

“Emerging Fintech Consumer Products: Buy Now Pay Later, Earned Wage Access, and Related Products”

Marisabel Torres Oral Testimony

Good morning, Chairman Lynch, Ranking Member Davidson, members of the task force, and members of the committee.

My name is Marisabel Torres, and I am the Director of California Policy at the Center for Responsible Lending. Thank you for the opportunity to testify in today’s hearing.

As a Latina, who is first-generation, my immigrant parents did not come to this country equipped with knowledge of the US financial system, I have seen first-hand how easily people can be preyed upon with credit offers that may promise financial opportunity but that can result in financial harms. As a consumer advocate who has worked on policy issues around financial inclusion - including predatory inclusion - I know my family’s experience was not unique.

Our discussion today is timely. The availability of fintech products and services is increasing as many consumers face tightened household budgets, and heightened financial insecurity in the wake of a health crisis with dire economic consequences.

More consumers may be looking for financial help after forbearance periods expire, and stimulus payments have ended. Lenders who offer seemingly low-cost or even free credit are well poised to capture this market share.

But while these products may appear straightforward, consumers and policymakers must ask themselves, what is the catch? We need data to understand what they are, their prevalence, and whether further protections are needed. The testimony I have submitted for the record details our concerns with products including buy now pay later, earned wage access, and so-called “overdraft avoidance” products . My oral testimony will focus on buy now, pay later.

In my state of California, the previous Commissioner of our financial regulator, the Department of Financial Protection and Innovation (DFPI), discovered that by offering these products to California consumers, certain buy now, pay later providers were making them illegally without license to make loans in the state. On this basis, DFPI brought enforcement actions against them and required their licensing in California.<sup>1</sup>

Because they were licensed, DFPI was able to begin gathering data. We are awaiting public disclosure of key points, but at a minimum, we know the take up of these products has exploded

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<sup>1</sup> See <https://dfpi.ca.gov/2019/12/30/dbo-denies-lending-license-sought-by-unregulated-point-of-sale-financer-and-issues-related-legal-opinion/>; <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/>; <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/>

in California. Of the loans that DFPI has published data on, the top six buy now pay later lenders accounted for nearly 11 million, or 91 percent, of the total consumer loans originated in 2020.<sup>2</sup>

If there are problems, their impact will be felt on a wide scale.

As described by recent surveys of buy now, pay later users, there are a number of issues identified with the surge in this lending. More providers are entering this market, and we cannot delay their examination to fully understand the impact on consumers.

There are signs that borrowers who miss payments may be racking up late fees at a high rate. A Credit Karma study found that of the 1,000 users surveyed, one-third reported they had fallen behind in payments. Of those people, over half said their credit scores had declined thereafter.<sup>3</sup> Not all of the buy now, pay later providers will pull credit to determine a consumer's ability to pay, but those that do will also report missed payments to a credit bureau. So these products can lead to damaged credit.

As with payday loans, buy now pay later requires the user to give lenders access to a bank account or a credit card to withdraw payments. This can lead to problems such as overdraft, not having sufficient funds to cover the payment, and the inability to pay other bills.

These products are also targeting and attracting younger consumers. As we saw with credit cards being pushed on college campuses, this can saddle young people with debt, starting their journey to adulthood with damaged credit and potential for life-long negative financial consequences.

There is also concern that the entire business model of buy now, pay later rests on driving borrowers to purchase items they would not otherwise buy.

Finally, these products are algorithmically driven. We can assume they will be subject to inevitable algorithmic bias. It is therefore vital that they be subject to regulatory examination to see if there are fair lending and related concerns.

This all reinforces the need for the Consumer Financial Protection Bureau to use its authority to identify and address the risks they pose to consumers. CFPB should collect data and move toward supervision of these products.

Thank you again for letting me be part of this discussion. I look forward to your questions.

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<sup>2</sup> See <https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf>

<sup>3</sup> See <https://www.creditkarma.com/about/commentary/buy-now-pay-later-surges-throughout-pandemic-consumers-credit-takes-a-hit>