivations and benefits of the carpool system).
\end{footnotes}
Mutual aid operates “under the knowledge . . . that the only person who truly knows how to meet someone’s needs is that person” and that aid recipients should not have to prove eligibility or show how they use the funds they receive. Ultimately, mutual aid exists within the philosophy that, as the community, “we keep us safe [and] we take care of each other.”

B. Peer-to-Peer Payment Apps

Mutual aid organizers use a variety of peer-to-peer payment apps to support their work. Peer-to-peer payment apps “are designed to allow consumers to send payments from account to account securely via email, text message, over the web, and sometimes by social media.” They are primarily used “via alternative payment services, most notably PayPal,” which owns Venmo, or Square Inc., which owns Cash App. The apps profit mainly from investing funds held in user’s accounts and through collecting various fees, such as Venmo’s instant transfer fee and credit card transaction fee.

Established in 2009, Venmo was designed to split costs or bills among friends in a social media-like manner where users can write blurbs describing the payments. Users fund the payments either from their Venmo balance (held in the app) or directly from their bank account. Friends can like or comment on the payments, and even post

30. Zoom Interview with ZN, supra note 17.
31. Interview with JM, supra note 18.
33. Id.
34. Ronald J. Mann, Regulating Internet Payment Intermediaries, 82 TEX. L. REV. 681, 685 (2004) (“[B]ecause . . . P2P provider[s] can profit by investing funds that remain in transaction accounts, some providers (including PayPal) encourage users to leave funds in those accounts by paying interest on them.”); see also Maxwell L. Gregson, Comment, Less is NOT More: The Need to Regulate Apple Pay, 20 N.C. BANKING INST. 311, 316 (2016) (“Venmo’s revenue generation model differs from PayPal’s. Whenever a credit card or non-major debit card is the funding source for a user’s Venmo account, the user must pay a 3% transaction fee . . . . Venmo claims that it ‘does not typically receive interest on funds held for its users,’ although it does reserve the right to do so.”).
GIFs in response. Users must have a linked bank account or credit card. Users may also transfer funds they have received in their Venmo account to their bank account in a few business days for free or instantly for a small fee. In order to send more than $300 in a week, users must verify their identity in the app.

Like Venmo, Cash App enables users to send payments instantly to others. Users have a unique username, called a $cashtag (such as $JaneDoe or $johnsmith) connected to their profile. Unlike Venmo, Cash App users are not required to have a bank account to sign up; however, there are limitations on the app’s use if it is not linked to a bank account. Although Cash App was the first of the peer-to-peer payment apps to create user debit cards, Cash App explicitly notes on its website that it is “a financial platform, not a bank. Banking services [are] provided and debit cards [are] issued by Cash App’s bank partner(s).”

PayPal functions as a digital wallet connected to a user’s bank account. Users can send funds to others through the company’s app. Users also often use the company’s services to make online purchases. While organizers will use other platforms such as Zelle, Apple Pay, or Google Wallet, they generally only do so as a last resort when their preferred apps have been frozen, or when community members run into

37. VENMO, supra note 35.
39. Id.
40. Identity Verification, VENMO, https://help.venmo.com/hc/en-us/articles/360027356113-Identity-Verification [https://perma.cc/S8C4-VX4R] (last visited Dec. 28, 2022). Venmo users can verify their identity through an “automated ID verification process” in-app. Id. However, if the automated process is unsuccessful, a user must supply government-issued identification and sometimes documents that supply proof of address or a user’s social security number or individual tax identification number. Id.
43. CASH APP, supra note 41.
45. Id.
46. Id.
issues with the other apps. These apps are not as popular with mutual aid groups because they require bank accounts and are not as widespread among the public, meaning fewer people can use them to donate or receive funds. Ultimately, organizers will use whatever app meets a community member’s needs as quickly as possible.

III. HISTORY OF QUEEN CITY REVOLUTION, BARNETT COMMUNITY FUND, AND ABORTION FUND OF OHIO

Academic scholarship of mutual aid has just begun to develop, and neither scholarship on mutual aid nor peer-to-peer payment apps addresses the effect of these apps on mutual aid and community organizing. This note relies on conversations with four organizers representing three mutual aid groups to learn more about their experience with these payment apps. Three of these interviewees (JM, IP, and ZN) and their respective groups (Queen City Revolution and Barnett Community Fund) asked to be anonymous. Their names and the names of the groups have been changed accordingly. The fourth interviewee is Maggie Scotece, the Interim Executive Director of the Abortion Fund of Ohio. Transcripts of each interview are on file with the North Carolina Banking Institute Journal.

A. Queen City Revolution

Queen City Revolution is a large mutual aid organization that distributes funds to low-income people of color to pay for life necessities such as rent, groceries, healthcare, transportation, and bail. Organizers formed the group in response to the police killing of Keith Lamont Scott in Charlotte, North Carolina in 2016. Initially, the

47. Zoom Interview with ZN, supra note 17; Interview with JM, supra note 18.
48. Interview with JM, supra note 18.
49. Id.; Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17.
50. Interview with JM, supra note 18.
51. Id. A Black police officer, Brently Vinson, fatally shot Keith Lamont Scott, a Black man, on September 20, 2016, outside of his home in Charlotte, North Carolina. Holly Yan et al., Keith Scott Killing: No Charges Against Officer, CNN (Nov. 30, 2016, 9:33 PM), https://www.cnn.com/2016/11/30/us/keith-lamont-scott-case-brentley-vinson/index.html [https://perma.cc/6KHQ-WXU9]. The officer was in the area for an unrelated investigation when he claimed to smell marijuana and see a gun in Mr. Scott’s car. Id. As Mr. Scott walked backward away from the vehicle, the officer shot Mr. Scott four times. Id. Mr.
grassroots organization worked with a national nonprofit to pay the bail of those arrested while protesting. As these protests died down, the group wanted to continue paying bail for protesters and also for those arrested for other crimes. Queen City Revolution also distributes funds for other needs of community members such as housing, groceries, transportation, and medical expenses.

Because the national nonprofit did not want to support bailing out non-protestors, Queen City Revolution began to raise funds from the community on its own. The group first fundraised through Google Wallet but eventually incorporated other peer-to-peer apps. The group asks donors to send funds to one organizer’s Venmo account. Community members then receive these funds in two primary ways. Organizers transfer funds from the main Venmo account to an organizer’s personal bank account where they withdraw cash from an ATM to give to community members or pay their bail directly. If this is not an option, organizers will transfer money to the community member via the community member’s preferred app.

Queen City Revolution saw unprecedented organizing and community support during the pandemic and the George Floyd protests in June and July 2020. The group raised tens of thousands of dollars for bail—both for protestors and those arrested for other crimes—as well as life necessities. (For an example, see Exhibit 2 in the Appendix). Queen City Revolution also organized “jail support” outside of the Charlotte-Mecklenburg jail, providing immediate support for those released including food, water, Gatorade, bus passes, hotel vouchers, cigarettes, and connections to fill other needs. (For an example, see Exhibit 1 in the Appendix). Queen City Revolution

Scott’s death led to widespread protests in Charlotte, North Carolina. Prosecutors did not bring charges against the officer. Id. 52. Interview with JM, supra note 18. 53. Id. 54. Id. 55. Id. 56. Id. 57. Interview with JM, supra note 18. 58. Id. 59. Id. 60. Id. 61. Id. 62. Interview with JM, supra note 18.
continues to organize to meet longstanding and new community members’ needs as they arise.63

B. Barnett Community Fund

Barnett Community Fund redistributes financial resources from students who attend college in a wealthy suburb in North Carolina to eight local Black women, several of whom are transgender.64 In response to the COVID-19 pandemic and the police killing of George Floyd, this “rag tag” group of college students posted a “bingo board” on Instagram to encourage wealthy college students to redistribute their wealth by suggesting concrete donations that corresponded to college experiences associated with higher incomes.65 For example, two sections said: “If you don’t need to worry about textbook costs, donate fifty dollars,” and “if your parents regularly take you to [a fancy restaurant] every time they are in town, [donate] sixty dollars.”66 The group then continued to post the emergency needs of community members on Instagram to raise funds throughout the summer of 2020.67

The following academic year, Barnett Community Fund reorganized and created a “monthly sustainer” program, which collects monthly pledged donations from students through Venmo.68 The group then distributes the funds evenly among all eight community members through their preferred app.69 New students join the group every year as others graduate.70 Although they still occasionally post emergency needs, the “monthly sustainer” program enables this small group to sustainably redistribute wealth and support their community.71

63. Id.
64. Zoom Interview with IP, supra note 18.
65. Id.; Zoom Interview with ZN, supra note 17.
66. Id.
67. Zoom Interview with IP, supra note 18.
68. Id.; Zoom Interview with ZN, supra note 17.
69. Zoom Interview with IP, supra note 18.
70. Zoom Interview with ZN, supra note 17.
71. Zoom Interview with IP, supra note 18.
C. Abortion Fund of Ohio

Abortion Fund of Ohio has provided funds for people seeking abortion care for over thirty years.72 Previously named Women Have Options Ohio, the organization renamed itself this past summer to be “more gender inclusive and more abortion destigmatizing.”73 As the only state-wide abortion fund in Ohio, it funds anyone “traveling to or from or within the state of Ohio to access abortion and reproductive healthcare.”74 The vast majority of Abortion Fund of Ohio’s clients are low-income people of color.75 Abortion Fund of Ohio is a 501(c)(3) nonprofit.76

Abortion Fund of Ohio has two primary funding models. First, the organization provides funds directly to clinics for a patient’s abortion care.77 Second, the organization provides “practical support” to people seeking abortion care.78 “Practical support” includes cash grants, which cover gas so clients can drive to their abortion appointment; hotel rooms so clients have a place to stay before or after their appointment; food for the client or their children; and childcare so clients do not need to worry about their children while they receive abortion care.79 The organization uses Cash App to disburse these cash grants to clients because many clients do not have a bank account.80 Abortion Fund of Ohio raises funds through both peer-to-peer apps and crowdsourcing as well as traditional funders, such as foundations and the local government.81

73. Id.
74. Id.
75. Id.
77. Zoom Interview with Maggie Scotece, supra note 72.
78. Id.
79. Id.
80. Id.
81. Id.
Despite the limitations of using peer-to-peer payment apps for mutual aid,82 they are “the only tool that we have right now that works.”83 Venmo, Cash App, and PayPal have “amplified mutual aid efforts” in a way that enables organizers to capture immediate “visceral” reactions to “live, raw information and narratives” about injustice and channel them into direct action: supporting their community.84 Peer-to-peer payment apps break down barriers to creating and connecting with one’s community and enable broader access to donors, especially across wealth gaps and racial divides.85

Peer-to-peer payment apps, coupled with the power of social media, enable organizers to reach a geographic specific audience to support community needs in their area. Both Queen City Revolution and Barnett Community Fund use social media to ask for donations, typically Instagram graphics listing a community need and a Venmo or Cash App account to which donors should send funds.86 (For an example, see Exhibit 3 in the Appendix). An organizer with Barnett Community Fund acknowledges that “the Community Fund would not exist without these apps . . . . [They] allow[] you to support people in your community when you can’t be together in person.”87 It “lowers the bar” for engagement in mutual aid: anyone can repost a direct ask on social media, and many can Venmo money to help a community member pay rent or make bail.88

82. Infra Part V.
83. Zoom Interview with IP, supra note 18.
85. See Interview with JM, supra note 18 (“It was George Floyd and COVID. So white people were really willing to donate money at that time, especially to get people out of jail”); Interview with ZN, supra note 17 (“I think that people are familiar with these apps, kind of highlights the ease and consistency with which we can engage in wealth redistribution and mutual aid . . . . I think just in terms of ease of sending funds and the culture of quick payments. I think those facilitate how a lot of people engage in mutual aid and wealth redistribution now.”).
86. Zoom Interview with IP, supra note 18; Interview with JM, supra note 18; Zoom Interview with ZN, supra note 17.
87. Zoom Interview with IP, supra note 18.
88. Zoom Interview with ZN, supra note 17.
Using peer-to-peer payments apps as tools for mutual aid does more than ease the process; they break down barriers between wealth gaps and racial divides. Because mutual aid has no eligibility requirement, in contrast to stringent nonprofits and government services, “it [has] broken down a lot of conceptions of trustworthiness or what boxes need to be checked in order for someone to send their money.”

Payment apps help to remove some of the paternalistic structures of charity that assume what recipients of aid need rather than letting recipients determine how to best meet their needs. Community members can request funds in these apps directly from people who have donated before. These apps illuminate that there are “constant recurring needs” in one’s community and that donors cannot just give “when [you] feel like it.” “It . . . troubles the idea that [mutual aid] is hierarchical.”

These apps are powerful tools for wealth redistribution. Barnett Community Fund uses these apps specifically for this purpose—to “radically reorganize how [and] who has wealth and who has access to wealth based on the recognition that the current distribution of wealth is based on a legacy of colonialism and slavery and economic violence.”

The prompts on the Barnett Community Fund’s bingo board about textbooks and fancy dinners were relevant to many students’ college experience: nearly fifty percent of the mostly white student body pays full cost of attendance, over $75,000, at the private liberal arts college. Wealthy students at other colleges have also participated in radical wealth redistribution, including one grandson of a “millionaire founder of a family-run tax software firm” who donated $5,400 across the nation.

89. Zoom Interview with ZN, supra note 17.
90. Reliance on foundation and charitable funding often gives those donors significant explicit or implicit power over the decisions a nonprofit organization makes and issues they focus on. Madonna Thunder Hawk, Native Organizing Before the Non-Profit Industrial Complex, in The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex 101, 105–106 (INCITE! ed., 2017). Lakota activist, Madonna Thunder Hawk, writes that, “before [the rise of nonprofits in the 1970s and 1980s] we focused on how to organize to make change, but now most people will only work within funding parameters . . . Now, most organizers are very specialized, and cannot do anything unless they have a budget first. More, foundations will often expect organizations to be very specialized and won’t fund work that is outside of their funding priorities. This reality can limit an organization’s ability to be creative and flexible as things change in our society.” Id.; Zoom Interview with IP, supra note 18; Interview with JM, supra note 18.
91. Zoom Interview with ZN, supra note 17.
92. Zoom Interview with ZN, supra note 17.
93. Id.
over several days in 2020. Wealth redistribution funds encourage people to recognize their financial privilege and support their community accordingly.

Finally, these apps are fast. Queen City Revolution routinely raises $1,000+ dollars over a weekend to pay for a community member’s rent. During the 2020 protests the group could pay bail for people whom police had arrested in under 24 hours. Venmo and Cash App are “so quick . . . it really allows you to respond to emergencies in a way that would not otherwise be possible.” The process is “easy” and “consistent” and creates a tangible way for communities to show up for each other quickly outside of the nonprofit and governmental sectors.

V. HINDERING THE MOVEMENT: HOW DO PEER-TO-PEER PAYMENT APPS NEGATIVELY IMPACT MUTUAL AID?

The Bank Secrecy Act (“BSA”), Electronic Funds Transfer Act (“EFTA”), and the Gramm-Leach-Bliley Act (“GLBA”) have influenced the formation and structure of peer-to-peer payment app policies, which mutual aid organizers and recipients must navigate. Transfer caps, hold and freezes, and identity verification, while all purporting to support the goals of the BSA, EFTA, and GLBA, lead to heightened policing of accounts and transactions that prevent users, especially mutual aid organizers and recipients, from accessing their funds. These policies create insurmountable obstacles for organizers and community members who simply wish to use the funds in their account.

95. Interview with JM, supra note 18.
96. Id.
97. Zoom Interview with IP, supra note 18.
98. Zoom Interview with ZN, supra note 17.
99. Infra Part V.
100. See Frozen Account, VENMO, https://help.venmo.com/hc/en-us/articles/210413707-Frozen-Account#:~:text=Why%20is%20my%20account%20frozen,widely%20accepted%20credit%20card%20policies [https://perma.cc/9S2B-UBLY] (last visited Sept. 18, 2022) (“In an effort to provide the highest level of security, we may freeze a user’s account, reverse certain payments and/or request certain documentation if flags are raised due to account activity that seems to be against our User Agreement or widely accepted credit card policies.”).
101. Infra Part V.
The BSA, EFTA, and GLBA respectively seek to prevent crime, fraud, and private information breaches.\textsuperscript{102} The main purpose of the BSA is to establish anti-money laundering programs and as such prevent and apprehend money laundering, financial terrorism, drug trafficking, and other criminal activity.\textsuperscript{103} The BSA requires money transmitters to comply with regular “reporting, monitoring, and recordkeeping requirements to diligently track sources of funds.”\textsuperscript{104} Such reports and records include anything that is considered “highly useful” in “criminal, tax, or regulatory investigations, risk assessments, or proceedings” or “intelligence or counterintelligence activities, including analysis, to protect against terrorism.”\textsuperscript{105} The EFTA “provide[s] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems.”\textsuperscript{106} Regulation E, promulgated by the CFPB, implements the EFTA.\textsuperscript{107} Regulation E limits consumer liability for fraudulent activity to fifty dollars if the user notifies the financial institution within two business days.\textsuperscript{108} If they do not report the fraud within two business days, the consumer will be liable for the lesser sum of $500 or the amount fraudulently charged.\textsuperscript{109} The GLBA protects consumer privacy and information by imposing on “each financial institution . . . an affirmative and continuing obligation to respect the privacy of its consumers and to protect the security and confidentiality of those customers’ nonpublic personal information.”\textsuperscript{110} Yet, the requirements under the GLBA are

\begin{itemize}
\item \textsuperscript{102} Erin Fonte, 2017 \textit{U.S. Regulatory Overview of Mobile Wallets and Mobile Payments}, 17 \textit{WAKE FOREST J. BUS. \& INTELL. PROP. L.} 549, 568, 576, 591 (2017).
\item \textsuperscript{103} Bank Secrecy Act of 1970 § 6101, 31 U.S.C. § 5311.
\item \textsuperscript{105} Bank Secrecy Act of 1970 § 6101, 31 U.S.C. § 5311(1).
\item \textsuperscript{106} Electronic Funds Transfer Act of 1978 § 904, 15 U.S.C. § 1693(b).
\item \textsuperscript{107} Fonte, \textit{supra} note 102, at 568–69.
\item \textsuperscript{108} Regulation E, 12 C.F.R. § 1005.6(b) (2020).
\item \textsuperscript{109} Id.
\item \textsuperscript{110} Gramm-Leach-Bliley Act of 1999 § 501, 15 U.S.C. § 6801(a); see also M. MAUREEN MURPHY, CONG. RSCH. SERV., RS20185, \textit{PRIVACY PROTECTION FOR CUSTOMER FINANCIAL INFORMATION} 1 (2007) ("[T]he Gramm-Leach-Bliley Act of 1999 . . . prohibits financial institutions from sharing nonpublic personally identifiable customer information with non-affiliated third parties without giving consumers an opportunity to opt out and requires them to provide customers with notice of their privacy policies. It requires financial institutions to safeguard the security and confidentiality of customer information.").
\end{itemize}
lax: financial institutions must “assess risks to customer information, create and monitor a safeguard program, and adjust the program as necessary.” 111 This is known as the “safeguards rule.” 112 Mobile payment apps must “develop, implement, and maintain a comprehensive written information security program,” which: “(1) [e]nsure[s] the security and confidentiality” of consumers, “(2) protect[s] against any anticipated threats or hazards to the security or integrity of such information,” and “(3) protect[s] against [the] unauthorized access to or use of [consumers private information] that could result in substantial harm or inconvenience to any customer.” 113

Although the extent to which the regulations under these statutes apply to peer-to-peer payment apps is unclear, most payment apps claim that they voluntarily comply. 114 Transfer caps, holds and freezes, and identity verification all seek to achieve the goals of the BSA, EFTA, and GLBA. Transfer caps can limit instances of money laundering and prevent accidental or fraudulent payments above a certain amount—creating a roadblock against using the app for these purposes. 115 Holds and freezes similarly achieve these goals, stopping to investigate suspicious payments between unknown parties, while also providing added privacy protection: apps can investigate whether the parties are who they purport to be and ensure banking and personal information remains secure. 116 Finally, identity verification attempts to stop further


112. Fonte, supra note 102, at 594.


114. See Pacifici, supra note 32, at 105 (“[I]t is unclear if PayPal . . . is regulated by Reg. E because of the insufficient specificity and circular language of Reg. E’s definitions.”); see also Congdon, supra note 111, at 117 (“[M]any mobile payment transactions involve third parties who are not clearly regulated by the GLBA. In response to issues like this, some mobile payment companies have voluntarily adopted GLBA-like provisions.”).


116. See id. (“You may not use the PayPal service for activities that: . . . relate to transactions that . . . show the personal information of third parties in violation of applicable
fraud, specifically phishing scams, “by limiting the use of fraudulent accounts.”

Despite the passage of the BSA, the EFTA, and the GLBA, peer-to-peer apps are still ripe for fraud and scams. Congress has identified seniors as particularly vulnerable to “losing money using applications like Zelle, Cash App, Venmo[,] and PayPal.” The LGBTQ+ community also faces unique privacy challenges because of the GLBA’s ineffective enforcement on peer-to-peer payment apps. “Fraud is flourishing” on peer-to-peer payment apps, yet financial institutions that control them refuse to take responsibility or comply with the EFTA.

Additionally, the app policies themselves, which seek to achieve the goals of the BSA, EFTA, and GLBA, and thus bolster consumer rights, can leave every day, low-income users financially vulnerable. The CFPB has received numerous complaints about Venmo, Cash App, and PayPal’s policies and the implications for consumers’ financial well-being. One single mother who had a “sick daughter with no

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law . . . [or] involve the sales of products or services identified by government agencies to have a high likelihood of being fraudulent.”); see also Why is My Payment on Hold or Unavailable?, PAYPAL, https://www.PayPal.com/us/cshelp/article/why-is-my-payment-on-hold-or-unavailable-help126 [https://perma.cc/4YWN-UDFS] (last visited Jan. 29, 2023) (listing reasons why PayPal would place a payment or account on hold).


119. See Cyrus Mostaghim, Constructing the Yellow Brick Road: Preventing Discrimination in Financial Services Against the LGBTQ+ Community, 11 MICH. BUS. & ENTREPRENEURIAL L. REV. 63, 91 (2021) (“Venmo did not notify users that both parties needed to take action to make a transaction private; a user’s action only impacted their friends, and friends of a user who did not mark the transaction as private could still see it.”).


121. Consumer Complaint Database, CFPB, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?date_received_max=2022-08-18&date_received_min=2011-12-01&has_narrative=true&page=1&searchField=all&searchText=venmo%20freeze&size=25
health insurance” and was “currently homeless” complained to the
CFPB that she couldn’t pay for her child’s “pampers [or] her milk,”
because Venmo has frozen her account, the “ONLY money I have
access to,” without explanation.122 Another user complaint stated that if
Venmo did not unfreeze their friend’s account and release their funds
“we may be looking for a new place to live” because they would be
unable to pay rent.123 Other complainants plead with the CFPB that
they “have no groceries”124 because Cash App froze their account and
that these apps put them in “debt and left my children and I homeless”
because they could not access their funds.125 Peer-to-peer payment app
policies that prioritize fraud and crime prevention do not just impact
mutual aid and movement work: they also impact poor people and
people of color simply trying to survive.

Not only are the BSA, EFTA, and GLBA not achieving their
goals, but the peer-to-peer payment policies that seek to implement the
directives of these acts have unintended consequences that unfortunately
fall hardest on low-income and marginalized people.126 These
consequences also extend to mutual aid groups that use peer-to-peer
payment apps.127 Transfer caps, identify verification requirements,
holds on transactions and freezes of accounts, and fear of tax liability
can debilitate movement work and make crucial funds inaccessible to
community members for days, weeks, or months at a time.128

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122. Complaint No. 5444395, CFPB (Apr. 4, 2022),
https://www.consumerfinance.gov/data-research/consumer-
complaints/search/detail/5444395 [https://perma.cc/HF2Z-MAHC].
123. Complaint No. 4494728, CFPB (June 27, 2021),
https://www.consumerfinance.gov/data-research/consumer-
complaints/search/detail/4494728 [https://perma.cc/B32L-X285].
124. Complaint No. 3664560, CFPB (May 22, 2020),
https://www.consumerfinance.gov/data-research/consumer-
complaints/search/detail/3664560 [https://perma.cc/VVW6-3US8].
125. Complaint No. 35385537, CFPB (Mar. 30, 2020),
https://www.consumerfinance.gov/data-research/consumer-
complaints/search/detail/35385537 [https://perma.cc/APS9-HGHR].
126. Infra Part V.
127. Infra Part V.
128. Infra Part V.
A. Transfer Caps

Transfer caps limit the amount mutual aid organizations can donate to community members on peer-to-peer payment apps. These caps have two primary effects on mutual aid and community organizing. First, transfer caps hinder organizer’s response to community needs in times of emergency because they limit the amount organizers can send in a period of time.129 Second, the caps limit the amount donors can send to organizers or community members directly.130 Thus, transfer caps restrict the capacity of mutual aid groups to support their community.

PayPal users may send varying amounts depending on their account status. Verified PayPal accounts can send up to $60,000 per week but may be limited to $10,000 per transaction.131 Because it is owned by PayPal, Venmo has similar thresholds, allowing transfers of $60,000 per week with a verified account.132 It used to be limited to $5,000 per week.133 Cash App typically allows users to send up to $7,500 in one week.134

First, transfer caps drastically limit the amount communities can send to each other, particularly in times of great need. Posting bail often exhausts mutual aid groups’ and bail funds’ transfer limits because of the high cost of bail, which is often several thousand dollars.135

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129. See Zoom Interview with ZN, supra note 17 (discussing the impact of transfer caps during the 2016 Keith Lamont Scott and 2020 George Floyd protests); Zoom Interview with Maggie Scotcece, supra note 72 (highlighting the consequences of transfer caps in a post-Roe America).

130. Zoom Interview with ZN, supra note 17 (discussing that donors with unverified accounts would be unable to send their pledged monthly donation).


133. Monacelli, supra note 2.


National bail funds face significant limitations on how many people for whom they can post bail. COVID Bail Out NYC, a group working to get people out of jail to avoid COVID-19 exposure, had “hundreds of people waiting to be bailed out,” but because of “transfer limits imposed by PayPal and . . . Venmo” they could only post “$20,000 worth of cash bail” a week, which supported about five people. Queen City Revolution faced similar limitations during the Summer of 2020. While these transfer limit policies “didn’t stop [mutual aid]” they did cause sending funds to be “delayed,” forcing community members to remain incarcerated before trial when they otherwise could have been home with family or friends. Organizers have “to explain to the family, ‘Oh, we thought we were getting them out like this minute and now we have to wait till tomorrow.’” Transfer limits take a significant toll on incarcerated poor people because they prevent mutual aid organizations from paying bail.

These limits also prevent people from protecting themselves from life-threatening natural disasters and acquiring life-saving medical care, including abortions. In 2021, Cash App’s $7,500 limit and Venmo’s then $5,000 limit prevented Feed the People Dallas from distributing over $200,000 to house homeless people and provide other aid for Texans during Winter Storm Uri. The Supreme Court’s decision in Dobbs v. Jackson Women’s Health Organization led to immediate “trigger bans” on abortion in several states, including Ohio where the Abortion Fund of Ohio has been working nonstop to provide financial resources to people in need of abortion care. Because travel and lodging routinely costs over $1,000 for out-of-state abortions, Cash App’s sending cap limits the number of people the Fund can send

136. Id.
137. Id.
138. Interview with JM, supra note 18.
139. Id.
140. Monacelli, supra note 2.
141. “Following the Dobbs decision, many laws severely restricting or banning abortion have taken effect—or will soon take effect. At least 13 states had ‘trigger bans’ in place—which made abortion illegal immediately upon Roe’s reversal or shortly thereafter.” Notice of Hearing, Hearing on The Impact of the Supreme Court’s Dobbs Decision on Abortion Rights and Access Across the United States Before the H. Comm. on Oversight & Reform (July 13, 2022), https://oversight.house.gov/legislation/hearings/the-impact-of-the-supreme-court-s-dobbs-decision-on-abortion-rights-and-access#:~:text=Following%20the%20Dobbs%20decision%2C%20many,Roe’s%20reversal%20or%20shortly%20thereafter [https://perma.cc/Z5RK-MAE8].
142. Zoom Interview with Maggie Scotece, supra note 72.
assistance to and how many emergencies it can take care of on the way.143 These transfer caps prevent mutual aid organizations from meeting crucial and immediate needs of community members.

Using multiple payment app accounts can temporarily ameliorate the limiting effects of transfer caps.144 However, multiple fundraising accounts can create confusion and distrust among donors: they are unsure which account to send funds to and if these accounts are legitimate and appropriately distributing the funds.145 Further, multiple accounts make it harder for organizers to keep records of donations and disbursements.146 Organizers will use multiple accounts when they must; but for simplicity and consistency, they try to avoid it.147

Lastly, transfer caps can affect donors’ ability to send funds to mutual aid organizations. Barnett Community Fund often runs into issues where its monthly sustainers have reached the upper limit of funds they can send because the donors themselves have not verified their identity with the app, which limits the amount they can send.148 Organizers who prefer to withdraw cash and give funds directly to community members face limitations on ATM withdrawals, often a $500 limit per ATM.149 This prevents both donors and organizers from getting funds quickly and consistently to people who need it.

143. See id. (“We used to have an organizational Cash App account . . . we only had one staff member that was able to access it, nobody else could add any of our organizational cards to the Cash App account . . . we actually had staff members start taking out Cash App credit lines to be able to pay for our clients because Cash App was being so difficult for us.”).

144. See Interview with JM, supra note 18 (“But at a time when we were moving, honestly, more than $10,000 a week to get protesters out of jail and support them and help them find temporary housing, that’s when I had to start using other apps. So, my Venmo would reach its cap, my Cash App would reach its cap so now I’m gonna figure out Zelle and figured out Zelle. And then when that hit I . . . used PayPal.”).

145. See id. (noting that donors were not sure they had sent money to the correct account).

146. Zoom Interview with IP, supra note 18 (“[W]e wanted to do a more sustainable and intensive kid of recordkeeping. That was part of what caused us to move into fewer and fewer Venmos.”).

147. Interview with JM, supra note 18.

148. Zoom Interview with ZN, supra note 17.

149. See Interview with JM, supra note 18 (stating that paying for bail was often restricted “between the hours of 9:00 to 5:00” when they could access a bank “because of [$500] caps on ATMs”).
B. Holds and Freezes

Unexplained transaction holds and account freezes are debilitating to mutual aid organizations. Mutual aid activities appear “suspicious” on the apps, giving Venmo, Cash App, and PayPal the authority to “hold [someone’s] money hostage.”[150] Although organizers have found temporary workarounds, these holds and freezes seriously hinder organizing efforts and lock community members out of accessing crucial funds for survival.[151]

Holds and freezes can last for just one or two business days—or up to 180 days while apps conduct full investigations—and can lead to permanent bans from the app.[152] Both Venmo and PayPal include similar statements regarding violations of their user agreement: “Our decision about holds and limitations may be based on confidential criteria that are essential to our management of risk and the protection of [Venmo/PayPal].”[153] Peer-to-peer payment apps’ user agreements and terms of service reflect largely identical boilerplate language outlining these apps’ acceptable use policies, action the platform may take if a user violates the acceptable use policy, information on how to use the app, and liability information.[154]

Although each of these user agreements provides a laundry list of ways to violate them,[155] consumers who do violate the agreement

[150] Zoom Interview with IP, supra note 18.
[151] Infra Part V.B.
[153] Id.; User Agreement, VENMO, supra note 38; see also Mallory Sofastaii, Venmo Accounts Frozen; Users Say Payment Platform Won’t Say What They Did Wrong, WMAR 2 NEWS (Nov. 9, 2021, 6:00 AM), https://www.wmar2news.com/matterformallory/venmo-accounts-frozen-users-say-payment-platform-wont-say-what-they-did-wrong [https://perma.cc/W5FS-LG54] (“Venmo doesn’t share how it decides to restrict a user’s account, not even with the user, in order to protect the systems that monitor activity on Venmo.”).
[154] See, e.g., PayPal User Agreement, PAYPAL, supra note 152 (dividing the user agreement into six headings: “about your account,” “sending money & buying,” “selling & accepting payments,” “restricted activities, holds, and other actions we may take,” “unauthorized transactions & other errors,” and “other legal terms.”).
[155] Actions that result in violating an app’s user agreement can include: (1) breaching the user agreement; (2) violating law; (3) infringing on copyrights; (4) using personal accounts for business transactions; (5) creating more than one personal account; (6) acting in a manner that is defamatory, threatening, or harassing; (7) providing false, inaccurate or misleading information; (7) send or receive funds that app “reasonably
(either purposefully or inadvertently) rarely receive information on how they violated the agreement and how they can remedy the issue.\textsuperscript{156} Companies rely on vague language as explanations, for example: “due to the nature of your activities, we have chosen to discontinue service to you in accordance with Venmo’s User Agreement.”\textsuperscript{157}

Large spikes in donations result in account freezes that stop mutual aid in its tracks and create distrust from donors. During the George Floyd protests and the early months of the COVID-19 pandemic, Queen City Revolution had to respond to immense and crucial needs, however, Venmo froze its primary account for over an entire week.\textsuperscript{158} “Once it was frozen,” organizers “couldn’t do anything with it.”\textsuperscript{159} Distributing funds “wasn’t just delayed,” it stopped entirely.\textsuperscript{160} After the Dobbs decision, Abortion Fund of Ohio also saw unprecedented need and began sending funds at a higher rate than ever before.\textsuperscript{161} This resulted in PayPal and Cash App shutting down the organization’s accounts for two weeks.\textsuperscript{162} The Fund could not meet urgent requests for support to get clients to appointments and the Fund shut down its operations entirely while its funds were frozen to avoid confusion and stress due to its inability to fulfill crucial promises.\textsuperscript{163} Other mutual aid organizations thought the Fund had shut down permanently and funders demanded their money back.\textsuperscript{164} When accounts are frozen, mutual aid groups “can’t do what [they] say they believes” to be “potentially fraudulent”; (8) owe money to the app; and much more. \textit{PayPal User Agreement, PayPal, supra note 152; User Agreement, Venmo, supra note 38.}

\textsuperscript{156} See Sofastaii, supra note 153 (“Sofastaii has received emails from Venmo users around the country whose accounts were frozen. Customers have said they don’t know why their accounts were flagged, and the company won’t tell them how they violated their policies.”).

\textsuperscript{157} Id.

\textsuperscript{158} Interview with JM, supra note 18.

\textsuperscript{159} Id.

\textsuperscript{160} Id.

\textsuperscript{161} Zoom Interview with Maggie Scotece, supra note 72.

\textsuperscript{162} Id.

\textsuperscript{163} “We were locked out at one point on PayPal to the point where we could not send money to anybody who wasn’t a friend of the account because they were so convinced that either it was fraud or it was being done for sex work purposes or anything like that, and that becomes really stressful on our clients ‘cause we thought we ha[d] sent them money and we only find out a couple of hours later that they canceled the account or they reported the transaction, and then our bank account gets shut down and it just kind of cascades from there.” Id.

\textsuperscript{164} Id.
are going to do.”\textsuperscript{165} This “puts doubt on mutual aid . . . because people think that you’re not using the money right.”\textsuperscript{166}

Account freezes happen to community members more often than mutual aid groups. It is mutual aid organizers’ experience that app freezes “target people of color.”\textsuperscript{167} While Barnett Community Fund’s organizational payment apps rarely freeze, all eight of the Black women who receive funds from the group have had funds, transactions, or their entire account frozen.\textsuperscript{168} One woman cannot use any of these apps and instead relies on other community members to collect her funds.\textsuperscript{169} Venmo froze another woman’s account for “violating community standards” and “not adhering to the community guidelines” without giving any direction on how she had violated the standards or how she could remedy the situation.\textsuperscript{170} Venmo held $300 dollars in her account for 180 days and refused to allow her to withdraw the funds.\textsuperscript{171} These funds were necessary for her to care for her young child.\textsuperscript{172} PayPal’s seemingly random two-day freezes on transactions and Cash App’s time-unlimited holds can make sending payments “a nightmare.”\textsuperscript{173}

Mutual aid organizers specifically ask donors to use non-identifying emojis in the comment of their payments to funds or community members.\textsuperscript{174} For organizers it is “well-known” if you comment “things like ‘for your rent,’ ‘for your clothes,’ ‘for bills’ . . . those are more likely to get flagged.”\textsuperscript{175} Venmo can more easily flag mutual aid and other transactions “they don’t want going on in their app” when donors use filterable words.\textsuperscript{176} Thus, using an emoji, for example an orange heart, is “really just in place of something that might draw attention . . . to the payment.”\textsuperscript{177}

\textsuperscript{165} Interview with JM, supra note 18.
\textsuperscript{166} Id.
\textsuperscript{167} Zoom Interview with IP, supra note 18.
\textsuperscript{168} Id.; Zoom Interview with ZN, supra note 17.
\textsuperscript{169} Zoom Interview with ZN, supra note 17.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Zoom Interview with IP, supra note 18.
\textsuperscript{174} Zoom Interview with ZN, supra note 17.
\textsuperscript{175} Zoom Interview with ZN, supra note 17.
\textsuperscript{176} Zoom Interview with IP, supra note 18
\textsuperscript{177} Id.; see also Zoom Interview with IP, supra note 18 (“[T]he sort of accepted practice at this point is to use random emojis in your memo line of donations . . . [a]nd that’s just like well-known at this point because of how pernicious it is and how much it pops up.”).
“Trying to navigate” freezes and holds is “like dodging bullets.”\textsuperscript{178} Mutual aid funds and community members alike “don’t know when you press send if it’s gonna go through [or] if it’s gonna freeze.”\textsuperscript{179} While these payments may seem trivial to some, for others, especially poor community members of color, “it’s a big deal.”\textsuperscript{180}

C. Barriers to Access

Recipients of mutual aid face two significant barriers when using peer-to-peer payment apps: identity verification requirements and instant transaction fees. Identity verification requirements restrict the amount consumers may send and receive, unless they go through apps’ verification process.\textsuperscript{181} Instant transaction fees make using the app costlier to consumers who need funds immediately to cover their bills.\textsuperscript{182} If a mutual aid recipient does not have a bank account, they are restricted to using one app: Cash App.\textsuperscript{183} These barriers are intrinsically connected to being poor, marginalized, and unbanked in America and ultimately affect when, where, and how much mutual aid can be distributed.\textsuperscript{184}

There are several parallels to low-income, marginalized users of peer-to-peer payment apps and the unbanked and underbanked in America. Unbanked and underbanked communities are defined as

\begin{itemize}
\item \textsuperscript{178} Zoom Interview with IP, supra note 18.
\item \textsuperscript{179} Id.
\item \textsuperscript{180} Zoom Interview with ZN, supra note 17.
\item \textsuperscript{182} See Instant Bank Transfer FAQ, Venmo, https://help.venmo.com/hc/en-us/articles/115015844068 [https://perma.cc/47PT-YYVW] (last visited Jan. 14, 2023) (noting that the fee can vary between twenty-five cents and twenty-five dollars depending on the size of the transaction); Zoom Interview with ZN, supra note 17 (addressing how the impact of a transaction fee is felt harder on poor people when “every dollar counts”).
\item \textsuperscript{183} “Cash App, a pro is you don’t need to have a bank account to have Cash App. So, it’s a lot of times easier to get money to folks who need it . . . . Who are poor and don’t have bank accounts.” Interview with JM, supra note 18; see also Dossett, supra note 41 (“You don’t need to link your bank account to open a Cash App account.”).
\end{itemize}
communities that either “lack a formal relationship with an insured depository institution or bank” or “have a formal relationship with a bank but must also substantially rely on alternative financial options such as payday loans, check-cashing services, and money orders.”

As of 2019, 7.1 million households were unbanked, and 43 million households were underbanked, the vast majority of which were people of color and low- to moderate-income households. Unbanked and underbanked people rely heavily on “fringe banks,” check cashers, payday lenders, and now, peer-to-peer payment apps, which offer “high cost, destabilizing products and services that make it even more difficult for users to move into the financial mainstream.”

Like traditional banks, peer-to-peer payment apps require identity verification to use the apps to their full extent. Users who have not verified their identity have restrictions on the amount they can send and withdraw from their PayPal and Venmo accounts. Unverified accounts on PayPal have a “limit on the total amount of money you can send from your account,” however, it is unclear what that limit is. Venmo only allows users to send $300 a week to other consumers without identity verification. While verified users can transfer any amount from their Venmo account to their bank account in one week, users who have not verified their identity are limited to transferring $1,000 to their bank account in one week.


186. FED. DEPOSIT INS. CORP., HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES 1 (2020), https://www.economicinclusion.gov/downloads/2019_FDIC_Unbanked_HH_SurveyReport.pdf [https://perma.cc/QBB7-UHD6]; see also Aulds, supra note 185, at 205–06 (“In 2019, unbanked rates were higher among Black Americans (13.8%) the Latinx community (12.2%), American Indians, and Alaska Native households than in White households, which was only 2.5% . . . 40% of the unbanked have annual incomes under 75K.”). Further, the number of unbanked households in America has decreased from 8.4 million, as reported in 2017. Havard, supra note 184, at 326.

187. Havard, supra note 184, at 319.

188. What’s the maximum amount I can send with my PayPal account?, PAYPAL, supra note 131; Personal Profile Bank Transfer Limits, VENMO, supra note 181.

189. What’s the maximum amount I can send with my PayPal account?, PAYPAL, supra note 131; Personal Profile Bank Transfer Limits, VENMO, supra note 181.

190. What’s the maximum amount I can send with my PayPal account?, PAYPAL, supra note 131.

191. Personal Profile Payment Limits, VENMO, supra note 132.

192. Personal Profile Bank Transfer Limits, VENMO, supra note 181.
To access all their services, both PayPal and Venmo require government-issued identification, which many people do not have. PayPal confirms customer’s personal information “such as your name, address, and date of birth” through their Customer Identification Process. They do this by scanning government-issued ID and matching it with your account information. Venmo users can verify their identity through an “automated ID verification process” in-app. But, if the automated process fails, a user must supply government-issued identification and sometimes documents that supply proof of address or a user’s social security number or individual tax identification number.

Peer-to-peer payment apps will freeze transactions and accounts if unverified consumers use the apps beyond what the app allows without identification. This has created problems for mutual aid recipients and organizers. For example, Venmo froze one community member’s account because she received more than $300 from the Barnett Community Fund before she went through the identity verification process. Although this community member luckily had a driver’s license and could resolve the issue within a week, she could not immediately access funds for basic necessities. Organizers recognize “how much of a privilege personal identification is” and that peer-to-peer payment apps can require users “to produce a photo ID, which not everyone has.”

Because Cash App does not require a bank account, community members without adequate documentation to open a checking account

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196. Id.
197. Identity Verification, VENMO, supra note 40.
198. Zoom Interview with ZN, supra note 17; Zoom Interview with IP, supra note 18.
199. Zoom Interview with ZN, supra note 17; Zoom Interview with IP, supra note 18.
200. Zoom Interview with IP, supra note 18.
or apply for state-issued identification cards can use the app with relative ease. Specifically, Cash App is ideal for undocumented people because it does not require a bank account, Individual Tax Identification Number (ITIN), or other documentation to get started. They can receive money directly from mutual aid funds and send the funds to pay their bills and expenses. This policy makes it “easier to get money to folks who need it . . . who are poor and don’t have bank accounts.” Abortion Fund of Ohio sends most of its practical support funds (for things such as gas and food while a client travels for abortion care) through Cash App. Since community members are able to use the Cash App debit card to withdraw funds from ATMs, community members can “spend funds that people have just sent” without paying an instant transfer fee. Together, these features mean that it’s simply “cheaper to have Cash App.”

Instant transfers enable users’ immediate access to peer-to-peer payment app funds in their bank accounts. Venmo’s instant transaction fees produce significant revenue for the company. To

201. “Cash App, it’s interesting . . . because it sort of literally created its own banking system by allowing people to have like a Cash App card, you don’t ever have to actually have a bank account. And I think that does appeal to poor people. And I think that’s why they do that. But then I wonder, in what ways is that about exploiting poor people, because you know it’s a market that you can tap into because they don’t have bank accounts.” Interview with JM, supra note 18.

202. See Zoom Interview with Maggie Scotece, supra note 72 (describing how peer-to-peer payment apps help distribute funds to clients who are undocumented immigrants); see also Getting Started with Cash App, CASH APP, https://cash.app/help/us/en-us/6485-getting-started-with-cash-app [https://perma.cc/XVL9-LNKF] (last visited Jan. 14, 2023) (demonstrating that users may, but are not required to, connect a bank account to access Cash App.).

203. See Zoom Interview with Maggie Scotece, supra note 72 (“Cash App is the only option we have to be able to get funds to people quickly.”).

204. “Cash App, it’s interesting . . . because it sort of literally created its own banking system by allowing people to have like a Cash App card, you don’t ever have to actually have a bank account. And I think that does appeal to poor people. And I think that’s why they do that. But then I wonder, in what ways is that about exploiting poor people, because you know it’s a market that you can tap into because they don’t have bank accounts.” Interview with JM, supra note 18.

205. Interview with JM, supra note 18.

206. Zoom Interview with Maggie Scotece, supra note 72.

207. Zoom Interview with Maggie Scotece, supra note 72.


209. Zoom Interview with ZN, supra note 17.

210. Interview with JM, supra note 18.

211. “Cash App, it’s interesting . . . because it sort of literally created its own banking system by allowing people to have like a Cash App card, you don’t ever have to actually have a bank account. And I think that does appeal to poor people. And I think that’s why they do that. But then I wonder, in what ways is that about exploiting poor people, because you know it’s a market that you can tap into because they don’t have bank accounts.” Interview with JM, supra note 18.

212. See Zoom Interview with Maggie Scotece, supra note 72 (describing how peer-to-peer payment apps help distribute funds to clients who are undocumented immigrants); see also Getting Started with Cash App, CASH APP, https://cash.app/help/us/en-us/6485-getting-started-with-cash-app [https://perma.cc/XVL9-LNKF] (last visited Jan. 14, 2023) (demonstrating that users may, but are not required to, connect a bank account to access Cash App.).

213. See Zoom Interview with Maggie Scotece, supra note 72 (“Cash App is the only option we have to be able to get funds to people quickly.”).

214. Interview with JM, supra note 18.

215. Zoom Interview with Maggie Scotece, supra note 72.


217. Zoom Interview with ZN, supra note 17.

218. Id.


immediately transfer funds to their bank accounts, Venmo users pay 1.75% of the transfer amount, with a minimum fee of twenty-five cents and maximum fee of twenty-five dollars. Normal transfers, which take one to three business days, are free. Cash App’s “instant deposits” incur a 0.5%-1.75% fee with a minimum fee of twenty-five cents, but no maximum. Like Venmo, standard deposits within one to three business days are free.

Community members often need funds immediately to pay for rent, groceries, transportation, or healthcare costs. Their needs simply cannot wait one to three business days, forcing some community members to utilize instant transfer. “Given the time sensitive nature . . . [of] emergency fundraising, if we sent $300, 2% off of that is not nothing.” For mutual aid recipients “every dollar counts.” They need all of their funds as soon as possible.

Underbanked people are more likely to use mobile banking and payment technology than banked communities, largely because it is

that the fee can vary between twenty-five cents and twenty-five dollars depending on the size of the transaction).

211. Id.
214. Id.
215. See Zoom Interview with IP, supra note 18 (noting that during the pandemic, community needs were higher than usual yet “[t]he time sensitive nature . . . [of] emergency fundraising, if we sent $300, 2% off of that is not nothing.” For mutual aid recipients “every dollar counts.” They need all of their funds as soon as possible.
216. See Zoom Interview with ZN, supra note 17 (“[T]he instant transfer fee is a money maker off of those who need the funds right now.”).
217. Id.
218. Id.
accessible anytime and anywhere.\textsuperscript{219} Although peer-to-peer payment apps make mutual aid accessible and simple for users in the short term, identity verification requirements and instant transaction fees leave unbanked, underbanked, and mutual aid recipients vulnerable to predatory practices similar to those of “fringe banks.”\textsuperscript{220}

D. Taxes

Many mutual aid organizations are vulnerable to significant, even crippling, tax liability because of their unique position as groups dedicated to supporting their communities financially through nontaxable gifts without a 501(c)(3) status.\textsuperscript{221} Peer-to-peer payment apps often perceive donations to mutual aid groups and disbursement to recipients as income when, instead, they are untaxable gifts.\textsuperscript{222} Although smaller organizations are less likely to face tax liability, larger organizations with 501(c)(3) status, such as the Abortion Fund of Ohio, have endured audits of their work because of their use of peer-to-peer payment apps.\textsuperscript{223} New legislation promulgated in the 2021 American Rescue Plan requires third-party payment settlement entities (including Venmo, Cash App, PayPal, and other payment apps) to report all transactions of $600 or more to the IRS starting for tax year 2023.\textsuperscript{224}


\textsuperscript{220} Supra Part V.C.

\textsuperscript{221} “The fear is very real” that the IRS will audit organizers and halt movement work due to potential tax liability. Zoom Interview with IP, supra note 18; see also Zoom Interview with ZN, supra note 17 (explaining how there is a “constant fear” about tax liability); Interview with JM, supra note 18 (describing the intentional choice of having a white person accept and hold money on Venmo because she’s less likely to encounter issues if the IRS is monitoring Venmo transactions); Zoom Interview with Maggie Scotece, supra note 72 (noting that the organization’s financial advisor informed the fund to keep receipts and documentation for all transactions for auditing purposes).

\textsuperscript{222} See Zoom Interview with Maggie Scotece, supra note 72 (discussing that the organization is undergoing an audit because of the increase in client needs after Dobbs).


\textsuperscript{224} Anthony A. Cilluffo, Cong. Rsch. Serv. IF12095, PAYMENT SETTLEMENT ENTITIES AND IRS REPORTING REQUIREMENTS 1-2 (May 3, 2022); see also Internal Revenue Serv., IR-2022-226, IRS ANNOUNCES DELAY FOR IMPLEMENTATION OF $600 REPORTING THRESHOLD FOR THIRD-PARTY PAYMENT PLATFORMS’ FORMS 1099-K (Jan. 3,
This change will increase the chance an app reports a mutual aid transaction to the IRS and, subsequently, increase the potential for tax liability.²²⁵

To mitigate the threat of tax liability, mutual aid groups keep extensive, encrypted records.²²⁶ The cost of such record keeping, however, is energy and resources that organizers could otherwise use to support community members.²²⁷ These records also potentially threaten the safety of fund recipients—especially those who receive funds for abortion care in a post-Dobbs America.²²⁸

Mutual aid groups are not typically registered as 501(c)(3) organizations and as such do not receive the tax benefits of incorporated nonprofits.²²⁹ Even so, these donations should be treated as gifts and thus should not be taxable.²³⁰ While “gift” is not defined in the tax code, the Supreme Court of the United States underscored the

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²²⁵ See CILLUFFO, supra note 224, at 1-2 (citing a study that found the change in reporting requirements for third party payment settlement entities led to a moderate increase in “reported receipts”).

²²⁶ Zoom Interview with IP, supra note 18; see also Zoom Interview with Maggie Scotece, supra note 72 (“Our financial advisor . . . told us we needed to have receipts and accountability for every transaction we’ve ever done.”).

²²⁷ Zoom Interview with Maggie Scotece, supra note 72 (“[W]e’ve actually had to invest in hiring new staff to be able to go back and try and recreate the transactions that we’ve had over the past year.”); Zoom Interview with IP, supra note 18.

²²⁸ See Zoom Interview with Maggie Scotece, supra note 72 (describing the hesitancy to keep client data for fear of clients being criminalized).


²³⁰ “Under the Internal Revenue Code, all income, regardless of its source, is taxable unless there is an exception. One important exception is for gifts, which the Supreme Court has defined as things given with ‘detached and disinterested generosity . . . out of affection, respect, admiration, charity, or like impulses.’ In short, the Supreme Court says, ‘the most critical consideration . . . is the transferor’s “intention.”’ When people send money to you to support your mutual aid group with an intent that meets this standard, it should not be taxable income—but not all payment platforms do a great job of explaining this to people who give you money, and, even if they did, someone might make a mistake in what boxes they check off on a payment platform app.” Mike Haber, 1099-K Forms and Taxes on Money for Mutual Aid Projects that Passes Through a Member’s Payment Account, BIG DOOR BRIGADE (Apr. 10, 2022), https://bigdoorbrigade.com/2022/04/10/my-mutual-aid-group-used-my-venmo-account-and-i-got-a-1099-k-form/ [https://perma.cc/4XR6-36Z9].
importance of the giver’s “intention” when it interpreted the term: money given with “detached and disinterested generosity . . . out of affection, respect, admiration, charity, or like impulses.”

The intention of mutual aid “is not . . . an expectation of receiving goods or services like a business transaction, but out of generosity, respect, a desire to support the community, an admiration for the project, or a similar goal.”

Many mutual aid groups do not seek 501(c)(3) status because the process forces grassroots organizing into a corporate model. This is often antithetical to some groups’ strategy. Instead, groups rely on the mobilization of communities as their own leaders rather than appointed “executives,” which bureaucratic incorporation requires. Some groups will acquire a fiscal sponsor, typically a 501(c)(3), which will agree to receive donations and then “cut checks for what [the mutual aid group is] paying for.” Both incorporation as a 501(c)(3) and fiscal sponsorship slow down disbursement of funds, increase time spent on paperwork rather than meeting community needs, and sometimes risk disclosure of mutual aid recipients’ and community members’ identities when it would otherwise not be required. Additionally, 501(c)(3) status does not necessarily shield organizations from audits to ensure funds are used for charitable purposes.

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232. HABER ET AL., supra note 222, at 2.

233. See Haber & Spade, supra note 229 (listing some of the concerns with 501(c)(3) status, such as privacy concerns and annual compliance requirements).

234. See Andrea Smith, Introduction: The Revolution Will Not Be Funded, in THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX 10 (INCITE! ed., 2007) (“[T]he NPIC [non-profit industrial complex] contributes to a mode of organizing that is ultimately unsustainable. To radically change society, we must build mass movements that can topple systems of domination, such as capitalism. However, the NPIC encourages us to think of social justice organizing as a career; that is, you do the work if you can get paid for it. However, a mass movement requires the involvement of millions of people, most of whom cannot get paid. By trying to do grassroots organizing through this careerist model, we are essentially asking a few people to work more than full-time to make up for the work that needs to be done by millions.”).

235. Haber & Spade, supra note 229.

236. Id.

237. Id.

238. See Zoom Interview with Maggie Scotece, supra note 72 (“With the amount of money we fundraised and the amount of money we’ve been sending out, we are now gonna have to go through an audit in order to maintain our 501(c)(3) status.”).
Further, because mutual aid can appear like small business transactions on peer-to-peer payment apps, there is significant worry among organizers that the IRS will treat their work as income. Several factors bolster the comparison between small businesses and mutual aid groups. First, regular disbursements to community members of several hundred to a few thousand dollars look virtually identical to small business transactions on the app. Second, the typical practice of attaching a mutual aid organization’s Venmo or Cash App to an individual organizer’s bank account looks much like a small business owner collecting funds for their business. Finally, without a 501(c)(3) status or a charitable peer-to-peer payment app account, mutual aid organizations are left legally defenseless to rebut the presumption that they operate for profit.

In 2021, Congress enacted new reporting requirements for third-party payment settlement entities to crack down on massive tax gaps. The legislation sought to collect taxes from small business owners and gig workers (such as Uber drivers and AirBnB hosts) who inadvertently...

239. See Haber, supra note 230 (providing a resource for organizers on tax compliance and mutual aid).


241. See Haber, supra note 230 (explaining how an individual organizer may receive a 1099-K form because the payment platform indicated in its records that the transactions taxable income and not a gift).

242. See Haber & Spade, supra note 229 (stating that one of the benefits of having 501(c)(3) status is that annual compliance requirements are “very minimal” if the “annual gross receipts are less than $50,000”); see generally, 26 U.S.C. § 501(c)(3) (listing organizations that are “exempt from taxation” including “[c]orporations, any community chest, fund, or foundation, organized and operated exclusively for . . . charitable . . . purposes . . . ”).

243. CILLUFFO, supra note 224, at 2 (“[T]he anticipated increased revenue from increasing information reporting . . . is largely related to increasing third-party reporting of business and self-employment income. These types of income are often not subject to third-party reporting, and the IRS believes they form a substantial portion of the tax gap.”).
or purposefully failed to report all of their taxable income.\textsuperscript{244} The new reporting rule requires third-party payment settlement entities to report all business transactions that are greater than $600 to the IRS and business owners on a 1099-K form, whereas the previous rule only required these entities to report transactions after a business surpassed $20,000 in income and yielded over 200 transactions in a calendar year.\textsuperscript{245} This new reporting requirement now matches tax law for independent contractors, freelancers, and small business owners requiring third-party payment settlement entities to report business transactions of $600 or more individually using form 1099-MISC.\textsuperscript{246} It is too soon to say for certain how the lower reporting threshold will impact tax compliance for small business owners and organizations sending and receiving more than $600 at a time, but scholars predict it will increase reports of transactions to the IRS.\textsuperscript{247}

Thus, mutual aid organizations are fearful that the new reporting requirement will increase their risk of being audited by the IRS. Organizers routinely send payments greater than $600 to pay for groceries, rent, medical expenses, and bail.\textsuperscript{248} Organizers believe that some of the account freezes they have experienced are due to peer-to-

\textsuperscript{244} See Kathleen DeLaHaye Thomas, Taxing the Gig Economy, 166 U. PA. L. REV. 1415, 1428–29 (2018) (highlighting the issues with the current tax schema for small business owners including lack of knowledge regarding liability and ability to keep track of records for filing requirements); see also Diane M. Ring & Shu-Yi Oei, The Tax Lives of Uber Drivers: Evidence from Online Forums, 8 COLUM. J. TAX L. 56, 56 (2017) (synthesizing communications about how to pay and file taxes as an Uber driver on online platforms, such as Reddit).

\textsuperscript{245} CILLUFFO, supra note 224, at 2; CAROLINE BRUCKNER, SHORTCHANGED: THE TAX COMPLIANCE CHALLENGES OF SMALL BUSINESS OPERATORS DRIVING THE ON-DEMAND PLATFORM ECONOMY 9 (May 2016).

\textsuperscript{246} BRUCKNER, supra note 245, at 9.

\textsuperscript{247} See Nellen et al., Taxes and the Growing Gig Workforce: What to Know, J. TAX’N 1, 15 (2018) (noting that lowering the threshold for filing a 1099-K form would reduce tax gaps); Shu-Yi Oei & Diane M. Ring, Can Sharing be Taxed?, 93 WASH. U. L. REV. 989, 1061–62 (2016) (“Lower reporting thresholds could help ensure that micro-earners earning lower income amounts cannot avoid having such amounts reported to the IRS . . . . [but] the precise impact of more complete Form 1099-K reporting is somewhat open to question, given the newness of both Form 1099-K and of the sharing economy. However, there are reasons to think that clarifying that sharing businesses are not ‘third party settlement organizations’ or simply lowering the reporting thresholds will improve tax reporting and compliance to some degree.”).

\textsuperscript{248} “The fear is very real” that the IRS will audit organizers and halt movement work due to potential tax liability. Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17; Interview with JM, supra note 18; Zoom Interview with Maggie Scotece, supra note 72.
 peer payment companies’ concerns about tax liability. Organizers are “scared of getting arrested . . . . [and] scared of getting audited,” even if their mutual aid group has yet to face these challenges. “The fear is very real.”

As a result of increased need for abortion care due to the *Dobbs* decision, and thus increased transactions through third-party payment apps to fund abortion care, Abortion Fund of Ohio is undergoing an audit for the very first time. *Dobbs* implemented several state-wide “trigger bans” on abortion throughout the United States. People seeking abortions in “trigger ban” states were suddenly unable to receive the abortion care they needed at home and needed to travel to states where the procedure remained legal. The number of people who had to travel for abortions, and the travel expenses for those abortions, subsequently increased. To counteract the expenses caused by trigger bans, Abortion Fund of Ohio paid for more abortions and abortion-related travel expenses.

As groups that work almost exclusively with low-income people of color, organizers’ fears are not irrational: the IRS has a long history of disproportionately auditing taxpayers who are Black or poor. The IRS froze 1.6 million low-income taxpayers refunds between 2002 and

249. Interview with JM, supra note 18.
250. Zoom Interview with IP, supra note 18.
251. Id.
252. Zoom Interview with Maggie Scotece, supra note 72.
253. “Following the Dobbs decision, many laws severely restricting or banning abortion have taken effect—or will soon take effect. At least 13 states had ‘trigger bans’ in place—which made abortion illegal immediately upon Roe’s reversal or shortly thereafter.” Notice of Hearing, H. Comm. On Oversight & Reform, supra note 141.
256. See Zoom Interview with Maggie Scotece, supra note 72 (“When the Dobbs decision came down and [the] Ohio six-week ban went into effect, overnight we had to begin to navigate hundreds of people out of state.”).
257. See Dorothy A. Brown, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790, 831 (2007) (“In order for the [Earned Income Tax Credit] to remain politically viable . . . . empirical data concerning the racial demographics of who benefits from the EITC must be widely disseminated . . . . [I]low-income taxpayers are being singled out for harsh retaliatory treatment for being poor—and for being perceived to be black.”).
2007 “although the vast majority did nothing wrong.”\textsuperscript{258} In fact, the
IRS is more likely to audit low-income taxpayers than high-income taxpayers.\textsuperscript{259} Low- and medium-income returns, including Earned Income Tax Credit returns, are easier to audit than high-income filers and businesses, resulting in greater investigation into the tax returns of low-income communities.\textsuperscript{260}

Mutual aid groups have taken proactive steps to protect organizers and community members of color. Organizations delegate fund collection and disbursement to white organizers.\textsuperscript{261} One white organizer stated that Queen City Revolution appointed her to this role because “she’s less likely to run into troubles if the IRS is checking—and if the IRS is checking she’s more likely to be able to navigate it.”\textsuperscript{262} Asking white organizers to risk potential audits from the IRS protects organizers that are “mostly Black, mostly non-white.”\textsuperscript{263} So far, mutual aid groups rarely encounter tax liability, but when they do, the community members most impacted are people of color.\textsuperscript{264} Several organizers with the Barnett Community Fund are white and gladly risk IRS audits to further the group’s goal of redistributing wealth: “the people who are receiving the money are always more vulnerable and always more directly targeted.”\textsuperscript{265} The work is worth the risk.

\textsuperscript{258} Id. at 790.

\textsuperscript{259} See id. at 807 n.105 (“‘The IRS audited 397,000 of the working poor who applied for the credit in 2001, eight times as many audits as it conducted of people making $100,000 or more’ . . . ‘In 2000, . . . the odds of audit for low-income taxpayers [was] approximately one in ninety while for everyone else the risk of an audit was approximately one in 370.’”).

\textsuperscript{260} See Sydney Warda, Comment, \textit{EITC Correspondence Audits: An Equal Protection Issue}, 70 \textit{DEPAUL L. REV.} 777, 777 (2021) (arguing that EITC taxpayers have an equal protection claim against the IRS for disproportionate auditing of low-income earners as a suspect class).

\textsuperscript{261} Interview with JM, \textit{supra} note 18.

\textsuperscript{262} \textit{Id.}

\textsuperscript{263} \textit{Id.}; see also Brown, \textit{supra} note 257, at 813 (“American opposition to welfare is due to the public perception that the typical welfare recipient is undeserving. They are undeserving because Americans believe that most welfare recipients are black and because Americans believe that blacks are not committed to working. ‘[R]acial stereotypes play a central role in generating opposition to welfare in America.’”).

\textsuperscript{264} See Interview with JM, \textit{supra} note 18 (“The person who I know who Venmo was like, you must pay taxes on this or we’re shutting you down, is Black.”).

\textsuperscript{265} Zoom Interview with IP, \textit{supra} note 18.
To protect themselves from potential audits, mutual aid organizations try to maintain thorough records. However, such recordkeeping poses two challenges. First, it limits mutual aid groups’ capacity for movement work. To keep their books straight, Barnett Community Fund limited the number of Venmo accounts associated with their organization. The “more sustainable and intensive kind of record keeping . . . was too much work” with multiple accounts. Abortion Fund of Ohio has had to spend significant energy and hire staff to help them through their audit—time, money, and energy that could otherwise be spent connecting people to resources and abortion care. Now that the Fund must send receipts to clients, the Abortion Fund of Ohio is restricted to sending funds to community members who have emails or can come to the Ohio office in person. Neither are always achievable, and both create greater barriers to receiving abortion care. Recordkeeping “in a mutual aid context . . . is incredibly hard.”

Second, recordkeeping requires exposing confidential information about community members that these organizations would prefer to keep anonymous for the safety of fund recipients. Abortion

266. “[W]e really needed to keep records, both for our sake, but also remembering that if the hammer comes down, we are not the most vulnerable parties involved in this transaction.” Id.

267. See Zoom Interview with IP, supra note 18 (explaining that the group’s switch to a monthly sustainer model was motivated in part to ease recordkeeping); Zoom Interview with Maggie Scotece, supra note 72 (explaining how the Abortion Fund of Ohio had to expend resources to hire new staff to help monitor transactions and having to rewrite the fund’s policy handbook for transactions).

268. Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17.

269. Zoom Interview with IP, supra note 18.

270. See Zoom Interview with Maggie Scotece, supra note 72 (“It’s been like drinking from a fire hose, I can barely get through the day without something else catching on fire, and it’s just been pivoting to try and find the . . . path of least resistance for many points in time.”).

271. “We have to send them a receipt and they have to attest in that receipt that they are only using the funds for the specified purposes [abortion care and related expenses] in the receipt, which is another layer, it means that our clients have to have emails, we have plenty of clients who don’t have emails.” Id.

272. See id. (“We have clients who will no longer wanna work with us because they’re worried about, especially if our client is undocumented, they don’t want any documentation of them being served by us.”).

273. Id.

274. See id. (“We don’t keep a lot of client data because we don’t want our clients to be criminalized [for receiving an abortion].”).
Fund of Ohio previously retraced its steps to “recreate the transactions that [they have] had over the past year” to comply with the audit.\textsuperscript{275} Abortion Fund of Ohio had intentionally not kept fund recipients’ information for “many safety reasons” such as preventing domestic abusers from learning fund recipients had an abortion and minimizing the chance the state would criminalize low-income, people of color, and undocumented people for seeking abortion care.\textsuperscript{276} “Low-income and BIPOC [Black, Indigenous, people of color] folks are often more criminalized” for abortion care so it is crucial to keep their identities and information safe.\textsuperscript{277} Because they must collect more personal information for their records, Abortion Fund of Ohio has “clients who will no longer want to work with us . . . especially if our client is undocumented” because they’re worried records of their abortion care could be used against them.\textsuperscript{278}

The new 1099-K rule requiring third party reporting to the IRS for business transactions over $600 will exacerbate an already real fear that tax liability will hinder mutual aid and criminalize low-income communities and people of color.\textsuperscript{279} Because of this fear, groups have taken precautions by delegating money-holding roles to white organizers\textsuperscript{280} and implementing extensive recordkeeping.\textsuperscript{281} Still, these solutions are neither long-lasting nor perfect, leading to unintended consequences of limiting capacity and exposing personal information of community members.\textsuperscript{282}

\textsuperscript{275} Zoom Interview with Maggie Scotece, supra note 72.
\textsuperscript{276} Id.
\textsuperscript{277} Id.; see also Barbara Baird & Erica Millar, Abortion at the Edges: Politics, Practices, Performances, 80 WOMEN’S STUD. INT’L F. 1, 6 (2020) (“[I]n the 32-year period since Roe over 400 women had been prosecuted in the US for illegal abortions or related crimes, most of them poor women of color.”).
\textsuperscript{278} Zoom Interview with Maggie Scotece, supra note 72.
\textsuperscript{279} Supra Part IV.D.
\textsuperscript{280} “I think that [fear of audits] is part of [the] reason why my crew, which is mostly Black, mostly non-white, first delegated me to be the person who accepts the money was because . . . ‘JM’s white so she’s less likely to run into troubles if the IRS is checking and if the IRS is checking she’s more likely to be able to navigate it.’” Interview with JM, supra note 18.
\textsuperscript{281} Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17.
\textsuperscript{282} See supra Part IV.D.
VI. SOLUTIONS: TRUSTING OUR COMMUNITY

Mutual aid organizations have implemented several small solutions to get around the restraints peer-to-peer payment app policies impose on them. These include creating spreadsheets of community member needs so that people can donate directly to others without an intermediary, thus limiting the chances accounts or transactions will be frozen. Organizers encourage donors to make regular donations to the same person or group of people and to donate in cash for the same reason. These small changes on the donor side could significantly limit the number of times community members and mutual aid organizations run into problems with peer-to-peer payment apps.

There are several short-term policy and regulatory solutions that could improve access to and use of these apps in the mutual aid context. First, Congress should speak clearly on whether peer-to-peer payment systems are subject to the BSA, EFTA, and GLBA and, if so, how these apps can best adhere to their requirements. Second, Congress should pass legislation and the CFPB should formulate regulations that require transparency from peer-to-peer payment apps on what will flag or freeze a consumer’s account. Such legislation or regulations should also

283. See Zoom Interview with IP, supra note 18 (discussing how Barnett Community Fund implements extensive, encrypted record keeping to quickly remedy issues should they arise); Zoom Interview with ZN, supra note 17 (“In terms of other freezes, there are community members who’ve lost access to different services and the ways they’ve gotten around that, are by using one another’s if they’re in the community. ‘Cause Barnett Community Fund distributes to eight individuals, many of whom know each other and many of whom are in the community with other primarily Black trans women . . . . [a]nd so oftentimes when someone requests funds or it’s time for distribution, we’ll see a community member collecting funds for themselves and someone else, who they can then transfer it to through some other payment service.”).

284. Zoom Interview with IP, supra note 18; Zoom Interview with ZN, supra note 17.

285. See Interview with JM, supra note 18 (“I would love to see people just doing it directly and not needing a middle person. I’d love to see everyone bailing somebody out of jail. I’d love to see everybody helping people get housing. I think that’s my biggest dream.”).

286. Id.

287. See supra Part V (finding that the acts’ applicability to peer-to-peer payment apps is unclear and thus results in failures of the their intended goals).

288. See supra Part V.B (discussing the consequences of unexplained account or transaction freezes and their detriment to mutual aid funds and their recipients); see also Zoom Interview with Maggie Scotece, supra note 72 (discussing the impact of a two-week freeze of their accounts: “[W]e had clients thinking we were shut down and they couldn’t get care. We had funders thinking that we weren’t doing funding anymore and saying,
consider requiring peer-to-peer apps to allow consumers to withdraw funds while their accounts are under investigation. Third, the IRS should treat donations to and from unincorporated mutual aid organizations as gifts, much like donations to nonprofits or simple gifts to friends or family members. Finally, returning to the original $20,000 1099-K reporting rule, and eliminating the $600 threshold, will decrease the likelihood that mutual aid funds will be improperly taxed and alleviate the fears and concerns of organizers and fund recipients.

These legislative and regulatory reforms would eliminate the grey area in which peer-to-peer apps operate and potentially lead to positive in-app policy changes for mutual aid organizations. For example, clear directives regarding EFTA compliance might allow peer-to-peer apps to increase transfer caps or create avenues for more flexible policies regarding mutual aid organizations. Venmo has done this to an extent, increasing their transfer cap to $60,000 in one week. New consumer protections, particularly ones that preserve access to funds held in peer-to-peer payment accounts, could require apps to explain why a consumer’s transaction or account is frozen and provide opportunities to resolve the issue together, rather than an app undergoing a one-sided investigation and leaving the consumer lost and without access to vital funds.

“[a]re you gonna give us our money back?”); Zoom Interview with IP, supra note 18 (addressing accountability to funders and skeptics of mutual aid: “part of doing mutual aid and specifically if you’re doing wealth distribution, is you’re going to take on a lot of heat and criticism, especially on social media. And we always wanted to put ourselves in a position where we’re like, ‘Okay, here’s the receipts.’ The money goes in and it goes out, there’s no funny business here.”).

289. See supra Part V.B (noting that if fund recipients were able to withdraw funds during account investigations, they would still be able to pay for crucial life necessities such as rent, food, healthcare etc.).

290. See supra Part V.D (arguing that mutual aid funds are in essence gifts and under current law should not be taxable).

291. Supra Part V.D; see also Zoom Interview with IP, supra note 18 (“I think the main thing is all of the financial world in and of itself feels so very inaccessible unless you have access to a real wealth of knowledge that only comes from wealth. And so, I know that the fear of [tax liability] is very real.”).

292. See supra Part V (discussing that the BSA, EFTA, and GLBA, while purporting to increase consumer protections and combat fraud and crime on peer-to-peer payment apps, are ineffective).

293. See supra Part V.A (arguing that limited transfer abilities hinder mutual aid and movement work).

294. Personal Profile Payment Limits, VENMO, supra note 132.

295. See supra Part V.B (arguing that unexplained holds and freezes of transactions and consumer account impact mutual aid funds and poor people the most).
the tax code for this kind of work, without stringent reporting requirements, would ease the burden on mutual aid organizations.\textsuperscript{296} Returning to the $20,000 reporting rule would protect small community organizers and fund recipients from potential audits.\textsuperscript{297}

Many scholars of peer-to-peer payment apps, financial regulation, and tax law would understandably challenge these suggestions as promoting policies that would lead to increased crime, fraud, and tax evasion. Promoting consumer rights to frozen funds or requiring that peer-to-peer payment apps become transparent on the criteria that flags and freezes accounts might create workarounds for fraudulent or criminal activity on these apps.\textsuperscript{298} The “ease and anonymity of moving money across peer-to-peer (P2P) platforms ... [and] increase[] [in] the volume of individual money transfers ... present potential harms to the payment system.”\textsuperscript{299} But fraud and crime still occur on these apps despite the implementation of current regulations and policies, which suggests greater regulation could be warranted to achieve the goals of the BSA, EFTA, and GLBA: “concerns regarding money laundering still permeate the P2P market, as existing state and federal laws lack clarity and do no fully address emerging concerns.”\textsuperscript{300}

In addition to concerns about fraud, loosening the 1099-K reporting requirement could widen the tax gap. Returning to the higher,

\begin{itemize}
\item \textsuperscript{296} See supra Part V.D (discussing how reporting requirements stretch thin mutual aid organizers’ resources); see also Zoom Interview with Maggie Scotce, supra note 72 (“When we sat down with our financial advisor, she told us we needed to have receipts and accountability for every transaction we’ve ever done, and in a mutual aid context, that is incredibly hard, we don’t especially in our context where for many safety reasons, we don’t keep a lot of client data because we don’t want our clients to be criminalized.”).
\item \textsuperscript{297} See supra Part V.D (arguing that the new tax reporting threshold will unfairly subject mutual aid groups to tax liability since mutual aid groups routinely send over $600 to fund recipients).
\item \textsuperscript{298} See Rohena Rajbhandari, Note, (Ven)mo Money, (Ven)mo Problems? How Money Laundering Permeates Peer-to-Peer Payment Platforms, 63 B.C. L. Rev. 669, 670–672 (2022) (discussing the prevalence of money-laundering on peer-to-peer payment apps and the applicable regulatory framework); Adam J. Levitin, Pandora’s Digital Box: The Promise and Perils of Digital Wallets, 166 U. Pa. L. Rev. 305, 336–42 (2018) (discussing the benefits and risks of mobile wallet platforms to consumers); Jonice Gray Tucker et. al., Square Peg Meets Round Hole: Regulatory Responses to Challenges Created by Innovation in Banking, 75 Bus. Law. 2491, 2492 (2020) (examining financial services regulation as banking continues to evolve); Fonte, supra note 102, at 591 (providing an overview of privacy regulations potentially affecting the mobile payment and wallet industry).
\item \textsuperscript{299} Rajbhandari, supra note 298, at 670.
\item \textsuperscript{300} Id. at 671; see also Fonte, supra note 102, at 565 (“Fraudsters can still ‘phish’ or otherwise steal and fake [identity protection measures implemented by apps].”).
\end{itemize}
$20,000, 1099-K reporting threshold could make it easier for gig workers and small business owners who use these apps for business transactions to either purposefully not pay their taxes or not realize they owe taxes on their income.\footnote{301} Conversations on Twitter and other online platforms regarding the new reporting requirement, although typically misinformed, have led small business owners who use payment apps to be aware they may owe taxes on their earnings.\footnote{302} But, mutual aid organizations that seek to provide a comprehensive safety net for their community as a gift, not income, and are not fraudulent or criminal in nature, need to have sanctuary and workarounds to continue this crucial work.

Simply making it easier for mutual aid organizations to use these apps is not the end goal. The short-term legislative and regulatory solutions proposed here may help in the short term.\footnote{303} Mutual aid is meant to exist outside the economic market; its goals cannot be fully achieved without widespread social change.\footnote{304} Ultimately, mutual aid is a stop-gap measure to soften the effects of racism, classism, and systemic income inequality until we reach a point where these things no longer exist.\footnote{305} The goals of mutual aid cannot be fully achieved without creating a sense of trust in the community. The community understands how to meet their needs best, the community can trust each other to fulfill their needs, and the community should be trusted to make their own financial decisions without threat of criminalization.
Appendix

Exhibit 1:

Donations needed for the Jail Support
Free Store

+ winter clothes!!!
+ general clothes (tees, underwear, socks, etc)
+ heavy blankets, sleeping bags, comforters
+ books, zines, art, art supplies
+ bags, luggage
+ outdoor cookware (grills, campfire stoves, charcoal, etc) and coolers
+ camping gear
+ bus passes
+ whatever else you can give

Donations can be dropped off day of (where you can browse), or porch pick-up arranged by ✉️

SAT. Nov 7th
4PM onwards

* The Occaneechi, Shakori, Eno, and Sissipahaw tribes stewarded the land we now call Orange County, North Carolina, which the University of North Carolina School of Law now occupies. The broader University seized and sold thousands of acres of Indigenous lands and enslaved Black people to build this campus. I acknowledge and honor the egregious and violent harm inflicted upon Black, Indigenous, people of color that has enabled me to learn on this campus and write this note. I am grateful for decades of organizers who have contributed to the development of mutual aid as a community praxis, specifically those at Barnett Community Fund and Queen City Revolution who have been crucial to my learning and advocacy. I am deeply grateful for my interviewees, JM, IP, ZN, and Maggie Scotece, without whom hundreds of people would be without rent, food, transportation, medical care, etc., or left incarcerated before trial. Thank you to my editors, Adam Gillette and Sarah Markov, and Professor Lisa Broome for their assistance in crafting this note. Thank you to UNC OutLaw for creating a community for queer folks in law school so we can thrive and write scholarship like this note. Finally, to my siblings, Abbey, Lilam, and Aiden, I love you.
Ex. 1: Graphic from Queen City Revolution asking for in kind donations to jail support. Jail support provides clothes, money, transportation, housing, etc. to people who are released from jail.

Exhibit 2:

Ex. 2: Instagram post from Queen City Revolution asking for donations to pay the bail of a Black mom in Charlotte, North Carolina.
Exhibit 3: Instagram post from Queen City Revolution asking for donation to help a Black mom and toddler find stable housing.