April 11, 2022

Comment Intake—Fee Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services

(Docket No. CFPB-2022-0003)

The Financial Technology Association (FTA) appreciates the opportunity to respond to this request for public comment issued by the Consumer Financial Protection Bureau (the "CFPB" or "Bureau") regarding fees that are not subject to competitive processes that ensure fair pricing. The Financial Technology Association (FTA) is a nonprofit trade organization that champions the transformative role of financial technology for American consumers, businesses, and the economy.[1] Representing leading fintech companies, FTA elevates fintech's power to increase competition and drive financial inclusion through responsible products and services. As our members' voice in Washington, FTA advocates for the modernization of financial regulation to support inclusion and innovation.

We welcome the opportunity to engage with the Bureau on its inquiry into opaque pricing strategies, including so-called 'junk fees.' Many of our member companies launched their businesses to target such fees, increase pricing transparency, and promote consumer-centric fairness and competition. Below we detail specific instances where fintech firms and their innovative products improve consumer outcomes by outcompeting certain legacy financial services providers who rely on opaque pricing models. We provide policy recommendations that foster greater competition, fairness, and fintech innovation.

[1] FIN. TECH. ASS'N, www.ftassociation.org (last visited April 11, 2022). The FTA's members include Afterpay, Betterment, BlueVine, Brex, Carta, Figure, Klarna, Marqeta, MoneyLion, MX, Nium, Plaid, Ribbit Capital, Sezzle, Stripe, Truework, Wise, Zest AI, and Zip.

Junk Fees: Overdraft and Credit Cards

Overdraft Fees

Banks earn billions of dollars a year by charging consumers overdraft fees and frequently earn between one to nine percent of total operating revenues from such fees.[2] According to another survey, half of U.S. adults say they overdrafted their account, with nearly 20 percent of respondents saying they have done so in the past year.[3]

Even more problematic, overdraft fees disproportionately impact those who can least afford them. According to the FinHealth Spend Report 2021, 95 percent of the overdraft fees consumers paid last year—$11.8 billion—were charged to people described by the report's authors as financially vulnerable and financially coping. Forty-three percent of vulnerable households with checking accounts reported an average of 9.6 overdrafts in 2020.[4] According to a Forbes survey, if a bank charged the market average of $24.38 in overdraft fees per transaction, that means vulnerable households paid nearly $234 in overdraft fees last year.[5]

Political and regulatory pressure is mounting on banks to shift practices: Director Chopra has described overdraft fees as 'a relic' that prevents meaningful competition in the market;[6] Senator Warren (D-MA) criticized the banking system at a Senate Hearing in May 2021 over 'egregious' overdraft fees that should be refunded to consumers.[7]

Fortunately, fintech competition is already providing consumers with alternatives. Fintech innovation focuses on reducing or eliminating these costs through speedier delivery of payments

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[2] Banking Dive, *Banks see nearly 40% uptick in overdraft fees year over year: S&P*, Aug. 2021, https://www.bankingdive.com/news/banks-see-nearly-40-uptick-in-overdraft-fees-year-over-year-sp/605637/

[3] Morning Consult, *The Public Is Divided on Overdraft Fees' Fairness. Here's What Banks Should Be Watching,* June 2021, https://morningconsult.com/2021/06/15/banks-overdraft-fees-pandemic/

[4] Financial Health Network, *FinHealth Spend Report 2021,* June 2021, https://finhealthnetwork.org/research/finhealth-spend-report-2021/

[5] Forbes, *Banks Charged Low-Income Americans Billions In Overdraft Fees In 2020*, Apr. 2021, https://www.forbes.com/advisor/personal-finance/how-to-prevent-overdraft-fees/

[6] Consumer Financial Protection Bureau, *CFPB Research Shows Banks' Deep Dependence on Overdraft Fees*, Dec 2021, https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/

[7] Reuters, *Senator Warren attacks JPMorgan's Dimon over 'baloney' overdraft fees*, May 2021, https://www.reuters.com/business/wall-street-ceos-tout-covid-assistance-diversity-efforts-before-us-senate-2021-05-26/

or wages, accounts that do not charge overdraft fees if balances temporarily dip, and financial tools that help manage cash flows.[8]

In the case of fintech-provided earned wage access ("EWA") models, an employee can access advances based on earned wages that have not yet been deposited into their account, helping them smooth out cash flow between paychecks and avoid incurring overdraft fees or resorting to costly credit card debt or payday loans. Research finds that consumers experience less stress and increased financial and emotional health with the help of EWA.[9] Faster payments systems can also help consumers avoid waiting 48-72 hours for a check to clear and paying an overdraft fee during that time. And fintech neo-banks and banking platforms offer a range of accounts with zero-fee overdraft protection.[10]

Facing current fintech competition, not just future regulation, many traditional banks have rolled out new overdraft protection or replacement products in order to compete. Citigroup has announced it will eliminate all overdraft, returned item, and overdraft protection fees by this summer,[11] while Bank of America, Wells Fargo, U.S. Bank, Truist, and Regions Bank have all announced they are eliminating non-sufficient funds (NSF) fees and certain overdraft charges while adding some safeguards to their overdraft programs.[12] Without competitive market pressures from fintechs and others, it is unlikely the status quo would have improved for consumers so quickly.

Credit Card Fees

Americans, on average, pay approximately $1,000 per year in interest on revolving credit card debt, and credit card interest rates are among the highest as compared to other major consumer

[8] *See* FTA, *Shaping the Future of Finance* (2021), https://www.ftassociation.org/wp-content/uploads/2021/03/fta-launch-paper_shaping-the-future-of-finance.pdf
[9] Earnin, *FTI Consulting Study Finds that EWA Services Such as Earnin Boosts Consumer's Ability to help Avoid Fees and Crush Credit Card Debt*, Feb. 2022, https://www.earnin.com/fti
[10] LendIt, *The Inevitable Movement Towards No Overdraft Fees*, Sept. 2019, https://www.lendacademy.com/the-inevitable-movement-towards-no-overdraft-fees/
[11] Reuters, *Citigroup to eliminate overdraft fees this summer*, Feb. 2022, https://www.reuters.com/business/citigroup-eliminate-overdraft-fees-this-summer-2022-02-24/
[12] Pew Research, *America's Largest Banks Make Major Overdraft Changes That Will Help Consumers*, Feb. 2022, https://www.pewtrusts.org/en/research-and-analysis/articles/2022/02/08/americas-largest-banks-make-major-overdraft-changes-that-will-help-consumers

finance product categories.[13] The mix of interest charges and late fees on credit cards can obfuscate the total cost of such debt and cause consumer harm. The CFPB recently issued a report showing that credit card issuers charged $12 billion in late fees in 2020. These late fees account for 99 percent of penalty fees and over half of the credit card market's total consumer fees.[14]

Buy Now Pay Later (BNPL) solutions are becoming increasingly popular with consumers to solve the pain points associated with traditional payment options.[15] Spending on BNPL in the U.S. has increased rapidly during 2021, up 230 percent since the start of 2020,[16] and has driven traditional players to attempt to compete by rolling out similar products. The rising popularity of BNPL also creates another source of competition for banks – losing access to millennial and Gen Z consumers attracted to this alternative form of financing.[17] Traditional banks are responding - in the U.S., Barclays has partnered with Amount to offer merchants point of sale (POS) financing under the merchant's brand, and several leading banks have announced plans to launch or test BNPL products.[18]

Customers prefer BNPL products relative to certain traditional credit options for several reasons. BNPL products can typically be approved without a hard credit check and offer more flexible financing options, transparent terms, predetermined repayment schedules, and lower or no interest fees.[19] Additionally, in the event of nonpayment, many reputable BNPL providers charge a one-time late fee with no further costs incurred by the consumer or other recourse pursued by the provider. The simplicity and transparency of such treatment stand in stark contrast to the opacity of credit card interest and late fees in the event of nonpayment. Notably, a recent survey of BNPL users found that only one percent (1%) had trouble understanding the terms and conditions of the

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[13] Motley Fool, *Americans Pay Almost $1,000 Per Year in Credit Card Interest,* Dec. 2020, https://www.fool.com/credit-cards/2020/12/11/americans-pay-almost-1000-per-year-in-credit-card/

[14] Consumer Financial Protection Bureau, *Credit Card Late Fees,* Mar. 2022, https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

[15] FTA, *Response to Notice and Request for Comment Regarding the CFPB's Inquiry into BuyNow-Pay-Later (BNPL) Providers*, Mar. 25, 2022, https://www.ftassociation.org/wp-content/uploads/2022/03/FTA-response-to-CFPB-BNPL-.pdf

[16] Afterpay, The Economic Impact of Buy Now, Pay Later in the US, Sept. 2021, https://afterpay-corporate.yourcreative.com.au/wp-content/uploads/2021/10/Economic-Impact-of-BNPL-in-the-US-vF.pdf

[17] EY, How banks can find a winning position in the buy-now-pay-later market, Feb. 2022, https://www.ey.com/en_gl/banking-capital-markets/how-banks-can-find-a-winning-position-in-the-buy-now-pay-later-market

[18] American Banker, *Buy now/pay later pioneers defend their turf as banks move in*, Dec. 2021, https://www.americanbanker.com/payments/news/buy-now-pay-later-pioneers-defend-their-turf-as-banks-move-in

[19] Federal Reserve Bank of Kansas City, *The Appeal and Proliferation of Buy Now, Pay Later: Consumer and Merchant Perspectives*, Nov. 2021, https://www.kansascityfed.org/documents/8504/psrb21alcazarbradford1110.pdf

provided BNPL service.[20]

- ➔ *Policy Recommendation*: In the case of both overdraft and credit card fees, FTA encourages the CFPB to continue its market research efforts with a specific focus on comparing consumer outcomes from legacy offerings and their fintech competition. The FTA respectfully suggests that new fintech models drive immediate consumer benefit by lowering costs, enhancing transparency, and stimulating healthy competition.

Consumer Fairness

AI and Machine Learning

AI/ML is having a profound impact on expanding fair and transparent access to capital. Traditional models for assessing credit applications, which rely heavily on personal credit scores, disproportionately penalize Black, Hispanic, and low-income borrowers, making it harder to access affordable credit.

Accordingly, these borrowers have had to turn to high-cost and opaque payday lending products, which in many cases profit by trapping borrowers in cycles of repeat borrowing and rollovers. The Bureau noted in its 2021 research that 52 percent of consumers who took out a payday loan in the six months before June 2019 also took out a payday loan in the 12 months before June 2020. And of the consumers who had taken out a payday loan in the previous six months, 63 percent still owed money on the loan.[21]

Fortunately, modern underwriting models demonstrate a greater capacity to analyze large amounts of diverse information, allowing for more accurate determinations of creditworthiness and increased access to credit for those previously excluded or forced to rely on marginal products.[22]

To this end, fintechs are tackling exactly these issues through AI/ML by deploying technologies that enable lenders to make better lending decisions with fairer and more accurate outcomes for

[20] Financial Health Network, Buy Now, Pay Later: Implications for Financial Health, Mar. 2022, https://finhealthnetwork.org/wp-content/uploads/2022/03/Buy-Now-Pay-Later-Brief-2022.pdf
[21] Consumer Financial Protection Bureau, *Consumer use of payday, auto title, and pawn loans,* May 2021, https://files.consumerfinance.gov/f/documents/cfpb_consumer-use-of-payday-auto_title-pawn_loans_research-brief_2021-05.pdf
[22] *See generally* Zest AI, *About Us* (last visited Jan. 5, 2022), available at https://www.zest.ai/about-us

consumers—increasing access and reducing inequity. For example, FTA member Zest AI's lending models are helping Community Development Financial Institutions ("CDFIs") across the country safely approve more protected-class borrowers hampered by the limits of traditional credit scoring.

For instance, Zest helped GreenState Credit Union (Iowa's biggest) deploy a new auto lending model that approves 25 percent more women and other protected-class citizens, and helped Truliant in Winston-Salem, NC, update to AI-based risk models and increase approvals by 31 percent average across Black, Hispanic, and other protected-class applicants. Zest AI is also building a *free* model to help credit unions offer small-dollar loans to consumers at sub-36 percent interest rates to help end payday lending. Greenstate will be the first user of the model, which is being rolled out later this year. By increasing access to credit, fintechs are also enabling historically disadvantaged populations to improve their credit scores through establishing positive payment histories, which in turn help these populations gain access to a broader range of credit products.

The use of AI/ML tools in underwriting, subject to appropriate safeguards, holds the key to promoting more fair and inclusive lending, especially for the underserved. It also will underpin innovative models that will increasingly compete with legacy approaches reliant on FICO scores or payday products.

- ➔ *Policy Recommendations*: In order to foster the development of fair, transparent, and inclusive credit markets in the U.S., FTA offers the following recommendations:
    - ◆ The CFPB should reinforce the obligation on lenders to explain how a model is reaching a particular conclusion and identify the principal reasons why a borrower might be declined – it should further note the AI/ML tools now available to comply with these requirements;
    - ◆ The CFPB should explore and publish findings on well-accepted explainability techniques and encourage lenders to use available technologies proven to expand access and fairness in lending. As part of this, the Bureau should provide for longer-term data collection and studies showing the impact of AI/ML decision making on underrepresented groups;
    - ◆ The CFPB should expand sandbox and safe harbor environments to allow more robust testing of new methodologies. While such environments should not be a prerequisite to deploying new models, their availability can help foster further

understanding of new technologies and the development of consumer-centric models;

- ◆ The CFPB should explore the adoption of leading AI/ML technologies that can enhance the Bureau's capacity to monitor fair lending compliance; and
- ◆ The CFPB should study AI/ML alternatives to existing fair lending analytical methods, including those currently used to estimate race, such as BISG. A better yardstick to measure lending outcomes will lead to better results for consumers.

Remittance and Cross-Border Payment Fees

Remittances and cross-border payments are critical to finance education and health, support businesses and other forms of employment, and allow families exposed to income shocks in low-income settings to receive needed funds. Today, more than ever, low- and middle-income communities rely on money sent home from friends and family abroad. In 2021, G20 countries sent nearly $215 billion in remittances, but $11.5 billion was lost to fees along the way.[23]

Indeed, the cost associated with sending money across borders remains a critical pain point for consumers. The global average cost of remittances remains high at 6.5 percent and those sent from the United States currently have an average cost of nearly 5 percent.[24] Banks and foreign exchange providers bury hidden costs by charging customers sizable markups on prevailing exchange rates – called the exchange rate margin – and pocket the difference. By marking up exchange rates, payment providers are able to advertise their service as 'no fee' or '0 percent commission.' Consumers and small businesses are therefore often unaware of the costs involved when sending or spending money abroad.

Fintech innovators are disrupting the market for remittances by disintermediating traditional actors and increasing competition for international payments. However, FTA believes there is also a need for a regulatory fix to level the playing field and ensure transparency.

- ➔ *Policy Recommendation*: The FTA supports pro-consumer changes to the CFPB's "Remittance Rule" and price disclosure standards to eliminate hidden fees and ensure

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[23] Wise, *Lowering Remittance Costs: Can G20 sending countries achieve the UN goal of 3% costs by 2030?* Sept. 2021, https://wise.com/documents/Wise_Report_Lowering_Remittance_Costs_September_2021.pdf
[24] *Id.*

consumers have complete information to make informed decisions. By requiring banks and international payments providers to include the exchange rate markup in the presentation of any fees charged on a product, consumers and small businesses will better understand the total cost. They can therefore choose an option that best serves cost considerations, thereby putting downward pressure on global remittance prices. The CFPB should accordingly update its Remittance Rule to require disclosures to show the "total cost" that includes both exchange rate margin and upfront fees. The exchange rate shown to consumers would derive from an active mid-market rate published by an independent source or government entity.[25]

Consumer Choice

Open Banking

A robust and consumer-centric open banking framework, as implemented by the CFPB pursuant to Dodd-Frank Section 1033, can promote consumer choice and drive down costly junk fees. Open banking gives consumers the ability to safely and securely access and share their financial data across financial services providers to obtain greater financial choice, personalization, and outcomes. This allows consumers more convenient and efficient ways to view and manage their money and shop for new, more tailored, and lower-cost financial services products and providers. Under this model, fintech companies can leverage the existing data from traditional banks to create their own new digital offerings for customers, including those that explicitly target models reliant on junk fees.

The FTA believes open banking and the sharing of information within the parameters of applicable data privacy and information security laws and safeguards facilitates competition by allowing new entrants into the marketplace and ensuring that information is no longer trapped with incumbent providers; consumers are empowered to use their data for their benefit and to shop for alternative financial products.

Examples of open banking include when consumers seamlessly connect their bank account to a payment app, use personalized financial dashboards to understand their financial health better, provide access to non-traditional financial data to receive credit, and/or aggregate investments with

[25] FTA, *Re: Promoting Transparency & Empowering Consumers in International Payments* (Dec. 1, 2021), https://www.ftassociation.org/wp-content/uploads/2021/12/FTA-International-Payments-Transparency-1.pdf

a robo-advisor. These examples help crack open financial silos that have long relied on opacity and junk fees to generate profits.

➔ *Policy Recommendation*: The FTA supports consumer-centric implementation of open banking regulation in the United States to empower consumer choice, data security, and privacy. To support consumers' ability to benefit from innovation and competition in financial services, FTA specifically encourages the CFPB to:
   - Establish a broad data right that is consistent across direct and authorized access;
   - Allow for the free flow of data from other institutions that touch a consumer's financial life, including payroll companies, telecom and utility providers, and the government, which can provide, for example, Social Security data;
   - Establish strong guidelines for consumer transparency and control, including that consumers be aware of all parties involved in data sharing and have ownership over which data they are sharing, with whom, and for what duration; and
   - Support standards-development in service of consumer rights by establishing baseline principles and expectations that those standards must meet.

Digital Investment Advisors (Robo-Advisors)

Fintech digital investment advisors are rapidly transforming the financial advisory market long tied to high fees and opaque practices intended to increase investor costs (e.g., churning). New entrants rely on a digital-first approach to enhance access, reduce cost, boost transparency and financial literacy, and improve financial outcomes.

It is common for legacy advisors to charge between one percent to five percent for their services. These providers also frequently set minimum investment amounts at $500,000 or more. These limitations serve as a significant barrier to entry for many retail investors, especially those new to investing.

Fortunately, fintech innovators are reducing the cost of entry, some offering little or no account minimums.[26] Furthermore, the typical robo-advisor charges 0.25 percent to 0.35 percent annually for their service — about a fourth of the cost of traditional providers. In dollar terms, that means

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[26] Finextra, *Key Benefits of Robo-Advisors in Fintech,* Apr. 2, 2021, https://www.finextra.com/blogposting/17140/key-benefits-of-robo-advisors-in-fintech

an investor with $100,000 would pay the typical traditional advisor $1,000 a year for their services and $250 to the average digital advisor.[27] These savings compound over time and can result in meaningful gains for consumers.[28]

Fintechs like Betterment, Wealthfront, and Personal Capital, which have achieved notable scale in this space, have forced incumbents to evolve their offerings to compete. For example, Vanguard now offers two levels of robo-advisory services charging between 15 basis points and 30 basis points (the latter including a human advisor).[29] All of this innovation and competition are directly benefiting retail investors.

The dissemination of transparent, low-cost investment advice can help young Americans invest in their futures and close the widening wealth gap in the U.S. These platforms also offer new opportunities to promote financial education and literacy. Whether in the context of providing investment or personal financial advice, digital advisory platforms are a vital tool in countering legacy opacity and junk fees in the advisory space.

➔ *Policy Recommendation*: While the SEC is the primary regulator for digital investment advisory platforms, FTA recommends that the CFPB research the benefits these platforms provide to consumers, including with respect to eliminating junk fees. New advisory firms are increasingly targeting broader areas of financial advisory and will help eliminate high costs and promote access for an even broader set of consumers. The CFPB should highlight and support this area of ongoing innovation.

Thank you for your consideration of our comments.

Sincerely,

Penny Lee

Penny Lee
Chief Executive Officer
Financial Technology Association

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[27] CNBC, *Robo-advisors are growing in popularity. Can they really replace a human financial advisor?,* Jan. 2022, https://www.cnbc.com/2022/01/16/robo-advisors-are-gaining-popularity-can-they-replace-a-human-advisor.html
[28] Plaid, *The Fintech Effect 2021: Fintech's Mass Adoption Moment,* Oct 2021, https://plaid.com/blog/report-the-fintech-effect-2021/
[29] CNBC, *Robo-advisor dream of disrupting Wall Street wealth is not working out exactly as planned,* Jan. 2022, https://www.cnbc.com/2022/01/27/roboadvisor-disruption-of-wall-street-wealth-is-not-working-out.html