Finding a Balance for New Fintech Products

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New financial products, including buy now, pay later (BNPL) loans and earned wage access (EWA), were discussed in a Senate Committee on Banking, Housing and Urban Affairs hearing on Sept. 13.

"The rapid growth of new consumer financial products being offered by nonbank, financial technology companies—also known as "fintech"—is of great interest to policymakers," according to the hearing memo from Committee Chair U.S. Sen. Sherrod Brown, D-Ohio, and Ranking Member U.S. Sen. Pat Toomey, R-Pa. "Fintech innovations could potentially improve the efficiency of the financial system and financial outcomes for businesses and consumers. However, without strong consumer protections and transparency requirements, the new technology could pose certain risks, potentially leading to unmanageable debt or other harmful outcomes. Many of the newer consumer financial products, like buy now, pay later (BNPL) and earned wage access (EWA), are short-term credit products, meant to help consumers meet short-term credit needs."

Witnesses for the hearing representing fintech and consumer groups agreed the products provide a benefit to consumers but questioned how they should be regulated—under current consumer protection laws or under new or updated laws and regulations that reflect the use of the products and don't stifle innovation.

Many of the newer consumer financial products discussed in the hearing are designed to help consumers meet short-term credit needs, but there are concerns about evaluating consumers' ability to repay and the impact these products could have on consumers' overall credit.

"Although these products, provisions, and fee models seem incredibly different at first glance, and are unique in reality, they share one thing in common: they disguise credit and its true cost to consumers and regulators alike," said Rachel Gittleman, financial services outreach manager at the Consumer Federation of America in her testimony.

However, Penny Lee, CEO of the Financial Technology Association, said these advances in consumer financial products are coming at a critical time for the American economy.

According to a **Morning Consult poll** conducted on behalf of the Financial Technology Association, Lee said, "Americans are more likely to report they are worse off financially than they were a year ago and express concerns about affording everyday essentials from groceries to gas."

The impact of BNPL has provided consumers another option for these expenses, according to the poll, and 82% BNPL users said they trust the service to do the right thing for consumers. About 94% of BNPL users said they found they could easily understand the terms and services of the product.

"I think that's a very high mark of people that really understand what these products are about, what their obligations are and have full understanding of the terms," Lee said.

Hodgepodge or Wait and See?

U.S. Sen. Mark Warner, D-Va., asked the hearing panel how these fintech products should be regulated—noting there is no clarity between the Consumer Financial Protection Bureau's fintech regulations and state laws. "I don't think the hodgepodge of regulations is going to help," Warner said.

On this topic, Todd Zywicki, a law professor at George Mason University and former senior fellow at the Cato Institute, noted the CFPB is collecting information on BNPL, which should provide useful details to better understand the structure of these fintech products. He said the CFPB should have the authority to supervise the use of these products, but only after more research is complete.

"As with EWA and all other non-prime financial products, the most relevant question is what alternatives these consumers would be left with if they are unable to access BNPL as a result of regulations that end up restricting access to these products," said Zywicki, chair of the CFPB's Task Force on Consumer Financial Law from 2020-2021. "Under conditions of high interest rates, high inflation and recessionary economic conditions, BNPL could turn out to be a crucial lifeline for consumers and smaller merchants to provide important resiliency during the coming challenging economic conditions."

Toomey, during his questioning for the witnesses, focused on the best way to regulate these products while not stifling innovation.

"All of this hostility to new financial products is further evidence of the condescension and paternalism of some of my colleagues to our constituents. Individual consumers are better positioned than any bureaucrat or politician to understand their own individual needs and preferences, and make their own choices," Toomey said. "My colleagues ignore the benefits consumers derive from access to more choices in a more dynamic marketplace. The best form of consumer protection is a robust, competitive market. That's why, instead of curtailing new financial products, regulation should facilitate innovation and consumer choice."

Zywicki said the promise of fintech is that it brings options to younger, underserved consumers.

"My big concern is taking [a] regulatory structure that dates back to the 1970s and trying to impose that on the new fintech economy, which could really be a problem," Zywicki said.

What's Next?

On Thursday, the CFPB published a **report** examining the rapid growth of BNPL lending, stating that the bureau will "ensure Buy Now, Pay Later lenders, just like credit card companies, are subjected to appropriate supervisory examinations."

In addition to studying BNPL products, the CFPB also launched a **request for information on employer-driven debt** and workers experiences with emerging practices and financial products.

Employer-driven debt comprises an emerging set of products and services that the CFPB is studying to better understand the potential impact on individual borrowers, jobseekers and the broader labor market, **ACA International previously reported**.

David Seligman, executive director of Towards Justice, said during the hearing that employer-driven debt is a result of workers not earning a living wage or having a predictable schedule, not a lack of access to credit.

Seligman said employer-driven debt should be monitored as part of the CFPB and Federal Trade Commission's consumer protection work.

Turning the hearing briefly to a different topic, U.S. Sen. Elizabeth Warren, D-Mass., discussed the Biden administration's student loan forgiveness plan and the role of student loan servicers, stating they should not encourage consumers to refinance their student loans, which would make them no longer eligible for the debt forgiveness.

Overall, it's expected that regulation of new fintech products discussed during the hearing will remain an issue of bipartisan congressional interest, regardless of the 2022 midterm election results.