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Testimony of Professor Todd Zywicki Presented to

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Digital Assets, Financial Technology, and Artificial Intelligence Subcommittee

"Delivering for American Consumers: A Review of FinTech Innovations and Regulations"

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Chairman Steil, Ranking Member Lynch, and Members of the Committee:

I am Todd Zywicki and it is a pleasure to appear before you today to testify regarding "Delivering for American Consumers: A Review of FinTech Innovations and Regulations." I am George Mason University Foundation Professor at Antonin Scalia Law School and Co-Founder and Co-Director of the Institute for Consumer Financial Choice. From 2020-2021 I served as the Chair of the CFPB's Taskforce on Consumer Financial Law[1] and from 2003-2004 I served as the Director of the Office of Policy Planning at the Federal Trade Commission. I am also the co-founder and co-director of the Institute for Consumer Financial Choice of the Law & Economics Center.[2] I am also co-author of *Consumer Credit and the American Economy* (Oxford 2014), among other published scholarship, and have written and spoken extensively on the impact to consumers from financial innovation, innovation, competition, and inclusion in consumer financial services products. I appear voluntarily today in my personal capacity and do not represent or speak on behalf of any other party or organization.

Today is an exciting time for innovation in consumer financial products. Technological innovation in consumer financial services has for generations been a driving force for greater competition, consumer choice, and financial inclusion for consumers. From the development of the Fair-Isaac credit scoring system (FICO), to the early use of computers to evaluate risk, underwrite loans, and reduce discriminatory lending practices, to marketing of credit cards and mortgages by telephone and later over the Internet, technological innovation in payments and credit has been the vehicle for democratizing access to financial services and building the

[1] CONSUMER FINANCIAL PROTECTION BUREAU, TASKFORCE ON FEDERAL CONSUMER FINANCIAL LAW (Jan. 5, 2021), *available in* https://www.consumerfinance.gov/data-research/research-reports/taskforce-on-federal-consumer-financial-law-report/.
[2] https://masonlec.org/institute-for-consumer-financial-choice/.

remarkable wealth of American families. Yet even with all of this innovation, today we are experiencing yet another surge of innovation.

Some recent fintech innovations are truly novel—for example, using artificial intelligence and alternative data sources to underwrite loans. But other innovations are primarily dramatic improvements on traditional models of finance, that make access more competitive and less expensive than in the past, such as “Buy Now Pay Later, a fintech update on traditional installment credit and buying “on time,” and Earned Wage Access, which formalizes and streamlines the traditional informal system that allowed workers to gain early access to earned wages prior to the end of the standard pay period.

All of these innovations have one theme in common—while they benefit all consumers, their benefits are largest for those historically underserved by the consumer financial system, particularly lower-income, younger, rural, and minority consumers who historically have been underserved by the traditional financial system. By combining the cost efficiencies of online provision combined with real-time underwriting techniques and easy comparison among different products and providers, consumers are benefiting from these innovations.

For new pro-consumer innovations to flourish, however, regulation must be designed to facilitate competition and choice. Big banks and other incumbent providers will always be aggressive in trying to prevent competition from new entrants. While the threat of misguided federal regulation has abated temporarily with the change of administration at the CFPB and the reversal of several rules, new threats have emerged. Of particular concern is the threat of counterproductive, inconsistent, and costly state regulation that could squash competition, undermine consumer choice, and deter innovation.

History teaches that the driving force for improvement of consumer welfare is competition, consumer choice, and innovation. Consumers know better than bureaucrats and regulators what products and services will benefit themselves and their families and what is their realistic range of available options. Regulation can be useful to promote competition, enable consumers more easily to understand and shop for the products that are most useful to them, and to protect consumers from unfair and deceptive products. Before imposing new restrictions, regulators should carefully discern whether a market failure exists and if so to ensure that any proposed regulation actually address that market failure. This is especially so when dealing with products such as fintech, which have special promise to benefit traditionally underserved consumers. Because these consumers historically have fewer choices than higher-income and more established consumers, regulators should be particularly wary of taking regulatory action that will further reduce those choices or raise the costs of serving those consumers with innovative products.

In my testimony today I will examine three types of fintech products to consider the benefits and potential risks to consumers: fintech products that make use of alternative data and underwriting, Earned Wage Access ("EWA"), and Buy Now, Pay Later ("BNPL"). As will be seen, each of these three product areas offer exciting prospects for consumer benefits, especially for traditionally underserved consumers. Current evidence suggests that these products to date have manifest benefits for consumers and limited risk. In large part, this is because some of these products are simply fintech updates on long-established models of consumer finance offered in a more streamlined fashion with more sophisticated underwriting.

Surveying the available economic research and data compels a clear conclusion—fintech products generally, and EWA and BNPL specifically, are very popular with consumers and provide them with substantial value. EWA enables consumers to access their already-earned wages in a timely fashion that can allow them to avoid late payments and use of more expensive short-term credit options such as payday loans or bank overdraft protection. BNPL is popular in allowing consumers to purchase durable goods and, increasingly, to pay for services such as uninsured healthcare costs or necessities such as gasoline or groceries that have increased in price and to spread those "lumpy" costs over time. Fintech generally has been demonstrated to be especially valuable to consumers traditionally excluded from the traditional financial system, such as younger, lower-income, minority, rural, and other consumers. In short, fintech continues to be a tremendous boon for consumers and the economy and lawmakers should encourage legislation and regulation that will promote fintech's continued growth and innovation.

The Benefits of Fintech and Financial Innovation For Consumers

Throughout American history, technology has been used to increase the convenience and usefulness of financial service products for consumers. Today, for example, we live in the era of the "miracle of instant credit." I can literally walk into a car dealership and drive out an hour later with a new car. Applications for new credit cards can be approved within minutes. Goods and services can be purchased anywhere in the world, 24 hours a day, in person, online, or over the phone. I can go almost anywhere in the world on a moment's notice and purchase food, lodging, medical care, and transportation all without a penny in my pocket. When I teach my consumer financial protection class, my Gen Z students are highly amused when I explain to them that when I was their age and I wanted to travel I would have to go down to the local bank and purchase something called "traveler's checks" and explained how they worked.

Over the generations, technology and consumer preferences have developed hand-in-hand.[3] Early on, access to many financial services was largely a privilege of rich and elite Americans. This included even basic bank accounts, which were expensive for consumers and offered minimal services outside of basic checking accounts. For most of American history, very few Americans had access to free checking, as consumers were expected to pay monthly maintenance fees to maintain a bank account, were required to purchase and have printed their own checks, and to maintain significant monthly minimum balances. Most consumers did not have access to overdraft protection services and would face significant penalty fees for bounced checks if they had insufficient funds to cover transactions. Withdrawal or deposits of cash could only be made by physically going into a bank and waiting in line during its limited operating hours or by getting "cash back" at the grocery store if it would allow you to write a check for more than the amount of the bill. Few Americans had access to general purpose credit cards and were instead reliant on retail store credit, layaway, and personal finance companies to make purchases.

Banking and credit were provided locally and creditworthiness was determined by each individual merchant or lender based on its unique experience. Lenders relied heavily on their personal knowledge of a consumer's character and reputation (one of the so-called "5 C's" of consumer finance) in the local community. Needless to say, this system was highly subjective and ripe for improper discrimination and favoritism by loan officers and local bankers. Because of the local nature of the market and the heavily reliance on subjective judgment, consumers had minimal choice and competition and were limited to shopping in their local markets, relying on high-cost personal finance companies or local retailers where through repeat business they had

[3] *See* Todd Zywicki, *Looking Forward by Looking Backward: The Future of Consumer Finance and Financial Protection*, 19 J. L. ECON. % POL'Y 223 (2024).

an established line of credit. Large department stores that could bear the cost and risk of running credit operations more easily had a competitive advantage over smaller retailers that could not offer their own credit or found doing so to be very expensive.

Over time, of course, the interaction of technology and consumer demand led to an increasingly national system of credit. Ubiquitous automobile ownership enabled consumers to shop outside their local communities or to even cross state lines to get access to financial products not available at home. Declining costs of telephone calls enabled credit cards and other financial products to be issued across state line and the emergence of specialized credit card banks (developments that were catalyzed by the Supreme Court's 1978 decision in *Marquette National Bank*). These technological developments spurred the emergence of large national department stores such as Sears, JC Penney, and Woolworth's, which could develop centralized credit operations that reduced costs and increased access to consumers. The development of credit bureaus that could pool information from many merchants as to a consumer's creditworthiness, rather than just the relationship with one merchant, facilitated competition the ability of consumers to shop among different providers of credit and goods. And the eventual emergence of FICO and standardized credit reporting further spurred choice and inclusion and dramatically reduced the reliance on subjective and discriminatory underwriting by local loan officers. Automated Teller Machines ("ATMs") enable consumers to make deposits or withdrawals of cash conveniently and at any time day or night and eventually grew into the debit card network. The displacement of checks as a primary payment mechanism, for which consumers bore the cost of bank accounts and the like, with debit cards, which are funded by interchange fees, enabled the dramatic spread of free checking for millions of American families (which as discussed below, was reversed by the Durbin Amendment in Dodd-Frank).

Notably, as consumer financial markets became more national in scope, the system of regulation *also* became more national. The highly influential 1972 report of the National Commission on Consumer Finance came down decisively in favor of consumer choice, competition, and innovation as the fundamental organizing principles of the national consumer finance system, and called for federal preemption of archaic state laws such as usury regulations and limits on entry (such as "convenience and advantage" requirements) that undermined these values. The late-1960s and early-1970s saw the first major wave of federal consumer financial regulation (such as regulation of debt collection practices and equal credit) that strengthened protections for consumers and facilitated competition. Most profound, the Supreme Court's historic decision in *Marquette National Bank* facilitated shopping for credit cards and other financial products across state lines, enabling millions of families who otherwise had been blocked from access to credit cards to get them while at the same time prompting a furious competition that rapidly led to the elimination of annual fees for basic cards and eventually the development of co-branded cards that offer an array of benefits such as airline cards or cashback rewards. In 1970, only 16% of American households held general-purpose credit cards; by 2001 that number had increased to 73%, as a result of the effective elimination of state usury ceilings combined with technological improvements in underwriting and pricing in the wake of *Marquette*. [4]

The emergence of the Internet and online access to financial services is the latest iteration in this wave of innovation. While the 1960s and 1970s saw the development of a national system

[4] *See* 1 CFPB TASKFORCE REPORT at 547-548. Access to credit cards declined, especially for higher-risk borrowers, following the enactment of the Credit CARD Act of 2009, which limited the ability of issuers to accurately price consumer risk. *See* Thomas A. Durkin, Gregory Elliehausen, and Todd J. Zywicki, *An Assessment of Behavioral Law and Economics Contentions and What We Know Empirically About Credit Card Use by Consumers*, 22 S. CT. ECON. REV. 1 (2014).

of consumer finance, today's consumer financial economy is increasingly virtual and unconstrained by geography. Consumers are increasingly mobile and flexible in the products they use. The specific fintech products being discussed here today represents these developments well. But they are just particular examples of the sorts of developments being seen in the market for fintech services that increasingly allow consumers to shop efficiently and for providers to tailor their products to consumer demand, and particularly to reach traditionally underserved consumers.

Fintech in a variety of manifestations is essential to these developments both in terms of competition and consumer protection. First, fintech service companies have shown a particular nimbleness in developing new products and services that benefit consumers, especially those traditionally excluded from the financial system. Second, fintech companies have increased competition and consumer choice, bringing beneficial competitive pressure to bear on banks that have often been slow to adapt to technological developments and to meet consumer demand. Third, to date, many fintech companies have partnered with smaller, often state-chartered banks, which has usefully strengthened these smaller banks as competitors in a market that has become increasingly consolidated and dominated by very large banks.

These innovations have been particularly important as pro-consumer responses to the consequences of misguided laws and regulations that have had adverse effects on consumers and competition in recent years. Many of the provisions of Dodd-Frank have increased the regulatory costs of consumer financial services, costs that have fallen more heavily on smaller banks compared to larger banks. Most destructive has been the so-called "Durbin Amendment" that imposed price controls on debit card interchange fees, resulting in a dramatic reduction in access to free checking for consumers and a dramatic increase in the cost of bank accounts, especially for lower-income consumers who were unable to meet the higher mandatory minimum balance requirements required to maintain free checking after Dodd-Frank was passed. The Credit CARD Act of 2009 and the Federal Reserve regulations that preceded it reduced access to credit cards for many young people and marginal credit risks, thereby slowing their financial maturation.

In addition, the regulatory costs of Dodd-Frank along with other developments have led to the closure or merging of many smaller banks across the country. These developments have been felt especially strongly in smaller and rural communities that traditionally had limited competition in the first place. Fintech may prove especially valuable in meeting the needs of those in rural communities who have seen the availability of traditional bricks-and-mortar banks shrink in recent years.

Fintech has stepped in to fill these gaps for many of these consumers, especially younger, rural, lower-income, higher-risk, and minority communities. Available empirical evidence confirms that while fintech has proved a boon to consumers generally, it has been especially valuable to traditionally excluded consumers.[5]

A notable article by economists at the Philadelphia Federal Reserve in 2019 examined the use of alternative data in underwriting by the fintech company LendingClub.[6] They found, ""The use of alternative data has allowed some borrowers who would have been classified as subprime by traditional criteria to be slotted into 'better' loan grades, which allowed them to get lower-priced credit." They also found in a related paper that LendingClub's activities penetrated areas

[5] See discussion in taskforce report.
[6] *See* Julapa Jagtiani and Catharine Lemieux, *The Roles of Alternative Data and Machine Learning in FinTech Lending: Evidence form the LendingClub Consumer Platform*, Federal Reserve Bank of Philadelphia Research Department Working Paper WP 18-15 (Jan. 2019).

that were underserved by traditional banks and had access to lower levels of lending supply, such as those with highly concentrated markets and areas with fewer bank branches per capita.[7]

Last year I conducted a study with former CFPB economist Andrew Nigrinis to estimate the potential benefits to consumers of FHFA's pilot program that allows automated underwriting of title insurance (that uses artificial intelligence and "big data" models) for very low-cost refinance loans as compared to traditional title insurance.[8] We estimated that through the direct cost savings benefits to consumers, the savings resulting from increased competitive pressures, and the increased transparency in the pricing of title insurance prices, consumers could save approximately $96 million annually and between $1.38 billion to $2.19 billion over the expected life of the program. Given the heightened public concern over housing affordability in the United States today, reducing the transaction costs of home closings through greater use of fintech is an easy way to reduce costs.

Other research shows the value of fintech in facilitating competition and reducing demographic disparities in loan pricing and access. For example, an analysis of the impact of the entrance of fintech companies into mortgage markets found that disparities in pricing by race between White borrowers versus Hispanic and Black were smaller for mortgages issued by fintech lenders and showed no difference in rejection rates based on race.[9]

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[7] *See* Julapa Jagtiani and Catharine Lemieux, *Do FinTech Lenders Penetrate Areas That Are Underserved by Traditional Banks?*, Federal Reserve Bank of Philadelphia Research Department Working Paper WP 18-13 (Mar. 2018).

[8] *See* Andrew Nigrinis and Todd Zywicki, *Assessing FHFA's Pilot Program on Automated title Decisioning: Promoting Competition and Reducing Housing Prices* (Feb. 3, 2025), *available in* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5109079.

[9] *See* Robert Bartlett, Adair Mores, Richard Stanton, and Nancy Wallace, *Consumer-Lending Discrimination in the FinTech Era* (Sept. 11, 2019), *available in* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3063448.

A 2023 study by New York Federal Reserve economists on unsecured consumer lending found a dramatic increase in unsecured personal loans during the early 2020s.[10] The authors found that fintech companies were providing less-expensive alternatives to traditional small-dollar lenders for low and moderate income consumers. They pointed specifically to the use of cash-flow-based underwriting and the use of performance on payment of utility, telecom, and rental payments for underwriting decisions as enabling them to extend access to consumers with thin or no credit files. These findings regarding the use by fintech companies of cash-flow underwriting and consideration of utility bills and rental payments reinforce earlier research that found similar positive effects for low and moderate income households from fintech providers.[11]

Economist Emily Williams examined the impact of fintech on financial inclusion.[12] She found that, in general, consumers with lower income, greater financial vulnerability, and living in minority neighborhoods tend to pay higher prices for basic banking services. Consumers who interact with fintech apps pay less for access to banking services (such as deposits and transaction services) than those who do not, especially for lower-income consumers living in areas with higher internet access.

As history teaches, however, technological innovation in financial services cannot operate alone without a regulatory structure that facilitates innovation, competition, and consumer choice. Entrenched incumbents will always seek to block new, innovative entrants

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[10] Ambika Nair and Eldar Beiseitov, The Role of Fintech in Unsecured Consumer Lending to Low- and Moderate-Income Individuals, FED. RES. BANK OF N.Y. (Nov. 2023), *available in* https://www.newyorkfed.org/medialibrary/media/outreach-and-education/household-financial-well-being/the-role-of-fintech-in-unsecured-consumer-lending-to-low-and-moderate-income-individuals.
[11] *See* FinRegLab, The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings (July 2019), *available in* https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf; Michael A. Turner, Patrick D. Walkder, Sukanya Chaudhuri, and Robin Varghese, A New Pathway to Financial Inclusion: Alternative Data, Credit Bullding and Responsible Lending in the Wake of the Great Recession (2012).
[12] Emily Williams, *Fintech, Financial Inclusion, and the Future of Finance* (2024).

who can challenge their market position. In addition, badly-designed regulation can block efforts to develop new products and services that can benefit consumers.

During the past year there have been several important regulatory developments that have facilitated the continued development of fintech products. But there are many others that this body and regulators could take that would further support beneficial developments.

First, I wish to highlight several steps positive steps that have been taken to promote the development of pro-consumer innovation policies. Most notable is Congress's enactment of the GENIUS Act will create a framework and facilitate the development of stablecoins as a useful payments device for consumers. In addition, the December decision by Comptroller Gould and the Office of the Comptroller of the Currency to recognize five national trust bank charter applications for fintech companies, including the conversion of several state trust companies to national trust banks. By issuing national bank charters to these companies, and hopefully more going forward, the OCC has created a framework for certain fintech firms to operate on a national basis without the burden of state-by-state money-transmitter licenses. In another promising development, in December PayPal also submitted an application to the FDIC to establish PayPal Bank as an industrial loan company, which hopefully will be approved swiftly.

Moreover, the decisions by Acting Director Vought to rescind several onerous regulations and policies issued under the Biden Administration, particularly with respect to EWA and BNPL, will help clarify the regulatory framework and clear the way for continued innovation and market entry.

But there is substantially more that Congress and regulators can do:

As Comptroller Gould's actions demonstrate, fintech operates in a national market with no connection to specific geographic designations. Product design and marketing bears no relationship to specific geography or zip code but is tailored in a highly individualized manner to consumers regardless of where they reside. Inconsistent regulations provide minimal (if any) benefit for consumers and raise costs and complexities for issuers and consumers. For these products to reach their full potential on a nationwide scale it may be necessary to look to preemption of burdensome state laws and regulations.

I was pleased to see the decision by CFPB Acting Director Vought to rescind the Biden Administration's rulemaking on Personal Financial Data Rights, also known as the "1033 Rulemaking," and to issue a new rule in its place. A properly designed 1033 Rule can facilitate greater competition and consumer choice while simultaneously strengthening consumer protection and data security.[13]

Congress and regulators should encourage greater use of "regulatory sandboxes" that will incubate new products and services and modernize consumer financial protection.[14] By their nature, regulation of fintech firms is also susceptible to greater use of modern regulatory structures and real-time cooperative oversight and course-correction as opposed to traditional after-the-fact enforcement and licensing. Greater use of technology and real-time based supervision can simultaneously reduce regulatory cost, better protect consumers, and allow for faster development of useful innovations.

Congress should consider taking steps to revise or eliminate many of the illogical and arbitrary "threshold" based regulatory rules tied to particular asset thresholds or otherwise.[15] Threshold-based regulatory systems can dampen competition, limit consumer choice, and

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[13] *See* Comment Letter of Professor Todd Zywicki on Personal Financial Data Rights Reconsideration (Oct. 22, 2025), *available in* https://www.regulations.gov/document/CFPB-2025-0037-0001/comment.
[14] *See* 1 CFPB TASKFORCE REPORT, *supra* note, at 479-80; *see also* Press Release, *Chairman Hill Introduces Bipartisan Bill to Promote Artificial Intelligence in Financial Services* (July 30, 2025), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410824.
[15] *See* CFPB TASKFORCE REPORT, *supra* note.

encourage wasteful regulatory arbitrage by financial service providers. Consider, for example, the provisions of Dodd-Frank such as the Durbin Amendment and other provisions that kick in when a firm exceeds $10 billion in assets. Research has found that because of the dramatic loss in revenue combined with the increased regulatory costs of exceeding the $10 billion threshold, many banks are clustered just under that asset trigger and careful not to exceed it. This tripwire also discourages many banks from growing organically above that level, leading to a tendency to "leap" across the threshold by merging or being acquired by a larger bank.

In addition, the presence of asset thresholds creates arbitrary distinctions among financial service providers that are otherwise functionally identical from the perspective of consumers. For example, from the perspective of consumers and financial regulation, there is no meaningful difference between a fintech firm that owns its own bank versus one that partners as a service provider to a bank. However, the firm that happens to own its own bank may be subject to the Durbin Amendment's price controls while the independent fintech firm is not. Instead, the independent fintech servicer may spread its consumers' accounts across several smaller banks while being careful to maintain all of them at less than $10 billion in assets so that they do not exceed that threshold. Congress should take steps to reform these threshold effects and where possible eliminate them and encourage regulators to develop regulatory frameworks that better match actual risks instead of arbitrary asset thresholds.

Finally, Congress should consider revising the longstanding limits on combining banking and commerce and make it easier for banks to engage in some degree of commerce and traditional commerce companies to engage in banking activities. Roughly 20 years ago, Walmart sought a banking charter only to have it defeated by an alliance of entrenched banks, consumer groups, and risk-averse bank regulators. Eventually Walmart abandoned the effort to secure a banking charter and instead began providing other financial services other than deposit accounts, such as remittances, money orders, check cashing, and pre-paid cards and "neo-banking." The positive effects for consumers have been profound as Walmart's entry into these markets dramatically undercut the prices of incumbents such as Western Union and check cashing companies and forced them to reduce their prices to meet the competition. Enabling a greater integration of banking and commerce would provide opportunities for the development of new payment systems that would also impose additional competitive pressure for traditional banks and payment card processing networks and allow the integration of payments into retailer apps and vice-versa.

Earned Wage Access

Life does not happen on a two week cycle. Although many expenses are recurrent and predictable in timing and amount, such as rent or mortgages, many household expenses are less predictable. In fact, most U.S. workers believe they should be paid their earned wages every day.[16] Yet wages are typically paid on biweekly, semimonthly, or monthly pay periods which creates a lag between the time that workers earn wages and the time they are actually received.[17] This timing lag can be exacerbated by any delay in the clearance of a paycheck once deposited. If a consumer needs cash during this latency period between the time wages are earned and paid, they may often

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[16] *See* Edward Segal, *Most Workers Want to be Paid Automatically Every Day According to New Poll*, FORBES.COM (Sept. 13, 2021), *available in* https://www.forbes.com/sites/edwardsegal/2021/09/13/most-workers-want-to-be-paid-automatically-every-day-according-to-new-poll/ (reporting that 83% of workers believe they should have access to their earned wages at the end of each workday or shift according to a survey by payroll management company Ceridian).

[17] Approximately 75% of American workers are paid less than once per week. *See* Bureau of Labor Statistics, *Length of Pay Periods in the Current Employment Statistics Survey* (Aug. 4, 2023), *available in* https://www.bls.gov/ces/publications/length-pay-period.htm.

be forced to turn to expensive alternatives such as payday loans or bank overdraft protection, or be unable to make desired and potentially necessary purchases because of lack of liquid funds.

Businesses justifiably note that daily cashflow is not always easy to predict, whereas biweekly or monthly pay periods are easier to plan for. In the past, workers could go to some employers informally to request advances on their wages already earned but not yet paid out. I have been unable to determine how common that was or the conditions under which employers would grant this advance. Moreover, the decision by an employer to provide an advance seemingly was entirely discretionary and ripe for arbitrary and differential treatment. Employers may also request an explanation from the employee before granting the advance, a process that easily could be seen as somewhat humiliating and even raising questions of personal privacy if the funds were being requested for a medical procedure, an abortion, or some other problem that the employee would rather not discuss.

Earned Wage Access ("EWA") programs have emerged as a fintech-based solution to this problem of accessing liquidity during the lag between the time wages are earned and actually paid.[18] This delay can be especially burdensome for new hires when the length of time between the first day of employment and first paycheck may be especially long.[19] This delay also can lead some consumers to turn to short-term small-dollar products such as payday loans to meet short-term liquidity needs between paychecks.[20] EWA programs also eliminate the discretionary decision-making of employers in deciding whose request to grant and preserve employee privacy by allowing them to take their advance through the platform and without being required to provide an explanation for why the funds are needed or asking friends or relatives to borrow money.

[18] *See* Bureau of Consumer Financial Protection, Advisory Opinion: Truth in Lending (Regulation Z); Earned Wage Access programs (Nov. 30, 2020).
[19] *Id.* at 2.
[20] *Id.* 2-3 (citing research by Financial Health Network).

Consumers who use EWA typically live paycheck-to-paycheck, lack savings, and have poor or fair credit.[21] According to one study, over 60% of EWA customers fell behind on bills and over 20% overdrafted, paid a bill late, paid a credit card late, or paid a utility bill late.[22] Almost 20% had taken out a payday loan.[23]

The rapid adoption of EWA programs and popularity with workers evidences their value to both employers and employees. Surveys indicate that approximately 70% of middle-market companies (between $10 million and $1 billion in annual revenues) offer EWA to at least some portion of their employees. Nearly all major retailers and other large consumer-facing companies also offer EWA, especially those with a large number of hourly workers and high worker turnover (sch as Walmart, Amazon, Target, McDonald's, and Hilton).

One survey found that 44% of employers reported that employees specifically requested EWA programs making it the second most-requested financial benefit after 401(k) plans and 79% of employees have stated they would be willing to switch to an employer that offers EWA. Some surveys report that as much as 80 percent of employees would prefer more frequent payments, whether weekly or even daily as doing so enables them to budget better and reduces financial anxiety.[24] Almost 80% of workers report that free access to earned wages would increase their loyalty to an employer and make them feel more valued as an employee. 81% say they would take a job that provides no-cost access to earned wages on-demand over an employer that does not.

According to a review of activities by eight EWA companies, the CFPB estimated that in 2022 more than 7 million workers took advances amounting to approximately $22 billion per

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[21] *See* Kerri M. Raissian, Jennifer Necci Dineen, Katie Fitzpatrick, and Andrew Pixley, *Connecticut Earned Wage Access User Impact Study* (Apr. 2025) (reporting that 71% of EWA users report having poor or fair credit).
[22] *See* Kerri M. Raissian, Jennifer Necci Dineen, Katie Fitzpatrick, and Andrew Pixley, *Connecticut Earned Wage Access User Impact Study* (Apr. 2025).
[23] *Id.*
[24] *Id.*

year.[25] Advances are relatively small in amount—according to one study the average was around $120.[26] A 2024 CFPB Report found an average advance transaction size of $106.[27] The average worker accessed $3000 per year and paid an average of $68.88 per year in fees.[28] These estimates are substantially smaller than a typical payday loan or installment loan. The total size of the EWA market is still quite small compared to other consumer financial markets such as credit cards, auto loans, and student loans, all of which measure in the hundreds of billions of dollars, or even "payday" and other short-term loans that are estimated to be in the tens of billions in total market volume.

Further evidence of employee satisfaction with EWA is the unexpected finding by University of Oregon economist Jonathan Davis that first-time EWA usage actually increased users' net monthly income by approximately $334, an increase of 11.5 percent compared to other employees.[29] Davis attributes this increase income to greater job satisfaction and employer loyalty that encourages workers to work more hours or longer retention in a job. He also found that users primarily used accessed wages to cover essential needs like rent, utilities, gas, car repairs, prescription drugs, or to pay down other debt such as credit cards. Given the relatively small price of EWA compared to the expense of credit card interest, late fees for rent or utilities, or the impact on health and employment of an inability to pay for prescription drugs or car repairs, the use of EWA to cover such expenses seems rational. Moreover he found no evidence of increased

[25] *See* Consumer Financial Protection Bureau, *Data Spotlight: Developments in the Paycheck Advance Market* (Jul. 18, 2024).
[26] *See* Devina Khanna, and Arjun Kaushal, *Earned Wage Access and Direct-to—Consumer Advance Usage Trends* 11 FINANCIAL HEALTH NETWORK (Apr. 2021).
[27] Consumer Financial Protection Bureau, *Data Spotlight: Developments in the Paycheck Advance Market* (Jul. 18, 2024).
[28] Consumer Financial Protection Bureau, *Data Spotlight: Developments in the Paycheck Advance Market* (Jul. 18, 2024). This is significantly less costly that alternatives such as payday loans or other short-term financing options.
[29] *See* Jonathan M.V. Davis, *The Impacts of Earned Wage Access: How Giving Workers More Control Over Pay Timing Can Increase Income and Boost Financial Stability* (Nov. 2025).

overdraft, interest, or other bank fees.[30] According to a survey by the Mercator Advisory Group, 78% of users of the EWA product said they used the early access to funds to pay for groceries, 64% for utility bills, 54% for transportation and car insurance, and 53% for unexpected expenses.[31] Similarly, a study of the introduction of an earned wage access by a firm in Mexico found that usage by employees was associated with higher employee retention, suggesting improved welfare and employment satisfaction.[32]

In 2024, Connecticut adopted changes to its banking regulations that eliminated consumers' ability to pay a fee for instant wage transfers through EWA programs, thereby dramatically reducing access to the program. Researchers examined the effects of these changes on consumers.[33] They found that many EWA users lived paycheck-to-paycheck and lacked savings or precautions against unexpected expenses. They also reported that they often used EWA funds to cover basic needs like food, transportation, and housing. Perhaps most salient, they considered the fees charged by EWA providers before the regulatory change to be comparable or lower than other financial service fees. Following the restriction on access to EWA plans, these individuals reported that they took steps such as going without necessary items, borrowing from family or friends, used credit cards more heavily, sold personal items of value, pawned items, took out a payday loan, or worked out a payment plan to pay bills. In short, by taking away a valuable and preferred option from consumers with already limited options, Connecticut's law actually increased economic instability and hardship by pushing consumers to increase reliance on higher-

[30] He did report a small increase in insufficient funds fees ($9) which he considered "unlikely to meaningfully reduce users' financial well-being" when weighed against the substantially larger net income gains from the use of EWA. As noted, using EWA often will enable the avoidance of other higher fees (such as late utility payments) or non-financial hardship such as inability to purchase prescriptions or car repairs or to pay rent in a timely fashion.
[31] *See* Mercator Advisory Group, *Customer Perceived Cost Savings: Study Sponsored by DailyPay*.
[32] *See* Jose Murillo, Boris Vallee, and Dolly Yu, *Fintech to the (Worker) Rescue: Earned Wage Access and Employee Retention* (March 27, 2022).
[33] *See* Kerri M. Raissian, Jennifer Necci Dineen, Katie Fitzpatrick, and Andrew Pixley, *Connecticut Earned Wage Access User Impact Study* (Apr. 2025).

cost alternatives. In short, depriving consumers of a preferred mechanism for making ends meet did not alleviate the underlying financial stress, it just made it more difficult for them to cope and forced them to greater use of more expensive alternatives.

Early EWA programs featured a variety of business models and fee structures. Most of them were funded by some combination of fees assessed on employers and employees. Sometimes employers would cover employee fees in part or whole. Today, however, EWA programs are moving toward a pricing model of free employee access to wages with an ACH bank transfer or bank direct deposit, with a modest fee for acquiring funds by some alternative means.[34] Many EWA programs involve transfer of funds to a debit card issued by a partner bank (such as a Visa or MasterCard-branded card) and for which the EWA provider earns revenues through interchange fees when the consumer spends the money on the card which supports the program. The program itself is primarily funded by the interchange fee revenue when the consumer uses the card.[35]

Risk of loss is low on these programs due to the fact that providers are advancing against funds already earned but not yet paid. A 2021 study by the Financial Health Network estimated that advances were successfully recouped at least 97% of the time.[36] While it is possible that an employer could have a later claim for recoupment against these funds, recoupment efforts are rare and even more rare are efforts by the provider to try to recoup those losses against employees. Moreover, most programs only allow the employee to draw only a portion of the funds earned but not yet paid (typically 50%), with the remainder paid at the end of the pay cycle. This holdback of wages reduces the risk of loss or need for subsequent recoupment.

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[34] *See*, *e.g.*, PAYACTIV.COM, https://www.payactiv.com/program-pricing/ (listing EWA Disbursement Type Fees).
[35] *See* Devina Khanna, and Arjun Kaushal, *Earned Wage Access and Direct-to—Consumer Advance Usage Trends* at Appendix, FINANCIAL HEALTH NETWORK (Apr. 2021) (listing fee structure for consumers from various EWA programs).
[36] *See* Devina Khanna, and Arjun Kaushal, *Earned Wage Access and Direct-to—Consumer Advance Usage Trends* 11 FINANCIAL HEALTH NETWORK (Apr. 2021).

A mismatch in the timing between when wages are received and when bills are due is generally recognized as a contributing factor to consumer use of bank overdraft protection or high-cost small-dollar loans, such as payday loans. Although some consumers use these products as short-term credit products, a significant number also appear to use them for liquidity to bridge timing gaps between the receipt of wages and when financial obligations are due.[37] EWA can serve as much lower cost and more convenient means for accessing liquidity than traditional payday loans. According to a survey by the Mercator Group conducted for one company, more than half of its customers previously used a payday lender but after they started using EWA, 69% of that group no longer used payday lenders and another 23% used payday loans less frequently or for smaller loans than previous.[38] Similarly, prior to uptake of EWA, 81% of them experienced NSF fees but afterwards 59% rarely or never overdrafted and another 31% overdrafted less frequently or for smaller amounts than previously.[39] Ninety-one percent also said that were less likely to pay bills late after gaining access to EWA than previously. As a result of access to EWA, employees stated they did not have to borrow as frequently from friends and family, pay late fees to a biller, incur NSF fees, pay for expenses with a credit card, or use a payday lender. In addition, by enabling them to reduce their reliance on these expensive alternatives, 77% of customers said that more frequent and convenient access to their wages enabled them save more money. A survey by the American Fintech Council found that 87% of respondents said that losing EWA would force workers to turn to more-expensive alternatives such as high-interest credit cards or payday loans.

A study by AiteNovarica reported similar findings about the benefits to workers from access to EWA.[40] Before using DailyPay's EWA product, 57% of employees reported having paid

[37] *See* CFPB, *Earned Wage Access* Advisory opinion, *supra* at 2.
[38] *See* Mercator Advisory Group, *Customer Perceived Cost Savings: Study Sponsored by DailyPay*.
[39] *Id.*
[40] *See* AiteNovarica, *DailyPay Use and Outcomes: A Summary of Survey Findings* (Aug. 2021).

a bill late, 49% borrowed from friends or family, 39% overdrew their bank account, 21% took out a payday loan, and 21% make a loan payment late or not at all. Overall, about 14% of survey respondents both overdrew their account *and* used a payday loan while about one-third did one or the other. Over 95% of employees reported that after using DailyPay they overdrew their accounts less often, used payday loans and borrowing from friends and family less frequently, and made fewer late bill payments than before. Research from other EWA providers confirms these findings.[41]

Here again Congress can play an important role in facilitating the continued development of Earned Wage Access products. The decision by the CFPB to clarify the continued legality of the "tips" model for EWA access in December 2025 has alleviated some of the regulatory uncertainty around that model. Most important, however, would be federal legislation that would further clarify the regulatory framework for EWA and reinforce the rights of employees to access their earned wages regardless of counterproductive state laws and regulations.[42]

Buy Now Pay Later (BNPL)

BNPL is another emergent fintech product that represents an update on traditional methods of consumer finance, such as installment loans, credit cards, and layaway plans. The use of installment loans to enable purchases of consumer durables, such as appliances, electronics, and furniture, dates to at least the late-19th century in the United States. Because many of these products are in the nature of capital goods, there is substantial value to consumers from being able to change the time of purchase so as to acquire the goods and use them while paying for them. The emergence

[41] *See* Instant, *Wages and Wellbeing: Analyzing the Impact of Same-day Pay* (April 2022).
[42] *See* Press Release, *Steil Introduces Legislation to Provide Consumer Protections and Regulatory Clarity for Earned Wage Access Services* (Feb. 22, 2024), *available in* https://steil.house.gov/media/press-releases/steil-introduces-legislation-to-provide-consumer-protections-and-regulatory-clarity-for-earned-wage-access-services.

of credit cards and their widespread adoption beginning in the second half of the 20th Century made it possible for consumers to extend their use of credit from financing consumer durables to general consumption purposes.

BNPL has exploded in popularity since its initial emergence both in the United States and abroad. In the United States, it is estimated that the BNPL market was $122 billion in 2025, growing over 10% from the year before. It has been estimated that over 50% of U.S. consumers are estimated to have used a BNP service at least one by the end of 2025.[43] A CFPB study drawing on the data provided by the six largest BNPL firms found that 21 percent of consumers with a credit record financed at least one purchase using BNPL from at least one of those firms in 2022 and, contingent on having a BNPL loan, BNPL users originated 9.5 loans that year.[44] A survey by researchers at the New York Federal Reserve similarly found that about 19 percent of respondents had used BNPL as a payment method in the past year.[45] According to one estimate, the number of BNPL users has grown by more than 300 percent per years since 2018, reaching 45 million active users in 2021 and today represents about 2 percent of U.S. online retail sales.[46] According to the CFPB, BNPL originations grow by 215 percent from 2019-2021 (reflecting in part the substitution to online commerce during the pandemic period) and 31 percent from 2021-2023.[47] As familiar

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[43] *See*, *e.g.*, Maurie Backman and Jack Caporal, *Study: Buy Now, Pay Later Services Grow in Popularity*, THE ASCENT, FOOL.COM (July 18, 2022), *available in* https://www.fool.com/the-ascent/research/buy-now-pay-later-statistics/.
[44] Cortnie Shupe and Joshua DeLuca, *Consumer Use of Buy Now, Pay Later and Other Unsecured Debt*, CONSUMER FINANCIAL PROTECTION BUREAU (Jan. 2025).
[45] *See* Felix Aidala, Daniel Mangrum, and Wilbert van der Klaaw, *How and Why Do Consumers Use "Buy Now, Pay Later"?*, LIBERTY STREET ECONOMICS (Federal Reserve Bank of New York, Feb. 14, 2024), *available in* https://libertystreeteconomics.newyorkfed.org/2024/02/how-and-why-do-consumers-use-buy-now-pay-later/.
[46] *See* Julian Alcazar and Terri Bradford, *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives*, FED. RES. BANK OF KANSAS CITY PAYMENT SYSTEMS RESEARCH BRIEFING (Nov. 10, 2021), *available in* https://www.kansascityfed.org/research/payments-system-research-briefings/the-appeal-and-proliferation-of-buy-now-pay-later-consumer-and-merchant-perspectives/.
[47] *See* Cortnie Shupe and Gordano Palloni, *The Effect of BNPL on Consumer Debt and the Ability to Repay Non-BNPL Debt Obligations*, CFPB OFFICE OF RESEARCH WORKING PAPER SERIES 2025-11 (June 27, 2025).

and well-established companies such as PayPal and others enter the market, the numbers may continue to increase.

A typical BNPL transactions if a point-of-sale loan that allows consumers to pay for online or in-store retail purchases over a set period, typically four payments every two weeks (1/4 at the time of purchase then additional payments every two weeks). Although modeled after traditional retail installment loans, most BNPL transactions are interest free consumers and are funded by the merchant through a merchant discount rate (and implicitly interchange fee) of approximately 3-6% (higher than the cost of a typical credit card).[48] Despite these higher costs, merchants are eager to accept BNPL because it enables sales to consumers who otherwise would lack sufficient liquidity to make purchases and enables consumers to spend more than they otherwise would.[49] This short-term no-interest financing is the predominant business model—according to one report, 70% of BNPL users are for short-term financing with no interest, 21% are for six months or less with no interest, and only 11% are for longer than six months with interest.[50] If the consumer makes payments on time, therefore, she usually incurs no fee or other costs from using BNPL, unlike a credit card for which the consumer will pay a finance charge if the balance is not paid in full at the end of the cycle. Traditionally, BNPL providers have not reported performance to credit bureaus.

BNPL originally evolved primarily to support online purchases of fashion and apparel and consequently, young women were early adopters of the product. From that beginning, BNPL usage has grown to support the purchase of other consumer durable goods although it has begun to be

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[48] *See* Zhu Wang, *Buy Now, Pay Later: Market Impact and Policy Considerations*, FED. RES. BANK OF RICHMOND ECONOMIC BRIEF No. 25-03 (Jan. 2025), *available in* https://www.richmondfed.org/publications/research/economic_brief/2025/eb_25-03.
[49] *Id.*
[50] *See* Hannah Gdalman, Meghan Greene, Necati Celik, *Buy Now, Pay Later: Implications for Financial Health: A FinHealth Spend Product Spotlight* at 4, Fig. 1 (March 2022).

used more commonly for purchases of products such as groceries, gasoline, and food delivery, as consumers are using it to manage their budgets in response to increasing prices. According to one survey of consumer behavior during the Covid pandemic, the most common types of purchases made by consumers using BNPL were for consumer durables such as clothing, electronics, furniture, appliances, and housewares.[51] Recent surveys indicate that in the past consumers have used BNPL are for the following purchases: Clothing and fashion (42%), electronics and gadgets (32%), furniture and home décor (26%), home appliances (22%), groceries and everyday household items (19%), and personal travel (18%).[52] Looking forward, however, consumers expect they will be most likely to use BNPL for purchases such as home appliances, furniture, personal travel, and electronics and gadgets, and less likely to use BNPL for groceries and everyday household items (12%), presumably reflecting expectations of moderating inflation.[53] The use of BNPL to cover out-of-pocket medical expenses is reported to be one of the fastest-growing areas of usage. And although originally developed in connection with online shopping, BNPL is increasingly being used in traditional physical stores via various tap-to-pay and QR codes for point-of-sale purchases.

BNPL has proven to be especially attractive to consumers who are otherwise underserved by the mainstream financial system, such as younger, lower-income, and credit-impaired

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[51] C+R Research, *Buy Now, Pay Later Statistics and User Habits* (2021), *available at* https://www.crresearch.com/blog/buy_now_pay_later_statistics. BNPL originally had disproportionate uptake by younger women, as BNPL focused on developing partnerships with female focused ecommerce brands. *See* CARDIFY, COVID-19 AND THE SURGE OF "BUY NOW, PAY LATER," CARDIFY.COM (July 29, 2020), *available in* https://www.cardify.ai/reports/buy-now-pay-later. It is not clear whether this is still the case and the growing usage of BNPL for electronics purchases, for example, suggests that this disparity in use by sex may no longer be the case.

[52] *See* Ashley Hudson and Shawn Paustian, *Insights Into Buy Now, Pay Later: Growth & Trends 2025* NUMERATOR.COM (Feb. 14, 2025), *available in* https://www.numerator.com/resources/blog/buy-now-pay-later-market-insights/.

[53] *Id.*

consumers.[54] Younger and less financially healthy households are more likely to use BNPL, particularly millennials and Generation Z, who either lack access to credit cards, are near their credit limits, or prefer the interest-free nature of BNPL and its more simple and transparent terms relative to credit cards.[55] Gen Z consumers were early adopters of BNPL. In part this was because federal regulations such as the Credit CARD Act, Dodd-Frank, and the Durbin Amendment created new barriers for young consumers to gain access to bank accounts, credit cards, and other traditional financial services and credit. Today, over 50% of Gen Z and 54% of Millennials report using BNPL more often than traditional credit cards. But BNPL is becoming increasingly popular with Gen X as well, as approximately 30% of Gen X'ers report using BNPL as well.

Younger and minority households are more likely to use BNPL than others.[56] Households in weaker financial condition are also more likely to use BNPL than financially healthy households.[57] Households classified as "financial fragile" are more likely to use BNPL than those that are "financial stable" and are more likely to use BNPL to purchase necessities and meet urgent financial requirements.[58] BNPL users are also almost twice as likely to report having subprime credit scores and 77% who have credit cards say they have carried a balance on their credit cards over the past year.[59] Consumers who use BNPL are also suffer more financial disruption and

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[54] *See* Tom Akana, *Buy Now, Pay Later: Survey Evidence of Consumer Adoption and Attitudes*, FED. RES. BANK OF PHILADELPHIA DISCUSSION PAPER DP 22-02 (June 2022).

[55] *See* Hannah Gdalman, Meghan Greene, Necati Celik, *Buy Now, Pay Later: Implications for Financial Health: A FinHealth Spend Product Spotlight* (March 2022).

[56] *See* Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later: Insights form new Survey Data*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Feb. 2024).

[57] Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later: Insights form new Survey Data*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Feb. 2024).

[58] *See* Felix Aidala, Daniel Mangrum, and Wilbert van der Klaaw, *How and Why Do Consumers Use "Buy Now, Pay Later"?*, LIBERTY STREET ECONOMICS (Federal Reserve Bank of New York, Feb. 14, 2024), *available in* https://libertystreeteconomics.newyorkfed.org/2024/02/how-and-why-do-consumers-use-buy-now-pay-later/.

[59] Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later: Insights form new Survey Data*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Feb. 2024). *See also See* Felix Aidala, Daniel Mangrum, and Wilbert van der Klaaw, *How and Why Do Consumers Use "Buy Now, Pay Later"?*, LIBERTY STREET ECONOMICS (Federal Reserve Bank of New York, Feb. 14, 2024), *available in* https://libertystreeteconomics.newyorkfed.org/2024/02/how-and-why-do-consumers-use-buy-now-pay-later/

payment problems than nonusers.[60] They are also significantly more likely to report that they are more concerned about making ends meet financially in the future than nonusers.[61] One recent report finds that 61% of BNPL users are classified as either subprime or deep subprime credit because they have reached their credit card limits or do not qualify for traditional loans.[62] Consumers who use BNPL have significantly higher utilization rates on credit cards lines of credit than those who do not.[63] According to one study, 62% of households earning under $50,000 prefer using BNPL over credit cards because of easier loan approval.

High earners, however, are increasingly using BNPL. Akana and Doubinko found that 30% of BNPL users during the 2023 holiday season earn more than $70,000.[64] On reason for this growth in BNPL usage by higher-income consumers is to take advantage of the benefits of interest rate float, for example by keeping their cash in high-yield savings accounts while paying for large purchases like electronics or travel in interest-free installments. For example, a substantial number of BNPL-financed purchases by "financial stable" households were for larger purchases of $1750-$2000 in value, whereas purchases by "financial fragile" households were almost always small

(finding much greater use of BNPL by those with sub-720 credit scores and particularly those who are deep subprime below 620 credit score and those who report being thirty or more days delinquent on some other obligation during the past year).

[60] *See* Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later Data from the LIFE Survey*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Apr. 2025), *available in* https://www.philadelphiafed.org/consumer-finance/4-in-6-payment-products.

[61] Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later: Insight from New Survey Data*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Feb. 2024), *available in* https://www.philadelphiafed.org/consumer-finance/4-in-6-payment-products-buy-now-pay-later-insights-from-new-survey-data.

[62] *See* Joanna Stavins, *Buy Now, Pay Later: Who Uses it and Why*, FED. RES. BANK OF BOSTON RESEARCH DEPARTMENT CURRENT POLICY PERSPECTIVES 2024-3 (May 22, 2024), *available in* https://www.bostonfed.org/publications/current-policy-perspectives/2024/buy-now-pay-later-who-uses-it-why.aspx.

[63] *See* Cortnie Shupe and Joshua DeLuca, *Consumer Use of Buy Now, Pay Later and Other Unsecured Debt*, CONSUMER FINANCIAL PROTECTION BUREAU (Jan. 2025).

[64] Tom Akana and Valeria Zeballos Doubinko, *4-in-6 Payment Products—Buy Now, Pay Later: Insight from New Survey Data*, FED. RES. BANK OF PHILADELPHIA CONSUMER FINANCE INSTITUTE (Feb. 2024), *available in* https://www.philadelphiafed.org/consumer-finance/4-in-6-payment-products-buy-now-pay-later-insights-from-new-survey-data.

(less than $250).[65] Like other consumers, using BNPL enables also higher-income consumers to spread out the cost of large purchases and time their liquidity requirements more precisely without having to pay finance charges or interest charges. Uptake of BNPL by higher-income and more financially stable households should also be beneficial to the BNPL market by enabling diversification in the BNPL risk pool, which should buffer the industry in the event of a recession or some other economic development that could cause economic stress.

Despite the fact that BNPL is heavily used by subprime and lower-income households, the default rate on BNPL loans is exceedingly low—roughly 2% during the period 2019-2022 according to a CFPB study.[66] From 2022 to 2023 chargeoff rates declined from an already low level of 2.63 percent to 1.83 percent.[67] By comparison, default rates on credit cards for the same population exceeded 10% for the same period of time.[68] Research suggests that consumer use of BNPL does not produce an increase in the use of non-BNPL credit or increased financial distress in non-BNPL products and that many consumers use BNPL as a substitute for higher-cost alternatives, such as credit cards. The same researchers also find that use of BNPL (which traditionally is not reported to credit bureaus) does not have a negative spillover effect on their overall credit rating.[69] This suggests that despite its rapid growth, paternalistic concerns about "loan stacking" or overspending are largely speculative.

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[65] *See* Felix Aidala, Daniel Mangrum, and Wilbert van der Klaaw, *How and Why Do Consumers Use "Buy Now, Pay Later"?*, LIBERTY STREET ECONOMICS (Federal Reserve Bank of New York, Feb. 14, 2024), *available in* https://libertystreeteconomics.newyorkfed.org/2024/02/how-and-why-do-consumers-use-buy-now-pay-later/.
[66] *See* Shupe and Palloni (2025).
[67] *See* Consumer Financial Protection Bureau, *The Buy Now, Pay Later Market: Data Spotlight* (Dec. 2025). The incidence of late fees declined over that same period as well. *Id.*
[68] *See* Cortnie Shupe and Joshua DeLuca, *Consumer Use of Buy Now, Pay Later and Other Unsecured Debt*, CONSUMER FINANCIAL PROTECTION BUREAU (Jan. 2025).
[69] *See* Valeria Zeballos Doubinko and Tom Akana, *How Does Buy Now, Pay Later Affect Customers' Credit?*, FED. RES. BANK OF PHILADELPHIA Discussion Paper 23-01 (Sept. 2023), *available in* https://www.philadelphiafed.org/consumer-finance/consumer-credit/how-does-buy-now-pay-later-affect-customers-credit.

Moreover, according to research by the Financial Health Network, 99% of BNPL users stated that they understood the terms and conditions associated with using the product.[70] Thus, while some consumers have expressed some confusion over particular practices (such as the nature of "tips" where that model is used) in general consumers understand and appreciate the simple and understandable terms of BNPL loans.

For all households, but especially households with impaired credit or thin files, BNPL provides a comparatively inexpensive, safe, and convenient option to finance purchases compared to real-world alternatives.[71] Most BNPL purchases are modest in size—according to one survey, users of the short-term, no-interest mode reported owing an average of $330 across all BNPL purchases at the time of the survey.[72] Based on data drawn from the six largest BNPL firms indicates that consumers who use BNPL borrowed on average $848 in 2023, a small amount compared to typical levels of household borrowing for credit cards, car loans, and student loans, and not even considering mortgage debt.[73] Given the relatively small amount of each loan and the modest amount borrowed in any given year, plus the absence of interest and finance charges that can lead to compounding of debt, it is not surprising that BNPL usage does not seem to linked to financial distress.

Consumers cite a variety of reasons for why they use BNPL. Some consumers use BNPL because they are credit constrained or otherwise lack access to sufficient credit. But many other consumers use BNPL because they simply like the product because of its convenience, the ability to spread-out payments, time liquidity requirements, and to avoid taking on debt for which they will have to pay interest or finance charges. According to one research report, the most common

[70] *Id.* 7.
[71] Backman and Caporal, *supra*.
[72] Gdalman, *supra* at 7.
[73] *See* Consumer Financial Protection Bureau, *The Buy Now, Pay Later Market: Data Spotlight* (Dec. 2025).

reason consumers give for using BNPL is "to make checkout easier."[74] Higher income consumers often use BNPL to avoid taking on debt, especially credit card debt, and tend to be slightly older than other users. Other surveys have indicated that 87% of users cite "spreading out payments" as the main reason to use BNPL, which allows them to spread the cost of "lumpy" large purchases across time and to match payments to their bi-weekly pay cycles and to extend their payment schedule without having to pay a finance charge as they would with a credit card. Research by economists at the Philadelphia Federal Reserve Bank found that the most frequently cited reason for using BNPL is "convenience and a general preference for the product," not credit constraints.[75] On the other hand, they also find that 11.7% of BNPL users do not have a credit card, 14.9% report that they would be unable to be approved for other types of credit, so at least minority of consumers use BNPL to address credit constraints.

Conclusion

We live in an exciting era of developments in financial technology. Recent innovations in alternative underwriting and fintech generally, and products such as EWA and BNPL specifically, are increasing consumer welfare, choice, and competition. But history teaches that continued innovation requires a thoughtful regulatory framework that will facilitate further developments and protect consumers from the efforts of incumbents to block entry and wrongheaded regulation. There is much that this body and regulators can do to facilitate further innovation and competition.

[74] CARDIFY, CONVENIENCE, DEBT, AND NOVELTY: ANALYZING BNPL CONSUMER DATA (Sept. 8, 2021), *available in* https://www.cardify.ai/reports/bnpl-trend-report. This group is made up of middle income people with incomes between $40,000-$80,000 and skew toward millennial-aged consumers who see BNPL as similar to payment platforms and digital wallet apps.
[75] Akana and Doubinko (2024), *supra*.