PREPARED STATEMENT OF
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BEFORE THE
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

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Statement Required by 12 U.S.C. §5492
The views expressed herein are those of the Director and do not necessarily reflect the views of the Board of Governors of the Federal Reserve System or the President.

Chairman Brown, Ranking Member Toomey, and distinguished Members of the Committee, I am pleased to present the Consumer Financial Protection Bureau's (CFPB) submission of the Semiannual Report to Congress.

Our economy and our consumer finance markets are truly in transition, out of a pandemic and further into the digital era. I will offer some observations about the state of the economy today, as well as what the CFPB is doing to prepare for the future, especially as we confront the challenges of Big Tech in banking. I will also highlight a number of opportunities for bipartisan reforms.

The Current State of the Economy and Household Finance

The CFPB's market monitoring and supervision of financial institutions provides one lens into the state of the economy. Consumer demand has rebounded as our country transitions out of pandemic conditions. While the labor market remains strong, household debt has increased rapidly. The rise in household payment burdens from auto loans and credit cards has been particularly pronounced, given rising interest rates, the cost of vehicles, and the impact of inflation on other goods and services in the economy.

As consumers continue to navigate the economic impacts and ripple effects of the pandemic, their financial patterns have adapted and responded to changing conditions – as have the companies that serve them. For example, the CFPB has observed a notable increase in use of Buy Now, Pay Later products over the past few years. As interest rates on credit cards increase – and correspondingly, outstanding balances – a low- or no-interest Buy Now, Pay Later product that spreads the cost of goods over four payments can be particularly appealing. The CFPB's recent study on Buy Now, Pay Later noted a significant increase in use of these products to fund essential goods and services. The CFPB is working to ensure that Buy Now, Pay Later lenders adhere to the same protocols and protections as other similar financial products to avoid regulatory arbitrage and to ensure a consistent level of consumer protection.

Homeowners and home buyers are likewise adjusting to today's economic environment, which is characterized by higher interest rates and softening home prices. With interest rates above 6% for fixed-rate mortgages and average monthly mortgage payments on the rise, weekly mortgage applications for purchases are down 40% from the same time last year. Adjustable-rate mortgages have increased from less than 5% to nearly 10% of mortgages in just the last three years, suggesting that buyers seeking lower interest rates may be increasingly looking for alternatives to fixed rate mortgages.

Unsurprisingly, refinancing volumes have declined substantially. Given the importance of the mortgage market to both consumers and the economy, we will continue to assess trends closely, identify risks that require attention by regulators, and keep the public informed of their options.

Medical debt continues to be a significant pain point for many Americans. Our analysis of consumer credit reports revealed that approximately 43 million credit reports contained a medical debt collection item. Given the complexities of medical billing in the United States, there are serious questions about the accuracy of medical debt credit reporting. The three major credit reporting companies are voluntarily making changes that will lead to reductions in the number of credit reports with medical debt items. We continue to examine how medical debt burdens are impacting household balance sheets.

Given the outlook for the global economy, we are also working across government to be prepared if the macroeconomic environment deteriorates. We will be closely monitoring any impacts on U.S. consumer finance markets and the effects on household debt and household financial stability.

Promoting Competition and a Decentralized Market

In an open and competitive market, consumers can choose products and services that meet their needs and shift away from providers that treat them poorly. When new companies can challenge incumbents and when consumers can easily switch in a decentralized market structure, we are all better off. That's one of the reasons why Congress charged the CFPB with ensuring that consumer finance markets are competitive.

In recent years, Big Tech companies and other digital giants have leveraged their existing platforms to expand their reach into banking and finance. While new entry is typically welcome news, Big Tech's entry raises broader concerns about competition and user choice. The CFPB has been closely studying these firms' expansion into consumer finance markets, particularly with respect to payment platforms, like Apple Pay, Google Pay, PayPal, and Venmo. We also continue to examine the effects of large technology conglomerates entering payments and financial services in other jurisdictions, like in China, where Alipay and WeChat Pay have extraordinary reach.

Big Tech firms can tie their payment platforms to their social media offerings or their mobile operating systems. Users may be restricted in how they make contactless payments (like "tapping") outside of the proprietary app affiliated with that operating system. Since there are strong network effects from payment systems, other payment apps have a strong incentive to leverage their scale to harvest data for purposes other than moving money from one party to another.

We have issued orders to a number of these firms to determine what data they are extracting from transactions and whether they can use that data to preference their other business lines. We are also particularly interested in how these payment platforms implement existing consumer protections, as well as how they make decisions on account approvals, freezes, and terminations.

In addition to identifying emerging risks to competition, the CFPB is working to proactively create conditions for small firms and start-ups to challenge incumbents. One way to prevent excessive centralization is to accelerate the shift to open banking and open finance. That is why it is a key priority for the CFPB to expand personal financial data rights through a rulemaking under section 1033 of the Consumer Financial Protection Act. This long dormant authority, once implemented, can give consumers more control over their personal financial data.

In October, the CFPB launched the rulemaking process. The proposals under consideration would require that financial firms provide consumers access to their own financial data on deposit accounts, credit cards, and other transaction accounts. Consumers would then be able to provide permissions to this data safely and securely to other financial firms. We are also exploring how to limit firms from sharing or misusing this sensitive data.

I am encouraged by the positive reactions this rulemaking process has elicited from across the consumer finance ecosystem, and I look forward to continuing the rulemaking process over the coming months.

We are also focused on promoting competition and new entry in refinance markets, including in mortgage, auto, and credit cards, and we have made it a priority to identify ways to lower barriers to entry and to foster innovation that addresses important market gaps.

Bipartisan Action Needed by Congress

Over the past year, the CFPB has had productive discussions with members from both chambers and on both sides of the aisle. There are a wide range of issues where I expect commonsense reforms can be advanced on a bipartisan basis.

Protect the neutrality of the payments system

The transfer of money in commerce is at the core of a market-based economy. Digital technology is driving greater ease for individuals and small businesses to transfer funds in a fast and frictionless way.

Facebook's Libra proposal in 2019 was a wake-up call to regulators around the world. While the proposal was largely scrapped, it was an important reminder of the power and potential that tech giants hold, and of the duties of financial regulators to carefully monitor how large tech conglomerates and other platforms enter the payments system and financial services.

Analysts estimate that payment apps from large tech firms are the conduit for trillions of dollars in transactions. There is growing concern that a small set of players, including some of the largest tech companies, are gaining a greater foothold in the payments system.

The rise in dominance of a small group of payment platforms raises questions about how firms can suppress, suspend, or discriminate against certain participants over others. The CFPB has heard considerable concern about payment apps kicking off users, or even claiming the ability to reach into their accounts and fine users without a clear reference to any legal infraction. For example, the operator of a major payment network recently suggested that it could impose fines on users for their online speech. Policymakers need to determine whether it is appropriate for platforms to shut off a user's account access without suspicion of fraud, money laundering, or other illicit activity.

Public commenters also raised concerns that dominant payment players will abuse their positions by substantially increasing fees on small banks, merchants, and consumers.

Congress must ensure that payments systems are neutral and nondiscriminatory, by eliminating the incentive for firms to use their control over payments to favor their other interests. This could require, for example, separations between payment utilities and ancillary businesses. In the coming months, the CFPB will be sharing more results from its study with this Committee and others in Congress.

Strengthen Financial Privacy Protections

More than twenty years ago, legislators began raising concerns about the creation of behavioral profiles using our credit and debit card transaction data.[1] With the rise of e-commerce and tech platforms that monetize user behavior through targeted advertising, these concerns are even more acute. Making digital payments and transferring funds online has become almost obligatory in our modern economy, and as a result, subjecting oneself to digital surveillance has become obligatory too.

The CFPB has found that large tech firms are able to ingest extremely detailed data about a user, including sensitive information. Firms we have studied have laid the groundwork, through loose privacy policies and expansive data retention practices, to use this data in ways that challenge traditional notions of privacy and autonomy.

The Gramm-Leach-Bliley Act requires that consumers are provided with a notice and a right to opt out of certain data collection and sharing practices. I am concerned that this privacy notice is ineffective. Privacy policies for financial services are often all-or-nothing: consumers must choose to accept the company's terms wholesale or decline to use the company's product. Given the importance of many financial services to consumers' daily lives, this can create a false choice between submitting to data harvesting or foregoing access to critical banking services.

The financial services landscape has changed significantly in the past two decades, and our approach to privacy must evolve as well. While Congress is broadly looking at privacy protections across sectors of the economy, I hope that financial privacy can be a top consideration for this Committee. Specifically, I hope you can explore meaningful limitations on the collection, use, and sharing of personal financial data. The CFPB will be looking closely at ways to better protect privacy in areas under our jurisdiction, including, for example, the collection and distribution of personal data in credit reporting and the use of data authorized by a consumer under the CFPB's personal financial data rights rulemaking.

There are a number of other opportunities for bipartisan legislative efforts, such as reforming the Appraisal Foundation, expanding awards for whistleblowers, and protecting relationship banking. The CFPB is eager to work with this Committee to craft potential solutions on these and many other issues.

Thank you again for the opportunity to appear before you. I look forward to responding to your questions.

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[1] See, for example, Freedom from Behavioral Profiling Act of 2000, S. 536, 107th Cong. (2001). https://www.congress.gov/bill/107th-congress/senate-bill/536?s=1&r=6