FINANCIAL TECHNOLOGY ASSOCIATION

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Docket Clerk
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

FTA Comment Letter re DOJ/NEC Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OLP182)

The Financial Technology Association (FTA) appreciates the opportunity to respond to the Request for Information (RFI) from the Justice Department and the National Economic Council (NEC) regarding State laws that significantly and adversely affect the national economy or interstate economic activity. We commend the Administration's proactive approach in soliciting input from stakeholders to identify and address laws that hinder America's economic growth, including those that burden consumers, small businesses, and industry.

FTA is a nonprofit trade organization representing leading technology-centered financial services (fintech) companies. Our members are committed to advancing the responsible use of technology to offer innovative financial products, while maintaining robust compliance with regulatory standards. In line with the Administration's mission to alleviate unnecessary regulatory burdens and costs, FTA urges the Justice Department and NEC to identify and address state laws that create a "crushing regulatory burden" and "project the regulatory preferences of a few States into all States," thereby undermining the national economy and interstate commerce.

Specifically, FTA advocates for federal preemption of state laws in the following four categories due to their significant deleterious impact on the ability of financial providers to offer Americans internet-enabled and digitally-powered financial services:

- Artificial Intelligence (AI) laws and regulations that impede financial services;
- State-level efforts to apply forms of the "True Lender" doctrine and to opt-out of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA);
- State data privacy legislation; and
- Inconsistent state-level Earned Wage Access (EWA) laws, regulations and guidance

Federal preemption in these areas is critical in asserting a modern, unified national approach that will reduce compliance burdens, foster digital innovation, expand access to critical financial

services for underserved consumers and small businesses, and enhance the overall competitiveness of the U.S. financial services industry.

I. Patchwork State Laws and Regulations for AI Technologies in Financial Services Disrupt Interstate Commerce and Impede Advancement

AI is enabling fintech companies to deliver personalized financial tools and help individuals select the right savings, investment, or budgeting products to fit their needs. Advisory tools, for example, can process an individual's financial data to empower informed financial decisions, such as selecting higher-yield savings accounts, pursuing strategies to lower tax burdens, paying off higher-cost credit, or making optimal investment decisions.

In the credit or insurance underwriting context, AI models enhance accessibility, accuracy, and fairness[1] by providing holistic financial or risk profiles that lower rates, reduce fees, and/or minimize debt. By analyzing data from online transactions, utility bills, and other cash flow history, for example, fintech providers can develop more accurate, fair, and transparent underwriting models for consumers with limited traditional credit profiles.[2] This approach creates opportunities for consumers to build a credit record, ultimately offering them more affordable, tailored options.[3]

Finally, AI is increasingly used to enhance regulatory compliance, particularly in anti-money laundering (AML) programs, fraud detection, and transaction monitoring. These "regtech" applications can reduce compliance costs while increasing the effectiveness of compliance programs, strengthening trust in U.S. financial markets and services.

Unfortunately, increasingly disparate and disruptive state laws and regulations regarding AI development are undermining interstate commerce, imposing an undue burden on industry, and threatening ongoing innovation. Such a patchwork approach stifles technological advancement and imposes impossible compliance requirements on entities utilizing AI for essential and

[1] Fuster, A. et al. (2021) "Predictably Unequal? The Effects of Machine Learning on Credit Markets," *Journal of Finance*, Forthcoming. Available at: https://ssrn.com/abstract=3072038.
[2] BLDS, L., Discover Financial Services and H2O.ai (2020) *Machine Learning: Considerations for Fairly and Transparently Expanding Access to Credit*. Available at: https://h2o.ai/resources/white-paper/machine-learning-considerations-for-fairly-and-transparently-expanding-access-to-credit/.
[3] Calomiris, C. W. (2020) *Chartering the Fintech Future, Presentation at the Cato Institute's 38th Annual Monetary Economics Conference*. Available at: https://occ.treas.gov/publications-and-resources/publications/economics/working-papers-banking-perf-reg/pub-econ-working-paper-chartering-fintech-future.pdf

beneficial use cases, such as streamlining processes and efficiently delivering products to consumers and small businesses.

More specifically, a financial provider using a single AI model (e.g., for fraud detection) would have to potentially modify that model to comply with 50 different state laws, each with its own unique requirements for testing, explainability, and data usage. This could be functionally impossible, or at the very least, prohibitively expensive. Additionally, such a scenario would lead to the balkanization of the financial services market, where companies might be forced to create separate, state-specific versions of their AI models. This would fragment the market, increase costs, and slow down the adoption of beneficial AI technologies.

Notably, disparate state-based AI laws and regulations also contradict clear federal policies, including the recent White House Executive Order titled "Winning the Race: America's AI Action Plan."[4] The White EO calls for advancing AI development in the U.S., including in the financial services context, not impeding it with labyrinthian state-level regulation. Additionally, financial services providers in the U.S. are already subject to comprehensive state and federal level entity-and-activities based financial services regulations, which govern the use of technologies, including AI. This well-established financial services regulatory framework is often being contradicted by general AI laws at the state level, resulting in ambiguity, confusion, and obstruction.

To foster a conducive environment for national AI innovation, policymakers must accordingly promote a unified regulatory approach at the national level. This approach should leverage existing financial services regulations and prevent the imposition of duplicative, conflicting, and burdensome regulations on financial services firms and AI model developers. AI is indeed a key national technology where America must lead—this effort will be undermined if state laws improperly and unduly burden and impede interstate commerce and national economic activity.

II. State Laws that Violate National and State Bank Powers and Undermine Interstate Bank-Fintech Financial Services Offerings Must be Addressed

Bank-fintech partnerships are a significant reason why eight in ten Americans can use a fintech app to send, manage, save, and invest their money with confidence. They also power tens of millions of small businesses that depend on fintech to access capital and the financial tools for success. Such partnerships are responsible for filling gaps in credit markets for underserved consumers and small businesses, reducing or eliminating overdraft fees through greater competition, and reducing friction, time, and cost—while enhancing access—to payments services.

[4] The White House (2025) *America's AI Action Plan*. Available at: https://www.whitehouse.gov/wp-ontent/uploads/2025/07/Americas-AI-Action-Plan.pdf.

Bank-fintech partnerships are subject to a broad array of laws, regulations, and federal banking agency ("FBA") guidance, "including but not limited to, consumer protection requirements (such as fair lending laws and prohibitions against unfair, deceptive, or abusive acts or practices) and those addressing financial crimes (such as fraud and money laundering)."[5] Additionally, given the FBA's robust regulatory authority, bank-fintech partnerships are subject to federal oversight and supervision. More specifically, the FDIC, Federal Reserve, and OCC have direct visibility into lending, deposit, and payments partnerships through supervision of the chartered banking entity.

Underscoring the role of federal regulatory oversight of bank-fintech partnerships, in 2020, the OCC and FDIC issued final rulemakings upholding the "valid-when-made" doctrine. These rulemakings were widely understood as supporting bank-fintech lending partnerships and recognizing their important role in providing consumer and small business access to capital.

Unfortunately, the well-established federal framework that upholds bank powers and the ability of banks to partner with fintechs in order to expand credit access is under attack by various state-level efforts. Ill-founded "true lender" laws purport to "characterize a nonbank platform performing substantive loan origination activity on behalf of a federally insured bank as the lender of loans generated through the partnership as a matter of state law."[6] Closely related, some states are pursuing opt-outs from the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), which aims to restrict the ability of an out-of-state bank to export interest rates from their home state. Efforts to restrict out-of-state bank interest rate exportation or to subject a bank's lending partner to state-based lending laws significantly burden interstate commerce and undermine the foundational principles of the U.S. banking system.

Indeed, interest rate exportation and the cross-border offering of bank credit is necessary to the functioning of a modern banking system and economy that functions across state lines. It is also a fundamental feature of the United States' dual banking system. The Supreme Court has expressly acknowledged that national banking powers limit state authority[7] and federal banking agency regulatory supervision already fills the field for oversight.[8] Any efforts to alter the national banking framework through improper state laws should be accordingly nullified.

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[5] Federal Register (2024a) 'Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses,' *89 Fed. Reg. 61577*. Available at: https://www.federalregister.gov/documents/2024/07/31/2024-16838/request-for-information-on-bank-fintech-arrangements-involving-banking-products-and-services.

[6] Cooley, K. and Doorley, F. L. (2025) 'What to expect in licensing in 2025,'*Mayer Brown Insights*. Available at: https://www.mayerbrown.com/en/insights/publications/2025/02/what-to-expect-in-licensing-in-2025

[7] *See* Marquette National Bank of Minneapolis v. First of Omaha Service Corp., 439 U.S. 299 (1978).

[8] Federal bank regulators provide holistic oversight of lending partnerships, considering customer profiles, product pricing, fees, terms, performance metrics, and repeat usage to determine if programs are healthy or indicative of a debt trap. This comprehensive approach, combined with the "valid when made" rules promulgated by the OCC and

Separately, we have seen instances of unequal treatment for national and state banks in recently enacted state laws. This year, New York passed a law governing buy-now-pay-later loans that only exempted national banks. This is a departure from case law as well as New York statutes as precedents that treat state-charted banks and national banks the same.[9]

Federal bank regulators provide holistic oversight of lending partnerships, considering customer profiles, product pricing, fees, terms, performance metrics, and repeat usage to determine if programs are healthy or indicative of a debt trap. This comprehensive approach, combined with the "valid when made" rules promulgated by the OCC and FDIC (which essentially mooted the *Madden* decision), demonstrates that a singular focus on theories like predominant economic interest (PEI) or state DIDMCA opt-outs is a red herring and detrimental to the national credit market.

III. State Privacy Laws Are Creating A Patchwork of Requirements that Cause Consumer Confusion and Impose Undue Burdens

FTA believes that consumer choice, trust, and protection is the cornerstone of financial services. Proper use of consumer financial data is the underpinning of a more fair, accessible, and empowering financial system capable of better serving all American consumers and small businesses. State enactment of disparate privacy laws, while many times well meaning, can create consumer confusion related to individual data rights. These laws also pose complex compliance challenges, given that digital commerce seamlessly operates across state borders.

We support efforts to modernize existing financial data privacy expectations[10] to ensure a level playing field amongst all financial services participants, enhance consumer rights and ensure that privacy and security expectations account for the digital age. In particular, we support a clear, consistent, and uniform federal privacy standard that preempts the patchwork of state privacy laws while satisfying consumer needs and expectations, safeguarding consumer data, and comporting with broader societal objectives and other legal requirements. A federal standard can also clarify and reinforce the role of various federal agencies (e.g., the Consumer Financial Protection Bureau and Federal Trade Commission).

FDIC, demonstrates that a singular focus on theories like predominant economic interest (PEI) or state DIDMCA opt-outs is a red herring and detrimental to the national credit market.

[9] Financial Technology Association (2025) *Statement on Flawed BNPL Provisions in New York State Budget*. Available at: https://www.ftassociation.org/fta-statement-on-flawed-bnpl-provisions-in-new-york-state-budget/

[10] House Financial Services Committee (2025) *House Financial Services Committee Requests Feedback on Current Federal Consumer Financial Data Privacy Law and Potential Legislative Proposals*. Available at https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410833.

IV. Inconsistent State Laws, Regulations and Guidance Pertaining to EWA Impede Interstate Commerce, Compliance, and Consumer Choice

Earned wage access ("EWA") is an important innovation that is helping hardworking Americans access their own earned wages as they accrue earnings. Millions of workers seek flexible, low-cost alternatives to high-interest credit products, such as payday loans. This is a free-market innovation that gives workers control over their paycheck.

The legal distinctions, unique characteristics, and critical benefits to American consumers of EWA products require a holistic, tailored approach to policymaking that helps consumers, keeping these financial products and services more accessible, convenient, affordable, and transparent, while protecting consumers and affording stakeholders a fair opportunity to inform any framework.

Unfortunately, the Biden Administration's CFPB proposed EWA interpretive rule[11] applied ill-fitting credit laws and pushed a legally flawed interpretation that would improperly reclassify EWA products as credit, thereby jeopardizing product access for millions of Americans. Several states have taken similar actions and attempted to apply their existing credit statutes to EWA. Meanwhile, other states have rightly recognized EWA as a distinct financial product and regulated it accordingly. This has created a patchwork of regulations, leading to confusion, increased compliance burdens for EWA providers, misguided lawsuits, and jeopardizing consumer access to the product. Notably, the Biden era proposed interpretive rule was recently cited by class action litigants to support application of credit laws that are not fit-for-purpose and was relied upon by a Judge in denying a motion to dismiss an action against an EWA provider.[12] While such reliance is inappropriate for a proposed—and not final—interpretive rule, it underscores the importance of further Administration action to avoid harming and distorting the market for EWA services.

It is accordingly critical that the Bureau formally rescind the proposed interpretive rule. Ultimately, any federal legislative effort should recognize the non-credit nature of both direct-to-consumer and employer-integrated EWA products and include preemption.

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FTA urges the Justice Department and NEC to prioritize identifying and addressing state laws that impose these unnecessary burdens on interstate commerce. A tailored strategy that leverages

[11] Federal Register (2024b) 'Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work,' *89 FR 61358*. Available at: https://www.federalregister.gov/documents/2024/07/31/2024-16827/truth-in-lending-regulation-z-consumer-credit-offered-to-borrowers-in-advance-of-expected-receipt-of

[12] *See* Orubo et al v. ActiveHours (2025) *Case # 5:24-CV-04702 (N.D. Cal.); Order on motion to dismiss Order on Administrative Motion per Civil Local Rule 7-11*. Available at: https://www.pacermonitor.com/public/case/54553455/Orubo_et_al_v_Activehours,_Inc

federal preemption to create unified national frameworks will provide clear guidance for industry, support responsible innovation, and foster economic growth, while maintaining strong consumer and small business protections. We appreciate the opportunity to contribute to this discussion and look forward to continued engagement in shaping policies that advance America's economic interests.

Sincerely,

Penny Lee
President and Chief Executive Officer
Financial Technology Association