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hearing on

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Thank you Chair Brown, Ranking Member Toomey, and members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs for the opportunity to testify before you today on innovation in financial services that is empowering consumers with greater choice, access, and opportunity. I appreciate the chance to speak with the Committee today and work with you to support American consumers and small businesses.

I am the Chief Executive Officer of the Financial Technology Association (FTA), a non-profit trade association representing industry leaders shaping the future of finance. We champion the power of technology-centered financial services and advocate for the modernization of financial regulation to support inclusion and responsible innovation.[1]

Fintech adoption has surged over the past few years. Nine in ten consumers use financial technology to manage their finances because it saves them time (93 percent) and money (78 percent), helps them make better financial decisions (73 percent), and reduces financial stress (71 percent).[2] Fintech innovation allows a single mom being able to buy groceries for her family without incurring an overdraft fee, a young person to manage his cash flow responsibly, or a small business owner the ability to access the capital she needs to expand operations.

These advances are coming at a critical time for the American economy. Millions remain underbanked or underserved and lack access to credit. Income and wealth inequality continues to grow, and small businesses seek to rebuild following years of uncertainty caused by the COVID-19 pandemic. Americans are more likely to report they are worse off financially than they were a year ago and express concerns about affording everyday essentials from groceries to gas, according

[1] FIN. TECH. ASS'N, www.ftassociation.org (last visited July 11, 2022). The FTA's members include Afterpay, Betterment, Block, BlueVine, Brex, Carta, Figure, Intuit, Klarna, Marqeta, MoneyLion, MX, Nium, PayPal, Plaid, Ribbit Capital, Sezzle, Stripe, Truework, Wise, Zest AI, Zilch, and Zip.
[2] Plaid and The Harris Poll, *The Fintech Effect: Fintech's mass adoption moment* (2021), available at https://plaid.com/the-fintech-effect-2021-mass-adoption/.

to polling conducted by Morning Consult on behalf of the Financial Technology Association.[3] With prices rising, millions continue to struggle to make ends meet – cash flow stress makes it difficult for many Americans to cover essential costs while they might await a biweekly or even monthly paycheck.[4]

Fortunately, fintech is creating new tools for consumers to improve their financial security. I will focus my remarks today on a few key areas of fintech innovation, including those occurring in the broadly termed "buy-now, pay-later" (BNPL) and earned wage access (EWA) spaces.

Fintech Innovation: Speeding Payments, Expanding Access, and Empowering Consumers & Small Businesses

Consumer-centric innovation is transforming how we offer, access, and benefit from financial services and markets in the United States. By using technology like mobile platforms, machine learning, automation, and other modern technologies to deliver on consumer demands for financial products and services, financial technology ("fintech") companies are improving efficiency and transparency, broadening equity, access, and inclusion, reducing costs, and increasing choice and opportunities for consumers and businesses.

Fintech solutions have emerged as critical tools to bridge physical and virtual activities as people have become increasingly accustomed to digital access. Consumers may now be less likely to exchange cash physically with employees at checkout,[5] but more likely to move their money online as they earn, save, and invest for the long run. Large and small businesses are rapidly adjusting to these changes by enhancing their digital offerings. As we continue to emerge from the COVID-19 pandemic, the financial landscape is changing, with fintech solutions becoming part of our day-to-day economic lives.

Diverse fintech products and services provide novel, convenient, and expanded access points into the financial system for individuals, households, and small businesses, ranging from mobile money services for basic savings and payments to digital applications for long-term investing or securing credit. Already, a consumer can exchange funds, select retirement investments, get a mortgage, pay for food, or manage expenses using fintech products. Tailored products empower individuals with different needs and help drive equity in the cost and quality of available services.

More specifically, payments providers are helping facilitate millions of daily transactions of all sizes. By reducing the time and effort needed for clearing and settlement, these solutions can process payments efficiently and improve the accessibility, affordability, and speed of moving money for consumers. Traditional processes, by contrast, can be slower and more expensive, resulting in higher costs and waiting times for consumers.

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[3] Morning Consult, *The Impact of Buy Now Pay Later*, (September 12, 2022), available at https://www.ftassociation.org/wp-content/uploads/2022/09/FTA_Analysis_MC.pdf.

[4] *See generally,* Financial Health Network, *A Financial Solutions Lab Brief on Household Cash Flow Challenges* (2015), available at https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2018/09/23202632/Financial-Solutions-Lab-Brief-on-Household-Cash-Flow-Challenges1.pdf.

[5] CNBC, *The coronavirus pandemic has caused a surge in demand for contactless payments, accelerating the shift from cash to digital options* (Dec. 2020, available at https://www.cnbc.com/2020/12/03/covid-19-pandemic-accelerating-the-shift-from-cash-to-digital-payments.html .

With respect to credit access, financial technology can help solve well-documented credit gaps that have disproportionately impacted already underserved populations, including minority and immigrant groups who have limited or no traditional credit footprint. Within this context, fintech lenders and providers are using online and mobile platforms and, at times, automated underwriting and unique or nontraditional data to provide funding to businesses and individuals more streamlined and inclusively. Using these services, borrowers can request loans online and receive credit decisions faster and more consistent with their actual creditworthiness.

Buy Now, Pay Later: Advancing Consumer-Centric Innovation

With respect to BNPL, a new generation of fintech innovators are offering consumers alternative payment options that can reduce debt and alleviate budget stress. Americans, on average, pay approximately $1,000 per year in interest on revolving credit card debt, and interest rates on all credit products are rising given the current economic environment.[6] It is no surprise then that consumers are looking for potential alternatives and that industry is competing to serve those consumers better.

Fintech innovators in the broadly defined BNPL space offer consumers many tailored and flexible payment options, including direct payments, pay after delivery, and installment plans that typically involve equal payments over a six to eight-week post-purchase period. BNPL firms typically charge consumers zero interest or low fees for installment payment plans and perform only a soft credit pull on consumers. Additionally, BNPL firms generally charge lower late fees in the case of delinquency or default and pursue no further recourse. A consumer who defaults on a BNPL product cannot use the service again, which prevents the risk of spiraling debt or compounding fees.

BNPL solutions compete with traditional payment options to solve common consumer pain points. Surveys indicate that BNPL users prefer the payment option for a number of reasons, including that:

- They are typically lower cost, charging little or no interest or fees;
- They are transparent, helping consumers better understand – and hence control – their finances;
- They typically help users budget and, as a result, help manage cash flow;
- They are typically flexible and offer more relief when consumers find themselves unable to pay; and
- They typically result in less debt, and repayment takes place over shorter terms.

BNPL products are structured to have payment terms requiring consumers to pay for a purchase in weeks or a few months. By allowing a consumer to pay for a purchase with smaller payments over a discrete period, BNPL products can reduce cash flow stress that might otherwise present challenges for a consumer awaiting a monthly paycheck.

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[6] The Motley Fool, *Americans Pay Almost $1,000 Per Year in Credit Card Interest* (Dec. 11, 2020), available at https://www.fool.com/credit-cards/2020/12/11/americans-pay-almost-1000-per-year-in-credit-card/.

It is not surprising, therefore, that a broad range of consumers prefer BNPL payment solutions as a responsible, low-risk, and low-cost option for making consumer purchases. According to a Morning Consult poll conducted on behalf of the Financial Technology Association, more than three quarters of BNPL users have a favorable opinion of the service and trust it to do the right thing for consumers. Zero- to low-interest rates were the most important factor for consumers using BNPL, with 77 percent saying it was somewhat or very important. Additionally, 94 percent of those surveyed said they understood the terms and conditions for using a BNPL payment option.[7]

Another 2020 survey of BNPL users found that more than 75 percent of consumers using a BNPL payment solution had funds available to cover the full purchase price of the target item at the time of the transaction.[8] In fact, the majority of users had 5x the total purchase amount in their account at the time of using the BNPL payment option. The same survey found that BNPL users are predominantly female and younger, with millennials and Gen Z customers making up the vast majority of users.

A recent study by the Financial Health Network includes some additional key data points on no-fee BNPL products:[9]

- Only 4 percent of consumers said it was difficult to make payment;
- Only 4 percent were late or missed one or more payments; and
- Only 1 percent stated that they did not understand the terms and conditions of the service.

These research findings underscore a promising area of financial innovation that is helping consumers navigate their financial lives and well-being.

Notably, BNPL solutions also support America's small businesses by enhancing the customer experience, facilitating economic activity, and driving customer satisfaction. A survey of 1,051 US merchants found that offering BNPL payment solutions to customers resulted in a better customer experience, increased sales, and increased sales conversion rates.[10] The benefits of BNPL are apparent regardless of merchant size, with large and small merchants seeing considerable improvement across business metrics. Another recent survey found that merchants using a particular BNPL solution enjoyed 13 percent more new customers.[11]

Merchants have increasingly started offering multiple BNPL services along with traditional credit and debit payment options. Merchants cite customer demand, increasing total business sales, and

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[7] Morning Consult, *The Impact of Buy Now Pay Later*, (September 12, 2022), available at https://www.ftassociation.org/wp-content/uploads/2022/09/FTA_Analysis_MC.pdf.

[8] Cardify, *COVID-19 and the surge of "buy now, pay later"* (July 29, 2020), available at https://www.cardify.ai/reports/buy-now-pay-later..

[9] Financial Health Network, *Buy Now, Pay Later: Implications for Financial Health* (Mar. 23, 2022), available at https://finhealthnetwork.org/research/buy-now-pay-later-implications-for-financial-health/.

[10] Zip, *Is 2021 the Year of BNPL? 6 Facts You Need to Know About This Payment Method* (June 10, 2021), available at https://zip.co/us/merchant-hub/retail-insights/retail-insights-top-bnpl-trends-2021

[11] *See* Accenture/Afterpay, *The Economic Impact of Buy Now, Pay Later in the US* (Sept. 2021), available at https://afterpay-corporate.yourcreative.com.au/wp-content/uploads/2021/10/Economic-Impact-of-BNPL-in-the-US-vF.pdf.

expanding customer choice as the key reasons for offering multiple payment solutions, including BNPL, as part of the regular offering. Given higher conversion rates and resulting increased sales from consumers' preference for BNPL, merchants offering BNPL payment solutions typically pay a fee to the BNPL provider, none of which is passed along to the consumer.

This business model means that most BNPL providers derive the vast majority of their revenue from merchants rather than consumers' fees. This is in contrast to the traditional credit model, where lenders rely on consumers revolving in debt and compounding interest for their revenue. Combined with the consumer safeguards like pausing accounts when a payment is missed, this means most BNPL companies only continue to see growth in their business if consumers are repaying on time.

BNPL Products are Subject to Robust Regulation

Importantly, BNPL products are subject to consumer protection regulations, and FTA members are committed to informing regulatory frameworks that safeguard consumers. Regardless of the BNPL offering, all BNPL products are subject to key consumer protection laws and regulations, including anti-money laundering, fair lending, credit reporting, debt collection, privacy, fair treatment of customers, and electronic fund transfers. They also are subject to similar state consumer protection laws.

Some BNPL products may not qualify as a loan when they are structured as “credit sales” or “retail installment sales,” where the legal seller of the goods and/or services agrees to accept the sales price in installment payments over time. In these instances, though, state-based frameworks govern such offerings. Other BNPL providers offer loans directly through state licensure or regulated bank partnerships, as discussed further below.

Informing Future Policy

It is an exciting time for consumers and merchants and the BNPL providers working to serve those two stakeholder groups with innovative, consumer-centric payment solutions. While there is clear evidence of the benefits, BNPL provides, FTA recognizes it is still early in the development of this space. We also believe it is crucial to remain vigilant against unscrupulous actors or products that would drive poor consumer outcomes.

We support partnering with policymakers to increase understanding of how consumers use BNPL solutions and their impact on their financial well-being. Future policy should be predicated on proper analysis of actual outcomes, including with respect to credit reporting, financial health, and consumer choice and preferences.

To this end, FTA members are engaged in active discussions with credit reporting agencies to ensure scoring models properly account for and are capable of integrating BNPL products. Given the considerable influence that credit bureaus exercise over Americans’ financial health and well-being, FTA believes it is important to pursue and support the modernization of the bureaus in order to make their scoring practices and data collections efforts more transparent and inclusive, including with respect to innovations like BNPL.

Earned Wage Access (EWA): Giving Consumers Earlier Access to Their Money

Earned Wage Access (EWA) is another key area of innovation that offers consumers flexibility through on-demand and earlier access to their earned wages, helping them make timely payments on everyday expenses, avoid overdrafting their bank accounts, and manage short-term financial shocks. EWA allows an employee to access funds based on earned wages that have not yet been deposited into their account, helping them smooth out cash flow between payroll cycles, which can be as infrequent as biweekly or monthly.

It is estimated that one in five families have less than two weeks of liquid savings, which leaves them exposed to financial shocks - from unexpected medical bills to car repairs.[12] And this average does not account for racial inequities, as Black and Hispanic households are considerably more likely to face financial emergencies than white households.[13]

EWA makes it easier, more flexible, and less expensive for customers to manage their spending and avoid getting into debt because they are simply able to access wages they have already earned. A 2021 study of EWA users shows that EWA services can provide consumers with a safe alternative to avoid missing bills or sliding further into debt and found that without these services, 44 percent of consumers would be unlikely to pay their bills on time, and 38 percent would consider going into overdraft.[14] The data is clear that EWA is a critical lifeline for consumers to meet their short-term liquidity needs.

There are two predominant EWA service models: the employer-based and the direct-to-consumer (D2C), both of which serve different consumer needs. With an employer-based model, individual employers partner with an EWA provider to offer their employees early access to wages. When the EWA disbursement is settled back, employers typically deduct the repayment amount directly from the employee's paycheck and settle the amount back to the EWA provider. There are multiple no-fee options for EWA, and there is sometimes a nominal fee for this service, which is sometimes covered by the employer, the employee, or a combination of the two.[15]

The D2C model can provide early access to income directly to any consumer who receives recurring direct deposits from an employer or other business. A broader range of customers can access D2C, including those who do not have this benefit through their employer, including gig economy workers, freelancers/contractors, and non-profit and public sector employees. Consumers may pay for this product through a monthly subscription fee, a fee per transaction, a voluntary tip amount, or a hybrid of a subscription fee plus a per-transaction or voluntary fee or tip. D2C providers commonly offer a version of the service to customers that imposes no mandatory fees.

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[12] CFPB, *Insights from the Making Ends Meet Survey: Research Brief No. 2020-1* (July 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet_survey-results_2020-07.pdf.

[13] Ganong et. al, *Wealth, Race, and Consumption Smoothing of Typical Income Shocks* (July 2020), NBER Working Paper Series, available at https://www.nber.org/system/files/working_papers/w27552/w27552.pdf.

[14] FTI Consulting, *Direct to Consumer Earned Wage Access User Survey Key Findings* (July 7, 2021), available at https://www.earnin.com/assets/pdf/FTI-Earned-wage-access-memo.pdf.

[15] For current models that charge the consumer a fee, average monthly employee subscription fees range from $5 - $10/month and individual transaction fees range from $1 - $5 dollars, some or all of which may be covered by the employer. Financial Health Network, *Earned Wage Access and Direct-to-Consumer Advance Usage Trends* (April 2021), available at https://cfsi-innovation-files-2018.s3.amazonaws.com/wp-content/uploads/2021/04/26190749/EWA_D2C_Advance-_sage_Trends_FINAL.pdf.

EWA services are non-recourse and never charge interest. This means that consumers have no legal obligation to repay an advance, and providers cannot take legal action to collect payments. Customers can decide not to repay their advance at any time by revoking the authorization related to their linked bank account or changing the destination of their direct deposit.[16] There is never a credit pull or credit reporting associated with this service. Failure to repay an advance does not result in interest charges or rollover payments, though it usually does limit access to additional EWA advances until the earlier advance is repaid. Importantly, since EWA products are not credit and are simply early access to an employee's *earned* wages they are not subject to TILA and state lending laws.

The Emerging EWA Regulatory Landscape

While EWA services are subject to important consumer protections, regulatory clarity is needed to resolve ambiguity that chills consumer-centric product innovation.

All EWA models are subject to general consumer protections, including state fair treatment of customers (UDAP) laws, but there is currently no specific EWA law or regulation in any state or at the federal level. Additionally, there is ambiguity in the regulatory categorization of certain EWA services, though CFPB exemptions to the payday rule, Treasury Department guidance on EWA treatment and state proposals appear to recognize that many EWA models are generally different from a traditional loan.

In 2020, the CFPB issued an Advisory Opinion stating that 'a Covered EWA Program' does "not involve the offering or extension of 'credit,'" and thus, does not fall under the purview of Regulation Z, which implements the Truth In Lending Act ("TILA"). A 'Covered EWA Program' must, among other things, contract with the employer to offer and provide EWA services.

However, the opinion did not reference D2C models, leaving it unclear as to whether these models are subject to Reg Z. Furthermore, the issue prompted the CFPB Acting General Counsel earlier this year to recommend that the Bureau provide "greater clarity on these types of issues" across the EWA landscape.[17] We agree and encourage the Bureau to engage with the industry to ensure ongoing responsible development of a range of EWA products that can serve different consumer needs and use cases.

Informing EWA Policy

FTA members are committed to EWA standards that promote consumer protection and transparency, including potential state registration requirements. However, all EWA services, regardless of the business model adopted by the provider, should be treated similarly in order to avoid anti-competitive market developments and to allow the service to be provided to the broadest possible customer segment.

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[16] According to the Financial Health Network, the average EWA 'unable to recoup' rate is under 3 percent. Furthermore, the report found that the majority of EWA customers chose to pay the voluntary tip.

[17] Ballard Spahr Consumer Finance Monitory, *CFPB Acting General Counsel addresses "confusion" caused by CFPB advisory opinion on earned wage access program* (Jan. 21, 2022), available at https://www.consumerfinancemonitor.com/2022/01/21/cfpb-acting-general-counsel-addresses-confusion-caused-by-cfpb-advisory-opinion-on-earned-wage-access-program/.

For example, according to a recent research report, "gig workers" currently represent approximately 36 percent of all workers in the U.S. economy, and by 2023, it is projected that more than half of the U.S. workforce will either be gig workers or have worked independently at some point in their career.[18] EWA services should be accessible to this portion of the U.S. workforce, as well as to full-time salaried employees.

Fintech Providers and Bank Partnerships

As outlined above, financial technology companies deliver better financial services at lower costs for consumers, sometimes directly and sometimes in partnership with banks. More specifically, fintechs can offer services directly to consumers and small businesses by either complying with state licensing laws or by pursuing a banking charter. Fintechs can also choose to partner with banks to help offer services. All of these paths are subject to well-established regulatory frameworks and support healthy financial services competition that benefits consumers, small businesses, and the U.S. economy—policymakers should accordingly be supportive.

With respect to fintech-bank partnerships, 65 percent of banks and credit unions partnered with a fintech over the past three years[19] and nearly nine in 10 view fintech partnerships as critical to their businesses. Partnering with fintechs helps small, mid-size, and community banks compete against large banks and better serve consumers and small businesses. Indeed, bank consolidation is at a high watermark — the top 15 banks hold over 56 percent of total deposits[20] — making these partnerships crucial for the success of many smaller financial institutions. During the pandemic, fintechs partnered with banks of all sizes to help small businesses struggling to stay open, accounting for the third-largest source of PPP funding,[21] and extending capital to a significantly higher rate of Black-owned businesses than traditional banks.[22]

Importantly, banks that partner with fintechs to offer credit products are subject to oversight from their banking regulators. The bank regulator can help ensure that these lending programs are fair and compliant. All applicable consumer protection laws and regulations apply to bank-fintech lending partnerships, and fintech partners are further subject to the bank regulators' third-party vendor guidance. Additionally, the partnering bank is able to better serve its customers with leading technologies and innovations offered by the fintech. For these reasons, it is sound policy to encourage such bank-fintech partnerships and to support the banking regulators that provide effective oversight.

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[18] Fortunly, *Gig Economy Statistics: The New Normal in the Workplace* (Feb. 17, 2022), available at https://fortunly.com/statistics/gig-economy-statistics/#gref.

[19] Ron Shevlin, *Bank-Fintech Partnerships Are Under-Performing: What's Going Wrong?* (Jan. 19, 2022), available at https://www.forbes.com/sites/ronshevlin/2022/01/19/bank-fintech-partnerships-are-under-performing-whats-going-wrong/?sh=60de477b559a.

[20] S&P Global, *Largest banks keep winning market share as deposits soar* (Sept. 21, 2020), available at https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/largest-banks-keep-winning-market-share-as-deposits-soar-60407300.

[21] SBA, *Paycheck Protection Program (PPP) Report* (May 31, 2021), available at https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf

[22] Howell at al., *Automation in Small Business Lending Can Reduce Racial Disparities: Evidence from the Paycheck Protection Program* (July 19, 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3939384.

Conclusion

On behalf of FTA's 22 member companies, I appreciate the opportunity to engage with the committee today. As detailed, fintech innovation, including BNPL and EWA solutions, are driving competition and choice for consumers and small businesses that result in lower costs and better financial outcomes. Yet, we strongly believe that balanced and thoughtful regulation is key to long-term success for all involved stakeholders, including providers, consumers, and merchants utilizing new payment solutions. We look forward to helping to inform this important process.