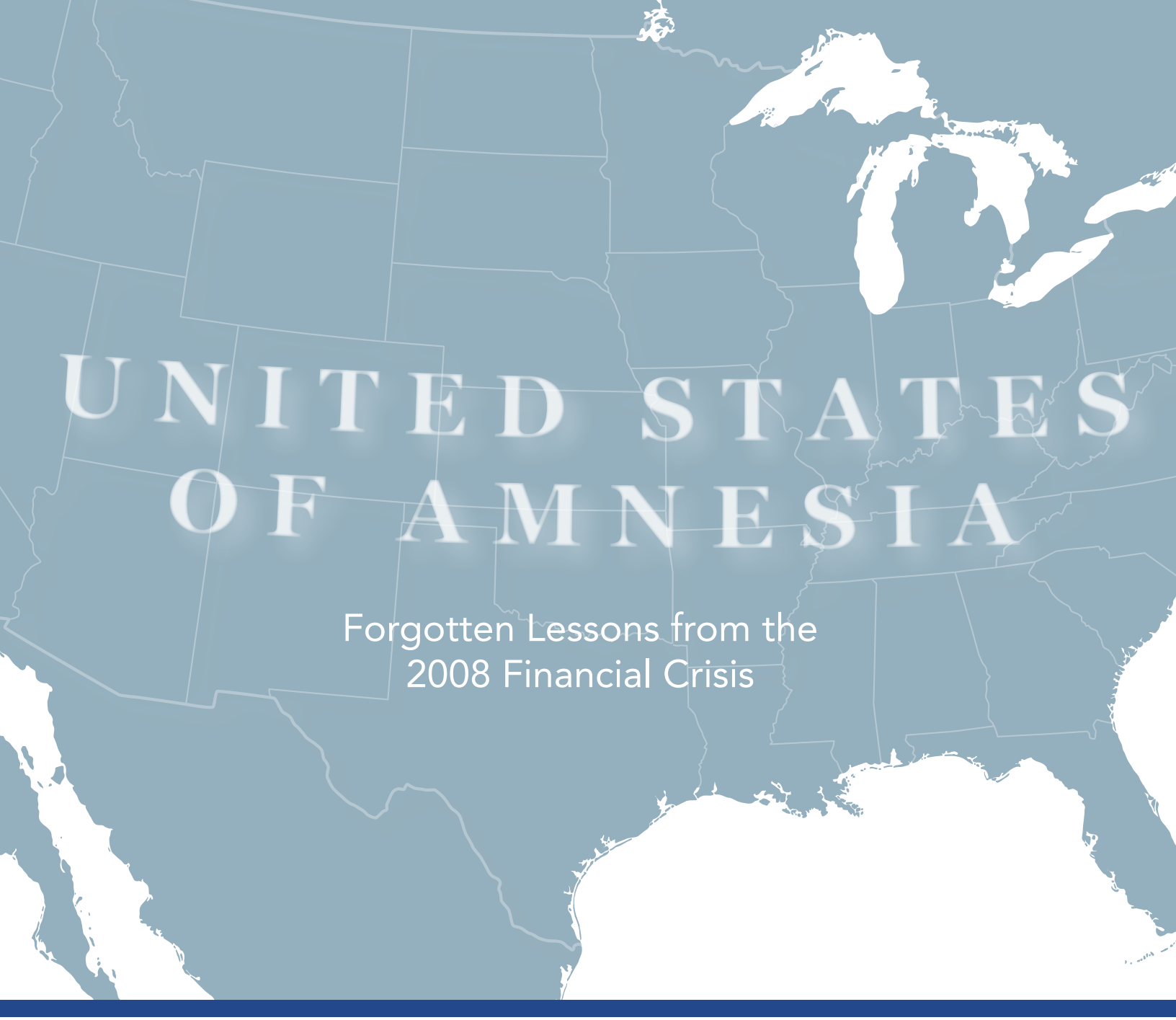


# The United States of Amnesia:
## Forgotten Lessons from the 2008 Financial Crisis

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## Executive Summary

"We are the United States of Amnesia; we learn nothing because we remember nothing," Gore Vidal once said. That warning feels especially relevant in today's financial landscape. In the aftermath of the 2008 financial crisis—when excessive risk-taking led to widespread economic devastation—Congress passed the Dodd-Frank Act to restore fairness in financial markets. In doing so, it created the Consumer Financial Protection Bureau (CFPB) to serve as a dedicated watchdog for consumers of financial services. From its inception, the CFPB has performed a critical role in restoring balance between powerful financial institutions and the individuals who depend on them. Profits returned, but within a framework designed to protect both consumers and the broader economy. Today, however, many of those safeguards are unraveling through a new wave of deregulation.

To understand the risks this poses, it is necessary to remember how regulatory failure enabled the last crisis. In the years leading up to 2008, financial institutions exploited gaps in oversight, shifting activity toward the least regulated parts of the market. Non-bank mortgage lenders and brokers thrived in this space, using lax standards and risky products to gain market share—eventually pulling even traditionally cautious banks into the same practices. In responding to the crisis, Congress, and subsequently the CFPB, ensured that strong and uniform regulation would create markets that were competitive for companies and fair to consumers. Yet recent policy decisions, especially around fintech, buy now pay later lending, and stablecoins, mark a return to uneven rules and regulatory blind spots. Once again, companies offering similar financial services are being treated differently under the law. And once again, short-term gains for a few are coming at the expense of long-term protections for many.

## Lest We Forget: A Primer on Regulatory Arbitrage Before the Financial Crisis

Prior to the Great Recession, the Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), and Federal Reserve subjected the banks and thrifts they supervised to stress testing, examined them for capital adequacy, and held them accountable to meet standards for corporate governance and risk management. As prudential regulators, those institutions reviewed the performance of banks to meet the needs and conveniences of the communities where they took deposits.

By contrast, non-bank mortgage lenders operated under a lighter regulatory regime, primarily through state mortgage licenses. Because their "originate to distribute" (OTD) business model relied on selling

risk-based priced mortgages to investors within a few weeks of origination, mortgage companies' profitability was divorced from the long-term performance of their loans.[1]

Mortgage brokers – intermediaries that marketed to consumers and performed many of the critical steps in disclosure, application-taking, and advising for loans originated by mortgage companies – also operated outside of federal scrutiny and without exposure to loan performance.

## Some Key Lessons From That Time:

*Without a level playing field, capital will flow to where it is subject to less regulation.* Wall Street investors rewarded mortgage companies. Between 1983 and 2003, the stock of Countrywide Financial, a subprime mortgage lender ultimately purchased by Bank of America, increased 23,000 percent.[2] Behind the scenes, Wall Street's appetite to create and sell exotic mortgage-backed securities fueled subprime mortgage companies to push adjustable-rate mortgages (ARMs), balloon, interest-only, "no doc," and "pick and pay" mortgage products. In the 1990s, the sum of subprime loans originated in a year exceeded $100 billion only twice. In 2002, subprime lending exceeded $200 billion for the first time. In 2004, it surpassed $500 billion. In 2005 and 2006, lenders originated more than $600 billion in subprime mortgages. The interest-only mortgage was a novel innovation when introduced in the early 2000s, but by 2007, one in five mortgages used an interest-only structure.[3]

*Choice is good, but not for regulators.* While charter switching continues to this day, it is far less common than it was prior to the Great Recession, when many bankers sought supervision from the regulator they saw as most amenable to their business. Almost 400 banks switched charters between 2000 and 2010.[4] Subsequent research revealed that charter-switchers were more likely to be rated safe and sound by their new regulator, even though they were likely to be riskier than charter-keepers.[5] Among the reasons driving the abolition of the OTS was a widely-held view that its examiners had been

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[1] Richard J. Rosen. (2010). The Impact of the Originate-to-Distribute Model on Banks Before and During the Financial Crisis—Federal Reserve Bank of Chicago (Working Paper Nos. 2010–20). Federal Reserve Bank of Chicago. https://www.chicagofed.org/publications/working-papers/2010/wp-20

[2] Shawn Tully. (2023, July 18). The dramatic rise—And epic fall—Of mortgage lender Countrywide. *Fortune*. https://fortune.com/2023/07/18/angelo-mozilos-brilliant-promotional-skills-powered-countrywide-stock-to-soar-23000-in-20-years-and-his-hunger-for-risk-led-to-disaster/

[3] Financial Crisis Inquiry Commission. (2010). *The Mortgage Crisis* [Preliminary Staff Report]. https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/2010-0407-PSR_-_The_Mortgage_Crisis.pdf

[4] Barbara Rehm. (2011, October 26). Two-Decade Trend Squeezes Choice From Dual Banking System. *American Banker*. https://www.americanbanker.com/news/two-decade-trend-squeezes-choice-from-dual-banking-system

[5] Marcelo Rezende. (2014). *The Effects of Bank Charter Switching on Supervisory Ratings* (Finance and Economics Discussion Series). Board of Governors of the Federal Reserve System. https://www.federalreserve.gov/pubs/feds/2014/201420/

reticent to require thrifts to write down distressed loans and less likely to require improvements to lending practices.[6]

In turn, state and federal regulators engaged in turf battles, pitting the rights of states to enforce their laws against national bank preemption power. In 1996, the OTS exempted federally chartered thrifts from state anti-predatory lending (APL) laws. In 2004, the OCC used its preemption power to assert that national banks were not subject to APL laws, either. At the time, more than twenty states had passed at least one law that applied stricter rules on mortgage lending.[7] For example, North Carolina's 2000 APL law banned prepayment penalties on smaller mortgages, required a "net tangible benefit" on home loan refinancings, and prohibited lenders from including balloon payments, negative amortization schedules, and other risky terms inside loans that exceeded high-cost thresholds for interest and fees.[8] The OCC's preemption rule prevented North Carolina from applying its law to national banks. Research showed that the rule permitted national banks to make more subprime loans and led to more foreclosures.[9]

The Dodd-Frank Consumer Financial Protection Act clarified that state law would take precedence when its protections exceeded those of federal regulators.

*Competition works best when all participants must follow the same rules.* Short-term rewards for taking risks can smother prudent businesses focused on long-term sustainability. While non-bank mortgage companies were primarily responsible for introducing subprime lending, they did not remain its exclusive providers. Over time, banks moved to take back market share. In 2004, independent mortgage companies originated more than half of all higher-priced mortgages. By 2007, their share fell to just 21 percent. Banks had taken the rest, either directly or through a subsidiary or affiliate.[10] The movement of

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[6] Granja, J., & Leuz, C. (2024). The death of a regulator: Strict supervision, bank lending, and business activity. *Journal of Financial Economics*, *158*, 103871. https://doi.org/10.1016/j.jfineco.2024.103871

[7] Wu, D., Sam, A. G., & Wang, X. (2024). Spillover effects of financial deregulation: The unintended consequences of the OCC preemption rule on mortgage lending practices. *International Review of Financial Analysis*, *95*, 103462. https://doi.org/10.1016/j.irfa.2024.103462

[8] Litan, R. E. (2003). *North Carolina's Anti-Predatory Lending Law: Still A Problem Despite New Study* (No. Regulatory Analysis 03-0). Brookings Institution. https://www.brookings.edu/wp-content/uploads/2016/06/09_nc_lending_litan.pdf

[9] Lei Ding, Roberto Quercia, Carolina Reid, & Alan White. (2010). *The Preemption Effect: The Impact of Federal Preemption of State Anti-Predatory Lending Laws on the Foreclosure Crisis*. UNC Center for Community Capital. https://www.ourfinancialsecurity.org/wp-content/uploads/2010/03/UNC-CCC-Preemption-Effect-Impact-of-Federal-Preemption-on-Foreclosure-Crisis.pdf

[10] Financial Crisis Inquiry Commission. (2010). *The Mortgage Crisis* [Preliminary Staff Report]. https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/2010-0407-PSR_-_The_Mortgage_Crisis.pdf

banks to seek risk revealed that the existence of a loophole could cause well-intentioned actors to change their business models to mimic risky competitors.

*Regulation can improve competition without limiting the availability of credit.* The Credit Card Accountability Responsibility and Disclosure (CARD) Act reversed the race to the bottom in credit card markets. Before the CARD Act's passage in 2009, credit cards were among the most complained-about products. Using policies such as double-cycle billing, universal default interest rate increases, and electing to hike interest rates on existing balances, credit card banks extracted billions in penalty fees and additional interest. The CARD Act addressed those problems – and with time, its implementation showed how better consumer protections could occur side-by-side with long-term growth in credit supply.

*Rules for a financial product should be consistent, even if the corporate structures of the companies involved in the sector are different.* In mortgage lending, supervision and enforcement of rules were patchy and uneven across firms. Banks were held to one set of standards and non-bank mortgage companies to another. Not surprisingly, risk-taking occurred in the places where regulators had less insight; however, the effects spread to impact practices by banks and non-banks alike, with dramatic consequences for the broader economy.

## A Case Study: Wachovia Bank

The demise of Wachovia Bank highlighted the pressures that arise when companies in the same market operate under very different regulatory expectations. For over 125 years, Wachovia had enjoyed a reputation as a conservative North Carolina bank. In 2006, fearing that it would continue to lose business to subprime mortgage lenders, Wachovia's leadership chose to purchase subprime lender Golden West Financial.[11] Golden West was entirely unlike Wachovia. It grew by offering ARMs and pay-option loans. Shortly after completing the acquisition, Wachovia introduced the "Pick-a-Pay" mortgage, which allowed borrowers to pay less than the monthly interest owed, leading to new outstanding debt. Within two years, Wachovia began losing billions of dollars. When the FDIC seized subprime lender Washington Mutual in September 2008, it triggered a bank run at Wachovia. By the next day – and only two years after it purchased Golden West -- Wachovia entered receivership.

[11] E. Scott Reckard. (2006, May 8). Wachovia to Buy Golden West S&L. *Los Angeles Times*. https://www.latimes.com/archives/la-xpm-2006-may-08-fi-wachovia8-story.html

The crisis demonstrated how capital will flow to places where it falls under less scrutiny, often resulting in great harm to consumers and the broader economy.

Unfortunately, once a loophole has been opened, it is hard to close.

In the early 2000s, non-bank mortgage lenders made their most substantial inroads into mortgage origination by taking an outsized role in subprime mortgage lending. Fifteen of the 25 largest subprime mortgage lenders were mortgage companies. When mortgage lenders extended risky credit, often without adequate underwriting, the increased demand caused housing prices to surge. The anticipation of further price increases only served to stimulate more speculation.

## 2025: Lessons Learned, Now Suddenly Forgotten

Almost as soon as the new administration entered office, it took steps to roll back regulations on fintechs, repeating a key mistake that contributed to the Great Recession. The CFPB reversed several important rules finalized in the previous administration that closed regulatory loopholes for fintech products; now they have been reopened. These reversals will be challenging to undo. As a result, banks and fintechs will operate under different regulatory environments, even when they provide services that are essentially the same.

Under the previous administration, the CFPB conducted a rulemaking process to ensure that buy now, pay later (BNPL) loans would receive the same treatment as credit cards. The idea seems like common sense. Consumers use BNPL loans for the same purposes and in the same contexts as credit cards. Both provide a means for consumers to repay a purchase over time. Generally, the opportunity to use a BNPL loan appears in online checkouts alongside credit cards, and increasingly, BNPL lenders are integrating their products as an alternative to credit cards. Their revenue models are also similar. Both BNPL and credit card companies receive fees from merchants.

The CFPB's rule, "Use of Digital User Accounts to Access Buy Now Pay Later Loans," said BNPL loans deserve the same treatment as credit cards in implementing consumer protections under the Truth in Lending Act (Regulation Z).[12] In May 2025, the CFPB announced that it would not enforce this 2024 rule,

[12] Consumer Financial Protection Bureau. (2024, July 23). *Use of Digital User Accounts to Access Buy Now, Pay Later Loans*. https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/use-of-digital-user-accounts-to-access-buy-now-pay-later-loans/

and would consider rescinding the rule entirely.[13] Consumers who frequently use BNPL often complain about the difficulties they encounter when disputing a product or service purchase. Those protections exist for credit cards and would have been standard for BNPL under the interpretive rule.

In 2024, the CFPB passed a final rule placing larger payment apps and digital wallets ("payment apps") under the CFPB's supervisory authority. Services like Cash App, PayPal, Venmo, Apple Pay, and others play a significant role in facilitating the transfer of funds. Supervision would have allowed the CFPB to review non-bank payment apps for their financial soundness, the implementation of consumer protection laws, and the surveillance of consumer information.

In April 2025, Congress passed a Congressional Review Act (CRA) resolution of disapproval of the 2024 payment app final rule. Consistent with all CRAs, it nullifies the rule as approved and prevents the CFPB from ever issuing a substantially similar rule. While interpretations of the "substantially similar" standard vary, at the very least, it reverses a rule that took several years to finalize and adds a new hurdle to future efforts to establish supervision. Nonetheless, Zelle – because it is a payment app owned and operated by banks – will continue to be supervised.

Supervisory power would have given the CFPB the ability to monitor the efficacy of payment app platforms to address scams, which have become an everyday nuisance in modern life. Scammers have become proficient in manipulating victims to send them money. Last year, consumers filed complaints to government agencies in response to $391 million in losses on transfers using a payment app.[14] Non-bank payment apps are actually more prone to scams than bank-to-bank apps such as Zelle. Service member complaints about payment apps have been increasing steadily.[15] Without supervisory authority, the CFPB will not be able to monitor these services to ensure they apply appropriate safeguards.

With those decisions, Congress and the CFPB abandoned regulatory parity. Products that do functionally equivalent things will have different regulatory frameworks. Unfortunately, their amnesia did not wane. The bout of forgetfulness continued into summer.

*New laws will have eliminated important regulations for crypto assets.*

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[13] Consumer Financial Protection Bureau. (2025, May 6). *CFPB Announcement Regarding Enforcement Actions Related to Buy Now, Pay Later Loans*. Consumer Financial Protection Bureau. https://www.consumerfinance.gov/about-us/newsroom/cfpb-announcement-regarding-enforcement-actions-related-to-buy-now-pay-later-loans/

[14] Federal Trade Commission. (n.d.). *Fraud Reports*. All Fraud Reports by Payment Method. Retrieved May 28, 2025, from https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/PaymentContactMethods

[15] Consumer Financial Protection Bureau. (n.d.). Office of Servicemember Affairs Annual Report 2022.

In July 2025, Congress passed the Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act. The law has eased the path for stablecoins to gain a foothold in our economy. It provides stablecoins with privileges over other forms of electronic payments and lends legitimacy to a product that has proven itself to be unstable time and again. Stablecoins have neither demonstrated their utility nor captured the interest of consumers as a payment instrument. Nonetheless, stablecoins will become more integrated into payments, making it urgent to understand the risks that they will pose.

Previously, the CFPB had proposed an interpretive rule that expanded the definition of "funds" and "accounts" to clarify the application of consumer law to stablecoins and digital wallets. This would have guaranteed that when people use stablecoins, they receive the same protections they would have when using other forms of electronic payments.

Regulatory equivalency should begin by including stablecoins for coverage under the Electronic Fund Transfer Act (EFTA) and Regulation E. The EFTA protects consumers from unauthorized transfers and errors. However, the GENIUS Act failed to do this. It did not specify that payment stablecoins are covered by EFTA, nor did it explain how the CFPB can use its EFTA authority to protect consumers when they use stablecoins. As the crypto industry grows and payment incumbents incorporate stablecoins into their operations, these carve-outs will cause greater harm to the individuals and small businesses that use stablecoins.

Lightly regulated stablecoins may be utilized by large companies. Recent news reports suggest that commercial companies are interested in issuing private stablecoins. Amazon and Walmart, for example, are considering becoming issuers.[16] Payment processor Fiserv will issue its FIUSD stablecoin by the end of the year. Emerging payment services driven by agentic artificial intelligence may allow stablecoin payments to substitute for network-branded cards.

Individuals will likely be unaware that they will relinquish fundamental safeguards against fraud and unauthorized transactions when utilizing stablecoins for payments. But the real danger lies ahead. Loopholes, once opened, rarely stay contained.

[16] John Adams. (2025, June 30). Walmart, Amazon and nonbanks are plotting stablecoins. *American Banker*. https://www.americanbanker.com/payments/list/walmart-amazon-and-non-banks-are-plotting-stablecoins

*Echoing the use of preemption power by the OCC and OTS before the Great Recession, Congress has chosen to limit how states can regulate crypto asset markets.*

The GENIUS Act exempts federally-approved stablecoin issuers from state licensing and state consumer protection laws, echoing a mistake from the Great Recession where two federal regulators applied preemption power to override state APL laws.

*Just as banks once moved into subprime mortgage lending to reclaim business they had ceded to non-banks, today, banks are designing products whose structures mimic those created by fintechs.*

In the run-up to the Great Recession, banks eventually entered subprime mortgage lending to recover market share that had been taken by non-banks. Similar patterns are emerging today in BNPL lending. Credit card companies view BNPL as a threat to their business, as they know it fulfills the same needs for consumers and merchants as traditional credit cards.[21] For some time now, some credit card banks have offered installment plans to repay outstanding principal balances. However, they have not provided an upfront pay-in-four alternative themselves. Banks are now exploring alternatives. For example, credit card issuing bank Synchrony is co-branding a buy-in-four BNPL service through partnerships with point-of-sale platform Clover.[22] At least two pairings of banks and BNPL issuers have brought hybrid debit card and BNPL credit line products to market.[23] [24]

## Conclusion

The recent wave of deregulation reflects not just a loosening of rules, but a more profound amnesia for the hard-won lessons of the Great Recession. The push to treat payment app companies, BNPL lenders, and stablecoin issuers as somehow exempt from basic regulatory oversight is a dangerous repetition of the same logic that allowed subprime mortgage lenders to flourish unchecked in the early 2000s. The illusion of innovation is once again being used to mask the migration of risk into less supervised corners

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[21] Amit Garg, Diana Goldstein, & Udai Kaura. (2022). Reinventing credit cards: Responses to new lending models in the US. McKinsey & Company. https://www.mckinsey.com/industries/financial-services/our-insights/reinventing-credit-cards-responses-to-new-lending-models-in-the-us

[22] Pay with Synchrony App Launches as First Combined Private Label and BNPL Financing Solution Available for Small Business Via Clover. (2022, July 14). Synchrony Financial. https://investors.synchrony.com/news-events/financial-news/detail/175/pay-with-synchrony-app-launches-as-first-combined-private-label-and-bnpl-financing-solution-available-for-small-business-via-clover

[23] Zacks Equity Research. (2025, June 4). Visa and Klarna Launch Innovative Card With Hybrid Features. Yahoo Finance. https://finance.yahoo.com/news/visa-klarna-launch-innovative-card-122400653.html

[24] Affirm Card: The power of Affirm. Now in your wallet. (n.d.). Retrieved September 19, 2025, from https://www.affirm.com/card

of the market. Accepting less supervision in the name of supporting innovation is regulatory arbitrage, and history shows us how it ends.

Gore Vidal's assertion that we are the "United States of Amnesia" is no longer just a clever indictment—it's a policy diagnosis. The deliberate dismantling of regulatory safeguards in fintech, payments, and stablecoins shows a collective refusal to remember what led to the last economic collapse. Rather than learning from mistakes made before the financial crisis, Congress and regulators are discovering new ways to repeat them. Financial stability is not preserved by deregulating the latest player in the game; it is maintained when all participants, regardless of their structures or brand names, are subject to the same prudent rules. If policymakers fail to recall this truth, they are destined to relearn it the hard way.

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