



Consumer Federation of America

Statement for the Record Submitted to
U.S. Committee on Financial Services' Task Force on Financial Technology
on "Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging
Fintech Cash Flow Products."

November 2, 2021

Submitted by:

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The Consumer Federation of America (CFA) appreciates the opportunity to submit a statement for the record for the November 2, 2021 hearing. CFA is a nonprofit association of more than 250 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of ensuring that our marketplace is fair and safe through advancing the consumer interest. CFA has a broad portfolio of issues including financial services, banking, credit, investor protections, privacy, food safety, product safety, telecommunications, energy efficiency, housing, insurance, and saving. CFA's non-profit members range from large organizations, such as Consumer Reports and AARP, to small state and local advocacy groups, as well as unions, co-ops, and public power companies. CFA appreciates the opportunity to submit a statement for the record for the Task Force on Financial Technology's hearing, "Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products."

New consumer credit products are expanding across market areas, including but not limited to Buy Now, Pay Later (BNPL) loans, Earned Wage Access (EWA) products, and cash advance and overdraft protection products that collect "tips."

Although innovation has an important role in the financial marketplace, it should be pursued in a way that is consistent with and enhances consumer protections. It should not shield innovators from enforcement and supervision nor limit the state and federal regulatory authority. Although some of these credit products could help consumers manage their finances, they are not risk free, as illustrated by consumer complaints to the Consumer Financial Protection Bureau and Better Business Bureau included throughout this statement.

The products and fee models discussed during the hearing, although each unique, share similarities in how they operate and how they use "innovation" to claim that they do not fit within the existing regulatory framework. Regardless of their structure, each of these products are credit—they provide funding today and are repaid later. Given that, these products should be

subject to the host of state and federal consumer protection laws that regulate credit products. At a minimum, they still need to be covered by basic consumer protections, including interest rate limits, underwriting for ability-to-repay, cost transparency, dispute rights, and fair lending laws. It is also important that they be examined for unfair, deceptive, or abusive practices independently of compliance with credit laws.

This statement will address three types of emerging forms of credit: Buy Now, Pay Later loans; Earned Wage Access (EWA) programs; and faux Earned Wage Access, overdraft protection, and cash advance products that collect “tips.”

Buy Now, Pay Later products may provide consumers with an affordable way to finance larger purchases, as these products allow consumers to purchase an item by only paying a portion of the price up front. Then, the consumer typically pays the rest of the debt in three equal, often interest-free installments over a set period (often 6 weeks). However, depending on structure, BNPL products can lack underwriting for a consumer’s ability to repay, can rely on the expectation of fees, can lead consumers into taking on unmanageable amounts of debt, and can lack dispute or refund rights should a consumer be unsatisfied with their purchase.

Earned Wage Access (EWA) programs are fundamentally a third-party advancing funds to a consumer before the consumer’s regular payday. These funds are repaid out of the paycheck. These products are a lower-cost form of a payday loan and should be regulated as credit. Although the trend is for employers to offer EWA programs for free, these programs are not risk free, as they can lead to the same cycle of repeat borrowing as other balloon payment loans.

Faux Earned Wage Access (EWA), overdraft protection, and cash advance products that collect “tips” are simply disguising finance charges under a new name. Tips are not truly voluntary, as they can be structured so that it is difficult for a consumer to avoid paying the default tip. Tips can add up quickly, costing nearly as much as traditional payday loans in some instances. These should be viewed and regulated as finance charges subject to state usury laws and the Military Lending Act.

These products should not use the guise of innovation to shield themselves from federal and state oversight and regulation of credit, consumer protection, and fair lending laws. Oversight is especially urgent as these offerings continue to increase and infiltrate new market areas. Failure to do so would lead to an undermining of consumer protection laws, making the financial marketplace less fair and competitive.

CFA recommends the following:

- Innovative financing products should be viewed and regulated as credit. State and federal financial regulators should supervise fintech providers to ensure that they are compliant with federal and state credit, fair lending, and consumer protection laws, as well as not engaging in unlawful discrimination or unfair, deceptive, or abusive acts or practices.
- Fintech providers should only offer products after determining a consumer’s ability to repay. Ability to repay should consider both income and financial obligations, as failure to do so can lead to a cycle of debt.

- Price transparency and unified terms and conditions is critical. The cost of credit should be portrayed to consumers as an Annual Percentage Rate (APR) so that they are able to compare products and make informed, knowledgeable decisions.
- Loans should be structured in an affordable way with proportional penalty fees, so that a consumer can repay without needed to reborrow or borrow elsewhere. Regulators should closely examine evasive pricing models including tips, participation fees, and payment rescheduling fees, to ensure that these are not evasive attempts to disguise finance charges.
- Consumer data should only be used in a responsible manner and in the way that consumers expect it to be used.
- Consumers should have the same chargeback rights as they do with credit cards, so that consumers have recourse should they run into a problem with their purchase.
- State and federal regulators should consider collecting, analyzing, and publishing data to better understand and illuminate the risks associated with these products.

1. Buy Now, Pay Later:

Buy Now, Pay Later (BNPL) options have increased dramatically in recent years. **The market has grown by more than 70% in 2021—the market is expected to reach \$100 billion in 2021, up from \$24 billion in 2020.**¹ A recent report predicts that the BNPL industry is expected to increase 10 to 15 times its current size by 2025.² BNPL is a checkout option available from many online retailers, credit cards, banks, and third-party providers that allows consumers to purchase an item by only paying a portion of the price up front. Then, the consumer typically pays the rest of the debt in three equal installments over a set period (often 6 weeks) and often without interest. Both the number of offerings and the number of users of these products have continued to grow considerably in recent years.

California found that the top six BNPL providers originated more than 10 million loans to consumers in 2020, which accounted for 91% of total consumer loans originated in 2020.³ Four companies account for most BNPL transactions in the United States— Afterpay, Klarna, Sezzle, and Quadpay.⁴ More than 3,400 complaints have been submitted to the Better Business Bureau about these companies in the last three years, and 63% of those complaints have been submitted

¹ Ron Shelvin, *Forbes*, “Buy Now, Pay Later: The “New” Payments Trend Generating \$100 Billion In Sales” (Sept. 7, 2021), <https://www.forbes.com/sites/ronshelvin/2021/09/07/buy-now-pay-later-the-new-payments-trend-generating-100-billion-in-sales/?sh=71a2b7b62ffe> [hereinafter Shelvin, The “New” Payments Trend (Sept. 2021)].

² CB Insights, *Disrupting The \$8T Payment Card Business: The Outlook On ‘Buy Now, Pay Later’* (Mar. 2, 2021), <https://www.cbinsights.com/research/report/buy-now-pay-later-outlook/> [hereinafter CB Insights, *Disrupting* (Mar. 2021)].

³ California Department of Financial Protection and Innovation, *Annual Report of Finance Lenders, Brokers, and PACE Administrators Licensed Under the California Financing Law* (Oct. 2021), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf>.

⁴ CB Insights, *Disrupting* (Mar. 2021)

in the last 12 months.⁵ Of the top ten online retailers in the U.S., seven either currently have BNPL options at checkout or have announced partnerships with BNPL providers.⁶ The other three are available through third party apps. Although these products may offer consumers an affordable alternative to finance large purchases, they are not risk free.

BNPL products have largely evaded oversight by federal and state regulators, and although these products could have a place in meeting consumer needs, they could pose risks and need to be covered by basic consumer protections. Each BNPL product presents different terms and installment plans, but the standard pay-in-four model is designed to fall outside of the scope of the Truth in Lending Act (TILA).⁷ Regardless of whether they fall outside of the scope of TILA, these products are still extending credit to consumers and should be subject to state licensing and credit statutes, as well as federal consumer protection and fair lending laws.

Many of these BNPL products are aimed at younger consumers through their marketing and partner brands. These younger consumers may have less credit history or may already be beleaguered with student loans and other forms of debt. These tactics are working. In 2021, the percentage of Generation Z who are using BNPL had grown from 6% in 2019 to 36%. Similarly, Millennial usage more than doubled, growing from 17% to 41% from 2019 to 2021.⁸

BNPL products entice consumers with a promise of interest free payments, no finance charges or interest, and claim that they are “better than credit,” but many providers charge fees, including late fees, missed payment fees, account reactivation fees, returned payment fees, and rescheduling fees. One U.K. survey found that about 20% of respondents had missed a payment, and that for some providers that charge fees, these fees can make up a significant portion of the company’s revenue.⁹ Fees range depending on the provider, but can reach as high as \$25, and with no limitations on how many fees can be charged, they can add up quickly.¹⁰

Since BNPL products are directly linked to either a consumer’s bank account or credit card, fees can trigger punitive overdraft and nonsufficient fund fees, and can have a negative impact on a consumer’s credit score. Unpaid or late fees can trigger overdraft fees in a consumer’s bank account; thus, the consumer can be charged by both the BNPL provider and their bank. For example, one U.K. bank reported that 10% of its customers who had made a

⁵ 3,443 complaints have been submitted in the last three years and 2,195 complaints have been submitted in the last 12 months about these four companies to Better Business Bureau, Complaint Database search, (November 12, 2021). <https://www.bbb.org>.

⁶ Jamie Grill-Goodman, *Retail Info Systems*, “Top 10 E-Commerce Retailers and Their Digital Experience” (Aug. 12, 2021), <https://risnews.com/top-10-e-commerce-retailers-and-their-digital-experience>.

⁷ 15 U.S.C. §1602(g). For analysis, see National Consumer Law Center’s *comments to Task Force on Financial Technology U.S. House Committee on Financial Services On “Buy Now, Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products”* at 4 (Nov. 2, 2021),

https://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/Fintech-task-force-liquidity-testimony-Lauren-Saunders-2021-11-2-FINAL.pdf [hereinafter NCLC comments to Task Force on BNPL (Nov. 2021)].

⁸ Shelvin, *The “New” Payments Trend* (Sept. 2021).

⁹ Personal Finances and Funds Team, U.K. HM Treasury, *Regulation of Buy-Now Pay-Later Consultation* (Oct. 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027366/210923_-_BNPL_condoc_-_Cleared.pdf.

¹⁰ Leticia Miranda, *NBC News*, “The Hidden Costs of ‘Buy Now, Pay Later’ Loans” (Nov. 4, 2021), <https://www.nbcnews.com/business/consumer/hidden-costs-buy-now-pay-later-loans-rcna4367>.

payment to two of the large BNPL providers had exceeded their overdraft allowance in that same month.¹¹ Some providers charge returned payment fees, which are triggered when a payment is returned unpaid due to insufficient funds. A returned payment fee may also trigger an additional bank fee for the consumers without any limit on how many times a BNPL provider can attempt repayment.¹² These fees can be incredibly damaging to consumers as overdraft and NSF fees are highly associated with closed bank accounts, leading to financial exclusion.¹³ Further, some BNPL products can only be used with a credit card, resulting in the consumer potentially being charged interest or charges imposed by the credit card company in addition to any fees associated with the BNPL product.¹⁴

The following is a consumer complaint and company response submitted to the Better Business Bureau (BBB), illustrating the cost of fees to consumers.

BBB Consumer Complaint: ... I signed up for a music program. If I made payments every month with no interest. set up payment plan to be within time frame for no interest. I thought paid off, they told me NO they said I was paying wrong amount each month & started charging me late fees. I was paying by what they told me to pay each month. They keep wracking up late fees. Which is what is only owed on the balance. They need to waive the balance

Company Response: ... You have made multiple payments towards this order totaling in \$798.74, but \$274.70 of this was late fees and interest, making the payments towards the order itself a total of \$524.04....¹⁵

The following are complaints submitted to the CFPB, identifying problems consumers face with unexpected fees and costs associated with BNPL products.

Washington Consumer: I have revoked authorization to debit my bank account with quadpay on numerous occasions and they refuse to and continue to try to debit my account.¹⁶

Pennsylvania Consumer: the lender charges a late fee of XXXX dollars every month as I am making my payments of XXXX dollars on time. They say that i

¹¹ U.K. Financial Conduct Authority, *The Woolard Review - A Review of Change and Innovation in the Unsecured Credit Market* (Feb. 2, 2021), <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf> [hereinafter U.K. Financial Conduct Authority, Woolard Review (Feb. 2021)].

¹² For example, Klarna charges a \$25 (or any lower amount required by law) if payment is returned unpaid for “non-sufficient funds.” See Klarna Pay in 4 Agreement, https://cdn.klarna.com/1.0/shared/content/legal/terms/0/en_us/sliceitinx.

¹³ Center for Responsible Lending Statement for the Record: *Overdraft Fees Cause Financial Exclusion; Policymakers Must Act Hearing on “Banking the Unbanked: Exploring Private and Public Efforts to Expand Access to the Financial System” Before the U.S. House Committee on Financial Services, Subcommittee on Consumer Protection and Financial Institutions* (July 21, 2021), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-overdraft-financial-exclusion-21jul2021.pdf>.

¹⁴ For example, Splitit charges all payment to a credit card rather than a bank account, see terms and conditions, (Nov. 5, 2021) <https://www.splitit.com/shopper/>.

¹⁵ BBB Complaint submitted 11/4/21 re Klarna <https://www.bbb.org/us/oh/columbus/profile/payment-processing-services/klarna-inc-0302-70091034/complaints>.

¹⁶ CFPB # 3994592 (Washington Consumer), and complaints cited as “CFPB # complaint number” are collected from Consumer Financial Protection Bureau, Complaint Database search, (November 12, 2021). <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

should pay XXXX dollars every month on a balance of XXXX dollars. They minimum amount due is excessive and their practices really against any expectations from the US consumers....¹⁷

Ohio Consumer: I've been attempting to reach someone at quadpay whom can help me for months. 4 months after first attempt I received response regarding late fees. They are taking way too many payments for accounts already paid or from multiple accounts.¹⁸

Florida Consumer: The ability to make payments through their app was modified and i was not able to log in, i had to mail in a payment and then i received a late fee because i didnt make the payment on time. Their faulty app not working was the reason i couldnt make the payment on time. They refused to waive the late fee and they are threatening to issue more late fees if i don't pay the late fee¹⁹

Minnesota Consumer: I made 3 payments to Klarna in the month... My account was up to date and according to the app I had paid on time. Now they are trying to say that i owe a XXXX late fee when I was already charged a XXXX late fee in XXXX. Now on XX/XX/XXXX I made a payment and apparently I can not be refunded my XXXX because of that. Which makes zero sense. Companies that take advantage of people like this should be fined.²⁰

Lack of clear and uniform consumer disclosures and statement requirements make it difficult for consumers to understand the exact cost of the loan, to compare costs amongst providers, and to keep track of multiple BNPL loans at a given time. Products and providers do not uniformly or clearly disclose how much these fees are, where to find information about fees, and whether these fees are capped. Some fees are listed in the terms and conditions, while others are listed in an installment agreement or in “frequently asked questions” sections on websites. Certain products contain disclosures about the possibility of a fee without an indication of the amount of that fee.

Further, each consumer purchase of a product or good is financed with its own payment plan and has its own payment due dates, as opposed to a single, monthly payment like other forms of credit. A single monthly payment is easier to track and manage than various payments throughout the month. Consumers with multiple BNPL loans may find it difficult to track since due dates vary based on the date of purchase. A recent survey of U.S. consumers found that 38% had missed payments—and that percentage goes up for younger consumers, with more than half of Generation Z or Millennials saying they had missed a payment. For those who have fallen behind on payments, 72% reported a decline in their credit score.²¹ Another study found similar amounts of BPNL users falling behind on payments—43% of users had fallen behind on payments according to a study by Cornerstone Advisors, and of those consumers, two-thirds said

¹⁷ CFPB # 3507672 (Pennsylvania Consumer).

¹⁸ CFPB # 4600135 (Ohio Consumer).

¹⁹ CFPB # 4561227 (Florida Consumer).

²⁰ CFPB # 3601199 (Minnesota Consumer).

²¹ Anna Irreera, *Reuters*, “As ‘Buy Now, Pay Later’ Surges, a Third of U.S. Users Fall Behind on Payments” (Sept. 9, 2021), <https://www.reuters.com/technology/buy-now-pay-later-surges-third-us-users-fall-behind-payments-2021-09-09/>.

that the reason for falling behind was because they had lost track of payments.²² Plus, some providers also charge rescheduling fees for consumers who need to move their payments, making it burdensome for consumers to change the payment schedule should an unexpected financial obligation arise.²³

Consumer understanding of the terms of BNPL loans varies widely, with many consumers not viewing BNPL as credit, according to a U.K. study.²⁴ If these products are not perceived as credit or as loans, consumers may not fully understand the consequences of failing to repay. Further, the U.K. study found that consumers still viewed BNPL as a financial service that was regulated and came with associated protections.²⁵ But these products are credit and carry the same consequences for defaulting as other types of loans. Consumer misunderstanding may lead to consumer harm. For example, some of these products include consent to receive debt collection emails and phone calls in the initial user or product agreement, which may lead to harassing or abusive debt collection should a consumer default on their loan.

Consumers may purchase more with BNPL than without, both in quantity and purchase amount. One study found that half of BNPL users spent 10-40% more using BNPL than using a credit card.²⁶ The same study found that customers using Quadpay and Sezzle average 4-5 transactions per month, and customers using Afterpay and Klarna average 4 per month.²⁷ Although the terms may be attractive, there are concerns about these products being marketed to people who cannot afford them who then buy more than they can afford, with assurances of increased purchasing power and exclusive merchant offers.

Marketing of these products is enticing, with promises of instant approval and no impact on a consumer's credit, however underwriting may not meaningfully assess a borrower's ability to repay. Underwriting for these loan products varies based on provider, and while many market "instant approval" or "no credit check required" for loans, underwriting may not holistically review a consumer's ability to repay along with the rest of a consumer's financial obligations. For many, the underwriting details are not clearly or uniformly disclosed to consumers. Although some involve a "soft" credit check with each individual BNPL purchase, others do not check credit reports at all. Further, some BNPL providers base purchase approvals and spending limits on the number of purchases and on time payments made on that BNPL application, rather than viewing these loans within the context of a consumer's financial obligations. If consumers have multiple BNPL loans with various providers, there's no way for companies to assess that since most payment history is not reported to credit bureaus.

The following complaint submitted to the CFPB illustrates issues around the lack of underwriting of BNPL products:

²² Penelope Wang, *Consumer Reports*, "The Hidden Risks of Buy-Now, Pay-Later Plans" (Feb. 14, 2021), <https://www.consumerreports.org/shopping-retail/hidden-risks-of-buy-now-pay-later-plans-a7495893275/> [hereinafter Wang, *Consumer Reports*, *Hidden Risks* (Feb. 2021)].

²³ For example, Sezzle provides one free reschedule on every order, but charges fees for any payment moves beyond that, see <https://shopper-help.sezzle.com/hc/en-us/articles/360045946992-How-do-I-reschedule-a-payment->.

²⁴ U.K. Financial Conduct Authority, *Woolard Review* (Feb. 2021).

²⁵ *Id.*

²⁶ Wang, *Consumer Reports*, *Hidden Risks* (Feb. 2021).

²⁷ Cardify, *Convenience, Debt, and Novelty: Analyzing BNPL Consumer Data* (Sept. 8, 2021), <https://www.cardify.ai/reports/bnpl-trend-report>.

Ohio Consumer: I applied for QuadPay through their app. The only information needed is my name, email address, home address, phone number, and a debt/credit card. Upon filling out all the required information, I was told that I was unable to be approved to use QuadPay. There is no credit check ran for the use of this service...As previously stated, the only required information for this service is Name, email address, home address, phone number, and a debt/credit card. I feel as though this company is discriminating against people for either their name or geographical location, because like I said before, there is no credit check for this service.²⁸

Some BNPL programs report some payment history to the credit bureaus, but some do not report positive credit activity, like making on-time payments to the credit bureaus, and only report negative activity, like defaulting on a loan. Some companies are introducing programs to report all payment history to the credit bureaus to “boost your limit” and “build your credit.”²⁹ However, even programs that report all payment history may have a negative impact on a consumer’s credit score since each loan is a separate credit item that gets opened and closed very quickly.³⁰

The following consumer complaint to the Better Business Bureau illustrates the potential harm to consumer credit scores and report.

BBB Consumer Complaint: I first joined Sezzle up on January 24th 2021 and its paid installment for goods and merchandise. I never missed any payment I had paid orders off early to where I gained a 1400.00 limit. On March 9th I processed an order thru Lowes for a stove with a total cost of 447.41 broken into 4 payments at 111.85. Unknown to me the bank made a chargeback of the order. I continued to make all the next payments on time which left one last payment. The proc to me making the payment the account was closed for nonpayment. I immediately asked can I make a payment to resolve the issue. I was told by the representative I had to contact the bank on May 8th 2021. I was told to contact Sezzle in 30 days to see if it was clear to make payment. I further sent and received an email on June 8th to make said payment. On June 16th my credit monitoring services see a drop of 73 points for a late payment over 60 days after I was told that it wouldn't be reported. This company falsel gave me inaccurate information³¹

Consumers have limited access to refund or redress should there be a problem with the item purchased. If a consumer has a problem with the product purchased, refund and return rights vary between providers, and again, information about these rights is difficult to find.

²⁸CFPB # 3529079 (Ohio Consumer).

²⁹ BNPL provider Sezzle offers Sezzle Up, an optional program for consumers to have all payment history reported to TransUnion and Equifax. For more information, see <https://my.sezzle.com/sezzle-up/>.

³⁰Trina Paul, *CNBC*, “‘Buy Now, Pay Later’ Loans Can Decrease Your Credit Score Even if You Pay on Time—Here’s What You Need to Know” (Sept. 3, 2021), <https://www.cNBC.com/select/how-buy-now-pay-later-loans-can-decrease-your-credit-score/>.

³¹ BBB Complaint submitted 11/4/21 re Sezzle, <https://www.bbb.org/us/mn/minneapolis/profile/financing/sezzle-inc-0704-1000027079/complaints>.

Based on consumer complaints to the CFPB, even if consumers can file disputes or complaints, refunds are not timely and are not always honored:

Texas Consumer: Okay I waited over a month to get a refund back from XXXX and I contacted them and they already send the refund back to Klarna and Im still showing that I owe XXXX but I return the computer back end of XXXX and I never got a email from Klarna or them saying they resolved my issues the order number is # XXXX I send them the tracking numbers and credit receipts but Im still being charged for this laptop³²

Maryland Consumer: On XX/XX/2021 I filed a complaint and dispute with Afterpay ... My complaint and dispute was in regards to a merchant that I placed an order with on ... In my complaint with Afterpay I noted that I had received a damaged order from the merchant and had reached out to the merchant for return instructions and a refund. However, the merchant failed to provide a return label. As a result, I was going to have to pay {\$76.00} on my payment due date of XX/XX/2021. On XX/XX/2021 I received a response from Afterpay stating, " your Afterpay payment plan remains in place, we are not able to adjust your payment schedule on the basis of longer than expected delivery. " ... I contacted Afterpay and indicated that the basis of my dispute was not due to " longer than expected delivery " but had clearly indicated the merchant was failing to adhere to their return policy and did not honor the issuance of a return label. On XX/XX/2021 I received a response from the merchant that a return label would be sent to me on XX/XX/2021. Mysteriously this was the same date my installment payment was due. It appears the merchant deliberately stalled the issuance of a return label in order to fraudulently collect funds that were in dispute. As an international payment platform Afterpay does not provide a claim process in which consumers are allowed to file a complaint against a merchant. Having such a process would allow for an investigation and response from the merchant. Instead, consumers are forced to make payment and pay for goods they aren't keeping dispute evidence that merchants have failed to adhere to their return policy.³³

Georgia Consumer: I recently purchased a bed on XXXX and was offered to break the total amount into 4 payments of {\$180.00}. I was immediately billed the {\$180.00} and then maybe 2 days later I cancelled the order due to the bed not being in stock and the delay of almost a month to have the bed delivered. I cancelled with XXXX and again with Quadpay. In fact I cancelled twice with Quadpay and they still bill my credit card another {\$180.00}. They have ignored my request to cancel after being reassured it would get resolved and I would receive a full refund. Both XXXX and Quadpay are lacking adequate customer service and are being dishonest in their advertising and their communication.³⁴

³² CFPB # 4638983 (Texas Consumer).

³³ CFPB # 4613567 (Maryland Consumer).

³⁴ CFPB # 4529520 (Georgia Consumer).

North Carolina Consumer: I keep getting emails from Klarna finance company stating that I owe a monthly payment of {\$100.00} that is past due. I have called them several times, sent several emails stating that I do not owe them any payments. The merchandise were returned. They keep sending me these emails. I want this to stop.³⁵

Florida Consumer: I purchased a product from XXXX using the QuadPay service for payment, splitting the purchase into 4 payments. But this product turned out to be the wrong item. At the instruction of XXXX customer service, I refused delivery and the item was returned to them on XX/XX/XXXX. I purchased a replacement also using QuadPay and waited for a refund on my first order. A refund was issued on XX/XX/XXXX, after XXXX had processed the returned item. I notified QuadPay and received an email that I needed to wait 13 days for the system to then process my refund. For the first order, I was charged a payment of {\$190.00} upon ordering the item. Despite notifying Quad Pay with email and photo evidence of my return and refund from XXXX, QuadPay continue to charge payments, {\$190.00} on XX/XX/XXXX and another is scheduled for XX/XX/XXXX. Additionally, the replacement order turned out to be defective. I returned the item to XXXX and again, have submitted proof of this refund to Quad Pay and they refuse to stop charging payments despite having evidence that this order has been refunded. Charged {\$180.00} upon ordering, and {\$180.00} on XX/XX/XXXX with another payment scheduled for XX/XX/XXXX. They refuse to work with me to resolve this, citing that they need to wait for " the system ". I understand the need to wait for the refund to be issued to my bank but continuing to charge my accounts for items I have returned weeks ago seems a bit much.³⁶

Ohio Consumer: I used QuadPay to purchase a XXXX watch. XXXX canceled my order and claimed they never charged the card. I can not get XXXX to answer me back. I have attempted to contact QuadPays customer service over 20 times with the chats being closed out by QuadPay before hearing from anyone. Im trying to get this resolved before the 2nd Payment is due to QuadPay. They have refused to answer back any messages I have sent them. In fact I am owed {\$20.00} in a refund.³⁷

Although BNPL offerings typically provide financing for goods and clothing, these products are shifting into new market areas, including groceries, travel, and even medical debt. With a similar structure to other BNPL plans, these offer no interest and no hard credit check financing options, often with similar terms and conditions, including limited chargeback rights, fees and charges, and mandatory arbitration agreements. However, in certain market areas, BNPL may be more problematic for consumers. For example, with limited chargeback, refund, or return rights, consumers may run into trouble using BNPL plans to pay for travel that

³⁵ CFPB # 4326099 (North Carolina Consumer).

³⁶ CFPB # 4094753 (Florida Consumer).

³⁷ CFPB # 3904665 (Ohio Consumer).

can be interrupted, cancelled, or delayed for a variety of reasons. In addition, providers also offer installment loans, which could be a way for providers to provide larger, longer debts than a typical BNPL loan.³⁸

BBB Consumer Complaint: July 24, 2020 I purchased a Greyhound ticket using Sezzle's \$10 monthly payment plan but hours before departure I cancelled this trip due to health reasons. However, I was charged \$38.20 upfront and in full. However, as of August 2020 I'm still being charged another \$38.20 on Sezzle's website. I told both Greyhound and Sezzle that my credit card and bank have verified that \$38.20 was already paid for. I called Sezzle's customer service and they're saying its Greyhounds fault. I call Greyhound and the say its Sezzle's fault. I'm very disappointed with this runaround and at this point I'm requesting a full refund to my bank account. Please help and thank you for your assistance.³⁹

BBB Consumer Complaint: In feb of 2020 i purchased concert tickets with ***** and Klarna. The concert was cancelled and ***** sent a refund to Klarna on August 27.... Today is October 22 and i still have not receive any of my money or any sort of help... The purchase was for \$617. I am unable to speak to a manger to expedite my refund.⁴⁰

Despite potential consumer harm, these products have received inadequate federal and state oversight. Within the United States, California is the only state that has acted against BNPL providers. California fined three BNPL providers for making unregulated loans to consumers and eventually required them to apply for the applicable license.⁴¹ Other countries have seen similar growth in third-party BNPL products, and federal regulators have stepped in to protect consumers. For example, federal regulators in both Australia and the United Kingdom have recently taken steps to regulate BNPL apps. The U.K. Treasury recently said that BNPL would be under supervision of Britain's Finance Conduct Authority, and Australian regulators created a new BNPL code of practice.⁴²

³⁸ Peter Lucas, Digital Transactions, "A Bread Partnership Adds More Long-Term Financing Power to Sezzle's BNPL Arsenal" (Oct. 25, 2021), <https://www.digitaltransactions.net/a-bread-partnership-adds-more-long-term-financing-power-to-sez-zles-bnpl-arsenal/>.

³⁹ BBB Complaint submitted 11/4/21 re Sezzle, <https://www.bbb.org/us/mn/minneapolis/profile/financing/sezzle-inc-0704-1000027079/complaints>.

⁴⁰ BBB Complaint submitted 11/4/21 re Klarna, <https://www.bbb.org/us/oh/columbus/profile/payment-processing-services/klarna-inc-0302-70091034/complaints>.

⁴¹ California Department of Financial Services, "Point-of-Sale Lender Sezzle Agrees to Cease Illegal Loans, Pay Refunds in Settlement with the California Department of Business Oversight" (Jan. 16, 2020), <https://dfpi.ca.gov/2020/01/16/point-of-sale-lender-sezzle-agrees-to-cease-illegal-loans-pay-refunds-in-settlement-with-the-california-department-of-business-oversight/>; California Department of Financial Services, "Point-of-Sale Lender Afterpay Agrees to Cease Illegal Loans, Pay Refunds in Settlement with the California Department of Business Oversight" (Mar. 16, 2020), <https://dfpi.ca.gov/2020/03/16/point-of-sale-lender-afterpay-agrees-to-cease-illegal-loans-pay-refunds-in-settlement-with-the-department-of-business-oversight/>; California Department of Financial Services, "Point-of-Sale Lender QuadPay Agrees to Cease Illegal Loans, Pay Refunds in Settlement with the California Department of Business Oversight" (Apr. 22, 2020), <https://dfpi.ca.gov/2020/04/22/point-of-sale-lender-quadpay-agrees-to-cease-illegal-loans-pay-refunds-in-settlement-with-the-california-department-of-business-oversight/>.

⁴² Ryan Browne, *CNBC*, "Britain is Cracking Down on the \$3.7 Billion 'Buy Now, Pay Later' Industry" (Feb. 2, 2021), <https://www.cnbc.com/2021/02/02/uk-to-regulate-buy-now-pay-later-bnpl-firms-like-klarna-and-clearpay.html>; Finextra, "Australian Finance Industry Association Introduces Voluntary Code of Practice for BNPL Sector" (Mar. 2, 2021), <https://www.finextra.com/pressarticle/86399/australian-finance-industry-association-introduces-voluntary-code-of-practice-for-bnpl-sector> (describing how the Australian Finance Industry Association (AFIA) introduced a BNPL code of practice).

Federal and state regulators should provide necessary oversight for BNPL providers, ensuring, at a minimum, that they are not engaging in unlawful discrimination or unfair, deceptive, or abusive acts or practices. Although many of these closed-end credit products largely do not carry periodic interest, most have late fees, missed, or rescheduled payment fees, and other finance charges that should not be permitted to exceed the allowable interest and fees for active-duty military under the Military Lending Act (MLA). Further, many of these products include mandatory arbitration agreements, which covered military members should be exempt from as established by the MLA.

Although we appreciate the CFPB’s earlier blog post warning consumers of the risks of BNPL, we urge the CFPB to view these products as credit and ensure that they are complying with all applicable credit laws and regulation.⁴³ If terms and conditions include consent to receive communication from third-party debt collectors, they should be compliant with the Fair Debt Collection Practices Act (FDCPA). The CFPB should ensure that these loans are only being made to consumers after determining a consumer’s ability to repay, in conjunction with all other financial obligations. State regulators should require lenders to abide by applicable licensing and usury laws. State and federal regulators should make sure that lenders are not charging unfair fees or shifting into an abusive fee model. Finally, state and federal regulators should consider collecting data on these programs to better understand the risks associated with them.

2. Earned Wage Access and Faux Earned Wage Access Products

Although some earned wage access (EWA) programs that are employer integrated and repaid only through deduction from future pay may be a better option than costly payday loans, they are not risk free. These fee-based EWA programs should be regulated as credit, especially as the trend continues towards employers offering these programs for free. Both Marisabel Torres with Center for Responsible Lending and Lauren Saunders with National Consumer Law Center discussed EWA programs and faux EWA programs in depth at the hearing and we generally share the concerns outlined in those testimonies.

While some users of EWA products have reported lower usage of payday loans and overdraft fees, these products should be subject to oversight and monitoring.⁴⁴ Accessing pay early may leave a hole in next week’s paycheck, which can in turn cause a cycle of borrowing or lead consumers to turn other forms of credit.

Regardless of structure, a product where a third-party advances funds to a consumer ahead of the consumer’s payday by a third party and is then repaid in some fashion out of the paycheck is a loan. CFA shares concerns raised by nearly 100 consumer, labor, civil rights, legal services, faith, community, and financial organizations about the potential harms of viewing these fee-based earned wage access products as something other than credit, leading to evasion of

⁴³ Nelson Akeredolu, Andrew Braden, Joshua Friedman, and Laura Udis, Consumer Financial Protection Bureau, “Should You Buy Now and Pay Later?” (July 16, 2021), <https://www.consumerfinance.gov/about-us/blog/should-you-buy-now-and-pay-later/>.

⁴⁴DailyPay, “Our Survey Says ... DailyPay Saves Employees, On Average, \$1,205 Per Year” (May 14, 2020), <https://www.dailypay.com/blog/our-survey-says-dailypay-saves-employees/>.

consumer protection and fair lending laws.⁴⁵ State regulators and the CFPB should regulate these fee-based earned wage access products as credit.

Specifically, CFA urges the CFPB to rescind its 2020 EWA advisory opinion or revise it significantly to focus only on whether providers of free programs are “creditors” covered by TILA, and revisit and potentially revoke the PayActiv approval order after affording PayActiv due process. The CFPB should further supervise these fee-based EWA providers and conduct research on the impact of EWA programs.

Further, fintech providers that purport to lend earned wages and seek access to a consumer’s bank account but are not employer integrated are essentially a payday loan and should be treated as such. Authorization to debit a consumer’s bank account poses can lead to abusive attempts to collect payment.⁴⁶

3. The “Tip” Model, used to pay for earned wage access, overdraft protection, cash advances, and loans:

Many fintech providers use purportedly voluntary “tips” to charge consumers for financial products, including faux early wage access, overdraft protection, cash advances, and even loans. Certain neo-banks offer consumers enticing promises of fee-free overdraft protection, claiming that overdraft fees have gotten out of hand. However, the overdraft protection offered still comes at a price—consumers are asked to “tip” to help other users make ends meet or pay for the cost of the service.⁴⁷ Another provider offers consumers cash advances for no interest, no monthly fee, and no credit check, “unlocking” higher cash advances each time they use the service. However, consumers are asked to leave a “small optional tip” to help cover costs of the product.⁴⁸ Other providers are utilizing this tip model as a way for consumers to pay for faux earned wage access and even loans.⁴⁹

These “tips” are not truly voluntary due to a variety of techniques companies use to make it difficult not to tip. Although there seems to be an assumption that so-called tips are voluntary and consumers must opt into them, companies are utilizing a variety of strategies to make it difficult not to tip or to make the consumer feel compelled to tip. Strategies include adding a default tip that must be removed each time; disingenuous statements about how tips support a “community” or will help other “users make ends meet” rather than going directly to the company; deceitfully labeling tips as “donations;” or denying or reducing future credit if a consumer fails to tip enough. Further, one colleague recently recounted that he found it

⁴⁵Letter from National Consumer Law Center, Center for Responsible Lending, Consumer Federation of America, et. al, to Consumer Financial Protection Bureau re: “Rescind earned wage access advisory opinion and sandbox approval and treat fee-based earned wage access products as credit” (Oct. 21, 2021), <https://consumerfed.org/wp-content/uploads/2021/10/CFA-joins-Groups-in-Urging-CFPB-to-Reverse-Earned-Wage-Actions-that-Threaten-to-Create-Dangerous-Fintech-Payday-Loan-Loopholes-10.12.21.pdf>.

⁴⁶ Letter from National Consumer Law Center & Center for Responsible Lending to Consumer Financial Protection Bureau re: “Concern about prior leadership’s finding that certain earned wage access products are not ‘credit’ under TILA” (Oct. 12, 2021), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-nclc-ewa-letter-to-cfpb-oct2021.pdf>.

⁴⁷ SpotMe, <https://www.chime.com/spotme/> (last visited Nov. 9, 2021).

⁴⁸ Instacash, <https://www.moneylion.com/instacash/> (last visited Nov. 9, 2021).

⁴⁹ For more information on providers using the tip model, including Earnin, see NCLC comments to Task Force on BNPL, at 14–17 (Nov. 2021).

impossible to undo the default tip option even after deleting and reinstalling the app. Even without manipulative strategies, consumers are more likely to feel compelled to tip for fear of being treated differently or denied access in the future.⁵⁰

Use of purportedly voluntary “tips” is inherently deceptive and evasive, especially given that as structured, “tips” are not voluntary. The “tip” model takes advantage of consumers’ lack of awareness of how tips add up, especially since small tips can add up to a high cost over time nearing payday loan pricing and thus, can make it easier for consumers to get sucked into the cycle of debt. For example, a voluntary tip can near \$15 per \$100, similar pricing to that of payday loans. On the surface, this pricing may look cheap to consumers but are marketed in ways to hide the true cost or dismiss the APR as irrelevant due to the shorter loan cycle. Plus, tip models rely on the consumers’ assumption that they will not be able to access the product in the future if they don’t tip.⁵¹ Further, tips are added to the repayment amount before the transaction is fully completed and recovery of tips is covered by the authorization to debit a user’s account per user contracts. Consumers do not tip after the service has taken place in appreciation for good service which might make them more voluntary.

Based on consumer complaints to the CFPB, tips are inherently deceptive and take advantage of consumers’ lack of awareness:

Nevada Consumer: ...Earnins is a service that let 's you borrow money before payday ... its a payday app and I have a limit of XXXX dollars on there and I only borrowed XXXX including small tips and they are trying to say that I owe them XXXX on my next payday. I never borrowed that much money. Thats my entire paycheck. So they get a hold of my bank account information and they are going to steal everything from me now. I need help pretty fast because that's my rent money and everything to live off of for 2 weeks. I would be drained out if every penny I have to even eat with. It's a payday service.⁵²

Minnesota Consumer: Today, XX/XX/2021, I used the app called Earnin to make a cash out of {\$100.00}. I clicked cashout and like the app promises, it's not obligatory to pay any fees. Instead, the app didn't even have an option to accept or decline any charges, it just automatically charged a pre-set tip amount that the app forcibly charged (by fraud) without my consent and without any approval. Instead of clicking ok or anything, I closed the app. I didn't even authorize it. I contacted the company via email and got an autoreply saying they don't monitor or reply to contacts. I asked Earnin to refund this illegally charged fee and remove the transaction. They refused to do so. I told them this is fraud and that I was also contacting the XXXX store because charging unauthorized fees like this is fraud

⁵⁰ For further analysis of whether tips are ‘voluntary,’ see Letter from National Consumer Law Center & Center for Responsible Lending to California Department of Financial Protection & Innovation at 8–12 (Mar. 15, 2021), https://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/CRL_CA_DFPI_EWA_Comments.pdf [hereinafter NCLC & CRL Letter to CA DFPI (Mar. 2021)].

⁵¹ For consumer examples of tip models, see NCLC & CRL Letter to CA DFPI at 8–12 (Mar. 2021).

⁵² CFPB # 4381685 (Nevada Consumer).

and violates the app store terms of use. The person representing EarnIn continued being rude and refused to give me back the money they stole.⁵³

New Jersey Consumer: On XX/XX/2020 I was able to take out a loan of XXXX by Money lion.... MoneyLion then breaks the loan up into 3 separate transactions and charges an exorbitant fee of XXXX on each transaction for instant pay to be sent to my bank account in minutes. While convenient and a small fee if it were one transaction, but it seems deceptive to break up one loan amount into 3 separate transactions resulting in 3 charges of XXXX (almost {\$15.00}) to have the loan sent to my bank quickly for a {\$120.00} loan.... The main problem is the way they break up the 1 loan into XXXX to make more transaction fees, but also the fact that they automatically add a tip amount and their system is designed to trick the person requesting the loan. This fee is pre-set to {\$5.00} (or some dollar amount) in their system and the person taking the loan must manually change it to {\$0.00} or another amount, as opposed to the company having it automatically pre-set to {\$0.00} and having the person add a tip of their choosing or leaving it at {\$0.00}....On XX/XX/XXXX when I went to pay back my loan I was curious as to why I had {\$20.00} in fees instead of approx {\$15.00}. When I reached out to customer service this is when I found out that there was the XXXX dollar tip on the last transaction of {\$20.00}. I asked them to remove it as I did not do this myself and explained to them that this must have been preset by the system and I never would have entered a XXXX dollar tip as Im not in a position to do that.... They just explained to me that next time I should remove the XXXX dollars and change it to XXXX dollars which is ridiculous because I explained to them the XXXX dollar tip should not be put in there automatically and that it should be set at XXXX dollars and if I want to leave a tip I can enter the amount of my choosing....they refused to take off the XXXX dollar tip that I never selected manually... I dont think its fair or legal. These are exorbitant fees that theyre charging and the fact that they are inputting the amount and not the person taking out a loan. I dont know what the loan fees are that my state allows, but I feel like this has to be illegal and borderline fraudulent, if not outright fraudulent. This is probably how theyre making a lot of their money off the backs of struggling consumers. Please look into this matter further. It will be greatly appreciated! Thank you!⁵⁴

Even if voluntary, tips could be considered finance charges under the Truth in Lending Act (TILA) and therefore, subject to state usury laws and fair lending laws. Regardless of how the charge is labeled to a consumer, the cost remains the same. Most borrowers likely do not understand how high an interest rate they are paying, and even if some borrowers are able to translate the fees or tips into APRs, these fees should still be subject to consumer protection laws. For example, one provider encourages users to leave a tip of \$0 to \$14 on a \$100 weekly loan, which would equate to 730% APR, an illegal interest rate in states across the country.⁵⁵

⁵³ CFPB # 4551776 (Minnesota Consumer).

⁵⁴CFPB # 4017709 (New Jersey Consumer).

⁵⁵ Kevin Dugan, *NY Post*, "Cash-advance App Earnin Gets Subpoenaed by NY Regulator: source" (Mar. 29, 2019), <https://nypost.com/2019/03/28/cash-advance-app-earmin-gets-subpoenaed-by-ny-regulator-source/>.

Labeling interest as a “tip” does not change its cost to the consumer and should not exclude it from usury law.

Failing to regulate these so-called “tips” as finance charges will enable dangerous erosions of fair lending laws and usury laws across the country. As the Federal Reserve Board previously stated, it did “not interpret Regulation Z to automatically exclude all ‘voluntary’ charges from the finance charge,” when it had primary authority over TILA. Even if they are voluntary in some instances, voluntary charges are finance charges in certain instances and may be subject to usury laws.⁵⁶ The CFPB should provide much needed oversight of finance providers that utilize the dangerous tip model and ensure that these providers comply with consumer protection laws and are not engaging in unfair, deceptive or abusive acts and practices.

4. Financial Inclusion

CFA is particularly concerned about products that claim to be promoting financial inclusion but, in reality, do quite the opposite. Without meaningful, holistic underwriting, affordable repayment options, and price transparency, products may do more to exacerbate financial exclusion rather than promote financial inclusion.

Many of these products use promises of limited or no credit checks which may entice consumers with thin or limited credit histories. Other products are aimed at consumers who are struggling to make ends meet or who struggle to access mainstream credit. However, failing to properly underwrite loans will simply lead to unaffordable debt for consumers.

5. Conclusion

Consumer Federation of America appreciates the Task Force holding this hearing and the opportunity to submit a statement for the record. We look forward to working with the Task Force to meaningfully address the potential risks that emerging fintech products pose for consumers.

⁵⁶For consumer examples of tip models, see NCLC & CRL Letter to CA DFPI, at 14–15, 20 (Mar. 2021).