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How Principles of Sharia Law Could Encourage Savings by America's Poor

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**HOW PRINCIPLES OF SHARIA LAW
COULD ENCOURAGE SAVINGS BY
AMERICA’S POOR**

*Joseph M. Ruth**

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I. INTRODUCTION

Millions of Americans have little to no money saved.¹ According to a Congressional study, the annual savings rate in the United States is around 4%, and more than 40% of American households do not even have enough money saved to cover basic expenses for three months.² Saving money is especially difficult for those who have little income to begin with.

After recent worldwide financial crises, it is evident that encouraging saving, at least to some extent, should be a top priority.³ However, saving money has little appeal in the short term, making this goal difficult to achieve.⁴ It is further difficult for many to rationalize saving money for later when the benefits are far off and interest rates are seemingly nominal.⁵ To encourage saving, legislators might want to look to an unlikely source: Sharia law.

Sharia comes from “an Arabic word that means a path to be followed, commonly a path that leads to water.”⁶ One Islamic scholar explained: “The linguistic meaning of Sharia reverberates in its technical usage: just as water is vital to human life, so the clarity and uprightness of Sharia is the means of life for souls and minds.”⁷ Sharia law is a moral and ethical guideline for Muslims, derived from

¹ U.S. Gen. Accounting Office, GAO-15-563, *SSA: Future of Offering Paper Savings Bonds at Tax Time Is Uncertain, and Lower-Income Households Continue to Face Savings Challenges* (2015).

² American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

³ *Id.*

⁴ Daniel Indiviglio, *5 Problems With Ultra-Low Interest Rates*, THE ATLANTIC (Apr. 9, 2011), <http://www.theatlantic.com/business/archive/2011/04/5-problems-with-ultra-low-interest-rates/237038/>.

⁵ *Id.* (describing the ultra-low interest rates and explaining how such rates make savings practices unattractive and illogical).

⁶ Carol Kuruvilla, *5 Things You Need to Know About Sharia Law*, HUFFINGTON POST (July 15, 2016, 6:44 PM), http://www.huffingtonpost.com/entry/5-facts-you-need-to-know-about-sharia-law_us_5788f567e4b03fc3ee507c01.

⁷ *Id.* (quoting Faraz Rabbani during a conversation on the BBC).

the Quran and the teachings of Muhammad.⁸ It is different than some religious teachings and rules however, because Sharia law is jurist-made law in which divine will is continually being interpreted by a community of jurists within the Muslim world.⁹

Sharia law touches all aspects of Islamic life, including finance and banking.¹⁰ As with any religion, Muslims vary in strictness of practice throughout everyday life, and “[m]ost of the world’s Muslims are not so devout that they completely abjure conventional finance.”¹¹ However, Islamic finance has become sophisticated enough in recent time as to give more Islamic customers the opportunity to bank with Sharia-compliant financial products.¹²

This comment will examine how Sharia compliant banking, with a focus on prize-linked savings accounts, can encourage new savings among groups with historically low savings rates. Part II looks at the general structure of prize-linked savings products in the United States and abroad. Part II further provides a history of prize-linked savings products through an international lens, discusses the foundations of Sharia law, and describes basic Sharia compliant banking. Part III analyzes the current state of prize-linked savings within the United States and evaluates the benefits of prize-linked savings implementation. Part III further discusses what institutional backlash is likely to occur in opposition to U.S. implementation of prize-linked products and analyzes potential vulnerability to prize-linked savings rational. Finally, Part III forecasts the likelihood of broad United States adoption of prize-linked savings products.

⁸ *Id.*

⁹ Justin Elliott, *What sharia law actually means*, SALON (Feb. 26, 2011, 10:01 AM), http://www.salon.com/2011/02/26/sharia_the_real_story/.

¹⁰ Aamer Madhani, *Shariah financing growing popular in the West*, USA TODAY (Oct. 11, 2014, 7:30 AM), <http://www.usatoday.com/story/money/business/2014/10/11/shariah-compliant-islamic-financing-usa-europe/16828599/>; *see also* Hilary Osborne, *Islamic Finance—the lowdown on sharia-compliant money*, THE GUARDIAN (Oct. 29, 2013, 9:08 AM), <https://www.theguardian.com/money/2013/oct/29/islamic-finance-sharia-compliant-money-interest>.

¹¹ Kuala Lumpur, *Big interest, no interest*, THE ECONOMIST (Sep. 13, 2014), <http://www.economist.com/news/finance-and-economics/21617014-market-islamic-financial-products-growing-fast-big-interest-no-interest>.

¹² *Id.*

II. BACKGROUND

A. Common Structures of Prize-Linked Savings Products

A prize-linked savings product is an account or security in which the holder is eligible to receive a prize if selected at random from the whole group of account holders.¹³ These accounts are legislatively referred to in the United States as “prize-linked savings” (PLS) or “savings promotion raffles.”¹⁴ These accounts are often structured to give no interest at all (or less than normal rates) but contribute what would have been the account holders’ interest payments to prize payments.¹⁵ The theory behind PLS accounts is that random payments or prizes create an excitement which normal saving lacks—encouraging new saving by many who otherwise would not open a regular saving account.¹⁶

B. International History of Prize-Linked Savings Products

Prize-linked savings products are not recent financial developments. Prize-linked products have been around in one form or another for centuries, with some of the oldest products dating back to 17th century England and France.¹⁷ These governments issued securities with randomized returns in the form of premiums, paid to a subset of securities holders,¹⁸ taking the place of common interest payments.¹⁹ The United Kingdom still offers Premium Saving Bonds which pays out a combination of interest payments and prizes.²⁰

¹³ American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

¹⁴ *Id.* §§ 2-3.

¹⁵ *Id.*

¹⁶ 160 CONG. REC. H7505 (daily ed. Sept. 15, 2014) (statement of Rep. Fitzpatrick).

¹⁷ Mauro F. Guillen & Adrian E. Tschoegl, *Banking on Gambling: Banks and Lottery-Linked Deposit Accounts*, 21 J. FIN. SERVICES RES. 219, 225 (2002).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 225-26.

These premium bonds automatically enroll holders in monthly drawings for up to £1,000,000-tax free.²¹

While the United States has never operated prize-linked products (at the federal level) like the United Kingdom, there is a history of prize-linked securities discussion in the United States. According to some sources, Alexander Hamilton proposed that the United States government issue prize-linked bonds as a way to fund the national debt.²²

Another notable use of prize-linked savings products was by Japan after World War II.²³ At the time, these accounts represented around 80% of all Japanese savings accounts.²⁴ Japan's prize-linked savings accounts differed slightly from the basic structure elsewhere in the world, as Japan's Ministry of Finance received pushback from conservative opposition who argued that these accounts would stimulate "the gambling spirit of the people" and "have a poor educational effect".²⁵ Japan's Ministry of Finance restructured the prize-linked accounts to ensure that the expected value of prizes was equal to the statutory maximum interest rate on deposits.²⁶ By ensuring that prizes had a high expected value (relative to standard interest payments) the Ministry of Finance convinced its opposition of the value behind prize-linked accounts.²⁷

South Africa's Million a Month Account (MaMA) was an example of a wildly successful account offered by a private bank rather than a government entity.²⁸ The MaMA started in 2005 and offered a chance to win up to one million South African rand each

²¹ *Id.* at 226 (discussing prize-linked savings programs from around the world).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Guillen & Tschogl, *supra* note 17, at 226.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Julia Kowalski, *Prize-linked savings products: An innovative tool for increasing savings among low-income households?*, THE PUBLIC SPHERE 131, --?? (2015), <http://publicspherejournal.com/wp-content/uploads/2017/06/8-Prize-linked-Savings.pdf>.

month.²⁹ When these accounts first opened, around 75%³⁰ of South Africans had no bank account of any kind. After just 3 years, over 1,000,000 MaMAs had been opened, and accounted for seven percent of all South African bank accounts.³¹ These accounts demonstrated a clear success at encouraging saving among unbanked South Africans. However, in 2008 the South African Lottery board sued the First National Bank of South Africa and shut down the MaMA program as an illegal lottery.³²

Originally, the MaMAs were created in consultation with South Africa's National Lottery Board, classifying the accounts as "promotional competition," exempt from the National Lotteries Act's ban on private gambling and games of chance.³³ Eventually, the program grew quite large, attracting around 900,000 customers with an estimated 1.4 billion rand in their accounts.³⁴ The National Lottery Board felt that this infringed on their monopoly over games of chance, and sued the bank offering the MaMAs.³⁵ The Board argued that depositors relinquishing control of their money, even temporarily, constituted consideration for a lottery.³⁶ The bank refuted this argument, noting that depositors got the entire balance of their account back once the account matured.³⁷ The South African Supreme Court held that deposits made to MaMAs constituted a "payment of money"³⁸ under the language of the Lotteries Act

²⁹ *Id.*, see also Matthew Prescott Oxman, *The savings jackpot*, CORPORATE KNIGHTS (Oct. 22, 2013), <http://www.corporateknights.com/channels/responsible-investing/the-savings-jackpot-13824399/>.

³⁰ Matthew Prescott Oxman, *The savings jackpot*, CORPORATE KNIGHTS (Oct. 22, 2013), <http://www.corporateknights.com/channels/responsible-investing/the-savings-jackpot-13824399/>.

³¹ *Id.*

³² Kowalski, *supra* note 28, at 146.

³³ *Id.* at 145.

³⁴ *Id.*

³⁵ *Id.* at 146.

³⁶ *Id.* at 145.

³⁷ *Id.*

³⁸ Lotteries Act of 1997, South Africa, 57 of 1997, Nov. 14, 1997.

because the bank acquired temporary, yet complete possession of the funds in return for being considered for a prize.³⁹

United States banking regulation changes—which have laid the ground work to allow similar accounts—seem to have considered the South African case in their logic.⁴⁰ Notably, U.S. states which have allowed prize-linked accounts have explicitly provided that account holders are able to withdraw funds from their prize-linked accounts at any point in time.⁴¹ This modification from the South African bank’s MaMAs (which functioned with a set maturity date, at which point the funds could be withdrawn)⁴² ensures that deposits are not consideration for a lottery—they are mere deposits.

C. Sharia Law and Sharia-Compliant Banking

Sharia law, derived from the Quran,⁴³ “requires compliance beyond following rules imposed by conventional sources of law,” especially in the world of finance.⁴⁴ “Sharia” has further been defined by one authority as:

³⁹ Kowalski, *supra* note 28, at 145.

⁴⁰ See MICH. COMP. LAWS SERV. § 490.411 (2016); see also ME. REV. STAT. TIT. 17, § 1831(2016); 19 R.I. GEN. LAWS § 5-29 (2016); NEB. REV. STAT. ANN. § 9-701 (2016); N.C. GEN. STAT. § 54-109.64 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016); MD. CODE ANN. FIN. INST. § 1-211 (2016); 2015 ILL. ALS 149 (2015); see also 2015 Ore. ALS 137 (2015); CONN. GEN. STAT. § 36a-308 (2016); MINN. STAT. ANN. § 609.761 (2016); 2016 La. ALS 257 (2016).

⁴¹ See MICH. COMP. LAWS SERV. § 490.411 (2016); see also ME. REV. STAT. TIT. 17, § 1831(2016); 19 R.I. GEN. LAWS § 5-29 (2016); NEB. REV. STAT. ANN. § 9-701 (2016); N.C. GEN. STAT. § 54-109.64 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016); MD. CODE ANN. FIN. INST. § 1-211 (2016); 2015 ILL. ALS 149 (2015); see also 2015 Ore. ALS 137 (2015); CONN. GEN. STAT. § 36a-308 (2016); MINN. STAT. ANN. § 609.761 (2016); 2016 La. ALS 257 (2016).

⁴² See Kowalski, *supra* note 28, at 145 (describing South Africa’s MaMAs).

⁴³ *Sharia*, MERIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/sharia> (last visited Nov. 2, 2016) (defining “Sharia” as Islamic law based on the Koran).

⁴⁴ Michael Zhou, *CURRENT DEVELOPMENTS 2013-2014: Giving Moral Advice in Sharia-Compliant Finance*, 27 GEO. J. LEGAL ETHICS 1021, 1021 (2014) (comparing Sharia compliant finance to secular finance).

Islamic canonical law based on the teachings of the Koran and the traditions of the Prophet (Hadith and Sunna), prescribing both religious and secular duties and sometimes retributive penalties for lawbreaking. It has generally been supplemented by legislation adapted to the conditions of the day, though the manner in which it should be applied in modern states is a subject of dispute between Muslim traditionalists and reformists.⁴⁵

Applied to banking, Sharia law prohibits excessive risk and uncertainty as well as any payments of interest.⁴⁶ These basic principles allow for profits, but focus on shared profits as well as shared risk.⁴⁷

Sharia law's ethical restrictions make modern commercial banking more complex and leaves Sharia finance a niche section of banking.⁴⁸ However, many Muslim countries create Sharia compliant institutions to allow strict followers of to get involved in modern finance and banking.⁴⁹ In fact, the majority of savings accounts in Iran are Sharia compliant,⁵⁰ offering prizes (often cash) in place of interest payments. For followers of Sharia law, these prizes serve a much greater purpose than simple excitement. By allocating payments as a random prize to only a few account holders, Islamic institutions can encourage saving by those who want to remain Sharia compliant. After all, these prizes replace set interest payments which are forbidden under Sharia law.

⁴⁵ *Sharia*, OXFORD ENGLISH DICTIONARIES, <https://en.oxforddictionaries.com/definition/sharia> (last visited Nov. 20, 2016) (defining "Sharia").

⁴⁶ Zhou, *supra* note 44, at 1025 (explains Sharia compliant finance with respect to interest payments); *see also* Madhani, *supra* note 10.

⁴⁷ Zhou, *supra* note 44, at 1025.

⁴⁸ Felicity Hannah, *Sharia-compliant savings and bank accounts rocket in popularity across Britain*, THE INDEPENDENT (May 2, 2015), <http://www.independent.co.uk/news/business/sharia-compliant-savings-and-bank-accounts-rocket-in-popularity-across-britain-10220992.html>.

⁴⁹ Thomas Hirst, *These are the top 9 countries for Islamic finance*, WORLD ECONOMIC FORUM (July 20, 2015), <https://www.weforum.org/agenda/2015/07/top-9-countries-islamic-finance/> (looking broadly at top countries for Sharia finance).

⁵⁰ *Id.*

Further, Sharia compliant banks are not allowed to charge arbitrary or excessive fees to their customers.⁵¹ Only charging fees associated with actual work done on the account creates more trust through transparency, and lowers the overall cost of saving.⁵² Al Rayan Bank in the United Kingdom (formerly known as the Islamic Bank of Britain) believes that the lower fees associated with its Sharia compliant accounts help attract Muslim and non-Muslim customers alike.⁵³ Sharia compliant banking allow Muslims to conform to the ethics of Islamic teaching and provides straightforward mechanisms for saving at relatively low cost.⁵⁴

III. ANALYSIS

A. Current PLS Products Available Within the United States

PLS products are not limited to Islamic cultures, and are currently in use in many countries, including the United States.⁵⁵ However, most U.S. states have strict gambling regulations which only allow for state run lotteries. Many of these states classify prize-linked accounts as “lotteries,” disallowing them entirely.⁵⁶ In recent years however, a few states have modified their laws to permit PLS products with varying restrictions.⁵⁷

The first U.S. State to statutorily authorize the use of prize-linked savings accounts was Michigan, with such accounts becoming

⁵¹ Hannah, *supra* note 48.

⁵² *Id.*

⁵³ *Id.* (estimating that 83 per cent of fixed-term deposit savings customers and 47 per cent of Isa customers who joined the bank last year were non-Muslim).

⁵⁴ *Id.*

⁵⁵ See American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

⁵⁶ *Id.* (differentiating between the term “lottery” as generally defined under antigambling legislation and prize-linked savings schemes).

⁵⁷ See MICH. COMP. LAWS SERV. § 490.411 (2016); see also ME. REV. STAT. TIT. 17, § 1831(2016); 19 R.I. GEN. LAWS § 5-29 (2016); NEB. REV. STAT. ANN. § 9-701 (2016); N.C. GEN. STAT. § 54-109.64 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016); MD. CODE ANN. FIN. INST. § 1-211 (2016); 2015 ILL. ALS 149 (2015); see also 2015 Ore. ALS 137 (2015); CONN. GEN. STAT. § 36a-308 (2016); MINN. STAT. ANN. § 609.761 (2016); 2016 La. ALS 257 (2016).

available in 2009.⁵⁸ Michigan's authorizing statute gives the authority for domestic credit unions, with authorization from the credit union board, to conduct "savings promotion raffles."⁵⁹ Along with other recordkeeping requirements, Michigan law regulates the fairness of each "raffle" and gives the director of the state credit union board examination and oversight powers⁶⁰ to ensure that each credit union follows the spirit of the statute.

What the Michigan law notably lacked was the authorization for any other financial institutions besides credit unions to offer their own prize-linked savings accounts.⁶¹ Michigan's law was designed exclusively for credit unions because Michigan implemented the law before the passage of the American Savings Promotion Act⁶² which allowed federally insured banks (under the FDIC) to participate in savings promotions. Michigan legislators have, in the last year, enacted a law⁶³ which brings their statute to the trending standards—allowing any financial institution to participate in savings promotions.

Interestingly, Michigan—specifically the Detroit Metro area—has one of the densest Muslim populations in the United States.⁶⁴ With such a high Islamic population, it makes sense that Michigan would lead the United States in adopting prize-linked savings vehicles on a widespread basis. Dense Muslim populations create a demand for Sharia compliance in everyday life, including in financial vehicles.

⁵⁸ American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

⁵⁹ MICH. COMP. LAWS SERV. § 490.411 (2016).

⁶⁰ *Id.* (discussing how Michigan's credit union board has the authority and responsibility to continuously ensure compliance with state law and issue cease and desist orders to noncompliant institutions)

⁶¹ *Id.*

⁶² American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

⁶³ 2015 LEGIS. BILL HIST., MICH. S.B. 752 (2016).

⁶⁴ *America's Muslim Capitals*, THE DAILY BEAST (Aug. 10, 2010), <http://www.thedailybeast.com/galleries/2010/08/10/america-s-muslim-capitals.html#slide2> (ranking Detroit, Michigan as the most Muslim city in America based off percentage of population estimated to be Muslim, the total number of mosques, and the number of halal certified restaurants).

Other states take different views on the level of regulation needed to allow prize-linked savings accounts. Some states followed Michigan early on and only allow prize-linked accounts through credit unions.⁶⁵ Other states allow any federally insured depository institution to offer these accounts,⁶⁶ place dollar limits on prizes,⁶⁷ limits on the number of prizes which may be offered,⁶⁸ and/or regulate the age of eligible account holders.⁶⁹ Where most states seem to agree however, is on the fundamental idea behind prize-linked savings accounts—namely, that the only consideration required to win is a (specified) deposit into an eligible account.⁷⁰ By disallowing payment or purchase beyond a deposit, these state legislators have

⁶⁵ See 2016 La. ALS 257 (2016); 19 R.I. GEN. LAWS § 5-29 (2016); N.C. GEN. STAT. § 54-109.64 (2016).

⁶⁶ MD. CODE ANN., FIN. INST. § 1-211 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016) NEB. REV. STAT. ANN § 9-701 (2016)); ME. REV. STAT. TIT. 17, § 1831; see also 2015 Ore. ALS 137, 2015 Ore. Laws 137, 2015 Ore. HB 2893, 2015 Ore. ALS 137, 2015 Ore. Laws 137, 2015 Ore. HB 2893 (allowing banks and credit unions to offer prize-linked products while not enabling all federally insured depository institutions to do so); Conn. Gen. Stat. § 36a-308 (LexisNexis, Lexis Advance through all 2016 Public Laws)(allowing banks and credit unions to offer prize-linked products while not enabling all federally insured depository institutions to do so).

⁶⁷ ME. REV. STAT. TIT. 17, § 1831 (2016) (limiting “the total designated prizes for each raffle” to “\$1000 or the fair market value of \$1000 in cases where an item or items of merchandise are the designated prizes”).

⁶⁸ WASH. REV. CODE ANN. § 9.46.0356 (2016) (limiting the number of prizes allowed to be given each year to one with exceptions for smaller more frequent giveaways not related to the main prize).

⁶⁹ CONN. GEN. STAT. § 36a-308 (2016) (limiting qualifying account holders to those who are “eighteen years of age or older” for participation in savings promotions).

⁷⁰ See MICH. COMP. LAWS SERV. § 490.411 (2016); see also ME. REV. STAT. TIT. 17, § 1831(2016); 19 R.I. GEN. LAWS § 5-29 (2016); NEB. REV. STAT. ANN. § 9-701 (2016); N.C. GEN. STAT. § 54-109.64 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016); MD. CODE ANN. FIN. INST. § 1-211 (2016); 2015 ILL. ALS 149, 2015 Ill. Laws 149; 2015 ILL. P.A. 149, 2015 Ill. HB 2477, 2015 ILL. ALS 149, 2015 Ill. Laws 149, 2015 ILL. P.A. 149, 2015 Ill. HB 2477; see also 2015 Ore. ALS 137, 2015 Ore. Laws 137, 2015 Ore. HB 2893, 2015 Ore. ALS 137, 2015 Ore. Laws 137, 2015 Ore. HB 2893; CONN. GEN. STAT. § 36a-308 (2016); MINN. STAT. ANN. § 609.761 (2016); 2016 La. ALS 257, 2016 La. ACT 257, 2016 La. HB 681, 2016 La. ALS 257, 2016 La. ACT 257, 2016 La. HB 681.

removed the gambling aspect from qualifying accounts, placing them squarely in the realm of promotions.⁷¹

The federal government enacted legislation authorizing prize-linked savings products through the American Savings Promotion Act of 2014.⁷² This act amends the definition of “lottery” to exclude prize-linked saving products⁷³ and limits the applicability of federal criminal gambling statutes⁷⁴ to allow institutions to successfully and legally offer prize-linked accounts.⁷⁵ The American Savings and Promotion Act further defines the term “savings promotion raffle” as “a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program.”⁷⁶

While state law more directly affects the ability of institutions to offer prize-linked accounts, this definition sets the foundation for all of the current state laws which allow for such accounts. Further, this act spurs national discussion about America’s savings deficit by plainly stating that Americans are not saving enough, and that and our government needs to provide consumers with greater access to financial services. Specifically, “allowing financial institutions the ability to provide innovative products is a simple way to encourage

⁷¹ Lisa Ward, *People Are More Likely To Open New Accounts If They Can Win A Prize -- Wealth Management Report*, DOW JONES INSTITUTIONAL NEWS (March 28, 2016), <https://www.wsj.com/articles/one-surprising-way-to-get-people-to-save-more-1459130785>.

⁷² American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014) (encouraging personal savings as a national priority due to dramatically low saving rates especially among poor American’s whose financial security is at greatest risk).

⁷³ *Id.*

⁷⁴ *Id.* (offering amendments to the existing criminal gambling statutes and clarifying such statutes to explicitly allow for prize linked saving mechanisms as defined).

⁷⁵ *Id.* (explaining new legislation in light of previous anti-gambling statutes which would otherwise make prize linked saving accounts illegal).

⁷⁶ *Id.* (the definition of “savings promotion raffle” used widely in federal legislation). 12 U.S.C.S. § 339(c)(4) (2017).

consumers to open savings accounts, incentiviz[e] saving, and foster healthier financial habits.”⁷⁷

Nationally, Wal-Mart Stores, Inc. has recently introduced a new “Prize Savings” program through their Wal-Mart branded pre-paid debit cards.⁷⁸ Wal-Mart contracts through Green Dot Bank to provide reloadable pre-paid debit cards to customers who purchase them.⁷⁹ These debit cards cost \$1, can be used anywhere that accepts Visa or MasterCard, and can be reloaded at any participating Wal-Mart location for a fee.⁸⁰ Neither Wal-Mart nor Green Dot pays interest on funds loaded onto these pre-paid cards, but now customers can be entered into a sweepstakes for cash prizes with every dollar deposited.⁸¹ Wal-Mart claims that its program is the “first national and retail prize-linked savings program,”⁸² and that initial “participants have saved 35% more on average than before starting the program.”⁸³

Wal-Mart’s “Prize Savings” program is another step in the corporation’s expansion into the financial services market (Wal-Mart already offers check cashing and money transfers besides their standard pre-paid debit card accounts).⁸⁴ This program was designed following the enactment of the American Savings Promotion Act,⁸⁵

⁷⁷ American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014).

⁷⁸ Seth Perlman, Wal-Mart program entices customers to save, *DAILY PRESS*, Dec. 22, 2016, at A8 (noting that Wal-Mart launched the program in August of 2016).

⁷⁹ *Id.*

⁸⁰ Maria LaMagna, *Does Wal-Mart have the answer to make America save again?*, *MARKET WATCH* (Dec. 23, 2016, 12:02 PM), <https://www.marketwatch.com/story/does-wal-mart-have-the-answer-to-make-america-to-save-again-2016-12-23>.

⁸¹ Perlman, *supra* note 78.

⁸² *Id.*

⁸³ Wal-Mart declined to say how many participants were used in their test group. LaMagna, *supra* note 80.

⁸⁴ Perlman, *supra* note 78.

⁸⁵ *Id.*

and Wal-Mart claims it is intended to encourage saving among its customers.⁸⁶

Unlike banks who make money investing customer savings,⁸⁷ Wal-Mart profits when customers spend more money in their stores. The “Prize Savings” program likely encourages customers to deposit more of their money into Wal-Mart branded debit cards, and in turn encourages further spending at Wal-Mart stores (as they make deposits at Wal-Mart locations).⁸⁸ George Barany, the director of strategic initiatives at America Saves, has suggested that the Wal-Mart “Prize Savings” program’s simplicity and ease of access is positive, “present[ing] an opportunity to change the culture from ‘Spend it all’ to ‘Start saving effectively.’”⁸⁹

B. Advantages to Implementing Prize-Linked Savings within the United States

Enabling U.S. institutions to offer prize-linked savings mechanisms would be hugely beneficial to the American public. First, Americans already have an addiction to lotteries. Each year, Americans spend over 60 billion dollars on lottery tickets.⁹⁰ In fact, Americans spend more on lotteries each year than they spend on sports tickets, books, video games, movie tickets, and music combined.⁹¹ Poor Americans (who are less likely to have a savings account) are affected by lotteries disproportionately more than their

⁸⁶ Salley Helm, *Wal-Mart’s Unconventional Approach To Get People To Save: Prizes*, NATIONAL PUBLIC RADIO (Nov. 25, 2016, 5:11 PM), <http://www.npr.org/2016/11/25/503316517/wal-marts-unconventional-approach-to-get-people-to-save-prizes>.

⁸⁷ See LaMagna, *supra* note 80 (noting that Green Dot Bank actually handles customer funds, not Wal-Mart).

⁸⁸ *Id.*

⁸⁹ *Id.* America Saves is a division of the Consumer Federation of America, a nonprofit consumer organization based in Washington, D.C.

⁹⁰ *The “No-Lose Lottery,” Part 2*, FREAKONOMICS (Dec. 2, 2010, 3:09 PM), <http://freakonomics.com/2010/12/02/the-no-lose-lottery-part-2/>; see also Derek Thompson, *Lotteries: America’s \$70 Billion Shame*, THE ATLANTIC (May 11, 2015), <http://www.theatlantic.com/business/archive/2015/05/lotteries-americas-70-billion-shame/392870/>.

⁹¹ Thompson, *supra* note 90 (citing data from the North American Association of State and Provincial Lotteries).

wealthier peers, and play the lottery at a higher rate than other socioeconomic classes.⁹² Further, poor Americans' expenditure on lottery tickets represents a much higher percentage of their total consumption than those who are better off financially.⁹³ By instituting prize-linked savings accounts, financial institutions are offering the public the chance to “play the lottery” with no risk of loss.⁹⁴ Prize-linked account holders may be giving up nominal interest payments, but experience the thrill of chance—all while better securing their financial future.

This rationale has been used by many lawmakers in support of PLS legislation.⁹⁵ Georgia State Senate Republican leader, David Shafer, advocated for implementation of prize-linked accounts with his introduction of legislation meant to allow Georgia banks to create such accounts.⁹⁶ Shafer noted, in support of his bill giving banks “regulatory freedom,” that as Georgia’s people spend billions of dollars on the lottery each year, banks should be able to use that enthusiasm to encourage savings.⁹⁷

Researchers at the University of Sydney used an online experiment⁹⁸ to show that the introduction of prize-linked savings accounts into the United States would increase saving rates among at

⁹² Emily Haisley, Romel Mostafa, and George Loewenstein, *Subjective Relative Income and Lottery Ticket Purchases*, 21 J. BEHAV. DECISION MAKING 283, 283 (2008); see also Garrick Blalock, David R. Just, and Daniel H. Simon, *Hitting the Jackpot or Hitting the Skids: Entertainment, Poverty, and the Demand for State Lotteries*, CORNELL UNIVERSITY (Dec. 14, 2004), <http://blalock.dyson.cornell.edu/wp/lottery.pdf>.

⁹³ Emily Haisley, Romel Mostafa, and George Loewenstein, *supra* note 92, at 283-84.

⁹⁴ See *The “No-Lose Lottery,” Part 2*, *supra* note 90.

⁹⁵ Kristina Torres, *Republican leader wants banks to offer prizes to open savings accounts*, THE ATLANTIC JOURNAL-CONSTITUTION (Feb. 7, 2017, 1:31 PM), <http://www.ajc.com/news/state--regional-govt--politics/republican-leader-wants-banks-offer-prizes-open-savings-accounts/95Fy9uoLZxmYdjBc6shlGP/>.

⁹⁶ *Id.*

⁹⁷ *Id.* (paraphrasing Georgia Senate President Pro Tem David Shafer, R-Duluth, addressing his proposed Senate Bill 134).

⁹⁸ Kadir Atalay, Fayzan Bakhtiar, Stephen Cheung, and Robert Slonim, *Savings and Prize-Linked Savings Accounts*, INSTITUTE FOR THE STUDY OF LABOR (IZA) (Oct. 2012), <http://ftp.iza.org/dp6927.pdf>.

risk households in the United States. The results showed a 12 percentage point average increase in total savings after the introduction of prize-linked accounts.⁹⁹ Further, this experiment showed that the demand for prize-linked savings comes from reductions in consumption and lottery expenditures.¹⁰⁰

These findings are significant because they show that prize-linked savings accounts would lead to genuinely new savings by current savers and generate new savers entirely.¹⁰¹ Further, showing that demand for prize-linked accounts is generated by a reduction in consumption and lottery expenditure substantiates what were only theories behind the value of prize-linked accounts: that prize linked savings accounts encourage better savings practice among financially at risk individuals and those who otherwise have little to no savings at all.

As illustrated in the appendix, the level of interest that different categories of Americans have in using prize-linked savings accounts.¹⁰² Specifically, researchers asked, “Would you invest money in a prize linked savings (PLS) product if a financial institution offered it?”¹⁰³

The responses show that while all categories of people would likely benefit from the introduction of prize-linked savings accounts, certain “at risk” groups of people such as the poor, less educated, and those over 65 years old would benefit at higher rates than others.¹⁰⁴

Second, prize-linked savings accounts offer Muslim Americans the opportunity to operate in modern consumer financial systems without sacrificing their religious principles. There are no other sophisticated commercial mechanisms available domestically for Muslim Americans to save money while maintaining Sharia compliance. While this effect may not reach the majority of

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

Americans, it is important to enable and encourage all Americans to plan for a stable financial future.¹⁰⁵ Prize-linked savings give up nothing, while benefiting many.

C. Institutional Backlash to Prize-Linked Savings

The likely major opponents to systematic changes of current laws surrounding prize-linked savings products include antigambling groups and the state-run lotteries.

Antigambling groups who oppose all forms of gambling under all circumstances, often for moral or sociological reasons, will likely oppose even well-structured prize-linked saving programs on principle. While prize-linked saving can rationally be distinguished from gambling through its elimination of risk, these accounts still operate in much the same way as a standard lottery.¹⁰⁶ Therefore, certain groups will likely oppose prize-linked saving because they see it as, at a minimum, encouraging gambling.

State run lotteries have, and will likely continue to oppose prize-linked savings because such products directly compete with their monopoly over lotteries. Florida's former Lottery Secretary, Leo Dibenigno, was quick to note the illegality of prize-linked accounts under Florida's gambling laws when asked about such accounts in 2010.¹⁰⁷ Dibenigno added that Florida's state run lottery helps to fund statewide educational initiatives, something private lotteries would not do.¹⁰⁸

Further, state-run lotteries enjoy a monopoly over the lottery business within their jurisdiction.¹⁰⁹ While allowing prize-linked

¹⁰⁵ American Savings Promotion Act, Pub. L. No. 113-251, § 2, 128 Stat. 2888 (2014). American Savings Promotion Act of 2014, H.R. 3374, 113th Cong. (2014).

¹⁰⁶ Ward, *supra* note 71.

¹⁰⁷ The "No-Lose Lottery," Part 2, *supra* note 90; *see also* Thompson, *supra* note 90.

¹⁰⁸ *Id.*

¹⁰⁹ Stephen L. Carter, *Why is the Government in the Gambling Business?*, DAILY BEAST (April 23, 2011, 7:59PM), <https://www.thedailybeast.com/why-is-the-government-in-the-gambling-business>.

savings accounts will not deeply affect state lottery business (as state lottery payouts would remain far more tempting than any PLS payout),¹¹⁰ any cut into the state's lottery business will encourage opposition. Demand for lotteries is largely price elastic,¹¹¹ meaning that more optimistic "lotteries" such as prize-linked savings accounts—which are in turn cheaper for individuals—will have a substitution effect on the market for institutional lotteries along with an increase in overall demand for gambling.¹¹²

D. Vulnerabilities of a Prize-Linked Savings System

Prize-linked savings products in the United States offer the incentives necessary to encourage many unbanked and underbanked Americans (those with little to no money in either checking or saving accounts)¹¹³ to create a savings, but still have many vulnerabilities. First, we have no direct, systematic empirical evidence that prize-linked accounts increase total savings of individuals.¹¹⁴ This lack of direct evidence makes influencing conservative legislators more difficult because claims of the effectiveness of prize-linked accounts remain speculative.¹¹⁵ However, there is an increasing amount of indirect evidence supporting PLS effectiveness.¹¹⁶ As more states

¹¹⁰ See *Multi-State Powerball Jackpot History*, LOTTERY POST, <https://www.lotterypost.com/game/4/jackpot> (last visited Dec. 13, 2017) (noting that the average Powerball Jackpot since 1992 is \$61.85 Million); see also *2017 Prize Distributions by Program*, SAVE TO WIN, <http://www.savetowin.org/product-info/prizes> (last visited Dec. 13, 2017) (noting prize amounts ranging from \$25 to \$5000 for Save to Win accounts).

¹¹¹ Guillen & Tschoegl, *supra* note 17, at 225 (2002).

¹¹² *Id.*

¹¹³ *2015 FDIC National Survey of Unbanked and Underbanked Households*, FEDERAL DEPOSIT INSURANCE COMPANY, <https://www.fdic.gov/household-survey/> (last visited Dec. 13, 2017) (estimating and defining unbanked and underbanked households in America).

¹¹⁴ Kowalski, *supra* note 28, at 132.

¹¹⁵ The "No-Lose Lottery," Part 2, *supra* note 90; (quoting Assistant Secretary for Financial Institution at the Treasury Department, Michael Barr as saying, "I don't think we yet know enough from the research to say that it's the kind of thing that we think needs to happen on a wide scale in order to be effective).

¹¹⁶ See Kowalski, *supra* note 28, at 139; see also Atalay, K., Bakhtiar, F., Cheung, S. and Slonim, R., *supra* note 98.

allow PLS products, more data will become available to further substantiate (or deny) these claims.

Next, newly created prize-linked savings accounts may substitute current savings accounts rather than generate new savings.¹¹⁷ In other words, the perceived benefits of PLS accounts is mitigated by the transfer of savings from a traditional savings account to a PLS account. In order for PLS accounts to benefit net savings, additional accounts need to be generated from money that would have otherwise been consumed. This vulnerability follows from the lack of empirical evidence supporting PLS accounts, and is largely overcome with ancillary support suggesting that much of the demand for PLS products comes from “new” savings.¹¹⁸

E. Likelihood of Broad U.S. Adoption of Prize-Linked Savings Products

Wide scale domestic adoption of prize-linked products is very likely, but will almost certainly take place at the state level. Many U.S. states have already statutorily allowed for PLS accounts.¹¹⁹ This legislation is generally limited in scope, often to smaller credit unions, but the national discourse¹²⁰ around these accounts has demonstrated a willingness by state legislators to move past archaic laws and norms in favor of progressive instruments which allow Americans to improve their own financial security.

While state level implementation of prize-linked products seems inevitable, it seems unlikely under current conditions that the United States government will introduce federally issued prize-linked

¹¹⁷ *Id.*

¹¹⁸ See Atalay, K., Bakhtiar, F., Cheung, S. and Slonim, R., *supra* note 98.

¹¹⁹ See MICH. COMP. LAWS SERV. § 490.411 (2016); *see also* ME. REV. STAT. TIT. 17, § 1831(2016); 19 R.I. GEN. LAWS § 5-29 (2016); NEB. REV. STAT. ANN. § 9-701 (2016); N.C. GEN. STAT. § 54-109.64 (2016); WASH. REV. CODE ANN. § 9.46.0356 (2016); MD. CODE ANN. FIN. INST. § 1-211 (2016); 2015 ILL. ALS 149 (2015); *see also* 2015 Ore. ALS 137 (2015); CONN. GEN. STAT. § 36a-308 (2016); MINN. STAT. ANN. § 609.761 (2016); 2016 La. ALS 257 (2016).

¹²⁰ See American Savings Promotion Act, 160 Cong Rec H 7504, 7505; *see also* The “No-Lose Lottery,” Part 2, *supra* note 90.

securities like the United Kingdom's Premium Bonds.¹²¹ The perceived global stability of the U.S. dollar has created a relatively high demand for U.S. treasury bonds in relation to other countries' bond markets.¹²² Because of this high demand for standard treasury bonds, there is little incentive for the United States government to innovate with respect to its national bond market. Further, U.S. personal savings regulation is largely left to the individual states, reinforcing the notion that change in this area would likely come at the state level rather than the federal level.

Unfortunately, it has become increasingly difficult for low income Americans to purchase U.S. Treasury Bonds.¹²³ In 2012, as part of a widespread federal initiative for the United States government to become increasingly more electronic, the U.S. Treasury Department stopped issuing paper Treasury Bonds—opting to sell bonds through the online TreasuryDirect website.¹²⁴ By eliminating paper bond sales, the Treasury Department has limited investment to those with an active bank account and access to the internet (let alone knowledge of how to purchase bonds through the TreasuryDirect website).¹²⁵

Further, the TreasuryDirect website is not optimized for use on mobile devices.¹²⁶ This causes more problems for America's poor, as Census Bureau data has shown mobile internet connectivity to be the only access many poor Americans have to the internet.¹²⁷

¹²¹ Guillen & Tschogl, *supra* note 17, at 226 (2002) (discussing prize-linked savings programs from around the world).

¹²² *U.S. Treasury Bonds Offer Stable Returns in Difficult Markets*, INVESTING ANSWERS (Aug. 4, 2011), <http://www.investinganswers.com/investment-ideas/bonds/us-treasury-bonds-offer-stable-returns-difficult-markets-238>.

¹²³ U.S. Gen. Accounting Office, GAO-15-563, *SSA: Future of Offering Paper Savings Bonds at Tax Time Is Uncertain, and Lower-Income Households Continue to Face Savings Challenges* (2015).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

The Treasury Department does still offer paper bonds through its “Tax Time Savings Bond program.”¹²⁸ This program is one of the main federal financial products easily available for poor Americans, and involves the issuance of paper treasury bonds as payment of one’s tax return.¹²⁹ By issuing bonds rather than a check for one’s tax return, the individual is investing their money rather than spending it.¹³⁰

However, with the elimination of other paper bond sales in the United States, along with a decline in overall bond sales, the Treasury department has said that it is looking at eliminating the Tax Time Savings Bond program altogether.¹³¹ Elimination of this program would create even more difficulties in saving for America’s poor, and as such create a greater need for innovative savings products such as widespread, prize-linked financial vehicles.¹³²

Finally, prize-linked savings accounts are beginning to receive support and advocacy from nonprofit organizations.¹³³ Atlanta’s Operation HOPE, an organization which helps low to moderate income families boost their finances has publically supported proposed legislation which would allow Georgia’s banks to offer prize linked accounts.¹³⁴ A representative from Operation HOPE noted that prize-linked accounts would “offer families an incentive to save more,” a necessity in achieving financial security.¹³⁵

IV. CONCLUSION

In conclusion, PLS products should be offered and encouraged throughout the United States as a way to increase national savings rates. We live in a time when almost half of all Americans do not have adequate savings to cover basic living

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Torres, *supra* note 95.

¹³⁴ *Id.*

¹³⁵ *Id.*

expenses in the event of a financial emergency. PLS accounts will motivate saving through the element of chance (which makes saving more fun), ensuring greater financial stability. While there is still limited empirical data supporting the benefits of PLS for financially at risk individuals, most researches agree based on indirect evidence that PLS products in the United States will help the financial security of at risk Americans.

Further, PLS products draw upon the fundamental ideas of Sharia law, opening doors to moral and ethical financial practices by Muslims and non-Muslims alike. These products follow Sharia law because they are not generally profit focused, and many do not offer interest payments to account holders. Implementation of prize-linked savings products in America would not only allow for Muslims who currently have no savings options (because of their fundamental beliefs) to open financial accounts, but it would also allow less strict followers of Sharia Law the option of Sharia-compliant banking practices over standard banking practices.

We are a county of mixed descent and mixed belief, and allowing for easy access to Sharia-compliant savings accounts is the next step on the road to inclusion. Additionally, prize-linked accounts have a track record of improving the savings rates among poor individuals—something we desperately need.

APPENDIX

Table 3 –Survey of Interest in PLS Accounts						
	(1)	(2)	(3)	(4)	(5)	(6)
	"Would you invest money in a prize linked savings (PLS) product if a financial institution offered it?"				Multivariate Logistic Odds Ratio	
<i>Descriptive Statistics</i>						
	Depends on the Actual Product Offered				Yes (1) vs Rest	(1) + (2) vs Rest
	Yes		No	Don't Know		
	12%	56%	26%	7%		
Reported Saving						
\$0	11%	52%	25%	12%	2.63	0.99
\$1-\$1,000	12%	57%	24%	7%	2.67	1.45
\$1,001-\$2,000	16%	50%	25%	9%	1.15	0.79
\$2,001-\$5,000	7%	63%	26%	4%	1.47	1.68
\$5,001-\$10,000	21%	44%	31%	4%	4.21*	1.37
\$10,001-\$30,000	6%	71%	18%	6%	0.79	2.30
Over \$30,000	7%	47%	46%	0%	Base Case	B.c.
Lottery Expenditure						
\$0	12%	47%	34%	7%	B.c.	B.c.
\$1-\$150	11%	60%	22%	7%	1.25	1.79***
>\$150	15%	73%	8%	4%	1.66*	5.71***
Gambling						
Never	13%	49%	30%	8%	1.50	1.05
Other	11%	58%	24%	6%	B.c.	B.c.
Financial Risk Profile						
Safe	12%	57%	26%	5%	B.c.	B.c.
Neutral	10%	55%	25%	10%	0.71	0.73
Risky	18%	52%	25%	5%	1.04	0.93
Relative Wealth						
Much worse off	7%	54%	32%	7%	0.15	0.34
Somewhat worse off	11%	59%	22%	8%	0.32	0.55
About the same as others	11%	56%	25%	8%	0.29	0.38*
Somewhat better off	14%	51%	32%	3%	0.40	0.38
Much better off	23%	23%	18%	5%	B.c.	B.c.
Gender						
Male	16%	54%	26%	4%	2.56***	1.16
Female	8%	57%	26%	9%	B.c.	B.c.
Age						
18-25	15%	55%	23%	6%	2.24	0.70
26-45	12%	55%	26%	6%	1.72	0.63
46-65	8%	54%	28%	10%	B.c.	0.45
Over 65	0%	82%	18%	0%	B.c.	B.c.
Marital Status						
Single	12%	59%	23%	6%	B.c.	B.c.
Married	13%	51%	29%	7%	1.87*	0.78
Divorced	4%	62%	28%	6%	0.46	0.89
Education						
High School or Less	10%	61%	19%	10%	B.c.	B.c.
Bachelor's degree	10%	60%	21%	9%	1.19	0.98
Technical	15%	50%	31%	4%	1.54	0.75
Postgraduate	8%	56%	30%	6%	0.68	0.73
Employment						
Full-time	12%	58%	25%	5%	1.28	1.42
Part-time	11%	54%	28%	7%	1.37	1.18
Unemployed	15%	50%	22%	12%	2.04	1.40
Retired & Other	8%	56%	32%	4%	B.c.	B.c.

Source: Institute for the Study of Labor (IZA)¹³⁶

¹³⁶ Kadir Atalay, Fayzan Bakhtiar, Stephen Cheung, and Robert Slonim, Savings and Prize-Linked Savings Accounts, INSTITUTE FOR THE STUDY OF LABOR (IZA) (Oct. 2012), <http://ftp.iza.org/dp6927.pdf>.