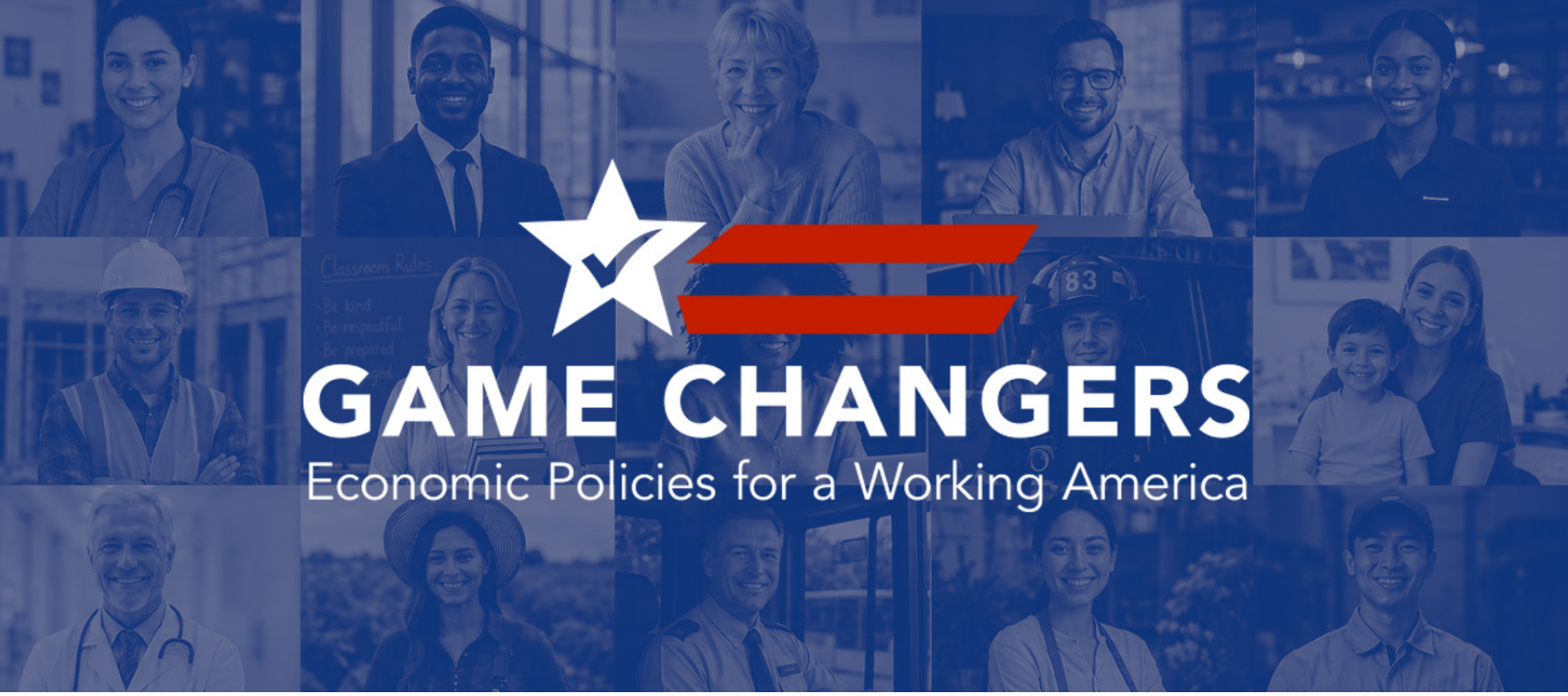

BACKGROUND PAPER / JULY 2026

Protecting Consumers and Our Financial System from Silicon Valley Fintechs

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1. Introduction

The banking system exists to help manage risks (particularly by holding customer deposits), intermediate capital (particularly through converting those deposits into loans), and provide the plumbing for payments and other financial transactions. When critics say that banking is broken, they may mean that banks are not performing these functions efficiently or cost-effectively for their customers, or that some consumers aren't being served by banks at all. Other critics raise concerns that banks are performing these functions in a way that threatens the stability of our financial system.

These are valid concerns. Existing banking regulation is available to address many of these consumer protection and financial stability problems, but such regulation is often underutilized for reasons driven by political economy.[1] Some banking critics, however, believe that the banking regulation is itself a problem, in the sense that it serves as a barrier to entry that impedes innovation and competition from non-banks.[2] Unfortunately, the deleterious effects of private power will only be felt more keenly in an environment where there are fewer legal protections for consumers and the stability of the financial system. If non-banks are allowed to accept deposit equivalents, they will be in a position to compete with regulated banks on a regulatory playing field that is tilted in favor of those non-banks – and banks themselves may cite non-bank competitors as a justification for loosening banking regulation, generating a regulatory race to the bottom.[3]

In addition, non-bank competitors are increasingly "fintechs" emerging from Silicon Valley – an environment characterized by billionaires, monopolies, and deregulatory pushes to a degree that is even more concerning than the traditional financial industry's political power. If left unconstrained, the likely result will be Silicon Valley's take on the "everything apps" that are already omnipresent in China (and all the competition, financial stability, and consumer protection concerns associated with them).[4] In short, trusting Silicon Valley to fix banking is a fool's errand. Instead, a return to regulated banking, with only chartered and insured banks being authorized to accept deposits, is the better path towards serving the public interest. And there are steps that can be taken to ensure that everyone has access to a regulated and insured bank account.

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[1] For a discussion of these political economy issues, *see* Gerald Epstein, BUSTING THE BANKERS' CLUB: FINANCE FOR THE REST OF US (2024).

[2] See, for example, Dan Awrey, *Unbundling Banking, Money, and Payments*, 110 GEO. L. J. 715 (2022); Rory Van Loo, *Making Innovation More Competitive: The Case of Fintech*, 65 UCLA L. REV. 232 (2018); Jason Mikula, *It's Time to Unbundle Banking*, OPEN BANKER (Mar. 04, 2024), https://openbanker.beehiiv.com/p/unbundlebanking.

[3] As economist Ken Rogoff recently noted, "advocates of lighter bank regulation point to the fierce competition implied by the deregulation of crypto, especially dollar-based stablecoins." Kenneth Rogoff, *Is Financial Deregulation Under Trump Going Too Far?*, PROJECT SYNDICATE (Apr. 3, 2026). For an overview of this phenomenon, *see* Helen A. Garten, *Regulatory Growing Pains: A Perspective on Bank Regulation in a Deregulatory Age*, 57 FORDHAM L. REV. 501 (1989).

[4] For a detailed discussion of the evolution of fintech in China, *see* Martin Chorzempa, THE CASHLESS REVOLUTION: CHINA'S REINVENTION OF MONEY AND THE END OF AMERICA'S DOMINATION OF FINANCE AND TECHNOLOGY (2022).

II. The Problem: Consumers are Increasingly Relying on Silicon Valley for Deposit-Like Services

Non-banks have been providing deposit equivalents to consumers since money market mutual funds emerged in the 1970s, but this trend has accelerated in the wake of the 2008 financial crisis with the advent of new Silicon Valley-style fintech firms. While fintech is often hyped as improving financial inclusion, many of the people using non-bank alternatives like PayPal or CashApp already have access to bank deposit accounts. Indeed, most of the fintech services available in the United States are impossible to access as a practical matter unless one already has a bank account.

An FDIC report published in 2024 found that 47.8% of "banked" households used nonbank payment apps, while only 18.2% of "unbanked" households used them (unbanked households made up 4.5% of the total population at the time of the survey).[5] In other words, these payment apps draw the bulk of their customers from the already banked, not from the unbanked (nearly 82% of unbanked households rely on cash or gift cards instead). There have been similar findings regarding crypto payments and financial inclusion: a Federal Reserve report from 2024 found a slightly higher use of cryptocurrency for payments in unbanked households (5% versus 2% in banked households), but noted that "use of cryptocurrency for financial transactions remained very low, even among groups who were more likely to use cryptocurrency in this way."[6]

Consumers who use non-bank payment services like PayPal and CashApp are not required to store funds in a digital wallet, but many of them do keep funds there. If consumers choose to hold stablecoins in a crypto wallet, then they are also storing their funds in a non-bank alternative. By switching to non-bank alternatives, consumers – often without realizing it – forfeit the consumer protections afforded by banking regulations. The most notable such protection is deposit insurance, which also plays an important role in protecting the stability of our financial system.

Deposit insurance was implemented in the 1930s following a series of devastating bank panics. This insurance gives depositors confidence that they will have continued access to their funds, and so discourages panicked withdrawals that could compromise the role that banks play in credit provision, payments processing, monetary policy, and national security. Banks can also receive loans from the Federal Reserve acting as a lender of last resort, and have access to specialist resolution mechanisms if they fail. These measures work together to improve the banking system's stability, although this public safety net does incentivize banks to make riskier investments and artificially lowers banks' cost of funding. Prudential banking regulation, which seeks to ensure that banks are operated in a safe and sound manner, has long been seen as a kind of *quid pro quo* that banks must submit to in exchange for such subsidy and as a mitigant for the attendant moral hazard.

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[5] Ryan Goodstein, *A CLOSER LOOK AT THE UNBANKED:Cash-Only Households Versus Those That Use Prepaid Cards or Nonbank Payment Apps* FDIC CONSUMER RESEARCH PERSPECTIVES (Jul. 2024), https://www.fdic.gov/system/files/2024-08/cash-only.pdf

[6] Board of Governors of the Federal Reserve System, *Economic Well-Being of U.S. Households in 2024* (May 2025), https://www.federalreserve.gov/publications/files/2024-report-economic-well-being-us-households-202505.pdf

When the functional equivalents of deposits are provided beyond the reach of banking regulation, the providers of those services are able to avoid compliance costs, but consumers using those products do not benefit from deposit insurance (or other consumer protections afforded to bank customers). Furthermore, in the absence of access to a lender of last resort or a resolution mechanism tailored to runnable funds, there are no formal mechanisms in place to respond to runs at non-bank institutions. As a result, the failure of a non-bank provider will result either in customers losing out, or the public finding itself on the hook for the cost of a bailout.[7]

The risks faced by customers became painfully obvious when the fintech company Synapse filed for bankruptcy.[8] Synapse didn't offer deposit equivalents itself; instead, it served as a "banking as a service" middleman that intermediated between regulated banks (particularly Evolve Bank and Trust) and fintechs such as Yotta, Mercury and Juno, making it easier for fintech startups to get up and running. When Synapse filed for bankruptcy in 2024, it became clear that that there had been recordkeeping irregularities at Synapse that made it difficult to match the funds held at Evolve with the funds owed to the fintechs' customers, so then the tool that Synapse had provided to Evolve to track customer funds was shut down. As a result, tens of thousands of fintech customers found themselves frozen out of accounts holding millions of dollars, some for weeks or months, even though many of the fintechs had assured their customers that their funds were protected by deposit insurance.[9] As much as $96 million was reported as missing, wiping out some people's life savings.[10] As one commentator put it, "most of the end users I've spoken to either believed these were banks…If they see 'FDIC-insured' they think they are safe. They don't know Yotta is a fintech that works with Synapse that works with Evolve."[11]

Non-bank fintechs often advertise themselves as offering "pass-through insurance," but this is no substitute for deposit insurance. Pass-through insurance would protect consumers if an equivalent of Evolve Bank were to fail, but not if an equivalent of Yotta were to fail. Customers of a Yotta equivalent would have to wait through protracted insolvency proceedings to see how much of their money they could get back. Publicity around the failure of a fintech firm (and perhaps associated lawsuits) could also damage confidence in a partnered bank like Evolve, perhaps precipitating a run on it. Or a floundering fintech firm might withdraw all their customers' funds from their partner bank, which might jeopardize the stability of that bank by compromising its deposit base. If the non-bank grows large enough, the desire to avoid these kinds of eventualities could encourage policymakers to bail out the non-bank.

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[7] There are also many non-consumer focused banking substitutes that are often referred to as "shadow banking" and have required bailouts at times. This Background Paper and its associated Policy Brief do not consider "shadow banking" used by institutional players – the focus here is on banking substitutes used by consumers. For a discussion of how to address institutional shadow banking and bailouts, *see* Marc Jarsulic, *End Financial Instability to Protect Household Income and Wealth*; Marc Jarsulic & Gerald Epstein, *No More Bailouts*.

[8] PYMNTS, *Synapse's Downfall Provides Hard Lessons for its B2B Partners* (May 30, 2024), https://www.pymnts.com/business/2024/synapses-downfall-provides-case-study-in-b2b-partner-management/.

[9] David Dayen, *Fintech Fight Leads to Hundreds of Thousands of Frozen Accounts*, THE AMERICAN PROSPECT (May 23, 2024), https://prospect.org/2024/05/23/2024-05-23-fintech-fight-frozen-bank-accounts-synapse/.

[10] Alexander Saeedy, *Synapse Executive Alerted Accountants Before $100 Million Missing Funds Scandal* WALL STREET JOURNAL (Feb. 20, 2025).

[11] Dayen, *supra* Note 9.

III. The Progression: Policymakers Have Accommodated and Encouraged Silicon Valley Fintechs in the Name of "Competition" and "Innovation"

A. Examples of Accommodation

We have already seen bailouts of non-bank deposit equivalents like money market mutual funds ("MMFs") and stablecoins (a type of crypto asset that was developed to help solve the price volatility that plagues most other crypto assets). While the investments made by MMFs and stablecoin issuers are typically more liquid than the usual portfolio of bank assets, those issuers may still need to sell their assets at a discount if they face an unusually high level of redemptions. MMFs experienced significant runs in 2008 that were only quelled by the implementation of ad hoc emergency government support programs, and there were runs on MMFs again in March 2020 as the financial markets were roiled by the Covid pandemic.[12] Once again, the panic was staunched by an emergency program announced by the Federal Reserve. We saw the beginnings of a run on the USDC stablecoin in March of 2023, when problems at Silicon Valley Bank (which held $3.3 billion of USDC's reserves on deposit) caused some holders to rush to redeem their stablecoins. USDC's value dropped below 90 cents, and it only returned to its peg once the government announced that uninsured depositors at Silicon Valley Bank would be made whole in an emergency intervention.[13]

MMFs and stablecoins – as well as some other fintech substitutes for deposits that we will examine – owe their existence to policymakers acquiescing in their regulatory arbitrage. MMFs, for example, were developed in the 1970s to arbitrage banking Regulation Q, which at the time prohibited banks from paying interest on some categories of deposit accounts, and limited the amount of interest payable on others. Pursuant to Section 21 of the Glass-Steagall Act, securities firms are not permitted to accept deposits.[14] Therefore, if shares in MMFs were found to constitute deposits, they would be breaking the law, but if they were found not to be bank accounts, they could provide customers with more of a return at a time when government securities were yielding significant interest. As the MMF industry began to grow, the banking industry asserted that money market mutual funds were accepting deposits, but in 1979, "the Assistant Attorney General, Criminal Division, of the United States Department of Justice, wrote an advisory letter to the SEC stating that money market funds providing checking privileges were not in violation of the Glass-Steagall Act," and the Justice Department reaffirmed its position in 1981 in response to a challenge from the Independent Bankers Association.[15]

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[12] Gary Gorton and Andrew Metrick, *Regulating the Shadow Banking System,* BROOKINGS PAPERS ON ECONOMIC ACTIVITIES (2010); Egemen Eren, Andreas Schrimpf & Vladyslav Sushko, *US Dollar Funding Markets during the Covid-19 Crisis—The Money Market Fund Turmoil*, BIS BULLETIN 14 (May 12, 2020), https://www.bis.org/publ/bisbull14.pdf.

[13] Moody's Ratings, STABLECOINS HAVE BEEN UNSTABLE. WHY? (Oct 18, 2023), https://www.moodys.com/web/en/us/insights/data-stories/stablecoins-instability.html#:%7E:text=The%2520big%2520drop%2520in%2520market,it%2520a%2520safer%2520stablecoin%2520option.

[14] 12 U.S.C. § 378.

[15] John R. Evans, *Glass-Steagall in Transition*, Address at the Second Annual Southern Securities Institute (Feb. 5, 1982),

A precedent was thus set allowing non-banks to offer deposit equivalents to consumers – a precedent that other non-banks would later seek to emulate. While there were plenty of non-bank payments businesses (including Visa and MasterCard) in existence when PayPal was founded in 1998, those businesses didn't hold customer funds for more than a fleeting period and so did not emulate banks' deposit-taking functions. But PayPal provides users with a digital wallet they can use to make payments to other PayPal wallets; while users don't have to store funds in these wallets (wallets can be linked to a bank account or credit card and facilitate payments from there), many users do indeed store money in their PayPal wallets. PayPal never sought a banking license, although the states of New York, California, Idaho, and Louisiana all expressed initial concerns that PayPal was accepting unlicensed deposits.[16] As journalist Max Chafkin recounts in his book *The Contrarian*, in its early days "at least in the eyes of some employees, [PayPal] was blatantly flaunting the rules of the banking industry."[17] According to Chafkin, PayPal's gambit was to grow so fast that it would be hefty enough to repel government crackdowns if and when they came. PayPal's then-CEO Peter Thiel reportedly lobbied heavily in Washington to prevent federal banking regulators from ever classifying PayPal as an unregistered bank, and the FDIC ultimately agreed that the way PayPal held customer funds did not count as accepting deposits. This business model has since been emulated by many other so-called "fintech banks" or "neobanks."

Stablecoins have engaged in a similar regulatory arbitrage strategy. Stablecoins are backed by a reserve of assets that is intended to keep their price close to a peg of $1 per coin, and ownership is recorded on a particular kind of database known as a blockchain. As with MMFs and PayPal, it was open to the Department of Justice to ban stablecoins pursuant to the prohibition on non-banks accepting deposits – but the Department of Justice did not act. Instead, after record-breaking political spending by the crypto industry,[18] Congress passed the GENIUS Act in 2025, essentially blessing the stablecoin business model and providing a path for non-bank tech platforms to issue stablecoins.[19] This legislation has been criticized for failing to adequately address stablecoins' financial stability risks and terrorists' and criminals' use of stablecoins, and for failing to protect consumers from fraud[20] – including by New York's Attorney General Letitia James and Manhattan District Attorney Alvin Bragg.[21]

In short, PayPal and stablecoins owe their existence at least as much to regulatory arbitrage as to technological innovation. The encryption technology developed by PayPal co-founder Max Levchin, for example, struggled to find use cases and wasn't enough to distinguish PayPal from the plethora of other dotcom era payments startups.[22] And stablecoins' underlying blockchain infrastructure – which relies on complicated game-theory based mechanisms (rather than trusted intermediaries) to approve transactions – is limited it its ability to scale in volume and speed. Even when the underlying

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[16] Carl Kaminski, Online Peer-to-Peer Payments: PayPal Primes the Pump, Will Banks Follow, 7 N.C. BANKING INST. 375 (2003).
[17] Max Chafkin, THE CONTRARIAN: PETER THIEL AND THE RISE OF THE SILICON VALLEY OLIGARCHS (2021).
[18] Rick Claypool, Big Crypto, Big Spending, PUBLIC CITIZEN (Aug. 21, 2024), https://www.citizen.org/article/big-crypto-big-spending-2024/
[19] The full title of the legislation is the Guiding and Establishing National Innovation for U.S. Stablecoins Act (2025).
[20] See, for example, Arther E. Wilmarth, Jr., The Looming Threat of Uninsured Nonbank Stablecoins, 50 DEL. J. CORP. L. 3 (2025).
[21] Allison Morrow, Stablecoin law allows crypto firms to profit from fraud, prosecutors say, CNN (Feb. 2, 2026), https://www.cnn.com/2026/02/02/business/stablecoin-genius-act-crypto.
[22] Chafkin, *supra* Note 17.

technological innovation is lackluster, though, "blitzscaling" strategies involving subsidized consumer adoption, media blitzes to build hype, and lobbying for legal accommodations, can generate a burst of growth for non-banks providing the functional equivalent of deposits.

B. Policy Justifications for Accommodation

Policymakers have often given Silicon Valley an edge by accommodating its regulatory arbitrage, fearing that regulation will otherwise stymie technological innovation. Such accommodation has sometimes taken the form of inaction (a failure to enforce the laws on the books), or sometimes bespoke legal treatment like a specialized charter or a regulatory sandbox. Whatever form the accommodation takes, policymakers are retrenching laws that were put in place to protect the public from harm, often on the assumption that doing so will further the public interest. But there is no reason to assume that making it is easier for Silicon Valley to do business will result in Silicon Valley innovating things that trickle down benefits for everyone.

There are many examples of innovation that redound primarily to the benefit of the Silicon Valley innovators and their funders; most relevant to this background paper, there is a burgeoning scholarly literature that is skeptical of the benefits and critical of the harms of the fintech industry.[23] Frankly, it should not be surprising that innovation primarily benefits the innovators and their funders, not the public. Silicon Valley venture capitalists are very focused on "exiting" from their investments in under ten years, so the emphasis is on hyping exponential growth early on, not on building a product that will satisfy consumer needs in the long term.[24] Furthermore, although Silicon Valley is often described as a champion of idiosyncratic genius, it is in fact plagued by conformist herd mentality (which often creates bubbles). As a result, venture capitalists tend to fund the same businesses that their friends are funding and running – and their social circles are typically very disconnected from everyday people and their needs.[25] Much of the technological innovation emerging from Silicon Valley is created by software engineers who lack expertise in, and historical perspective on, the domains they purport to disrupt.[26] While regulation is typically viewed by Silicon Valley as a barrier to this innovation, technological tools won't alter private sector incentives and motivations, and Silicon Valley's disruptive solutions may very well cause the precise harms that regulation was intended to address.

Notwithstanding these realities, it is quite common to encounter expectations that innovation will result in win-win improvements. For example, fintech analyst Jason Mikula has argued that the provision of banking services by non-banks outside of the banking regulatory perimeter "has the potential to improve efficiency and with it access, inclusion and, yes, profitability."[27] There is a similarly pervasive expectation that competition will result in win-win improvements, but while

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[23] *See, for example*, Lindsay Sain Jones & Goldburn P. Maynard, Jr., *Unfulfilled Promises of the FinTech Revolution*, 111 CALIF. L. REV. 801 (2023); Hilary J. Allen, *Fintech and Techno-Solutionism*, 98 S. CAL. L. REV. 761 (2025); Christopher K. Odinet, *Predatory Fintech and the Politics of Banking*, 106 IOWA L. REV. 1739, 1746 (2021); Nakita Q. Cuttino, *The Rise of "FringeTech": Regulatory Risks in Earned-Wage Access*, 115 NW. U. L. REV. 1505 (2021); Tonantzin Carmona*, Debunking the Narratives About Crypto and Financial Inclusion,* BROOKINGS (Oct. 26, 2022); Terri L. Friedline, BANKING ON A REVOLUTION: WHY FINANCIAL TECHNOLOGY WON'T SAVE A BROKEN SYSTEM (2020).

[24] *See* Matthew T. Wansley & Samuel N. Weinstein, *Venture Predation*, 48 J. CORP. L. 813 (2023).

[25] *See* Peter Lee, *Enhancing the Innovative Capacity of Venture Capital*, 24 YALE J.L. & TECH. 611 (2022).

[26] See Meredith Broussard, ARTIFICIAL UNINTELLIGENCE: HOW COMPUTERS MISUNDERSTAND THE WORLD (2018).

[27] Mikula, *supra* Note 2.

competition is often a useful force, it will generate winners and losers and we shouldn't assume that its benefits will be distributed equitably. The policy goal of "competition" has always been inflected with political economy, and for decades, competition policy in the United States focused only on the prices consumer paid as private entities were permitted to accumulate versions of market power that sounded in things like political power and data consolidation. It is now becoming clear that these accumulations of power – which were for many decades not widely considered to be anti-competitive – can be highly detrimental to the public interest.[28]

Although banking regulation can – when enforced – serve as a barrier to non-bank firms competing to provide certain financial products and services, it does not necessarily follow that such barriers to entry are bad policy.[29] For example, bank regulatory requirements can be viewed as a force that prohibits some kinds of socially harmful innovation and channels other kinds of innovation in a way that accords with the public interest. Requiring banks and non-banks to play on the same legal playing field can also be viewed as promoting fair competition, while allowing non-banks to compete in a more lenient regulatory environment than their bank competitors can be seen as distorting competition (as well as allowing harms to the public). Furthermore, competitive pressures from activities performed beyond the banking regulatory perimeter will inevitability create momentum for banking regulation *within* the perimeter to be lessened or scrapped altogether. The equilibrium reached is likely to be a less regulated environment for everyone, leaving consumers more exposed and the financial system more vulnerable to panics.[30]

We can use stablecoins to illustrate these points. While some laud stablecoins for their technological innovation, using public permissionless blockchains to process transactions is significantly less efficient than more traditional forms of transaction processing:[31] the primary "efficiencies" achieved have been wrung from avoiding regulatory compliance (particularly with respect to anti-money laundering rules and economic sanctions).[32] Stablecoins create financial stability vulnerabilities and are often used by criminal enterprises and to avoid sanctions.[33] They do not meaningfully address financial inclusion (as the World Economic Forum concluded in 2021, "stablecoins as currently deployed would not provide compelling new benefits for financial inclusion beyond those offered by pre-existing options").[34] Indeed, as discussed above, crypto assets (including stablecoins) are rarely used for real-world payments at all, but members of the Silicon Valley elite have successfully pushed overhyped narratives about stablecoin payments capabilities, and procured through political spending the passage of the GENIUS Act – a law which "establishes a regulatory framework for *payment* stablecoins" (emphasis added).

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[28] *See,* for example, Lina M. Khan, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710 (2017); Ramsay Eyre & Ganesh Sitaraman, *New Ideas in Competition Policy,* VANDERBILT POLICY ACCELERATOR (May 10, 2024), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2024/05/10172859/Paper-New-Ideas-in-Competition-Policy-VPA.pdf.

[29] Saule T. Omarova & Graham S. Steele, *Banking and Antitrust*, 133 YALE L.J. 1162 (2024).

[30] Garten, *supra* Note 3.

[31] Edmund Schuster, *Cloud Crypto Land*, 84 MOD. L. REV. 974, 991-2 (2021).

[32] Crypto's "purported lack of individual- or entity-based control is a design choice, aimed at evading government regulation." Graham S. Steele, *Financial Statecraft*, forthcoming 31 STAN. J. L., ECON. & BUS.

[33] Wilmarth, *supra* Note 20.

[34] World Economic Forum, *What is the Value Proposition of Stablecoins for Financial Inclusion*, DIGITAL CURRENCY GOVERNANCE CONSORTIUM WHITE PAPER SERIES, 8 (Nov. 2021) (available at https://www3.weforum.org/docs/WEF_Value_Proposition_of_Stablecoins_for_Financial_Inclusion_2021.pdf).

There are real concerns that, now that Congress has blessed stablecoins' arbitrage of the prohibition on non-banks accepting deposits, stablecoins will cannibalize the business of banks. While analysts have offered very different takes on the extent of likely substitution,[35] the Independent Community Bankers Association estimates that "continuing to allow crypto intermediaries to pay interest or yield on payment stablecoin holdings would reduce community bank lending by $850 billion due to a $1.3 trillion reduction in the industry's deposits."[36] Because banks are the transmission belt for monetary policy, such substitution could circumscribe the ability of the Federal Reserve to carry out monetary policy, and it could also impede the ability of banks to lend to businesses and individuals. If credit becomes constrained as a result, we could quite plausibly see political pressure exerted on legislators and regulators to allow stablecoins to extend credit to a wide range of borrowers – coming even closer to supplanting the role of regulated banks.

C. Everything Apps: The Logical Endpoint of Accommodation

As such, there is little reason to hope that society will benefit if stablecoins outcompete bank deposits. The GENIUS Act also creates a path for non-financial businesses – particularly tech platforms – to issue stablecoins as a kind of deposit equivalent. Silicon Valley platforms are more vertically integrated and prone to monopoly or duopoly markets than we typically see in the financial industry.[37] These platforms benefit from network effects, in the sense that their services become more valuable as other users join, and once sufficient users have joined, users are loath to forfeit access to the network. Given that large tech platforms already have huge numbers of users and lots of data about them, if those platforms are permitted to provide financial services (which also benefit from network effects), they will be in a position to grow and profit from economies of scope and scale beyond the reach of banking regulation. In 2019, when Facebook proposed to launch its Libra coin, policymakers around the world recognized these concerns about the bundling of financial services with tech platforms (and their associated data) and pushed back.[38] But by 2025, U.S. lawmakers were willing to facilitate the fusion of finance and tech platforms through the GENIUS Act.

The logical endpoint of this fusion is the "everything app" model popular in China where only one password and log-in is required to access a plethora of services provided by a tech platform (ranging from payments to social media to dating to medical appointment scheduling to e-commerce). But as Martin Chorzempa (an expert observer of Chinese fintech) explains "[e]ven fintech's most consistent advocates…concluded that inviting big tech into finance had not turned out as they hoped. Worries arose that the government's attempts to break the monopoly of the banks had created an even more dangerous one in the super-apps [Alipay and WeChat]."[39]

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[35] "The scale of potential outflows from the banking system is up for debate." Nikou Asgari, *The stablecoin war: Wall Street vs crypto over the future of money*, FINANCIAL TIMES (Feb. 2, 2026).
[36] *ICBA Analysis: Permitting Interest on Payment Stablecoin Holdings Would Reduce Community Bank Lending by $850 Billion* (Dec. 15, 2025), https://www.icba.org/w/icba-analysis-permitting-interest-on-stablecoins.
[37] "Whereas even the biggest banks today have around 10 percent of the share of deposits, a single technology firm has captured 60 percent or more of the market in social networking (Facebook), searches (Google), and music downloads (Apple)." Van Loo, *supra* Note 2 at 235.
[38] Nick Statt, *Facebook is Shifting its Libra Cryptocurrency Plans After Intense Regulatory Pressure,* THE VERGE (Mar. 3, 2020).
[39] Chorzempa, *supra* Note 4 at 140-141.

In addition to impeding competition, the Chinese government has expressed concerns about the financial stability risks posed by these everything apps,[40] as well as their political clout.[41] U.S. policymakers should heed these concerns as many well-known Silicon Valley platform businesses – including Mark Zuckerberg's Meta, Elon Musk's X, and Brian Armstrong's Coinbase – express their desire to create everything apps.[42] Given the size of its existing user base, it is conceivable that a platform like Meta could become a "too big to fail" financial services provider – or perhaps even approach "too big to save" status (in the sense that the United States might struggle fiscally with bailing it out). There are also lower-profile businesses eyeing the everything app model, and even if they do not pose financial stability concerns, everything apps raise consumer protection issues that have not typically been at the forefront of financial regulatory conversations – including abusive use of data and the possibility of transaction censorship.[43] Regulators should be cautious about these as well: for example, in 2026, popular YouTuber Mr. Beast purchased the youth-focused fintech bank Step Mobile (which partners with Synapse's former partner bank Evolve Bank and Trust) through his media holding company Beast Industries, and plans to expand into crypto too.[44]

In the United States, there has traditionally been a separation between banking and commerce that would have prevented tech platforms from accepting deposit equivalents.[45] This separation was motivated by concerns that if a bank were exposed to non-financial business lines, problems in those other business lines could damage confidence in the bank and precipitate a run on deposits. The separation also reflected concerns that banks' subsidized funding sources might give them an advantage over commercial firms if they were to compete head-to-head in commercial business lines – and that a vertically integrated firm of this type might wield enormous political power. The legal separation between banking and commerce was effected through the Bank Holding Company Act, which prevents affiliates of deposit-taking banks from engaging in non-financial businesses. But affiliates of non-banks are not so constrained, so allowing non-banks to accept deposit equivalents will help break down the separation of banking and commerce and facilitate the growth of everything apps.

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[40] *Id.* at 11; 190.

[41] *Id.* at 160

[42] Anthony Cuthbertson, *Elon Musk is about to launch his 'everything app', report claims*, THE INDEPENDENT (Apr. 27, 2026); Leo Schwartz & Ben Weiss, *Exclusive: Meta in talks to deploy stablecoins three years after giving up on landmark crypto project*, FORTUNE (May 8, 2025); Boaz Zobrado, *The Race To Build Fintech's Everything App*, FORBES (Jan. 18, 2026).

[43] For a discussion of these kinds of issues, *see* Raul Carillo, Testimony before the U.S. House of Representatives Committee on Financial Services Task Force on Fintech regarding *"What's in Your Wallet? A Review of Recent Trends in Mobile Banking and Payments"* (Apr. 28, 2022).

[44] Melinda Huspen, *Youtuber MrBeast Buys Youth-Focused Fintech App*, AMERICAN BANKER (Feb. 10, 2026)

[45] For a discussion of the historical separation of banking and commerce, *see* Arthur E. Wilmarth Jr., *Wal-Mart and the Separation of Banking and Commerce*, 39 CONN. L. REV. 1539 (2007).

IV. The Game Changer: Only Regulated Banks Should be Permitted to Accept Deposits or Their Equivalents

To ensure that all Americans have access to low-cost, regulated and insured bank accounts and are therefore not excluded from participating in the economy, Congress should either enact a public banking option[46] or require banks to provide accounts for low-income customers (as has already been done in Canada, the UK, and the EU).[47] If banks are the only private firms that can provide deposit accounts (or their functional equivalents), then all consumers will benefit from deposit insurance, and government authorities will face less pressure to bail out non-banks.

Legislators and regulators do not have to accommodate non-banks who wish to accept deposit equivalents. With MMFs, PayPal and its fintech progeny, and stablecoins, there were points at which authorities could have clamped down on the regulatory arbitrage being performed by "innovators," but they did not do so – perhaps, in some instances, for fear of being perceived as Luddites standing in the way of technological innovation. This accommodation was not just a sin of inaction, however: in recent years, banking regulators have affirmatively encouraged and facilitated the performance of banking functions by non-banks. The Game Changer proposed here is to roll back these steps, and to instead enforce long-standing prohibitions on non-banks accepting deposits.

The most important precedent to undo is regulators allowing non-banks to accept the functional equivalent of deposits from the public. In that vein, Morgan Ricks and Lev Menand have a proposal that would reaffirm and strengthen the prohibition currently found in Section 21 of Glass-Steagall on non-banks accepting deposits. They propose to update the prohibition on non-banks accepting "deposits" to a more functional prohibition on non-banks issuing "money-claims."[48] Their concern is that the term "deposit" has proven too easy to arbitrage and so they want to replace it with a broader functional definition. Unfortunately, arbitrage opportunities cannot be entirely eliminated by a more expansive legislative definition: ultimately, this is a question of political will, and revoking permission for the MMF, stablecoin, and fintech banks to operate will take a lot of political will. Legislative change of the kind proposed by Ricks and Menand would be an unequivocal signal that Congress wishes to halt and reverse the devolution of deposit-taking to non-banks, but with sufficient political will, policymakers could crack down on most of these non-bank activities using the statutory language we already have in Section 21 of Glass-Steagall.[49]

Regulatory acquiescence in the arbitrage of the definition of "deposit" is not the only way the law has accommodated non-bank provision of functional deposit equivalents, though. Legislators and regulators have taken many other incremental steps towards such accommodation, and all of these should be rolled back. As a matter of priority, the GENIUS Act authorizing non-banks to issue stablecoins should be repealed. But there are also many other incremental accommodations that

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[46] For discussion of public options, *see* John Crawford, Lev Menand & Morgan Ricks, *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113 (2021); Saule T. Omarova, *The People's Ledger: How to Democratize Money and Finance the Economy*, 74 VAND. L. REV. 1231 (2021); Mehrsa Baradaran, *It's Time for Postal Banking*, 127 HARV. L. REV. F. 165 (2014).
[47] Adam J. Levitin, *The Financial Inclusion Trilemma*, 41 YALE J. ON REG. 109, 154 (2024).
[48] Lev Menand & Morgan Ricks, *Rebuilding Banking Law: Banks as Public Utilities*, 41 YALE J. REG. 591, 642 (2024).
[49] Codified at 12 U.S.C. § 378(a)(2). For a discussion of enforcing this provision against stablecoin issuers, *see* Wilmarth, *supra* Note 20 at 53-4.

need to be addressed, as they extend many of the privileges of banking to non-banks without the *quid pro quo* of banking regulation.

The industrial loan company ("ILC") charter has long been an anomaly in banking law. Because ILCs (which can accept deposits and obtain deposit insurance) are excluded from the definition of "bank" in the Bank Holding Company Act, ILCs can be owned and affiliated with firms performing all manner of commercial activities.[50] Over the years, several firms seeking to abrogate the separation of banking and commerce have sought to acquire or form Utah-based ILCs – perhaps most notably, Walmart sought to acquire an ILC in 2005.[51] The FDIC then placed a moratorium on ILC applications for deposit insurance and the number of ILC charters did not expand in the years between 2006-2013. Even after that moratorium expired, the FDIC did not approve a new ILC until 2020 – but the FDIC has approved several ILC charters for fintech firms since then. Legislation to "close the ILC loophole" was approved on a bipartisan basis by the House Financial Services Committee in 2022,[52] but it never became law. Some variant of that legislation should be enacted to close this loophole.

Another long-standing charter option that is increasingly being used by non-bank fintechs is the national trust bank charter. Entities holding these charters are subject to lighter regulation than banks operating under a full banking charter, and typically don't count as "banks" for the purposes of the Bank Holding Company Act. Notwithstanding that statutory authorities limit trust charter holders to engaging in fiduciary activities,[53] the OCC has recently taken the view that national trust banks can also engage in non-fiduciary activities, including issuing stablecoins. In February 2026, the OCC issued a rule designed to conform its chartering regulations to this interpretation[54] (in December 2025, the OCC announced that it had approved five national trust charter applications for crypto firms).[55] This rule should be repealed, and these approvals rescinded. Holders of national trust bank charters should instead be restricted to engaging in fiduciary activities.

Until very recently, only insured depository institutions could open a master account with a Federal Reserve bank – these accounts are needed to utilize Federal Reserve transaction processing services, and all payments in the United States are ultimately settled using these Federal Reserve master accounts. This meant that a non-bank payments provider had to maintain a relationship with a depository institution that *did* have such an account.[56] However, the Federal Reserve recently proposed a special purpose account type (known as a "skinny charter") for fintech payments providers,

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[50] 12 U.S.C. § 1841(c)(2)(H).
[51] For a discussion of this episode, *see* Wilmarth, *supra* Note 45.
[52] *Rep. García's Bipartisan Legislation to Prevent Tech Companies and other Retailers to Act Like Unregulated Banks Passes in Committee* (Jun. 23, 2022), available at https://chuygarcia.house.gov/media/press-releases/rep-garcia-s-bipartisan-legislation-to-prevent-tech-companies-and-other-retailers-to-act-like-unregulated-banks-passes-in-committee
[53] Pursuant to 12 U.S.C. § 92a, holders of this charter are authorized only to engage in fiduciary activities. *See* Arthur E. Wilmarth, Jr., *Policy Brief: The OCC Has Violated Four Federal Statutes by Allowing National Trust Banks to Engage in Crypto-Related Nonfiduciary Activities, including the Issuance of Stablecoins*, (May 19, 2026), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6789822.
[54] 91 Fed. Reg. 9,977 (Mar. 2, 2026).
[55] Office of the Comptroller of the Currency, *OCC Announces Conditional Approvals for Five National Trust Bank Charter Applications* (Dec. 12, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-125.html
[56] For a discussion of Federal Reserve accounts, *see* Julie Andersen Hill, *Opening a Federal Reserve Account*, 40 YALE. J. REG. 453 (2023).

designed to make it easier for non-bank recipients of national trust bank charters to process payments.[57] It bears emphasizing that the expansion of trust charters and skinny accounts have been primarily geared towards facilitating the integration of crypto into the traditional financial system. The Federal Reserve should instead abandon its plans to make "skinny accounts" available to crypto firms and other non-banks, and full-fledged Federal Reserve master accounts should only be available to regulated banks.

The availability of pass-through insurance to non-banks also needs to be rethought. Pass-through insurance can be a confusing concept for consumers, who may assume that pass-through deposit insurance affords them more protection than it actually does. If, as often seems to be the case, customers of fintech banks mistakenly believe that their funds are directly insured,[58] finding out that that is not the case could result in panicked withdrawals from the fintech bank, potentially causing financial stability problems as well as consumer harm. Pass-through deposit insurance should therefore be circumscribed to help address consumer confusion about whether or not their funds are insured. Changes to 12 CFR 330.7(a) should be effected so that pass-through insurance is not made available to non-bank financial institutions acting as customers' agents; regulators should also aggressively enforce existing laws that prohibit financial institutions from misleading customers about the nature of their funds' protections.[59]

Other steps can also be taken to reduce the risks posed by fintechs. Until the end of 2020, "brokered deposit" regulations helped discourage partnerships between banks and non-bank fintechs. "Brokered deposits" are deposits placed with banks through an intermediary rather than directly by a customer, and banks that rely too heavily on brokered deposits are penalized in many ways (including increased premia paid for deposit insurance, and lower supervisory ratings).[60] Banks that are not well capitalized also face restrictions on their ability to pay high interest rates on brokered deposits, and in some instances are prohibited from even accepting brokered deposits in the first place.[61] As a result, if deposits from a fintech partner were categorized as brokered deposits, that would discourage banks from entering into a relationship with a fintech partner.

Conversely, a rule that makes it easier to establish that a non-bank fintech partner does not constitute a "deposit broker," and that deposits received from that fintech partner therefore do not count as brokered deposits, would accommodate the proliferation of fintech partnerships. In 2020, the FDIC adopted rules to that effect, creating new carve-outs and exemptions that fintech partners could apply for to ensure that they were not considered deposit brokers.[62] In 2024, the FDIC proposed a rule that would reverse much of the 2020 rule, requiring the bank partners themselves to apply for exemptions which had been narrowed (and some exemptions would be eliminated entirely).[63] The 2024 proposal was not finalized, however, and so the 2020 rule remains in place, accommodating fintech

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[57] Request for Information and Comment on Reserve Bank Payment Account Prototype, 90 Fed. Reg. 60,096 (Dec. 23, 2025).
[58] Alex Johnson, The FDIC Still Has a Synapse-sized Problem, OPEN BANKER (Jun. 3, 2025), https://openbanker.beehiiv.com/p/synapseproblem.
[59] Section 18 of the Federal Deposit Insurance Act (codified at 12 U.S.C. § 1828).
[60] Carnell et al., THE LAW OF FINANCIAL INSTITUTIONS 7TH Ed., 202; 326 (2021).
[61] Section 29 of the Federal Deposit Insurance Act (codified at 12 U.S.C. § 1831f).
[62] FDIC, FDIC Board Approves Final Rule on Brokered Deposit and Interest Rate Restrictions (Dec. 15, 2020), available at https://www.fdic.gov/news/press-releases/2020/pr20136.html.
[63] Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions, 89 Fed. Reg. 68,244 (proposed Aug. 23, 2024).

partnerships. The FDIC should instead revert to its pre-2020 practice of characterizing most fintech partners of banks as "deposit brokers."

Another regulatory strategy for accommodating fintech's provision of banking services is the promotion of "open banking." Open banking has been described by the Bank for International Settlements as "the sharing and leveraging of customer-permissioned data by banks with third party developers and firms to build applications and services, such as those that provide real-time payments, greater financial transparency options for account holders, and marketing and cross-selling opportunities."[64] Application programming interfaces or "APIs" – a type of software that allows different technology systems to communicate with one another, essentially making them interoperable – form the technological backbone of open banking efforts designed to make it easier for bank consumers to switch to non-bank alternatives.[65] As is often the case, though, developing the technology (in this case, APIs) is not the most challenging or important part of open banking. Because customer data is highly valuable to banks and they are unlikely to share it voluntarily, open banking typically requires a regulatory push: the APIs can only do their best work if banks are compelled through regulations to standardize customer data formats, as well as share that data. Section 1033 of Dodd-Frank requires the Consumer Financial Protection Bureau to adopt a rule regarding personal financial data rights, but there has been significant back and forth on how to implement that provision.[66] Implementation should focus on giving consumers access to their own financial data, rather than making it easier for banks to share customer data with non-bank fintechs.

The goal in all of this is to reassert the *quid pro quo* of the relationship between banking and government support. Mehrsa Baradaran frames this as a kind of social contract: "The public needs a safe and reliable banking system, without which the economy cannot reach optimal performance. Banks also need government support, without which their customers would lack sufficient trust to permit them to function properly."[67] Right now, implicit government support (and the moral hazard that comes with it) is flowing to non-banks that are not subjected to the same *quid pro quo* of regulatory compliance that banks are.[68] While certainly not perfect, the bank regulatory toolkit has been incrementally honed to reflect hard-earned experience with past scandals and crises. This increasing migration of core banking services beyond the reach of this regulatory toolkit is not sustainable: deposit-related services, with all their synergies and fragilities, should be performed by banks that are insured and regulated.

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[64] Basel Comm. on Banking Supervision, BANK FOR INT'L SETTLEMENTS, REPORT ON OPEN BANKING AND APPLICATION PROGRAMMING INTERFACES 19 (2019), https://www.bis.org/bcbs/publ/d486.pdf

[65] For a discussion of the role of APIs in open banking, *see* Dan Awrey & Joshua Macey, *The Promise & Perils of Open Finance*, 40 YALE J. REG. 1 (2023).

[66] Ronald K. Vaske & Ballard CFS Group, *Reversing course, CFPB says it will issue revised open banking rule*, BALLARD SPAHR LLP CONSUMER FINANCE MONITOR (Aug. 4, 2025), https://www.consumerfinancemonitor.com/2025/08/04/reversing-course-cfpb-says-it-will-issue-revised-open-banking-rule/

[67] Mehrsa Baradaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283, 1284 (2014).

[68] Robert C. Hockett & Saule T. Omarova, *The Finance Franchise*, 102 CORNELL L. REV. 1143, 1164 (2017).

V. The Post-Script: Making a Return to Regulated Banking Work for America

There is certainly room for improvement when it comes to banking, and there are many tools in the existing banking regulatory toolkit that are available to help address these concerns – competition and innovation from non-bank alternatives are not needed to drive improvement. It is important, though, to be realistic about what improved banking services can achieve. Some people expect the banking industry to solve problems that it cannot solve. When individuals cannot obtain banking accounts, then that is indeed a banking problem, and one that this Game Changer proposes can be relatively easily rectified through banking reform. Similarly, when banks are not providing deposit or payment service in ways that align with public priorities, then that is also a banking problem that banking reform can address. For example, Aaron Klein has proposed that Congress amend "the Expedited Funds Availability Act to require immediate access for the first several thousand dollars of a deposit, instead of permitting the lengthy, costly delays that harm people living paycheck to paycheck," and a bill has been introduced to that end.[69] However, if a problem was never a financial services problem to begin with, then it is unreasonable to expect banks (or non-bank fintechs, for that matter) to solve it.

Banks are sometimes critiqued for failing to adequately cater to the "underbanked" – those who have access to a bank account, but often rely on expensive fringe financial services because banks cannot help them address their economic emergencies. But as Adam Levitin has observed, "[t]he unbanked and underbanked are fundamentally different populations…the primary characteristic of the underbanked is that they have poor credit."[70] Put slightly differently, the problem here is not lack of access to financial services, but people's underlying economic precarity. True solutions to economic precarity lie in increasing the minimum wage, making healthcare more affordable, and otherwise creating a social safety net – and for those who say that such policies are unaffordable, many would pay for themselves.[71] It has been demonstrated, for example, that if the State of New York were to adopt a "Medicare for All" policy, it would significantly reduce the State's current expenditures on healthcare.[72] In other instances, worthwhile policies – such as universal childcare[73] – would require additional expenditures, but the United States suffers more than any country from corporate profits tax evasion (the U.S. lost on average about $100 billion per year from 2016-21).[74] Efforts to make the tax system fairer can help fund efforts to reduce economic precarity for the American people.

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[69] Aaron Klein, Opening Statement of Aaron Klein at Roundtable on America's Unbanked and Underbanked, BROOKINGS (Dec. 15, 2021), https://www.brookings.edu/articles/opening-statement-of-aaron-klein-at-roundtable-on-americas-unbanked-and-underbanked. In 2022, Senators Van Hollen and Warren together with Members of Congress Pressley and Garcia introduced a Payments Modernization Act to that effect.

[70] Levitin, *supra* Note 47 at 116.

[71] Patricia A. McCoy, SHARING RISK: THE PATH TO ECONOMIC WELL-BEING FOR ALL (2025).

[72] Robert Pollin, Jeannette Wicks-Lim and Peter Arno, *Medicare for All*.

[73] Nancy Folbre and the Care Economy Team, *Fully-Universal Federally-Funded Child Care*

[74] Lauren Johnston and Thomas Liess, *International Tax Justice for a Democratic Economy*

Other efforts can bolster wages for workers and provide them with greater job security.[75] In the absence of such reforms, financial services providers – particularly underregulated financial services providers – are more like to exploit than ameliorate economic precarity with their products. Simply making credit more readily available to American workers can leave them mired in unsustainable debt, for example.[76] And providing speculative investment opportunities to those with little ability to absorb losses also leaves American workers worse off. In addition to suffering directly from the proliferation of less-regulated banking alternatives, working Americans may also suffer indirectly from financial crises generated by less regulated banking alternatives (and by the banks themselves, if those banks continue to cite non-bank competitors as a justification for loosening financial stability regulation).

*For more information on this topic, including the **Policy Brief***, please visit our policy page.

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[75] See, for example, Arin Dube and Suresh Naidu, *Raising Middle-Class Pay and Working Conditions through Sectoral Standards*; Alexander Hertel-Fernandez, *Solidarity Insurance: Reimagining Unemployment Insurance as a Platform for Worker Power*; Paul Sonn and Irene Tung, *'Just Cause' Job Protections*.
[76] Abbye Atkinson, Borrowing Equality, 120 COLUM. L. REV. 1403 (2020).