



**Testimony of Mitria W. Spotser**

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**United States House of Representatives  
Committee on Financial Services**

**“Modernizing Financial Services Through Innovation and Competition”**

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## **I. Introduction**

On behalf of the Center for Responsible Lending, thank you Chairman Hill, Ranking Member Lynch, and Members of the House Financial Services Committee for the opportunity to submit this testimony at the Subcommittee on Digital Assets, Financial Technology and Inclusion hearing entitled, “Modernizing Financial Services Through Innovation and Competition.”

I am the Vice President and Director of Federal Policy at the Center for Responsible Lending (CRL). CRL is a non-partisan, nonprofit research and policy advocacy organization working to promote financial fairness and economic opportunity for all, end predatory lending, and close racial wealth gaps. CRL is an affiliate of Self-Help, a community development lender headquartered in Durham, NC. Since 1980, Self-Help has provided over \$7 billion in financing to 131,000 families, individuals and businesses under-served by traditional financial institutions. It helps drive economic development and strengthen communities by financing hundreds of homebuyers each year, as well as nonprofits, child-care centers, community health facilities, public charter schools, and residential and commercial real estate projects. Through its credit union network, Self-Help’s two credit unions serve over 170,000 people in North Carolina, South Carolina, California, Illinois, Florida, and Wisconsin and offer a full range of financial products and services.<sup>1</sup>

I want to be clear. At the Center for Responsible Lending, we strongly believe that increased innovation and competition are critical goals in the financial services marketplace. But, it is important for us to remember what those terms actually mean and, perhaps even more important, why they matter. Done correctly, innovation in the financial services marketplace increases lender efficiency, reduces market risk, and expands financial access through increased competition driven by greater affordability of products and services for consumers. Based on that understanding, CRL has serious concerns about whether the products and relationships being discussed here today, actually fulfill those goals.

We offer this testimony as consumers are struggling with rising inflation and stagnant wages, making it harder for many families to make ends meet or cover their emergency expenses. Today, 76% of American families live paycheck to paycheck with little or no savings for emergencies and 25 million US workers earn less than \$10.10 an hour. The skyrocketing cost of living has made economically disadvantaged families especially vulnerable to financial predators.

Our goal here is simple – to ensure that regulation keeps pace with financial technology by distinguishing between actual “innovation” and the clever marketing to avoid compliance with consumer protections among already-existing financial products or services. Accordingly, we ask that Congress maintain existing and work to create more guardrails around all financial products, including fintech products, that function exactly like other forms of loans and credit. Second, we

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<sup>1</sup> Learn more at [www.self-help.org](http://www.self-help.org) and [www.self-helpfcu.org](http://www.self-helpfcu.org).



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ask that Congress, once and for all, put an end to statutory and regulatory loopholes that allow banks to partner with third-party lenders to facilitate usurious and predatory loans.

Finally, we wish to express our concerns about several draft bills. The “Earned Wage Access Consumer Protection Act” proposed by Representative Steil contains a fatal flaw - it exempts EWA from much needed disclosure requirements, the exact opposite of what needs to occur.

We oppose the “Financial Services Innovation Act of 2023,” which would allow fintech companies to petition financial regulators for a waiver or modification from financial regulation without any meaningful requirement that they demonstrate that the product or service they are providing is actually innovative or increases competition by having the potential to expand access by increasing affordability. Simply put, there is no reason to give Earned Wage Access or Buy Now, Pay Later lenders a pass on regulation when their products have clear parallels to payday loans and credit cards.

Similarly, we do not support the “Examining Consumer Choice in Digital Payments Act,” which would prevent the CFPB director from engaging in rulemaking in the BNPL space. As written, the current legislation would hamstring the agency and unnecessarily restrict its ability to regulate developing products like BNPL.

## **II. Exempting EWA products from regulation would hurt consumers.**

Earned or Early Wage Access (EWA) products are short-term, small dollar loan advances of a borrowers’ earned paycheck, before their scheduled payday. EWA lenders typically claim that their products promote financial inclusion. Rather than furthering access to credit, these advances pose the same issues as other small dollar short term loans. In reality, the worst versions of these products closely resemble a payday loan, with high levels of repeat usage and expensive fees that add up to APRs over 300%.<sup>2</sup> Consumers who use these products can find themselves in a debt trap, leading borrowers to take out multiple loans over consecutive pay periods, often resulting in repeated costly overdraft fees. Users often are required to share their banking history to receive advances, which raises data privacy concerns. Research from the Government Accountability Office (GAO) found users of a direct-to-consumer EWA application used the service on average 26 to 33 times per year.<sup>3</sup> Frequent reliance on early access to wages is a sign of financial distress, all too common among low wage, low wealth working Americans. Additionally, some EWA providers solicit tips and require additional fees that inflate the cost of using an EWA application. In a recent poll conducted by CRL, 70% of respondents who used the popular MoneyLion, Earnin or Dave apps reported leaving tips.<sup>4</sup> Without appropriate consumer protections and limitations on costs, these products – which have workers paying to be paid –

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<sup>2</sup> [2021 Earned Wage Access Data Findings \(ca.gov\)](#), California Department of Financial Innovation (2023), see attached additional materials from CRL on EWA

<sup>3</sup> [Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed | U.S. GAO](#)

<sup>4</sup> Survey Summary of Earned Wage Access and Cash Advance Apps, Center for Responsible Lending, (August 2023) [crl-ewa-research-factsheet-aug2023.pdf \(responsiblelending.org\)](#)



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only further reduce workers' net earnings and reduce wealth-building capacity for working-class families.

Despite high-cost lenders' assertions to the contrary, EWA is a credit product that must be regulated as such.

We oppose Representative Steil's bill that exempts EWA products from the most basic and necessary protection for consumers under the Truth in Lending Act (TILA). TILA would require lenders to disclose the true cost of EWA advances, using the annual percentage rate (APR) calculation that allows consumers to compare the cost of credit across products. EWA products should be subject to the same disclosure obligations as other financial products.

The Consumer Financial Protection Bureau (CFPB) has authority to issue guidance on deeming these products as credit under general TILA principles and should do so. To protect consumers, Congress should reaffirm CFPB's express guidance on this issue.

### **III. Buy Now Pay Later loans should be required to meet existing regulatory standards, just like other credit products.**

Buy Now, Pay Later (BNPL) is a product that allows consumers to purchase goods in four equal, often interest-free installments over a set time period (often 6 weeks). Consumer use of BNPL has increased dramatically in recent years. Nationally, the market grew by more than 70% in 2021<sup>5</sup> and is expected grow by nearly 25% of its current size by 2030.<sup>6</sup> BNPL borrowers can be harmed when BNPL lenders do not adequately assess a borrower's ability to repay; do not provide the same clear disclosures required of credit card issuers; and do not give borrowers the same chargeback and dispute rights that credit card issuers must give.

BNPL loans function for consumers just like credit cards, yet many BNPL lenders currently do not comply with key, credit card consumer protections like TILA and the CARD Act.

Thankfully, the fix for this regulatory gap is straightforward: a clarification that BNPL loans are "consumer credit" under TILA. The CFPB should take regulatory action, such as issuing guidance or rulemaking, to clarify the status of such products. Such a change would rightly make BNPL loans subject to the same appropriate and helpful credit reporting practices that apply to credit cards, including fee disclosures, ability-to-repay requirements, reasonable and proportional penalty fees, chargeback protections, dispute rights, and standard statement requirements.

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<sup>5</sup> 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-trendgenerating-100-billion-in-sales/?sh=71a2b7b62ffe>

<sup>6</sup> Laura Wood, Yahoo! Finance, "United States Buy Now Pay Later (BNPL) Market Report 2023: Market to Grow by a CAGR of 24.3% to 2030 - Growing Use of Analytics Tools to Provide a More Personalized and Streamlined Process" (June 1, 2023), <https://finance.yahoo.com/news/united-states-buy-now-pay-101500296.html>.



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“Examining Consumer Choice in Digital Payments Act” accomplishes none of the needed reforms, is duplicative of CFPB’s research and knowledge base, and delays the process of protecting consumers. CFPB has already gathered a wealth of information on BNPL that details usage as well as the risks to consumers.<sup>7</sup> Placing unnecessary limits on the normal authority of the CFPB Director would be a disservice to consumers.

#### **IV. Rent-a-bank loans, facilitated by under-monitored third-party partnerships, have no place in a market designed to increase affordability and expand access through fair and responsible lending.**

Nonbank lenders skirt regulations by partnering with a small number of out-of-state banks to offer “rent-a-bank” loans, which facilitate predatory lending and evasions of state interest rate limits. Rent-a-bank loans take the form of installment loans, lines of credit, and payday loans. These banks are helping nonbank lenders charge rates of 100% APR to 160% APR on installment loans and lines of credit, even when consumers and legislators have specifically voted to limit usury rates to protect consumers from abusive high-cost lenders. These out-of-state lenders often provide larger, longer-term loans—of \$10,000 or \$20,000 or more—at rates that can produce finance charges in the thousands of dollars, sometimes exceeding the amount financed.<sup>8</sup>

High-cost rent-a-bank lending can carry high credit risks and default rates that violate principles of responsible lending and prudent underwriting. High-cost predatory lending also frequently includes increased risks of unfair, deceptive or abusive practices and of violating laws governing debt collection, credit reporting, fair lending, military lending, privacy and data security, know-your-customer, and community reinvestment requirements.

The FDIC’s existing authority allows it to end these predatory rent-a-bank schemes, which are unlawful, harm consumers, pose serious and undue risks to banks, engage in inappropriate regulatory arbitrage, and harm competition by giving high-cost lenders the benefits of a bank charter without the obligations. Congress should reaffirm the long-standing principle that bank charters are not to be rented out. And in the meantime, the FDIC must take enforcement actions against rent-a-bank lenders and crack down on unsafe and abusive predatory lending that fails to comply with prudent underwriting standards. Until these rent-a-bank schemes are terminated, consistent with recent interagency guidance from the FDIC, OCC and the Federal Reserve, we

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<sup>7</sup> CFPB Publishes New Findings on Financial Profiles of Buy Now, Pay Later Borrowers | Consumer Financial Protection Bureau (March 2, 2023) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-new-findings-on-financial-profiles-of-buy-now-pay-later-borrowers/>, CFPB Study Details the Rapid Growth of “Buy Now, Pay Later” Lending | Consumer Financial Protection Bureau (September 22, 2022) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-details-the-rapid-growth-of-buy-now-pay-later-lending/>, Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey | Consumer Financial Protection Bureau (March 2, 2023) <https://www.consumerfinance.gov/data-research/research-reports/consumer-use-of-buy-now-pay-later-insights-from-the-cfpb-making-ends-meet-survey/>

<sup>8</sup> Poll: Dangers of Rent-a-Bank Schemes | Center for Responsible Lending (February 10, 2020) <https://www.responsiblelending.org/research-publication/poll-dangers-rent-bank-schemes>



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urge the FDIC to begin directly examining the third parties that handle origination, servicing and other activities for high-cost rent-a-bank programs.<sup>9</sup>

## **V. Conclusion**

None of these products are a solution to the financial challenges many families face and can, in fact, exacerbate financial insecurity by trapping workers in a cycle of debt if not properly regulated. The “Financial Services Innovation Act of 2023” would allow any product that uses technology to apply for a waiver from regulation. This is not the path to take, given the widespread examples of consumer harm. New products build upon the existing landscape, and there are more similarities than differences among fintech products and traditional ones. Regulation should reflect that continuity.

Lawmakers and regulators addressing these products should impose meaningful guardrails on their use. These are standards that apply to similar financial products on the market.

We need consumer protections to prevent lenders from stripping wealth from low-wage workers and struggling families under the pretense of clever marketing and high-tech innovation.

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<sup>9</sup> Interagency Guidance on Third-Party Relationships: Risk Management FDIC Financial Institution Letter June 6, 2023  
<https://www.fdic.gov/news/financial-institution-letters/2023/fil23029.html#:~:text=The%20guidance%20serves%20as%20a,of%20managing%20third%2Dparty%20relationships>